

## Rule determination

# National Electricity Amendment (South Australian jurisdictional derogation – Interim reliability reserve eligibility) Rule 2025

### Proponent

The Hon Tom Koutsantonis MP, Minister for Energy and Mining in South Australia

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## Summary

- 1 The Australian Energy Market Commission (AEMC or the Commission) has made a more preferable final rule (hereafter “final rule”) for a time-limited jurisdictional derogation in South Australia. This is in response to the rule change request submitted in November 2024 by the Hon Tom Koutsantonis MP, Minister for Energy and Mining in South Australia (the Minister). The final rule will provide the Australian Energy Market Operator (AEMO) with additional options to consider for interim reliability reserves (IRR) to manage reliability risks, by exempting the capacity of two recently mothballed facilities (Snuggery (63 megawatt (MW)) and Port Lincoln (75 MW) - collectively “ENGIE units”) from the out-of-market contracting restrictions in clause 3.20.3 (g) and (h) of the National Electricity Rules (NER or Rules). It will commence on 23 January 2025.
- 2 The final rule provides a one-off exemption that temporarily increases the scope of resource options available to AEMO to manage a short-term reliability issue in South Australia. It will allow AEMO to consider contracting with the additional units for IRR, where, under the current NER, it could not do so. It could unlock 138 MW of capacity in emergency reserves this summer, which may help minimise the risk of load shedding in South Australia.
- 3 In seeking to provide more options for AEMO to manage reliability issues in South Australia, the Commission has been conscious of the importance of avoiding market distortions. For this reason, the final rule is narrow in its scope and duration. Our final rule is for a jurisdictional derogation that exempts only the ENGIE units from the 12-month backward restriction in clauses 3.20.3 (g) and (h), meaning they will be eligible for AEMO to consider for contracting for IRR during the term of the derogation. It is a more preferable rule with respect to the term of the derogation, because it is shorter than that sought in the rule change request and because it better aligns with the existing framework under the Rules. The derogation ends on 31 March 2025 to align with the end of the interim reliability measure (IRM) as it applies to IRR under clause 11.128 of the NER.
- 4 This determination does not take a position on the suitability of contracting the capacity of the ENGIE units. This is for AEMO to decide in accordance with the Rules and associated guidelines and procedures. The checks and balances of the existing Reliability and Emergency Reserve Trader (RERT) and IRR principles remain in place to ensure that AEMO will be required to consider what is in the best interests of consumers when negotiating and entering into reserve contracts.

## A combination of specific factors in this case warrants an exemption from out-of-market reserve provisions

- 5 While the Commission has, in this instance, approved a narrow exemption, it remains committed to preserving the wholesale market as the primary mechanism for delivering reliability, supported by the out-of-market reserve provisions.
- 6 The exemption in this final rule applies to clauses 3.20.3 (g) and (h) of the NER, which prevent resources from participating in out-of-market reserves unless they have been out of the market for 12 months (referred to in this final determination as the “12-month backward restriction”).<sup>1</sup> They were introduced through the *Enhancement to the RERT* rule change in 2019.<sup>2</sup> The rationale was to minimise the potential for market distortions by ensuring there was a separation between out-of-market reserves and those resources participating in the market.<sup>3</sup>

1 Clause 3.20.3 (g) applies to the capacity of scheduled resources, that is, the “capacity of scheduled generating units, scheduled bidirectional units, wholesale demand response units, scheduled network services or scheduled loads”.

2 AEMC, *Enhancement to the RERT*, Rule determination, 2 May 2019.

3 AEMC, *Enhancement to the RERT*, Draft rule determination, 7 February 2019, p. 119.

- 7 The separation between in-market and out-of-market reserves is important for preserving the wholesale market as the primary mechanism for supplying reliable electricity to customers. The out-of-market reserves are only to be used as a last resort, in situations where there are insufficient resources in the wholesale market to meet demand. Without the 12-month backward restriction, market participants could be incentivised to exit the market if they see the potential for a better price as out-of-market reserves. This could have the effect of resources moving in and out of the market depending on the season and would undermine the efficiency of the wholesale market and contribute to worsening reliability and a greater reliance on out-of-market reserves.
- 8 Given the importance of the out-of-market provisions for keeping incentives in the wholesale market sharp, the Commission considered carefully the proposal for the exemption. The Commission has formed the view that a one-off, time-limited exemption applied narrowly is warranted due to the following unique combination of factors in this case.
- In early 2024, generator-owner ENGIE announced the mothballing of its Snuggery and Port Lincoln peaking units from 1 July 2024. At this time, the units were placed in an extended recall state. The recall times for the units are published as part of the Medium Term Projected Assessment of System Adequacy (MT PASA) process, and from 1 July 2024, the ENGIE units had a 90 day recall time in MT PASA. While ENGIE advised that the facilities would close in 2028, the mothballing and the associated extended recall times meant that the units were not available to participate in the market once mothballed nor could be easily recalled.
  - The August 2024 Electricity Statement of Opportunities (ESOO) forecast a 200MW reliability gap against the IRR (above 0.0006% unserved energy (USE)) for summer 2024-25 in South Australia.<sup>4</sup> This reliability gap had emerged due to changes that occurred between the 2023 ESOO, the May 2024 Update to the 2023 ESOO<sup>5</sup> and 2024 ESOO. The changes AEMO cited included the mothballing of the units and a change in network configurations in Victoria and South Australia.<sup>6</sup>
  - In August 2024, AEMO issued an invitation to tender for IRR to provide out-of-market, back-up supply to address the reliability gap forecast in South Australia for summer 2024-25. However, it did not receive a sufficient response.<sup>7</sup>
- 9 The Commission also notes that the risks identified in the 2024 ESOO may be exacerbated by other factors, including extreme weather and factors relating to interconnection capacity. The Bureau of Meteorology's climate outlook continues to forecast unusually high maximum temperatures across much of the southern two-thirds of Australia in January to March 2025.<sup>8</sup> Not having adequate reserves available to address these risks and avoid load shedding would have a series of unfortunate and costly consequences for South Australian consumers, businesses and industry.
- 10 These factors, combined with the imperative to maintain reliability during this critical juncture of the transition, informed the Commission's decision to approve the requested exemption.

4 AEMO, 2024 ESOO, August 2024, p. 69.

5 AEMO published the 2023 ESOO in August 2023 and an Update to the 2023 ESOO in May 2024. Refer to appendix C.1 for further details on the nature of the reliability risk outlined in the ESOOs.

6 AEMO, 2024 ESOO, August 2024, p. 68.

7 AEMO's RERT tendering webpage notes, "AEMO has now accepted all qualifying tenders provided in response to the Invitation to Tender but the total reserves contracted will not fully address the reliability gap forecast for the 24/25 summer in South Australia in the 2024 ESOO...even if this [South Australian jurisdictional] derogation is made and these additional generators are contracted to provide Interim Reliability Reserves, a forecast reliability gap will remain in South Australia for the period identified in the 2024 ESOO". Refer to [aemo.com.au/energy-systems/electricity/emergency-management/reliability-and-emergency-reserve-trader-rert/rert-tendering](https://aemo.com.au/energy-systems/electricity/emergency-management/reliability-and-emergency-reserve-trader-rert/rert-tendering)

8 Refer to [www.bom.gov.au/climate/outlooks/#/temperature/summary](https://www.bom.gov.au/climate/outlooks/#/temperature/summary)

## It is critical that we safeguard reliability at this point in the transition to net zero

- 11 In addition to the factors noted above, the Commission has also made this rule to safeguard reliability at this important point in the transition to net zero. One of the challenges arising from the transition to net zero underway is that short-term issues need to be addressed alongside longer-term market reforms. This requires achieving reliability outcomes without distorting the longer-term investment signals needed to address enduring system challenges.
- 12 While the Commission maintains the principle that the wholesale market is the primary means through which reliability is delivered, we also recognise that, in the context of the significant transformation underway in the National Electricity Market (NEM), there will be short-term transitional issues that need to be managed - such as the reliability gap forecast for South Australia this summer. Jurisdictional derogations, which are included under the Rule making powers in the National Electricity Law (NEL), provide us with useful mechanisms to manage specific unforeseen jurisdictional issues that can arise unexpectedly and cannot be managed under existing frameworks. This can be especially helpful during periods of significant change, such as the current energy transition, where pragmatic and flexible mechanisms are required to maintain reliability and implement solutions as we navigate the path forward to net zero.

