



AUSTRALIAN ENERGY MARKET COMMISSION

RULE

Consultation paper

National Electricity Amendment (Allowing AEMO to accept cash as credit support) Rule 2024

Proponent

Delta Electricity

24 October 2024

Inquiries

Australian Energy Market Commission
Level 15, 60 Castlereagh Street
Sydney NSW 2000

E aemc@aemc.gov.au
T (02) 8296 7800

Reference: ERC0403

About the AEMC

The AEMC reports to the energy ministers. We have two functions. We make and amend the national electricity, gas and energy retail rules and conduct independent reviews for the energy ministers.

Acknowledgement of Country

The AEMC acknowledges and shows respect for the traditional custodians of the many different lands across Australia on which we all live and work. We pay respect to all Elders past and present and the continuing connection of Aboriginal and Torres Strait Islander peoples to Country. The AEMC office is located on the land traditionally owned by the Gadigal people of the Eora nation.

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Summary

- 1 In the National Electricity Market (NEM), participants are required under the National Electricity Rules (NER) to provide credit support to meet prudential requirements. This credit support allows the Australian Energy Market Operator (AEMO) to manage financial risks in the event that a participant defaults and is unable to pay its outstanding settlement.
- 2 Delta Electricity (Delta) considers that the current available options for credit support in the NEM can lead to profitable and solvent participants being unable to obtain an accepted form of credit support. Under the current arrangements, only bank guarantees and letters of credit in forms acceptable to AEMO can be provided as credit support.
- 3 Delta submitted a rule change request to allow AEMO to accept cash as credit support. This would provide an alternative option for participants to provide credit support and meet their prudential requirements in the NEM. The proposed change would apply to all market participants that are required to credit support, such as generators and retailers.
- 4 We have commenced our consideration of the rule change request, and this consultation paper is the first stage. We are seeking your feedback on:
 - how we propose to assess the request to determine if it will promote the long-term interests of consumers
 - whether the current options for credit support create material problems in the markets
 - if the current arrangements are problematic, whether Delta's proposed solution or any alternative solutions could address issues.

We are proposing to use the expedited process for this rule change

- 5 We are proposing to use the expedited rule making process under section 96 of the NEL because we consider the rule change request is a request for an urgent rule.
- 6 We consider that the rule change, if not made as a matter of urgency, will imminently result in prejudicing or threatening the safety, security or reliability of the national electricity system. This is because of the risk that Delta may be unable to provide an accepted form of credit support to AEMO from the end of 2024 and, at the extreme, could be restricted from participating in the NEM, exacerbating reliability gaps over summer. AEMO's 2024 Electricity Statement of Opportunities (ESOO) highlighted forecast reliability gaps in NSW, as well as Victoria and South Australia for this coming summer.
- 7 We consider that using the expedited process is appropriate to assess the rule change request. The expedited process would be eight weeks in total, with one round of consultation (this consultation paper) prior to a final determination.
- 8 Stakeholders can object to this expedited process by lodging a written objection with us by **7 November 2024**. Any objection should detail reasons why the rule change is not urgent. We will switch to the standard rule change process if we receive a valid objection. See below for more information on how to object to the expedited process.

We are seeking your views on issues arising from the current options for providing credit support

- 9 Delta, the proponent of this rule change request, considers that there is an increasing trend of financial institutions not providing financing arrangements where there is exposure to fossil fuels.

Delta considers that this creates issues for market participants who may be unable to meet their prudential requirements due to an inability to obtain accepted forms of credit support. Delta considers that this issue can occur even when affected participants are profitable and solvent.

- 10 Delta notes that this issue is particularly relevant to its circumstances. Delta's current credit support arrangements expire at the end of 2024, and it has been unsuccessful to date in obtaining new credit support arrangements with an acceptable credit support provider. This creates a risk that Delta may not meet its prudential requirements from the end of 2024 and could be restricted from participating in the NEM.
- 11 We are seeking to determine the materiality of the issue raised by Delta that profitable and solvent participants may be unable to meet prudential requirements due to the current available options to provide credit support. We are also seeking any other issues identified by stakeholders due to the current options for credit support.

We are also seeking your views on allowing AEMO to accept cash as credit support

- 12 Delta has proposed that AEMO be allowed to accept cash as credit support in the NEM. If introduced, this would provide an alternative option for participants to provide credit support and meet their prudential requirements without needing to organise credit support arrangements with a lender.
- 13 We will be considering any potential benefits from allowing AEMO to accept cash as credit support against any potential costs. Potential benefits could stem from addressing any issues, such as Delta's specific issue, from the current options to provide credit support. Potential costs could be increased risks to AEMO and the market, due to cash being clawed back if a participant becomes insolvent, or any impacts on emissions reductions.
- 14 In considering Delta's solution, we will also be considering variations to its proposed solution that, if implemented, might better deliver benefits and manage risks. These variations could enable AEMO to manage under what conditions it accepts cash as credit support to minimise clawback risks to AEMO and the market, or socialise the costs of a clawback among market participants instead of AEMO bearing the costs. We are also considering whether transitional arrangements may be necessary to address Delta's immediate issue. We welcome comments from stakeholders on these issues.

