

1 October 2024

Ms Anna Collyer
Chair
Australian Energy Market Commission
GPO Box 2603
SYDNEY NSW 2000

Lodged online: <https://www.aemc.gov.au/contact-us/propose-rule-change>

Dear Ms Collyer,

Rule Change Proposal – Allowing AEMO to accept cash as credit support

Delta Electricity (**Delta**) submits the **attached** rule change proposal and requests that the AEMC considers it under the expedited rule change process.

Delta's rule change proposal is to allow AEMO to accept cash to meet credit support requirements, in addition to the existing method of a bank guarantee. This would require a minor amendment to both the National Electricity Rules (**NER**) and National Gas Rules (**NGR**).

Delta considers this rule change request to be simple, non-controversial, and relatively urgent for the continued safe, secure and reliable operation of the power system.

This proposed change would ultimately allow greater flexibility for participants to meet AEMO's prudential requirements and would provide a much simpler and efficient administrative process for AEMO.

To discuss further please contact Joel Aulbury, Compliance and Regulation Manager, at joel.aulbury@de.com.au.

Yours sincerely,



RICHARD WRIGHTSON
Chief Executive



Name and address of person making the request

Delta Electricity
Suite 5.01, 580 George Street
Sydney NSW 2000

Description of the proposed rule

Rule 3.3.2 of the National Electricity Rules (**NER**) and Division 10, Subdivision 3 of the National Gas Rules (**NGR**) require that, under certain circumstances, market participants must meet prudential requirements. Where a market participant is a net debtor to AEMO, it must provide credit support to AEMO. The current and only accepted form of credit support is a bank guarantee or letter in a form prescribed by AEMO (Rule 3.3.2(b)).

A significant number of financial institutions, that would be acceptable to AEMO, are no longer providing financing facilities to fossil fuel generators. While the energy transition is progressing, there will be an ongoing reliance on fossil fuel generators, at least in the immediate future. There is an urgent and emerging need to ensure that market participants who, due to the ESG policies of credit support providers, are unable to meet the requirements of Rule 3.3.2(b) have alternative options.

The proposed rule change would bridge the gap between ESG decisions taken by financial institutions and the ongoing reliance on fossil fuel generation. It would permit AEMO to accept credit support in the form of cash in addition to a bank guarantee or letter in a form prescribed by AEMO.

Delta considers the proposed change would require the following changes to the rules:

- amend NER Rule 3.3.2(b), by inserting 'cash or' after the word 'is; and
- amend NGR Rule 479(1) by inserting 'cash or' after the words 'Subdivision must be'

The nature and scope of the issue with the existing rules

The NER and NGR permit credit support, where required, to be in the form of bank guarantees (or letter from a bank).¹ While this has historically not been an issue, there is an increasing trend of financial institutions no longer providing financing arrangements where there is an exposure to fossil fuels. This includes coal and gas fired electricity generation and coal mining.

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.

¹ NER Rule 3.3.2 (b); NGR Rule 479.



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. It should be noted that for some forms of credit support (e.g. breaches of interim trading margins), AEMO can accept cash.

Why the proposed change should be expedited

This proposed change is simple as it requires a relatively minor amendment to both the NER and the NGR to allow cash as a credit support option. This minor amendment is:

- Non-controversial, as it would not have a significant effect on the National Electricity Market or impact any participant negatively, and would not favour anyone, group, or technology over another. It does not require a change in how the market operates but would provide all market participants with the ability to reduce their own financing costs by having the option to provide credit support directly to AEMO.
- Relatively urgent, as the financing options available to Delta (and other market participants exposed to fossil fuels) beyond 2024 are extremely limited or non-existent and, without the option of providing cash as credit support, is likely to result in:
 - inefficient outcomes where AEMO must restrict market activity from market participants where a bank guarantee cannot be provided for those activities; and
 - severe reliability and security issues at worst, where critical generation assets are forced to withdraw from the market or are removed from participating in the market by AEMO because of an inability to meet prudential requirements through a bank guarantee.

While it is likely that, should such circumstances materialise, government or regulatory bodies would seek an interim solution, this creates an unacceptable level of uncertainty for market participants, and the simplest and most efficient solution is to resolve the issue through the proposed rule change.

How the proposed rule change request would address the issue

The rule change proposal would allow market participants to provide, and for AEMO to accept, credit support in the form of cash. The primary issue to be addressed is the inability for market participants to use cash as credit support instead of, or where they are unable to acquire, a bank guarantee or letter in a form prescribed by AEMO as currently required by NER Rule 3.3.2(b) or NGR Rule 479(1).

How the proposed rule change request will contribute to the National Electricity Objective

The proposed rule change meets the National Electricity Objective by:

1. Ensuring the continued supply of secure and reliable electricity into the power system. The proposed rule change achieves this by allowing critical fossil fuel generation infrastructure to continue to operate in the NEM, by meeting AEMO's prudential requirements. The NEM will continue to rely on this infrastructure to maintain a secure and reliable power system despite the ESG policies of credit support providers.
2. Promotes efficiency and may reduce the cost to operate for market participants. It does this by allowing all market participants the option to use cash, instead of financial institutions, to meet AEMO prudential requirements. Maintaining a financing facility, in order to provide bank





guarantees to AEMO, attracts fees and costs. This proposed change would allow market participants, who can obtain financing, to make a choice on the lowest cost option for them.

The expected potential impacts of the proposed change to the rules on those likely to be affected including costs and benefits

The proposed rule change would be beneficial to the market and for market participants and it would likely reduce the administrative burden for AEMO.

While a bank guarantee may seem to provide greater security to AEMO than cash, it would be relatively simple for a mechanism to be implemented, either by the market participant lodging cash with AEMO in lieu of a bank guarantee or an arrangement by which cash which is put up by way of credit support is quarantined from the ordinary course of business of the market participant. These are 'mechanical issues' that can be addressed as part of the implementation of the proposed rule change.