## The Commission has considered stakeholder submissions in making its decision

- 13 We initiated the rule change under the expedited urgent rule making process. We used the urgent process because if the rule change is not made as a matter of urgency, there will be an imminent threat to the reliability of the national electricity system. There were no objections to the use of the expedited process.
- 14 In submissions to the consultation paper, stakeholders acknowledged the reliability shortfall against the IRR in South Australia and the potentially adverse outcomes of consumer load shedding if the shortfall materialised in real-time. This included adverse outcomes for consumers, especially if load shedding coincided with extreme weather, and the potential for such an event to undermine confidence in the energy system.
- 15 Two of the eight stakeholders that responded to the consultation paper were opposed to the derogation.<sup>9</sup> Others considered it appropriate to manage risks, but wished to see strict limitations on the derogation to maintain the market as the primary mechanism for reliability. The Commission carefully considered the issues raised by stakeholders, which included issues related to costs for consumers, emission impacts, the potential for market distortion and setting a precedent. We are satisfied that the issues can be managed through a combination of:
  - the existing checks and balances in the out-of-market reserve framework that require AEMO to minimise costs for consumers and market distortions, and
  - the Commission's decision for the derogation to be strictly time limited and narrow in scope.
- 16 The Commission also considered the alternative options suggested by stakeholders, such as AEMO using its directions powers instead of contracting with the ENGIE units under the IRR. Given the reliability risks and the importance for AEMO to have certainty about the availability of the units, and having regard to stakeholder feedback, the Commission has come to the view that using directions would not be practical (refer to section 2.3.3 for further details).

<sup>9</sup> The two stakeholders were Shell Energy and the Justice and Equity Centre.

## We assessed our rule against four assessment criteria using regulatory impact analysis and stakeholder feedback

- 17 The Commission has considered the National Electricity Objective (NEO)<sup>10</sup> and the issues raised in the rule change request and assessed the final rule against four assessment criteria outlined below. In the consultation paper<sup>11</sup> we did not include emissions as an assessment criteria but have done so in this final determination in response to stakeholder feedback.
- 18 We gathered stakeholder feedback and undertook regulatory impact analysis in relation to these criteria.
- 19 The more preferable final rule will contribute to achieving the NEO by:
- **Promoting system reliability** - the final rule allows AEMO to consider the ENGIE units for IRR contracts in South Australia for late summer, consistent with the interim reliability gap forecast in the 2024 ES00.
  - **Allowing for issues to be addressed quickly and ensuring costs are justified** - the final rule allows AEMO to quickly progress the next steps to help address summer reliability concerns in South Australia, as the rule change was progressed using an expedited timeframe and commences immediately. No changes have been made to the remainder of the reserve frameworks, meaning it will be simple to implement and will require AEMO to follow the existing processes for procuring reserves. This includes applying the existing checks and balances in the reserve frameworks to avoid market distortion and minimise direct costs to consumers.
  - **Promoting good regulatory practice** - the final rule is narrow and the term of the derogation is as short as practicable to minimise market distortion and avoid setting a precedent. In this unusual instance, ENGIE was not incentivised to withdraw from the market as the units were mothballed prior to the reliability gap being published, so we do not consider that the rule change is creating undesirable incentives, including any incentive for 'gaming' by market participants. This final rule addresses a one-off issue relating to the use of the IRR contracting framework, which is soon to expire. There are other reforms and initiatives underway to improve reliability in South Australia and the NEM more broadly. If another similar rule change request were to be submitted in future, that request will be subject to a rule change process to examine it on its own merits.
  - **Not undermining emissions reduction goals** - the final rule provides a one-off exemption that temporarily increases the scope of options available to AEMO to manage an urgent reliability issue. We are in the midst of a transition to net zero and consider that reliability issues can undermine progress towards Australia's greenhouse gas emission targets. Two stakeholders<sup>12</sup> noted the emissions associated with the derogation were unlikely to be significant, though the Justice and Equity Centre was concerned about the precedent it sets for continued reliance on fossil-fueled generators.<sup>13</sup> We consider that the specific factors in this case along with the importance of maintaining reliability and avoiding incidents that would erode trust in the transitioning grid, justifies this narrow, one-off exemption.

10 Section 7 of the NEL.

11 AEMC, South Australian jurisdictional derogation - Interim reliability reserve eligibility, Consultation paper, 28 November 2024, p. 13.

12 AEMO (p. 5) and the Justice and Equity Centre (p. 4).

13 Justice and Equity Centre, submission to the consultation paper, 16 December 2024, p. 4.

## The final rule will exempt the ENGIE units from the 12-month backward restriction for IRRs

- 20 Our final determination is to make a jurisdictional derogation for South Australia, relating specifically to the Snuggery and Port Lincoln units. The final rule makes the jurisdictional derogation in chapter 9 of the NER, alongside the other jurisdictional derogations for South Australia.<sup>14 15</sup>
- 21 The jurisdictional derogation exempts the Snuggery and Port Lincoln units from clause 3.20.3 (g) and (h) for IRR by stating that these clauses do not apply to AEMO or another person in relation to the capacity of the generating units specified in the table in new clause 9.27.3. This allows AEMO to consider them for emergency reserves, despite them being out-of-market for less than 12-months. It is specific to IRR, meaning they cannot be considered for other types of RERT contracts.
- 22 This does not necessarily mean that AEMO will enter into IRR contracts for the capacity of these two generators, but it enables AEMO to consider including these generators in the IRR for South Australia. In making any decision to enter into IRR contracts, AEMO would still need to have regard to the RERT principles and RERT guidelines (set out in clauses 3.20.3(b) and 3.20.8, and subject to the new clause 9.27.3(c)) and additional tests for multi-year reserve contracts (under rule 11.128). There would also be transparency of this decision as per the reporting requirements specified in the NER for IRR.
- 23 Given the jurisdictional derogation relates to the use of the IRM, the derogation will end upon the expiration of the IRR rules in chapter 11 of the NER - that is, on 31 March 2025.<sup>16</sup> This is specified in the expiry date in the new clause 9.27.2. Because the clauses from which the relevant generators are exempted relate to entering into, not giving effect to, a contract, this rule does not exclude the contracts from applying for a period beyond 31 March 2025 (that is, AEMO could call on them after 31 March 2025) if this is deemed necessary by AEMO in accordance with the checks and balances in the current Rules around reserve contract terms.
- 24 The rule commences on the date of this final determination - that is, 23 January 2025.

<sup>14</sup> In proposing the jurisdictional derogation, the Minister needs to consult with the Ministers of other participating jurisdictions in accordance with the requirements for requesting a jurisdictional derogation under section 91(3) of the NEL. This was confirmed in the rule change request (p. 3) and via correspondence with the AEMC.

<sup>15</sup> The Commission also considered the relevant items set out in section 89 of the NEL in making this jurisdictional derogation.