We consider that there are four assessment criteria that are most relevant to this rule change request

- 15 Considering the National Electricity Objective (NEO), and the issues raised in the rule change request, the Commission proposes to assess the rule change request against four assessment criteria.¹
- 16 We are seeking feedback on our proposed assessment criteria:
 - **Safety, security and reliability:** Do the proposed changes enable the reliable, secure and safe provision of energy at efficient cost to consumers over the long term? Do the proposed changes promote the efficient operation and use of, and investment in, generation facilities, load, storage, networks and other system service capability?

¹ Section 7 of the NEL.

- **Emissions reductions:** Do the proposed changes efficiently contribute to achieving government targets for reducing, or that are likely to reduce, Australia’s greenhouse gas emissions?
- **Flexibility:** Are the proposed changes future proof, resilient and able to accommodate market, technological, policy, climate and other changes?
- **Predictability and stability:** Do the proposed changes promote predictability and stability in the regulatory framework for stakeholders?

Submissions are due by 21 November 2024

- 17 Written submissions responding to this consultation paper must be lodged with Commission by **21 November 2024** via the Commission’s website, www.aemc.gov.au.
- 18 There are other opportunities for you to engage with us, such as one-on-one discussions. See the section of this paper about “How to engage with us” for further instructions and contact details for the project sponsor.

Full list of consultation questions

Question 1: Do the current available options for credit support create problems in the NEM?

- How likely is it that other participants may face issues in the future obtaining bank guarantees or letters of credit, similar to the issues currently faced by Delta or otherwise?
- Could the current options for credit support create risks to the supply of electricity? Are these short-term risks or longer-term risks to the broader NEM?
- Are there any other issues faced by market participants due to the current options to provide credit support?

Question 2: What are the potential benefits of allowing cash to be provided as credit support?

- What benefits do you consider there to be from allowing cash to be provided as credit support?
- If there are benefits, how material could they be?

Question 3: What are the potential costs of allowing cash to be provided as credit support?

- What are your views on risks to AEMO and markets participants from insolvencies if cash is provided as credit support? Are these risks sufficiently material to outweigh any benefits of the proposal?
- What do you consider would be the likely impact on emissions by allowing cash to be provided as credit support?
- Are there any other potential costs from allowing cash to be provided as credit support?
- If there are costs, how material are they?

Question 4: Are there any provisions that could enable AEMO to sufficiently manage insolvency risks when accepting cash as credit support?

If cash is accepted as a form of credit support, do insolvency risks to AEMO and the market need to be managed? If so, could risks be satisfactorily managed by:

- socialising costs from cash clawbacks among market participants, instead of AEMO bearing the costs?
- guidance to AEMO on conditions for which cash could be provided as credit support?
- AEMO registering a security interest in the cash on the Personal Property Securities Register?

Question 5: Would transitional rules be needed?

We note that Delta's current bank guarantee facilities are expiring at the end of 2024.

If a rule was made to allow AEMO to accept cash as credit support, would transitional rules be needed to enable Delta or other participants to provide cash as credit support during an interim period? If so, what would be an appropriate form of transitional rules?

Question 6: Are there any additional variations or alternative options to Delta's proposal?

Do you have any additional variations or alternative options to Delta's proposal that may address problems associated with the available options for providing credit support in the NEM?

Question 7: Assessment framework

Do you agree with the proposed assessment criteria? Are there additional criteria that the Commission should consider or criteria included here that are not relevant? What are stakeholders views on the costs and benefits of the proposed solution or alternative options against these criteria?

How to make a submission or object to expedited process

We encourage you to make a submission

Stakeholders can help shape the solutions by participating in the rule change process. Engaging with stakeholders helps us understand the potential impacts of our decisions and, in so doing, contributes to well-informed, high quality rule changes.

We have included questions in each chapter to guide feedback, and the full list of questions is above. However, you are welcome to provide feedback on any additional matters that may assist the Commission in making its decision.

How to make a written submission

Due date: Written submissions responding to this consultation paper must be lodged with Commission by **21 November 2024**.

How to make a submission: Go to the Commission's website, www.aemc.gov.au, find the "lodge a submission" function under the "Contact Us" tab, and select the project reference code ERC0403.²

Tips for making submissions are available on our website.³

Publication: The Commission publishes submissions on its website. However, we will not publish parts of a submission that we agree are confidential, or that we consider inappropriate (for example offensive or defamatory content, or content that is likely to infringe intellectual property rights).⁴

How to object to an expedited process

The Commission is proposing to use an expedited process (eight weeks, one round of consultation) for this rule change for the reasons set out in section 1.3. Stakeholders can object to this process. We will switch to the standard rule change process if we receive a valid objection.⁵

Due date: Written objections to the expedited process must be lodged with Commission by **7 November 2024**.

How to lodge an objection to the expedited process: Go to the Commission's website, www.aemc.gov.au, find the "lodge a submission" function under the "Contact Us" tab, and select the project reference code ERC0403.⁶

Contents: Objections must set out the reasons why you consider:

- the Rule is not related to any matter or thing that, if not made as a matter of urgency, will result in that matter or thing imminently prejudicing or threatening:
 - a. the effective operation or administration of the wholesale exchange operated and administered by AEMO; or
 - b. the safety, security or reliability of the national electricity system.