<sup>16</sup> Refer to clauses 11.128.1 and 11.128.2.

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# 1 The Commission has made a final determination

This final determination is to make a more preferable final rule (hereafter “final rule”) in response to a rule change request submitted by the Hon Tom Koutsantonis MP, Minister for Energy and Mining in South Australia (the Minister). The rule change request seeks a jurisdictional derogation in South Australia from certain restrictions on contracting for interim reliability reserves (IRR).

## 1.1 Our final rule will allow AEMO to consider more options to manage summer reliability risks in South Australia

The Australian Energy Market Commission (AEMC or Commission) has made a jurisdictional derogation in South Australia to allow AEMO to enter into contracts for IRR this summer in relation to the capacity of two recently mothballed generators. This is an interim measure to provide the Australian Energy Market Operator (AEMO) with the options it needs to manage summer reliability.

The 2024 Electricity Statement of Opportunities (ESOO) forecasts a 200MW reliability gap against the interim reliability measure (IRM) (above 0.0006% unserved energy (USE)) for summer 2024-25 in South Australia.<sup>17</sup> Extreme weather and factors relating to interconnection capacity may also exacerbate these risks, noting that the Bureau of Meteorology’s climate outlook continues to forecast unusually high maximum temperatures across much of the southern two-thirds of Australia in January to March.<sup>18 19</sup> There is a risk that there may not be adequate reserves available to avoid load shedding, which would have a series of unfortunate and costly consequences for South Australian consumers, businesses and industry.

In early 2024, generator-owner ENGIE announced the mothballing of its Snuggery (63-megawatt (MW)) and Port Lincoln (75MW) peaking units (collectively “ENGIE units”) from 1 July 2024, from which time their recall status was set to 90 days,<sup>20</sup> ahead of permanently closing the facilities in 2028. This meant that the units are not available in market to support reliability in South Australia during the summer peak. In addition, they are not currently available for AEMO to contract for IRR to provide out-of-market, back-up supply if forecast shortfalls eventuated. This is because clauses 3.20.3 (g) and (h) of the National Electricity Rules (NER or the Rules) prohibits AEMO and another person from entering reserve contracts with respect to a generator that has been “available for dispatch at any time during the 12-month period immediately preceding” the date of the reserve contract (referred to in this final determination as the “12-month backward restriction”).<sup>21</sup>

This derogation will provide AEMO the option of contracting with the ENGIE units to help manage reliability in South Australia for this summer.<sup>22</sup> The additional generators, if contracted, could unlock 138MW of capacity this summer, which may help minimise the risk of load shedding.

Our final rule is for a jurisdictional derogation that exempts only the ENGIE units from the 12-month backward restriction, making them eligible for AEMO to consider for IRR. It will be in place until 31 March 2025 to align with the end of the IRM as it applies to contracting for IRR (refer to section 3.3 for further detail on the rationale for the end date).

<sup>17</sup> AEMO, 2024 ES00, August 2024, p. 69.

<sup>18</sup> Refer to [www.bom.gov.au/climate/outlooks/#/temperature/summary](https://www.bom.gov.au/climate/outlooks/#/temperature/summary)

<sup>19</sup> Refer to appendix C.1 for further details on the nature of the reliability risk.

<sup>20</sup> The recall times for the units are published as part of the Medium Term Projected Assessment of System Adequacy (MT PASA) process. From 1 July 2024 the ENGIE units had a 90 day recall time in MT PASA.

<sup>21</sup> Refer to appendix C.2 for further details on the 12-month backward restriction.

<sup>22</sup> AEMO uses a number of tools under the Rules to maintain reliability. These include contracting for reserves, using alternative network configurations and issuing directions to market participants.

Jurisdictional derogations are included under the Rule making powers in the National Electricity Law (NEL) and can be useful mechanisms to manage specific unforeseen jurisdictional issues that arise unexpectedly and cannot be managed under existing frameworks. This can be especially helpful during periods of significant change, such as the current energy transition, where pragmatic and flexible mechanisms are required to maintain reliability and implement solutions as we navigate the path forward to net zero.

This determination does not take a position on the suitability of contracting the ENGIE units, rather it makes these units eligible for consideration by AEMO for IRR. If AEMO wishes to use the ENGIE units for IRR, it will be required to adhere to the existing checks and balances in the Rules for procuring out-of-market reserves. The current reserve framework in the Rules (in particular, the Reliability and Emergency Reserve Trader (RERT) principles in clause 3.20.2(b)) ensures that AEMO considers what is in the best interests of consumers when negotiating and entering into these contracts.<sup>23</sup>

## 1.2 Stakeholder submissions helped to shape our determination

We initiated the rule change under the expedited urgent rule making process. We used the urgent process because if the rule change is not made as a matter of urgency, there will be an imminent threat to the reliability of the national electricity system.

There were no objections to the use of the expedited process.

The Commission received eight submissions in response to the consultation paper which helped inform the Commission's final determination.

In submissions to the consultation paper, stakeholders acknowledged the reliability shortfall against the IRM in South Australia and the potentially adverse outcomes of consumer load shedding if the shortfall materialised in real-time. This included adverse outcomes for consumers, especially if load shedding coincided with extreme weather, and the potential for such an event to undermine confidence in the energy system.<sup>24</sup> There were diverse views in submissions about whether the derogation should be made, with the majority of stakeholders considering it appropriate to manage risks, but preferring strict limitations on the derogation to maintain the market as the primary mechanism for reliability. Stakeholders who were concerned about the derogation raised issues related to costs for consumers, emission impacts, the potential for market distortion and setting an undesirable precedent, including for generators to take their units out-of-market to enable them to negotiate for reserve contracts at better prices.

The Commission carefully considered the issues raised by stakeholders and is satisfied that the issues can be managed through a combination of:

- the existing checks and balances in the out-of-market reserve framework that require AEMO to minimise costs for consumers and market distortions, and
- the Commission's decision for the derogation to be strictly time limited and narrow in scope.

The Commission also considered the alternative options suggested by stakeholders and has come to the view that enabling the potential contracting of the units for IRR in the short-term provides AEMO with another needed practical option for maintaining reliability. Nonetheless, as

<sup>23</sup> Some parts of the RERT guidelines refer to the out-of-market provisions and the restrictions that they impose on RERT participation (refer to Reliability Panel, Reliability and Emergency Reserve Trader Guidelines, Final guidelines, 21 August 2020, p. 13). Final rule clause 9.27.3(c) clarifies that these corresponding parts of the RERT guidelines will similarly not prevent AEMO from contracting with the ENGIE units, thus ensuring that the exclusion of the operation of clauses 3.20.3(g) and (h) flows through to the guidelines. The RERT guidelines will otherwise apply as normal, along with the RERT principles and procedures.

<sup>24</sup> The Commission received eight submissions to the consultation paper. These can be accessed on the [AEMC's website](#).

stated above, this determination does not make a decision on the suitability or use of the ENGIE units. There is nothing in the final rule to prevent AEMO considering other options to complement (or operate in place of) these reserves, subject to the reliability needs of the system this summer and the checks and balances in the existing Rules.

A discussion of stakeholder issues is set out in section 2.3 and appendix E.