Publication: The Commission publishes objections on its website. However, we will not publish materials that we agree are confidential, or that we consider inappropriate (for example offensive or defamatory content, or content that is likely to infringe intellectual property rights).⁷

² If you are not able to lodge a submission online, please contact us and we will provide instructions for alternative methods to lodge the submission.

³ See: <https://www.aemc.gov.au/our-work/changing-energy-rules-unique-process/making-rule-change-request/submission-tips>

⁴ Further information is available here: <https://www.aemc.gov.au/contact-us/lodge-submission>

⁵ See section 96 of the NEL. The Commission will consider if the reasons set out in the objection are misconceived or lacking in substance.

⁶ If you are not able to lodge an objection online, please contact us and we will provide instructions for alternative methods to lodge the objection.

⁷ Further information is available here: <https://www.aemc.gov.au/contact-us/lodge-submission>

For more information, you can contact us

Please contact the project sponsor with questions or feedback at any stage.

Project sponsor: Sebastien Henry
Email: sebastien.henry@aemc.gov.au

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1 The context for this rule change request

This consultation paper seeks stakeholder feedback on the rule change request submitted by Delta Electricity (Delta) to allow the Australian Energy Market Operator (AEMO) to accept cash as credit support in the National Electricity Market (NEM).

We are proposing to process this rule change request through an expedited process, as we consider that the rule change, if not made as a matter of urgency, will imminently result in prejudicing or threatening the safety, security or reliability of the national electricity system.⁸

1.1 Delta Electricity has proposed that the rules allow AEMO to accept cash as credit support

Prudential requirements allow AEMO to manage financial risks in the event that a market participant defaults and is unable to pay its outstanding settlement. As part of the prudential requirements for participants in the NEM, credit support must be provided to AEMO when a market participant is a net debtor to AEMO. Specifically, this credit support must be in the form of a bank guarantee or a letter in a form prescribed by AEMO.⁹ Prudential requirements for participants are outlined in rule 3.3 of the National Electricity Rules (NER). Failure of a market participant to meet its prudential requirements may see it, at the extreme, suspended from participation in the NEM.

Delta Electricity has submitted a rule change request relating to the options available to market participants to provide credit support. Delta considers that there exist circumstances in which otherwise profitable and solvent participants may be unable to provide credit support in a form that can be accepted by AEMO. Delta is proposing that AEMO be allowed to accept cash as credit support, providing a new credit support option for participants.

The rule change request can be found on our website [here](#).

1.1.1 Delta considers that profitable and solvent participants may be unable to provide credit support in the form currently prescribed in the NER

Delta considers that there is an increasing trend of financial institutions no longer providing financing arrangements to participants with exposure to fossil fuels. This could mean that participants may not be able to meet their prudential requirements and may be restricted from participating in the market, even if they are profitable and solvent.

In Delta's case, it has been unsuccessful in obtaining a bank guarantee facility or arrangements with an acceptable credit support provider to provide credit support from the end of 2024 in order to meet its NEM prudential requirements. Delta's current bank guarantee facility expires at the end of 2024, and Delta has been unable to extend the current facility due to the environmental, social and governance (ESG) policies of the financier. Delta has also been declined by numerous other lenders due to ESG constraints.

Therefore, Delta may be unable to meet its prudential requirements from the end of 2024 and, unless a resolution is found, it may be restricted from participating in the NEM.

Given that Delta operates a 1320MW coal-fired power station in NSW, this has the potential to lead to material changes to available supply of scheduled, synchronous generation in the near future if

⁸ Section 87 of the NEL.

⁹ Clause 3.3.2 of the NER.

Delta is suddenly restricted from participating in the NEM. Impacts could include immediate risks to the reliability (due to reductions in supply) and security of the power system (due to sudden unavailability of synchronous units).

Due to this immediate concern with Delta, we consider that this rule change request is urgent and are processing it under the expedited process, as described in section 1.3.

More information can be found in chapter 2 on the problems raised by Delta with the current arrangements for prudential requirements.

1.1.2 Delta has proposed that AEMO be allowed to accept cash as credit support

Delta has proposed that the NER be amended to allow participants to provide, and AEMO to accept, cash as a form of credit support in the NEM. Allowing cash to be accepted as a form of credit support would be an alternative option to allow participants, including Delta, to provide credit support and meet prudential requirements.

More information on this proposed solution is provided in chapter 3.

1.2 We have started the rule change process

This paper is the first stage of our consultation process. As explained in section 1.3, we are proposing to use an expedited process for this rule change because we consider the request is for an urgent rule. This expedited process includes the following formal stages:

- a proponent submits a rule change request
- the Commission commences the rule change process by publishing a consultation paper and seeking stakeholder feedback
- stakeholders may lodge objections to the expedited process and engage through other channels to make their views known to the AEMC project team
- stakeholders may lodge submissions on the consultation paper and engage through other channels to make their views known to the AEMC project team
- the Commission publishes a final determination and final rule (if relevant).

If we receive a valid objection to the expedited process, we will revert to the standard rule change process. The standard rule change process would include, prior to a final determination being made, the publication of a draft determination and draft rule with an opportunity for stakeholders to provide feedback on the draft determination.

Information on how to provide your submission and other opportunities for engagement is set out at the front of this document. You can find more information on the rule change process on our website.¹⁰

To make a decision on this proposal, we are seeking stakeholder feedback on how we propose to assess the request, the stated problem and the proposed solutions.

1.3 We are proposing to use an expedited process for this rule change

We propose to use the expedited rule making process under section 96 of the NEL because we consider the rule change request is a request for an urgent rule, and using the expedited process (eight weeks in total, with one round of consultation) is appropriate in the circumstances.

Objections to the expedited process can be made by **7 November 2024**.

¹⁰ See our website: <https://www.aemc.gov.au/our-work/changing-energy-rules>

1.3.1 We consider that the rule change request is urgent

We consider the rule change request is urgent as the rule change, if not made as a matter of urgency, will imminently result in prejudicing or threatening the safety, security or reliability of the national electricity system.¹¹ This is because there is a potential risk that Delta Electricity, a registered market generator and customer in the NEM, may be unable to meet its prudential requirements with AEMO from the end of 2024, and as a consequence, at an extreme, may be suspended from participating in the NEM.

Delta may be restricted in operating in the NEM when they do not meet the prudential requirements, such as the operation of the coal-fired 1320MW Vales Point B Power Station. AEMO's 2024 Electricity Statement of Opportunities (ESOO) highlighted forecast reliability gaps in NSW, as well as Victoria and South Australia for this coming summer.¹² We consider that the potential risk for a sudden and unplanned withdrawal of a scheduled, synchronous generator of material size from the end of 2024 could prejudice or threaten the security and reliability of the NEM. As such, we consider that there is an urgent need to address the issue and avoid potential risks to security and reliability in the NEM.

We also note that Delta is generally a net supplier to the NEM and would typically not be required to provide credit support. However, Delta's retail to customers means that, under certain circumstances (such as generator unavailability), Delta may become a net debtor to AEMO and thus be required to provide credit support. Furthermore, it is possible that Delta may find alternative solutions to meet prudential requirements outside of this rule change request.

However, we cannot assume that Delta would not become a net debtor to AEMO, nor rely on the possibility of alternative solution, to address Delta's issue from the end of 2024. Therefore, we consider that there is an imminent risk that Delta may be unable to meet its prudential requirements, which could threaten the reliability and security in the NEM.

We consider that the rule change request is urgent in line with the definitions of an urgent rule in section 87 of the NEL. In proceeding with an expedited process for this rule change, and subject to any objections to the expedited process, we anticipate that a final determination would be made within eight weeks from the publication of this consultation paper.

1.3.2 Stakeholders can object to the expedited process by 7 November 2024

If any stakeholder opposes the use of the expedited process for this rule change, they can object. The process for objecting to the expedited rule making process is set out in the summary of this consultation paper. Any objections must be provided in writing to the AEMC by 7 November 2024, and set out reasons why.¹³

- the Rule is not related to any matter or thing that, if not made as a matter of urgency, will result in that matter or thing imminently prejudicing or threatening:
 - a. the effective operation or administration of the wholesale exchange operated and administered by AEMO; or
 - b. the safety, security or reliability of the national electricity system.

We will publish any received objections on our website and our decisions regarding them. If we are of the opinion that any objections are not misconceived or lacking in substance, we will revert to a standard rules consultation process and publish a corresponding notice.

¹¹ Section 87 of the NEL.

¹² See AEMO's 2024 ES00 [here](#).

¹³ Section 87 of the NEL.

2 The problem raised in the rule change request

This chapter outlines and seeks stakeholder feedback on:

- the problem raised by Delta in the rule change request
- whether other participants may be unable to meet their prudential requirements
- emissions considerations related to the problem
- any other issues due to the current options for credit support.

2.1 Delta is at risk of not meeting its prudential requirements from the end of 2024

Delta considers that there is an increasing trend of financial institutions no longer providing financing arrangements where there is an exposure to fossil fuels. For participants exposed to fossil fuels, this can restrict the financing options available for them to meet their prudential requirements under the current arrangements. If participants are unable to meet their prudential requirements, their activities in the market may be restricted (if they are able and allowed to participate at all).

Delta also outlines how the current arrangements for credit support are impacting them specifically and creating a potential risk that they may not be able to meet their prudential requirements from the end of 2024:

Delta's current bank guarantee facility expires at the end of 2024. In 2023 the current financier advised that, due to its ESG policies, it would not be possible to extend the current facility. In late 2023 Delta engaged an experienced financial adviser and commenced a refinancing process. To date, Delta has been unsuccessful in obtaining a bank guarantee facility or arrangements with a credit support provider who would meet the requirements of the acceptable credit criteria as defined in Rule 3.3.3 of the NER.

By way of example, it has been identified during the refinancing process that 13 of the 15 lenders declined due to ESG constraints, which included the Big-4 Australian banks. Both of the remaining financial institutions were prepared to offer a bank guarantee facility to provide credit support related only to requirements for mining rehabilitation obligations and renewable Power Purchase Agreements. While it was considered, by these lenders, that these guarantees are "ESG positive" (i.e. support mine rehabilitation obligations and an agreement to purchase solar power), there was still no appetite from most lenders simply because of the association with thermal coal.