### 1.3 The final rule allows AEMO to address a temporary reliability issue on the path to net zero

The final rule provides a one-off exemption that temporarily increases the scope of resources available to AEMO to manage an urgent reliability issue in South Australia. This final rule addresses a one-off issue relating to use of the IRR contracting framework, which is soon to expire.<sup>25</sup> As noted by EnergyAustralia, there are a range of other South Australian measures in the process of being implemented to address reliability issues, but these will not be in place for this summer.<sup>26</sup>

This rule change is addressing a short-term reliability issue in South Australia arising in the context of the state's transition to net zero. As noted in the South Australian Government's recently released Electricity Development Plan, "South Australia is already at the forefront of the national energy transformation".<sup>27 28</sup>

It is vital that short-term reliability issues are well managed on the path to net zero. As discussed in the Commission's vision for the energy transition, maintaining energy system security and reliability along with building social trust are important long term challenges and opportunities to navigate.<sup>29</sup> Reliability issues can undermine progress towards Australia's greenhouse gas emission targets, particularly because reliability events, such as blackouts, can diminish trust in the transitioning grid and set back key transitional projects. As discussed in the South Australian Government's Electricity Development Plan, "The community is increasingly aware of emerging threats to power system reliability and resilience. In a June 2024 survey, Energy Consumers Australia found that 60 per cent of South Australian households surveyed were concerned that Australia's energy system will not be resilient to extreme weather events and that there will be frequent electricity outages in the next three years".<sup>30</sup>

The transition to net zero has meant that the Commission is making many of its decisions in a fast evolving and dynamic environment, where short-term measures are needed alongside longer-term market reforms. This rule change has required the Commission to consider and balance multiple aspects of the National Electricity Objective (NEO). This includes how to achieve reliability and maintain consumer trust and confidence in the short-term without distorting the longer-term investment signals needed to address enduring system challenges.

25 The rules providing for reserve contracts for IRR (rule 11.128) will expire on 31 March 2025.

26 Page 1 of EnergyAustralia's submission to the consultation paper refers to the South Australian Firm Energy Reliability Mechanism (FERM), the Orderly Exit Management Framework and tenders under the Capacity Investment Scheme. Refer to appendix E for our consideration of these mechanisms as part of considering this rule change request.

27 "In 2016, South Australia successfully retired the last coal generator from the network and subsequently pioneered a transition to electricity supply from low emissions sources and battery storage. The state's energy is now supplied by a diverse mix of distributed energy resources (CER), wind farms, solar photovoltaic (PV) systems, gas and liquid fuels, utility scale batteries and interconnection with other NEM jurisdictions. As an example of South Australia's leading renewable integration, during 2023, there were 289 days where renewable generation provided the entire state's energy supply for part of the day."

28 Government of South Australia, South Australian Electricity Development Plan, 2024, p. 17.

29 AEMC, A consumer-focused net zero energy system, September 2024.

30 Government of South Australia, South Australian Electricity Development Plan, 2024, p. 15.

The Commission has needed to balance its ongoing commitment to the out-of-market provisions in the RERT and IRR frameworks that seek to prevent market distortions with addressing a short-term reliability issue. These trade-offs are symptomatic of the challenges that come with the transition to net zero. They shine a light on the need for the Commission to address short-term issues in a way that does not unduly impact on longer-term solutions and objectives.

## 2 The rule will contribute to the energy objectives

### 2.1 The Commission must act in the long-term interests of energy consumers

The Commission can only make a rule if it is satisfied that the rule will or is likely to contribute to the achievement of the relevant energy objectives.<sup>31</sup>

For this rule change, the relevant energy objective is the NEO:

The NEO is:<sup>32</sup>

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.<sup>33</sup>

### 2.2 We must also take these factors into account

#### 2.2.1 We have considered whether to make a more preferable rule

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 is likely to better contribute to the achievement of the NEO.<sup>34</sup>

For this rule change, the Commission has made a more preferable final rule. It is a more preferable rule with respect to the term of the derogation, because it is shorter than that sought in the rule change request and because it better aligns with the existing framework under the Rules. The reasons are set out in section 2.3.4 and section 3.3 below.

#### 2.2.2 We have considered the factors relating to making a jurisdictional derogation

The Commission must consider the relevant items set out in section 89 of the NEL when making a jurisdictional derogation. Under section 89:

In making a jurisdictional derogation, the AEMC must have regard to whether—

- (a) the derogation provides for the orderly transfer of the regulation of the electricity industry in a participating jurisdiction under jurisdictional electricity legislation to the regulation of that industry under the national electricity legislation; or

<sup>31</sup> Section 88(1) of the National Electricity Law (NEL).

<sup>32</sup> Section 7 of the NEL.

<sup>33</sup> Section 32A(5) of the NEL.

<sup>34</sup> Section 91A of the NEL.

(b) the derogation continues existing regulatory arrangements applying to the electricity industry in a participating jurisdiction and the Minister of the participating jurisdiction requesting the derogation has notified, in writing, the AEMC that he or she considers it necessary and appropriate that the existing regulatory arrangements continue; or

(c) the derogation is necessary to exempt, on an ongoing basis, generating, transmission or distribution systems or other facilities owned, controlled or operated in the participating jurisdiction to which the derogation relates from complying with technical standards relating to connection to the national electricity system set out in the Rules because those systems or facilities, by reason of their design or construction, are unable to comply with those standards.

The Commission considered the items in section 89 of the NEL for this rule change.

In requesting a jurisdictional derogation, the proponent is also required under section 91(3) of the NEL to consult with the Ministers of other participating jurisdictions on the rule change request.

The Minister confirmed that this consultation had occurred in the rule change request and in correspondence with the AEMC.<sup>35</sup>

## 2.3 How we have applied the legal framework to our decision

The Commission must consider how to address the proposal for a jurisdictional derogation to allow the ENGIE units to be considered for IRR against the legal framework.

We identified the following criteria to assess whether the proposed rule change, no change to the rules (business-as-usual), or other viable, rule-based options are likely to better contribute to achieving the NEO:

- **Safety, security and reliability:** Do the proposed changes enable the reliable, secure and safe provision of energy at an 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 capabilities?
- **Implementation considerations:** Do the proposed changes manage the timing of benefits versus costs, direction of reform and interaction with other reforms and processes? Do the proposed changes balance the cost and complexity of implementation and ongoing regulatory and administrative costs to all market participants, consumers and market bodies, across all potential solutions?
- **Principles of good regulatory practice:** Do the proposed changes promote predictability and stability in the regulatory framework for stakeholders? Do the proposed changes promote simplicity and transparency for all stakeholders? Do the proposed changes promote a principles-based approach over prescription, except where prescription is necessary?
- **Emissions reduction:** Do the proposed changes efficiently contribute to achieving government targets for reducing, or that are likely to reduce, Australia's greenhouse gas emissions?

These assessment criteria reflect the key potential impacts – costs and benefits – of the rule change request, for impacts within the scope of the NEO. Our reasons for choosing these criteria are set out in section 4 of the consultation paper, available on the project webpage.<sup>36</sup>

<sup>35</sup> Refer to South Australian Minister of Energy and Mining, Rule change request, p. 3.

<sup>36</sup> AEMC, South Australian jurisdictional derogation - Interim reliability reserve eligibility, Consultation paper, 28 November 2024.

In the consultation paper, we did not include emissions as an assessment criteria,<sup>37</sup> but have done so in the final determination in response to stakeholder feedback.

The Commission has undertaken regulatory impact analysis to evaluate the impacts of the various policy options against the assessment criteria. Appendix B outlines the methodology of the regulatory impact analysis.

The rest of this section explains why the more preferable final rule best promotes the long-term interest of consumers when compared to other options assessed against the criteria.

### 2.3.1 The final rule promotes system reliability by allowing AEMO to consider additional options to maintain reliability this summer

The final rule allows AEMO to enter contracts for IRR with the ENGIE units for late summer, consistent with the interim reliability gap raised in the rule change request. We have not made a decision on the suitability or merits of contracting with the ENGIE units. This is a matter to be considered by AEMO in accordance with the Rules, and there is nothing in the final rule to prevent AEMO considering other options to complement (or operate in place of) these reserves, subject to the reliability needs of the system this summer and the checks and balances in the existing Rules.