This means that there exists a real potential that a market participant, while being a profitable and solvent business, may be unable to meet prudential requirements with AEMO from the end of 2024.

This immediate risk to Delta, who operates a 1320MW coal-fired power station in NSW, creates further issues to the broader NEM. If Delta is required to provide credit support but is unable to meet its prudential requirements, it may be unable to participate in the NEM and the corresponding reduction in supply to the market could have immediate security and reliability issues. These issues could have direct negative impacts on consumers due to significant, sudden and unplanned reductions in supply, such as increased prices and/or, in the worst case, loss of load.

We note that, while these issues could occur, they may not be enduring. We consider that any restriction could be temporary, as Delta may find an alternative solution to satisfy its prudential requirements. Therefore, any threats to reliability and security may only be temporary until such a solution is found.

As mentioned in section 1.3.1, this potential risk is subject to circumstances where Delta is required to provide credit support. Nevertheless, we consider the risk is sufficiently material that we consider this rule change to be urgent.

2.2 We are interested in whether other participants may be unable to meet prudential requirements

As noted in section 2.1, Delta considers that it may become increasingly difficult for participants exposed to fossil fuels to obtain financing arrangements that allow them to meet prudential requirements. Therefore, while there is an immediate risk to Delta, we are also interested in whether other participants may struggle to provide acceptable forms of credit support, for similar reasons or otherwise.

This may include NEM participants with fossil fuel generators. If, in the future, such participants encounter issues and are unable to provide an accepted form of credit support, similar to Delta, there could be risks to reliability and security in the NEM. These risks could be material if multiple participants are affected simultaneously and/or if the amount of affected capacity in the NEM is material. Potential consequential negative impacts could include:

- short-term impacts from sudden and significant reductions in supply, such as:
 - unsupplied demand, or the increased probability of unsupplied demand, due to a supply shortfall
 - increased prices and costs to consumers from reduced supply
- system security impacts from sudden and significant reductions in synchronous plant in the electricity system.

Therefore, we are interested in whether other participants in the NEM may be unable to meet prudential requirements, due to the current options to provide credit support.

2.3 We will consider any impacts on emissions associated with the problem and any possible solutions

We acknowledge the potential decrease in emissions if Delta is unable to participate in the NEM because it cannot provide credit support in the form of a bank guarantee or letter of credit. Delta operates the 1320MW coal-fired Vales Point Power Station in NSW, which is currently expected to close in 2033.¹⁴ Therefore, any restriction to the operation of Vales Point from the end of 2024, due to Delta not meeting prudential requirements, has the potential to lead to emissions reductions.

However, we note that any restriction on the operation of Vales Point due to this issue with prudentials may not be enduring. Any restriction could be temporary as Delta may find an alternative solution through other avenues. Therefore, any restrictions on the operation of Vales Point may only be in the short-term.

In assessing this rule change request, we will consider potential impacts on emissions from Delta or other participants along with any other costs, such as from reliability and security issues, if they

¹⁴ The current expected closure date can be found in AEMO's Generation Information [here](#).

are unable to participate in the NEM for a period of time (noting that this period may be short, as mentioned above).

In progressing this rule change request, we are seeking stakeholder views on emissions reductions.

2.4 We are seeking stakeholder feedback on whether the current options for credit support create issues

We are seeking stakeholder views on problems arising in the NEM due to the current options for credit support to participants. This could include any of the issues discussed above, or any other issues identified by stakeholders. Other issues might include:

- higher than necessary costs in obtaining an acceptable bank guarantee or letter of credit, when other lower cost options are available
- risks that participants may be unable provide additional credit support in the form of an acceptable bank guarantee or letter of credit in the required timeframe.

Question 1: Do the current available options for credit support create problems in the NEM?

- How likely is it that other participants may face issues in the future obtaining bank guarantees or letters of credit, similar to the issues currently faced by Delta or otherwise?
- Could the current options for credit support create risks to the supply of electricity? Are these short-term risks or longer-term risks to the broader NEM?
- Are there any other issues faced by market participants due to the current options to provide credit support?

3 The proposed solution and implementation

To address the issues raised by Delta (as described in its rule change request and outlined in chapter 2), it has proposed that participants in the NEM be able to provide, and AEMO allowed to accept, credit support in the form of cash.

This chapter outlines and seeks stakeholder feedback on:

- the potential benefits and costs of the proposal
- potential rules amendments to give effect to the proposal
- variations to the proposal that could enhance benefits or mitigate risks.

3.1 We are interested in stakeholder views on the potential benefits and costs from Delta's proposal

Under Delta's proposal, participants in the markets would be able to use cash as an alternative option to provide credit support. We are interested in stakeholder views on the potential benefits and costs of Delta's proposal.

3.1.1 Potential benefits from allowing cash to be accepted as credit support

In the immediate future, providing cash as an alternative form of credit support could enable Delta to meet its prudential requirements. This would address the urgent potential security and reliability risks to the NEM described in section 1.3.

In the long-term, Delta's proposed solution may preemptively address similar issues for other participants in the NEM, thereby avoiding profitable and solvent participants suddenly exiting the market. Sudden material reductions in supply to the market is likely to lead to inefficient outcomes and higher costs to consumers. Therefore, Delta's proposal may promote predictability and stability, and contribute to a smooth and orderly transition, in the NEM.

Delta's proposal may provide other benefits to the market. AEMO's Energy Market Prudential Readiness Review noted that cash an alternative credit support option could provide benefits to individual participants and the market as a whole, through:¹⁵

- Reduction in the risk of default due to administrative difficulties resulting in a Participant not meeting the timeframes for lodging a bank guarantee.
- Flexibility for Participants to choose the least cost option for provision of collateral, including for example by providing a base level of guarantee, supplemented by cash to meet seasonal variations.
- Reduction in administration costs for both Participants and AEMO in arranging and administering bank guarantees.
- Access to the advantage that cash collateral is readily accessible at short notice, and does not rely on the timely conversion of a bank guarantee in the event it needs to be called upon.

We are seeking stakeholder views on whether Delta's proposal would address any issues in the current arrangements and deliver benefits to the markets.

¹⁵ AEMO, Energy Market Prudential Readiness Review - Final Report to the MCE, April 2011, p.44.

Question 2: What are the potential benefits of allowing cash to be provided as credit support?

- What benefits do you consider there to be from allowing cash to be provided as credit support?
- If there are benefits, how material could they be?

3.1.2 Potential costs from allowing cash to be accepted as credit support

We are seeking stakeholder views on potential costs that may arise from allowing cash to be accepted as credit support:

- risks to AEMO and the market if the participant providing cash becomes insolvent
- lack of emissions reductions, by enabling Delta to continue operating Vales Point
- any other potential costs identified by stakeholders.

Risks to AEMO

There are potentially increased risks for AEMO in accepting cash as credit support in lieu of accepting bank guarantees or letters of credit where a market participant is or later becomes insolvent. These risks will need to be carefully considered and mitigated as part of any rule change.

A liquidator appointed to a market participant may seek to claw back any cash deposits paid by the market participant or applied by AEMO within the 6 months prior to the commencement of the administration or liquidation as an unfair preference if the payment and/or use of the cash deposit results in AEMO receiving more in the liquidation of a market participant in respect of an unsecured debt than it would have received otherwise.¹⁶

If AEMO's interest in a cash deposit constitutes a "security interest" for the purposes of the *Personal Property Securities Act 2009* (Cth) (PPSA), AEMO's rights in respect of a cash deposit may be lost in the administration or liquidation of a market participant unless AEMO has taken all necessary steps to perfect its interest pursuant to the PPSA. A security interest is broadly defined under the PPSA and refers to any interest in personal property provided for by a transaction that in substance secures the payment or performance of an obligation.¹⁷

Even if AEMO has properly perfected by registration on the Personal Property Securities Register (PPSR) any security interest in a cash deposit provided by a market participant, the market participant's other secured creditors may assert a priority over AEMO's security interest in the cash deposit.¹⁸ In these circumstances, the cash deposit could be clawed back from AEMO, leaving AEMO to bear any consequential costs. Consideration will need to be given to how any priority issues can be managed.

Processes would need to be considered and developed to mitigate the above risks associated with any rule change to allow cash to be used as credit support in lieu of a bank guarantee or letter of credit. Such processes may involve:

- the careful structuring of the arrangements pursuant to which cash deposits are held by AEMO

¹⁶ *Corporations Act 2001* (Cth), sections 588FA, 588FC and 588FE(2)

¹⁷ *Personal Property Securities Act 2009* (Cth), section 12(1)

¹⁸ In most cases, security interests are required to be perfected by registration on the Personal Property Securities Register. Unperfected security interests will immediately vest in the market participant upon insolvency.

- managing any potential priority concerns
- a requirement that any market participant, who wishes to provide credit support by way of a cash deposit, also enters into a security deposit deed and consents to the making of all required PPSA registrations by AEMO.

It is worth noting that such insolvency risks were previously considered in AEMO's Energy Market Prudentials Readiness Review, where stakeholders and AEMO considered that clawback risks could be material and needed to be mitigated.¹⁹ We propose several options that could be useful in mitigating insolvency risks are mentioned in section 3.2.

We note that the amount of credit support required by participants in the NEM, and consequently potential insolvency risks from the use of cash as credit support, may be affected by the outcome of the AEMC's *Shortening the settlement cycle* rule. In the draft determination, the AEMC proposed to shorten the settlement cycle of the NEM from 20 business days to 11 business days.²⁰ The AEMC has not yet made a final determination on the *Shortening the settlement cycle* rule. We will be considering relevant interactions between that final determination (when made) and this rule change.

Emissions reductions

Another potential cost of Delta's proposal is the impact on emissions reductions. As described in section 2.3, maintaining the current arrangements could in theory lead to emissions reductions by restricting the operation of Vales Point. However, it is possible that emission reductions may be minimal, if Delta finds an alternative solution outside of this rule change to satisfy its prudential requirements.