Electricity supply shortfalls and extreme, unpredictable weather conditions are projected in South Australia this summer, which may compromise electricity supply to customers. AEMO reiterated the risk period as mid-January to the end of February 2025 in its submission to the consultation paper,<sup>38</sup> consistent with the notice published on 31 October 2024 in relation to its intention to negotiate for IRR providers in South Australia for this summer. It noted as part of this process:<sup>39</sup>

“AEMO has now accepted all qualifying tenders provided in response to the Invitation to Tender but the total reserves contracted will not fully address the reliability gap forecast for the 24/25 summer in South Australia in the 2024 ES00. AEMO has been canvassing other options to secure additional reserves for South Australia and the South Australian government is currently seeking a jurisdictional derogation from the AEMC to allow AEMO to procure Interim Reliability Reserves from certain generators who would otherwise be ineligible under current out of market requirements. AEMO notes that even if this derogation is made and these additional generators are contracted to provide Interim Reliability Reserves, a forecast reliability gap will remain in South Australia for the period identified in the 2024 ES00.”

Allowing AEMO to consider contracting with the ENGIE units for IRR could unlock 138MW of large-scale, emergency generating capacity. This may better enable the reliable provision of energy to consumers at an efficient cost, particularly as AEMO must have regard to the RERT principles and additional tests for multi-year IRR contracts when selecting emergency resources (including considering options that present the least cost to end use consumers of electricity).<sup>40</sup>

In submissions to the consultation paper, stakeholders acknowledged the reliability risks and that consumer load shedding could adversely affect consumers. EnergyAustralia noted that this was a pertinent issue with respect to confidence in reliability during the transition.<sup>41</sup>

37 AEMC, South Australian jurisdictional derogation - Interim reliability reserve eligibility, Consultation paper, 28 November 2024, p. 13.

38 AEMO, Submission to the consultation paper, 20 December 2024, p. 1.

39 Refer to [aemo.com.au/energy-systems/electricity/emergency-management/reliability-and-emergency-reserve-trader-rert/rert-tendering](https://aemo.com.au/energy-systems/electricity/emergency-management/reliability-and-emergency-reserve-trader-rert/rert-tendering)

40 Refer to appendix C.3 and appendix C.4 for further details on the RERT principles and tests for IRR.

41 EnergyAustralia, Submission to the consultation paper, 20 December 2024, p. 2.



“...we accept that confidence in the market’s governance and institutions would be undermined if we faced a situation of involuntary load-shedding while potential supply sources were apparently available”.

### 2.3.2 The final rule has been made under the expedited timeframe and can be implemented quickly

The final rule allows AEMO to quickly progress the next steps to help address summer reliability concerns in South Australia.

To enable this:

- we used the expedited rule making process under section 96 of the National Electricity Law (NEL) because we consider, if the rule change is not made as a matter of urgency, there will be an imminent threat to the reliability of the national electricity system.<sup>42</sup>
- the final rule commences at the first possible instance (that is, on the date of this final determination - 23 January 2025).

The final rule will be simple to implement as no changes have been made to the remainder of the reserve frameworks (that is, the existing NER clauses are unchanged, aside from the narrow exemption of the ENGIE units, and should continue to operate as designed). AEMO continues its obligations under the current Rules as they relate to reserves (refer to section 3.4 for further details on how we have retained the rest of the reserve frameworks).

In submissions to the consultation paper, two stakeholders<sup>43</sup> suggested the rule change request was submitted too late to be effective for the summer of 2024/25. If AEMO decides to enter into the contracts with ENGIE then this contract can cover the remaining summer months and will add to the options that could help avoid reliability issues leading to load shedding.

### 2.3.3 AEMO is required to justify the costs associated with any reserve contracts

The final rule maintains the existing checks and balances in the reserve frameworks to minimise direct costs (they also help to minimise indirect costs - covered in section 2.3.4 in the discussion about the potential for market distortions).

If AEMO contracts the ENGIE units for IRR, public information on standard contract terms shows that we would expect availability, pre-activation and usage charges to be paid to ENGIE. These costs would be passed on to South Australian consumers, along with any reporting costs.

#### Stakeholders requested that the Commission consider the cost of reserve contracts

In its submission to the consultation paper, the Energy Users Association of Australia (EUAA) requested an analysis of costs and probabilities of the plants being used to inform the Commission’s decision-making.<sup>44</sup>

We have not conducted modelling of these costs because the decision before the Commission is not whether AEMO should enter into the contracts but rather whether an exemption should be provided so that the units can be considered by AEMO for IRR in South Australia.

We understand that any tender submitted by ENGIE will be assessed against the same evaluation criteria as other tenders received in response to AEMO’s current invitation to tender for IRR for

<sup>42</sup> No stakeholders objected to the use of the expedited process, which allowed us to make this final rule within eight weeks of initiating the rule change request.

<sup>43</sup> The EUAA (p. 3) and EnergyAustralia (p. 2).

<sup>44</sup> EUAA, Submission to the consultation paper, 20 December 2024, p. 2.

South Australia. As it has done for all others, AEMO will assess this tender (and its associated costs) in accordance with the RERT principles (in clause 3.20.2(b) of the NER), the RERT guidelines and its internal processes and guidelines applicable to this invitation to tender process. The RERT principles relevantly provide that:<sup>45</sup>

- (1) actions taken should be those which AEMO reasonably expects, acting reasonably, to have the least distortionary effect on the operation of the market;
- (2) actions taken should aim to maximise the effectiveness of reserve contracts at the least cost to end use consumers of electricity;
- and
- (3) the average amount payable by AEMO under reserve contracts for each MWh of reserves for a region should not exceed the estimated average value of customer reliability (VCR) for that region.

Clause 11.128.4 also sets out additional requirements for contracts for IRR, including multi-year IRR contracts. When entering into multi-year IRR contracts, AEMO must ensure that, at the time of entering into the contract, the amount of reserve procured under the reserve contract is no more than what AEMO considers is reasonably necessary to ensure reliability of supply in the relevant region (clause 11.128.4(i)(2)), among other items. These requirements apply in addition to the RERT principles and guidelines when procuring IRR.

Transparency is provided to stakeholders via the RERT and additional IRR reporting requirements already in the Rules.<sup>46</sup>

In its submission to the consultation paper, the AER considered that these checks and balances would be adequate to minimise the costs passed onto consumers.<sup>47</sup>

#### **The Commission assessed the alternative suggested by some stakeholders that AEMO should direct the ENGIE units instead of using IRR**

The final rule will allow AEMO to consider an additional measure to safeguard reliability - that is, contracting the ENGIE units for IRR.

In submissions to the consultation paper, two stakeholders<sup>48</sup> suggested that directing the units to make themselves available for summer may be preferable to signing reserve contracts. They noted that this was considered an option for using the capacity of mothballed plants in the AEMC's *Enhancement to the RERT rule change* (2019).<sup>49 50</sup>

“AEMO can direct plant that remains in-market to generate if necessary to do so... This was a key reason for not capturing mothballing / temporary shutdown decisions under the notice of closure framework and would seemingly provide an alternate solution to addressing the identified reliability concern that should be considered by the AEMC.”