Question 3: What are the potential costs of allowing cash to be provided as credit support?

- What are your views on risks to AEMO and markets participants from insolvencies if cash is provided as credit support? Are these risks sufficiently material to outweigh any benefits of the proposal?
- What do you consider would be the likely impact on emissions by allowing cash to be provided as credit support?
- Are there any other potential costs from allowing cash to be provided as credit support?
- If there are costs, how material are they?

3.2 We are interested in potential variations and alternative options to Delta's proposal

While Delta's proposal is discussed above in section 3.1, we are interested in potential implementation considerations or variations that could, if implemented, deliver improved outcomes. We are seeking stakeholder feedback on:

- are there provisions that could be made to manage risks to AEMO and other participants from the use of cash as credit support?
- are transitional provisions needed to address Delta's specific immediate issue, prior to the implementation of any new arrangements?

¹⁹ AEMO, Energy Market Prudential Readiness Review - Final Report to the MCE, April 2011, p.45.

²⁰ AEMC, Shortening the settlement cycle - draft determination, 8 August 2024.

We are also interested in any additional considerations or variations that stakeholders may have.

3.2.1 We will consider options to manage risks to AEMO and market participants from the use of cash as credit support

As discussed in section 3.1, a potential issue with Delta's proposal is that cash used as credit could be clawed back if the corresponding participant becomes insolvent.

If cash were to be an accepted form of credit support, it would be preferential if the arrangements were designed to mitigate this risk. We consider that there could be several options to that could help deliver of this objective:

- **Socialising clawback costs among market participants:** With the existing arrangements and the simple inclusion of cash as an accepted form of credit support, AEMO would bear the costs of a clawback if a participant becomes insolvent. This could materially impair AEMO's ability to manage and operate the markets. Therefore, rules may be needed to facilitate cost recovery from participants in the event a clawback, which would instead socialise the costs of a clawback across market participants.²¹
- **Guidance to AEMO in accepting cash:** AEMO could be provided guidance (such as through the rules) on under what conditions to accept cash as credit support. This could allow cash to be used in certain circumstances, while enabling AEMO to manage insolvency risks by limiting the amount of cash provided as credit support. For example, cash could be provided up to a dollar limit and/or participants might need to meet certain criteria to be allowed to provide cash.
- **AEMO could register a security interest in the cash:** In the WEM, participants are allowed to provide cash as credit support to AEMO. When doing so, this gives rise to a security interest under the PPSA and is registered on the PPSR in order to safeguard the security.²² As noted in section 3.1.2, similar arrangements implemented in the NEM could help to reduce risks to AEMO and participants from potential insolvencies, however this is unlikely to mitigate all insolvency risks from cash provided as credit support.

We are seeking stakeholder feedback and views on these possible variations to Delta's proposal.

Question 4: Are there any provisions that could enable AEMO to sufficiently manage insolvency risks when accepting cash as credit support?

If cash is accepted as a form of credit support, do insolvency risks to AEMO and the market need to be managed? If so, could risks be satisfactorily managed by:

- socialising costs from cash clawbacks among market participants, instead of AEMO bearing the costs?
- guidance to AEMO on conditions for which cash could be provided as credit support?
- AEMO registering a security interest in the cash on the Personal Property Securities Register?

21 There is a similar mechanism when there is a shortfall in AEMO's recovery of payments in relation to a billing period, where costs are shared across settlement recipients by reducing the amount paid to them for supplied electricity supplied and reallocations through the market in that billing period. We do not consider that this mechanism would be suitable for recovering costs in relation to a clawback.

22 Refer to AEMO's WEM credit support guidelines, found [here](#).

3.2.2 We will consider the potential for transitional rules to address the immediate issue with Delta

If we determine that cash should be accepted by AEMO as credit support, it may be preferable for any implementation to address the immediate issue of Delta's existing arrangements expiring at the end of 2024.

Therefore, while any rules, if made, could be implemented and effective immediately, there would likely be insufficient time for Delta's immediate issue to be addressed. This is because AEMO would need to develop and amend procedures and systems to abide by any new rules and allow cash to be lodged with AEMO for credit support. It is not clear at this stage how long this process might take but it would be reasonable to assume that it might be at least several months.

Due to the potential imminent risk to reliability and security in the NEM, we are interested in whether transitional rules may be needed. Any transitional rules could aim to retain the status quo arrangements until any enduring arrangements take effect, while allowing an exemption for some participants to be allowed to provide cash as credit support.

We are seeking stakeholder feedback and views on whether transitional rules may be appropriate.

Question 5: Would transitional rules be needed?

We note that Delta's current bank guarantee facilities are expiring at the end of 2024.

If a rule was made to allow AEMO to accept cash as credit support, would transitional rules be needed to enable Delta or other participants to provide cash as credit support during an interim period? If so, what would be an appropriate form of transitional rules?

3.2.3 We will consider additional variations or alternative options to Delta's proposal

We have outlined Delta's proposal to allow cash to be accepted as a form of credit support and possible variations that could be considered to potentially enhance the proposal. We are seeking stakeholder input on other variations or policy considerations that we should consider as possible options to implement Delta's proposal.