Shell Energy also suggested that using directions could be more transparent with respect to costs than contracting the units.<sup>51</sup>

45 Clause 3.20.2 (b).

46 The requirements for RERT reporting are included in clause 3.20.6 and amended for IRR under clause 11.128.5.

47 AER, Submission to the consultation paper, p. 2.

48 Shell Energy (p. 2) and Origin (p. 1).

49 AEMC, *Enhancement to the RERT*, Rule determination, 2 May 2019, p. 164.

50 Quote from: Origin, Submission to the consultation paper, 20 December 2024, p. 1.

51 Shell Energy, submission to the consultation paper, 19 December 2024, p. 3.

The final rule does not prevent AEMO from directing the units under clause 4.8.9 if they deem this the most appropriate measure to provide reserves in South Australia this summer. However, while AEMO has broad powers under clause 4.8.9 to direct the units, this is a heavy-handed approach that may not guarantee availability of the reserves to address reliability risks.<sup>52</sup>

AEMO's submission to the consultation paper outlines why it considers directions are not a practical option to address the issues in this rule change.<sup>53</sup> Specifically, AEMO considers that it would be impractical to direct the mothballed ENGIE units to generate, because of their extended recall times.<sup>54</sup>

In addition, reserve contracts allow the terms of reserve provision to be negotiated upfront and contain performance obligations, such that the units are likely to be more dependable at short notice if an urgent reliability issue arises.<sup>55</sup> Reserve contracts for IRR in particular require a full and fixed commitment of reserves and include strict performance requirements and testing conditions. The reserves contracted as IRR may not be varied and will be required to be 100% available on a firm basis for the duration of the agreement.<sup>56</sup>

Having regard to stakeholder submissions on this issue, the Commission considers that use of the AEMO direction powers would not be a practical option to address the issues raised by the rule change request.

#### 2.3.4 The final rule promotes good regulatory practice by minimising the potential to distort the market

The scope of the final rule is narrow and the term of the derogation is as short as practicable to minimise market distortion and avoid setting an undesirable precedent, including for participants to take their units out of market to enable them to negotiate for IRR and RERT contracts at a better price. The current situation reflects a transitional issue, and the trade-off lies in maintaining consumer trust and confidence now without distorting the longer-term investment signals needed to address enduring system challenges. The final rule reflects our focus on both short-term solutions and long-term objectives in line with stakeholder preferences for a narrow derogation.

##### Stakeholders identified the risk of market distortion and setting an undesirable precedent

In submissions to the consultation paper, stakeholders agreed the market should be the primary mechanism by which reliability is achieved. Six stakeholders<sup>57</sup> noted the potential for market distortion if the derogation was made. Of these:

- AEMO, the AER and Snowy Hydro believed the potential for market distortion was justified as this case is exceptional and a once-off.
- Shell Energy and the Justice and Equity Centre did not believe the potential for distortion was justified.

<sup>52</sup> There are a number of reasons for this that are elaborated on pp. 2-3 of AEMO's submission to the consultation paper, including the extended recall status of the units.

<sup>53</sup> AEMO, Submission to the consultation paper, 20 December 2024, pp. 2-3.

<sup>54</sup> The recall times for the units are published as part of the MT PASA process. At the time that the interim reliability gap was declared in the 2024 ES00 (August 2024), the ENGIE units had a 90 day recall time in MT PASA.

<sup>55</sup> While AEMO has broad powers to issue directions under clause 4.8.9 of the NER and there are civil penalties associated with non-compliance (refer to clause 4.8.9(c)), participants may not comply if they consider, in their reasonable opinion, there is a risk to public safety or a risk of materially damaging equipment. Non-compliance, in this case, may have detrimental impacts to reliability, as discussed in this determination, and so contracting the units for reserves is likely to be desirable.

<sup>56</sup> Refer to: [aemo.com.au/en/energy-systems/electricity/emergency-management/reliability-and-emergency-reserve-trader-rert/rert-tendering](https://aemo.com.au/en/energy-systems/electricity/emergency-management/reliability-and-emergency-reserve-trader-rert/rert-tendering)

<sup>57</sup> Justice and Equity Centre (p. 3), Shell Energy (p. 2), AEMO (p. 2), Snowy Hydro (p. 1), Origin (p. 1), EnergyAustralia (p. 1)

In addition, four stakeholders<sup>58</sup> identified the risk that the derogation could set an undesirable precedent.

- Snowy Hydro and Shell Energy were both concerned this would set the wrong precedent for other NEM participants to engage in strategic withdrawals from the market.
- EnergyAustralia noted the potential to set a precedent for other governments to over-ride the market.
- The AER considered that the risk of setting an undesirable precedent could be managed by limiting the duration of the derogation and ensuring participants are aware it is one-off.

The Commission maintains that the wholesale market is the primary means through which reliability is delivered and that incentives to invest in market reserves need to be preserved, so that the costs of reliability are minimised for consumers. The out-of-market provisions in the reserve frameworks in the Rules are important, with out-of-market reserves ideally only being used as a last resort.

#### **A combination of specific factors in this case warrants an exemption from out-of-market reserve provisions**

Given the importance of the out-of-market provisions for keeping incentives in the wholesale market sharp, the Commission considered carefully the proposal for the exemption.

The 12-month backward restriction in clauses 3.20.3 (g) and (h) was introduced through the *Enhancement to the RERT* rule change in 2019.<sup>59</sup> The rationale was to minimise the potential for market distortions by ensuring there was a separation between out-of-market reserves and those resources participating in the market.<sup>60</sup> It applies to the “capacity of scheduled generating units, scheduled bidirectional units, wholesale demand response units, scheduled network services or scheduled loads” (clause 3.20.3 (g)).<sup>61</sup>

The separation between in-market and out-of-market reserves is important for preserving the wholesale market as the primary mechanism for supplying reliable electricity to customers. The out-of-market reserves are only to be used as a last resort, in situations where there are insufficient resources in the wholesale market to meet demand. Without the 12-month backward restriction, market participants could be incentivised to exit the market if they see the potential for a better price as out-of-market reserves. This could have the effect of resources moving in and out of the market depending on the season and would undermine the efficiency of the wholesale market and contribute to worsening reliability and a greater reliance on out of market reserves. Refer to appendix C.2 for further details on the 12-month backward restriction.

The Commission has formed the view that a one-off, time limited exemption applied narrowly is warranted due to the following unique combination of factors in this case.

- In early 2024, generator-owner ENGIE announced the mothballing of its Snuggery and Port Lincoln peaking units from 1 July 2024. At this time, the units were placed in an extended recall state with a recall time of 90 days.<sup>62</sup> While ENGIE advised that the facilities would close in 2028, the mothballing and the associated extended recall times meant that the units were not available to participate in the market once mothballed nor could be easily recalled.

58 Snowy Hydro (p. 1), Shell Energy (p. 3), EnergyAustralia (p. 1) and the AER (p. 1)

59 AEMC, *Enhancement to the RERT*, Rule determination, 2 May 2019.

60 AEMC, *Enhancement to the RERT*, Draft rule determination, 7 February 2019, p. 119.

61 Further information on the application of the out-of-market provisions, including to wholesale demand response units, and the other out-of-market clauses in the Rules are included in appendix C.2.

62 The recall times for the units are published as part of the Medium Term Projected Assessment of System Adequacy (MT PASA) process.

- Subsequently, in August 2024, the ESOO forecast a 200MW reliability gap against the IRM for summer 2024-25 in South Australia.<sup>63</sup> This reliability gap had emerged due to changes that occurred between the 2023 ESOOs<sup>64</sup> and 2024 ESOO. The changes AEMO cited included the mothballing of the units and a change in network configurations in Victoria and South Australia.<sup>65</sup> Refer to appendix C.1 for further details on the nature of the reliability concern in South Australia.
- In August 2024, AEMO issued an invitation to tender for IRR to provide out-of-market, back-up supply to address the reliability gap forecast in South Australia for summer 2024-25. However, it did not receive a sufficient response. Refer to section 2.3.1 and appendix C.1.1 for further details on AEMO's tender for IRR.