We are also interested in whether stakeholders have alternative options to address any of the problems identified in chapter 2.

Question 6: Are there any additional variations or alternative options to Delta's proposal?

Do you have any additional variations or alternative options to Delta's proposal that may address problems associated with the available options for providing credit support in the NEM?

4 Making our decision

When considering a rule change proposal, the Commission considers a range of factors.

This chapter outlines:

- issues the Commission must take into account
- the proposed assessment framework
- decisions the Commission can make
- rule-making for the Northern Territory.

We would like your feedback on the proposed assessment framework.

4.1 The Commission must act in the long-term interests of consumers

The Commission is bound by the National Electricity Law (NEL) to 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) respectively.²³

The NEO is:²⁴

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; and
- (c) the achievement of targets set by a participating jurisdiction—
 - (i) for reducing Australia’s greenhouse gas emissions; or
 - (ii) that are likely to contribute to reducing Australia’s greenhouse gas emissions.

The targets statement, available on the AEMC website, lists the emissions reduction targets to be considered, as a minimum, in having regard to the NEO.²⁵

As described in our guidelines on how we consider the national energy objectives, we can weight each component of the NEO as we consider appropriate in the circumstances.²⁶ In assessing this rule change request, our initial view is to weight the reliability, safety and security components of the NEO higher than the emissions component as we consider the potential costs from reliability and security risks are likely to be more substantial than emissions benefits from any outage of Vales Point. Consistent with the NEO, we will still be considering emissions in making our determination on the rule change request. We also note that the long-term viability and closure of coal-fired power stations is subject to broader considerations that are beyond the scope of this rule change request, which considers whether cash should be accepted as credit support. We welcome stakeholder views on these considerations.

²³ Section 88 of the NEL.

²⁴ Section 7 of the NEL.

²⁵ Section 32A(5) of the NEL.

²⁶ AEMC, How the national energy objectives shape our decisions, Final guidelines, 1 August 2024, p.15. See also section 88(2) of the NEL regarding the application of the national electricity objective by the AEMC.

4.2 We propose to assess the rule change using these four assessment criteria

4.2.1 Our regulatory impact analysis methodology

Considering the NEO and the issues raised in the rule change request, the Commission proposes to assess this rule change request against the set of criteria outlined below. These assessment criteria reflect the key potential impacts – costs and benefits – of the rule change request. We consider these impacts within the framework of the NEO.

The Commission's regulatory impact analysis may use qualitative and/or quantitative methodologies. The depth of analysis will be commensurate with the potential impacts of the proposed rule change. We may refine the regulatory impact analysis methodology as this rule change progresses, including in response to stakeholder submissions.

Consistent with good regulatory practice, we also assess other viable policy options - including not making the proposed rule (a business-as-usual scenario) and making a more preferable rule - using the same set of assessment criteria and impact analysis methodology where feasible.

4.2.2 Assessment criteria and rationale

The proposed assessment criteria and rationale for each is as follows:

- **Safety, security and reliability:** Do the proposed changes enable the reliable, secure and safe provision of energy at efficient cost to consumers over the long term? Do the proposed changes promote the efficient operation and use of, and investment in, generation facilities, load, storage, networks and other system service capability?
- **Emissions reductions:** Do the proposed changes efficiently contribute to achieving government targets for reducing, or that are likely to reduce, Australia's greenhouse gas emissions?
- **Flexibility:** Are the proposed changes future proof, resilient and able to accommodate market, technological, policy, climate and other changes?
- **Predictability and stability:** Do the proposed changes promote predictability and stability in the regulatory framework for stakeholders?

Question 7: Assessment framework

Do you agree with the proposed assessment criteria? Are there additional criteria that the Commission should consider or criteria included here that are not relevant? What are stakeholders views on the costs and benefits of the proposed solution or alternative options against these criteria?

4.3 We have three options when making our decision

After using the assessment framework to consider the rule change request, the Commission may decide:

- to make the rule as proposed by the proponent²⁷
- to make a rule that is different to the proposed rule (a more preferable rule), as discussed below, or

²⁷ Delta describes the proposed rule on page 1 of their rule change proposal.

- not to make a rule.

The Commission may make a more preferable rule (which may be materially different to the proposed rule) if it is satisfied that, having regard to the issue or issues raised in the rule change request, the more preferable rule is likely to better contribute to the achievement of the NEO.²⁸

4.4 The proposed rule would not apply in the Northern Territory

Parts of 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.²⁹

The proposed rule would not apply in the Northern Territory, as it amends provisions in NER chapter 3 that do not apply in the Northern Territory.³⁰ Consequently, the Commission will not assess the proposed rule against additional elements required by the Northern Territory legislation.

²⁸ Section 91A of the NEL.

²⁹ 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.

³⁰ 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>.

Abbreviations and defined terms

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
Commission	See AEMC
ESG	Environmental, social and governance
ESOO	Electricity Statement of Opportunities
NEL	National Electricity Law
NEM	National Electricity Market
NEO	National Electricity Objective
NER	National Electricity Rules
Proponent	The proponent of the rule change request
PPSA	Personal Property Securities Act 2009 (Cth)
PPSR	Personal Property Securities Register