These factors, combined with the imperative to maintain reliability during this critical juncture of the transition (discussed in section 2.3.1), informed the Commission's decision to make the rule.

The Commission notes that this is a transitional measure as other market reforms are being progressed to help pave the way for innovation in the market, opening up new, low-emissions ways to meet future reserve requirements. We also note that reliability in South Australia will be supported by:

- the South Australian government initiatives underway that are aimed at improving reliability in the medium- to long-term<sup>66</sup>
- Project EnergyConnect (PEC), which will unlock interconnector capacity between New South Wales and South Australia<sup>67</sup>
- the ENGIE units will be eligible for reserve contracts under the RERT framework for next summer onward, as the 12-month backward restriction as it applies to them ends on 1 July 2025.

If, in the future, another proponent submits a similar rule change request, there would be a rule change process to assess it on its own individual merits against the NEO, and AEMO would still be required to adhere to the checks and balances for reserve procurement discussed in appendix C.3 and appendix C.4.

### **We have taken steps to minimise the potential for market distortion and the risk of setting an undesirable precedent**

Nonetheless, we have taken steps to manage the immediate reliability risk while minimising the potential for market distortion and the risk that this rule change will set an undesirable precedent:

- the final rule is a jurisdictional derogation that applies to South Australia only. Derogations are sound policy tools for addressing specific jurisdictional issues, providing a safety valve where the existing rules cannot accommodate emerging challenges, and maintaining confidence in the electricity system. During a period of significant change, derogations offer a pragmatic and flexible mechanism for implementing solutions swiftly.
- the derogation is limited in its scope. It applies to only interim reliability reserves with only the ENGIE units.

63 AEMO, 2024 ESOO, August 2024, p. 69.

64 AEMO published the 2023 ESOO in August 2023 and an Update to the 2023 ESOO in May 2024. Refer to appendix C.1 for further details on the nature of the reliability risk outlined in the ESOOs.

65 AEMO, 2024 ESOO, August 2024, p. 68.

66 These initiatives are discussed further in appendix E.

67 Refer to appendix C.1 for further information on PEC timelines.

- the derogation is limited in its duration. It ends on 31 March 2025, which aligns with the end of the IRR provisions in the Rules (refer to clause 11.128.1 and 11.128.2). This is appropriate given the forecast reliability gap is against the IRM. For this reason, the final rule is a more preferable rule. The proponent proposed a two-year term for the derogation, however, the Commission considers that the term should be limited for the reasons outlined here and in section 3.3.

Refer to chapter 3 for further details on how we have drafted the final rule.

These steps align with stakeholder suggestions. All stakeholders that discussed the nature of the derogation preferred it to be narrow (specific to the two plants) and time-limited (the shorter the better) to minimise market distortion. Shell Energy also noted (and we agree) that the solution should be isolated to contracts for IRR as the issue relates to an interim reliability gap.<sup>68</sup>

While the Commission has, in this instance, approved a narrow exemption, it remains committed to preserving the wholesale market as the primary mechanism for delivering reliability, supported by the out-of-market reserve provisions.

### 2.3.5 The final rule will not undermine emission reduction goals, as it allows AEMO to consider more options to address reliability events that may impact the transition

The final rule provides a one-off exemption that temporarily increases the scope of options available to AEMO to manage an urgent reliability issue. We are in the midst of a transition and reliability issues can undermine progress towards Australia's greenhouse gas emission targets. Reliability events, such as blackouts, can diminish trust in the transitioning grid and set-back key transitional projects.

In submissions to the consultation paper, two stakeholders<sup>69</sup> raised the emissions associated with the proposed derogation - noting that they were not likely to be significant. The Commission recognises that there would be emissions from the use of diesel for the ENGIE units. However, given these will only arise if the reserves are called upon, and reserves are a last resort mechanism to address urgent reliability risks, on balance, we consider that the rule change is appropriate and necessary.

We also note that the final rule only allows, but does not require, AEMO to contract with the ENGIE units. If AEMO does contract with the ENGIE units, this will be subject to the checks and balances in the Rules.

The Justice and Equity Centre also suggested that, while the emissions associated with the proposal may not be significant, the precedent it sets for continued reliance on fossil-fueled generators may "frustrate the achievement of greenhouse gas emissions targets".<sup>70</sup>

For the reasons discussed in section 2.3.4, we do not consider there will be a significant precedent set as a result of this final rule. There are reliability benefits in avoiding an erosion of trust in the energy transition, and these outweigh this one-off exemption to allow AEMO to consider fossil-fueled resources for out of market reserves.

<sup>68</sup> Shell Energy, Submission to the consultation paper, 19 December 2024, p. 3.

<sup>69</sup> AEMO (p. 5) and the Justice and Equity Centre (p. 4).

<sup>70</sup> Justice and Equity Centre, submission to the consultation paper, 16 December 2024, p. 4.

## 3 How our rule will operate

### 3.1 The final rule is a jurisdictional derogation that applies to the ENGIE units

Our final determination is to make a jurisdictional derogation for South Australia, relating specifically to the Snuggery and Port Lincoln units. The final rule makes the jurisdictional derogation in chapter 9 of the NER, which is where the other jurisdictional derogations for South Australia sit in the NER.

A jurisdictional derogation is a rule made at the request of a Minister of a participating jurisdiction that either exempts a person or class of such a person, or AEMO, from complying with a provision in the Rules, or otherwise modifies the application of the Rules to that person or class of such a person, or AEMO, in the relevant jurisdiction. In this case, the jurisdictional derogation applies to the ENGIE units. We have achieved this in the final rule by specifying the power stations, their generating units and their dispatchable unit identifiers (DUIDs) in a table in the new clause 9.27.3 (see Table 3.1 below).

**Table 3.1: Table with the applicable plant in clause 9.27.3**

Power Station	Generating units	DUID
Snuggery Power Station	Units 1, 2, and 3	SNUG1
Port Lincoln Gas Turbine	Units 1-2	POR01
Port Lincoln Gas Turbine	PL3	POR03

Various additional constraints apply to proposals for, and making of, jurisdictional derogations. In particular, the Minister proposing the derogation needs to consult with the Ministers of other participating jurisdictions in accordance with the requirements for requesting a jurisdictional derogation under section 91(3) of the NEL. The Minister confirmed that this consultation had occurred in the rule change request and in correspondence with the AEMC.<sup>71</sup>

The Commission also considered the relevant items set out in section 89 of the NEL in making this jurisdictional derogation.<sup>72</sup>

### 3.2 The jurisdictional derogation exempts the ENGIE units in South Australia from the 12-month backward restriction for IRR

The jurisdictional derogation exempts the Snuggery and Port Lincoln units from clauses 3.20.3 (g) and (h) for IRR by stating that these clauses do not apply to AEMO or another person in relation to the capacity of the generating units specified in the table in new clause 9.27.3.

#### 9.27.3 Interim reliability reserve eligibility

(a) Clause 3.20.3(g) does not apply to prevent AEMO from entering into a *reserve contract* for interim reliability reserves in relation to the capacity of the *generating units* specified in the following table.

(b) Clause 3.20.3(h) does not apply to prevent a person from entering into a *reserve*

<sup>71</sup> Refer to South Australian Minister of Energy and Mining, Rule change request, p. 3.

<sup>72</sup> Under section 89 of the NEL, the AEMC must have regard to certain matters in relation to the making of jurisdictional derogations.



*contract for interim reliability reserves in relation to the capacity of the generating units specified in the following table.*

This allows AEMO to enter into IRR contracts in relation to the capacity of the ENGIE units for emergency reserves, despite them being out-of-market for less than 12-months. It is specific to IRR, meaning they cannot be considered for other types of RERT contracts.

The rule is narrow and specific to the ENGIE units, in line with the feedback from all stakeholders that discussed the nature of the derogation (as discussed in section 2.3.4). These facilities are the only two potential reserve providers in South Australia to which the 12-month backward restriction applies.<sup>73</sup> The final rule does not prevent AEMO considering other reserve options to complement (or operate in place of) these reserves depending on the needs of the system now and in the future, nor does it require AEMO to enter into contracts for IRR in relation to the ENGIE units.

New rule 9.27 also contains a provision to clarify that any requirements of the RERT guidelines corresponding to the out-of-market restrictions (clauses 3.20.3(g) and (h)) will also not prevent AEMO from negotiating or entering into an IRR contract with the ENGIE units. Some parts of the RERT guidelines refer to the out-of-market provisions and the restrictions that they impose on RERT participation.<sup>74</sup> Final rule clause 9.27.3(c) clarifies that these corresponding parts of the RERT guidelines will similarly not prevent AEMO from contracting with the ENGIE units, thus ensuring that the exclusion of the operation of clauses 3.20.3(g) and (h) flows through to the guidelines. The RERT guidelines will otherwise apply as normal, along with the RERT principles and procedures.

### 3.3 The jurisdictional derogation will be in place until 31 March 2025

The derogation will end upon the expiry of the IRR rules on 31 March 2025.<sup>75</sup> This is specified in the expiry date in the new clause 9.27.2.

The 12-month backward restriction relates to entering contracts within 12-months of last dispatch (refer to clause 3.20.3 (g) and (h)) so the final rule only needs to cover a period during which AEMO and ENGIE could not otherwise enter into contracts. It need not extend for the duration of the contractual term (once the contracts have been entered into). As IRR contracts (the applicable reserve contracts for an interim reliability gap) cannot be entered into after 31 March 2025 (refer to clauses 11.128.1 and 11.128.2), it is appropriate to align the expiry of the jurisdictional derogation exempting the units from the 12-month backward restriction with the end date of the IRR rules.

The final rule is more preferable than the rule proposed in the rule change request, because of the shorter duration. The Minister had proposed in its rule change request that the derogation would last for a period of no longer than two years (until 31 March 2026). However, the Commission considers it is more appropriate to shorten the derogation period for the reasons relating to market distortion set out in section 2.3.4 and to align with the end date of the IRR rules.

If AEMO enters into IRR contracts in relation to the ENGIE units, the final rule does not exclude the contracts from applying for a period beyond 31 March 2025 (that is, AEMO could call on them after 31 March 2025) if this is deemed necessary by AEMO in accordance with the checks and balances in the current Rules around reserve contract terms.

<sup>73</sup> The only other mothballed generator in South Australia at the time of this determination is Torrens Island Unit B1, which was mothballed in 2021 and has a recall time of 270 days.

<sup>74</sup> Refer to Reliability Panel, Reliability and Emergency Reserve Trader Guidelines, Final guidelines, 21 August 2020, p. 13.

<sup>75</sup> Refer to clauses 11.128.1 and 11.128.2.



Note that from 1 July 2025, the units would be able to be contracted under the existing RERT rules as the 12-month backwards restriction will have ended.

### 3.4 There are no changes to the rest of the reserve frameworks

The final rule does not change the remainder of the RERT and IRR frameworks in the NER (that is, clauses other than 3.20.3 (g) and (h) as they apply to interim reliability reserves for the ENGIE units are unchanged). We have made only the necessary changes to allow AEMO to consider contracting the additional units for reserves this summer given the imminent reliability risk in South Australia.

This means that the reserve frameworks will continue to operate as designed, with AEMO being responsible for contracting decisions, subject to the checks and balances of the existing RERT and IRR principles. If, after the making of this rule, AEMO wishes to use the ENGIE units for reserves, it will be required to enter reserve contracts with ENGIE for the relevant capacity, subject to the checks and balances in the Rules. This will ensure that these contracts are in the best interests of consumers and will also help minimise potential market distortions and the risk of setting a precedent, which was a key stakeholder concern (as discussed in section 2.3.4).

## A Rule making process

An expedited rule change request includes the following stages:

- a proponent submits a rule change request
- the Australian Energy Market Commission (AEMC or Commission) initiates the rule change process by publishing a consultation paper and seeking stakeholder feedback
  - the Commission also invites objections to the use of the expedited rule change process at this time.<sup>76</sup>
- stakeholders 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).

You can find more information on the rule change process on our website.<sup>77</sup>

### A.1 The Minister proposed a jurisdictional derogation to allow emergency reserve procurement in South Australia

On 15 November 2024, the Commission received a request for a jurisdictional derogation from the Hon Tom Koutsantonis MP, Minister for Energy and Mining in South Australia (the Minister). The Minister's rule change proposal sought a jurisdictional derogation in South Australia from certain restrictions on contracting for reliability reserves. This would allow the Australian Energy Market Operator (AEMO) to enter into reserve contracts in relation to the capacity of two recently mothballed generating units to help safeguard reliability this summer.

The Minister consulted with the Ministers of other participating jurisdictions on the rule change request in accordance with the requirements for requesting a jurisdictional derogation under Section 91(3) of the National Electricity Law (NEL).

### A.2 The proposal sought to address a forecast reliability gap in South Australia this summer

In early 2024, ENGIE announced the mothballing of two of its peaking facilities - Snuggery (63-megawatt (MW)) and Port Lincoln (75MW) - ahead of closing the facilities in 2028. Accordingly, on 1 July 2024, the units were mothballed and placed in an extended recall state.<sup>78</sup>

Subsequently, AEMO's 2024 Electricity Statement of Opportunities (ESOO) projected a reliability shortfall of 200MW in South Australia against the interim reliability measure (IRM) for the 2024-25 period.<sup>79</sup> The proponent noted that this did not consider delays to additional capacity coming online through Project EnergyConnect (PEC),<sup>80</sup> exacerbating the risks identified by AEMO (and in the proponent's own modelling mentioned in the rule change request).

The Minister suggested that utilising the capacity of the Snuggery and Port Lincoln units may assist AEMO to manage reliability risks in the upcoming summer period in South Australia,

<sup>76</sup> If an objection is received and it is not deemed to be misconceived or lacking in substance, the Commission will revert to the standard rule change process. No objections to the expedited process were received for this rule change request.

<sup>77</sup> See our website for more information on the rule change process: <https://www.aemc.gov.au/our-work/changing-energy-rules>

<sup>78</sup> The recall times for the units are published as part of the Medium Term Projected Assessment of System Adequacy (MT PASA) process. From 1 July 2024, the ENGIE units had a 90 day recall time in MT PASA.

<sup>79</sup> AEMO, 2024 ESOO, August 2024, p. 69.

<sup>80</sup> PEC is a new 330kV electricity interconnector between South Australia and New South Wales that will add approximately 800MW of further transfer capacity between these two states. It is a partnership between ElectraNet and Transgrid. Refer to the PEC webpage for further information on the project: [projectenergyconnect.com.au](https://projectenergyconnect.com.au)

particularly if reliability issues coincide with severe weather events. However, the units are currently unable to be considered for out-of-market reserve contracts due to provisions set out in the National Electricity Rules (NER or the Rules).

Clauses 3.20.3 (g) and (h) of the NER prohibit AEMO and a person entering into scheduled reserve contracts under the Reliability and Emergency Reserve Trader (RERT) framework if the relevant units have been available for dispatch in market within the last 12-months (“the 12-month backward restriction”).<sup>81 82</sup> Both Snuggery and Port Lincoln were available and last dispatched in the market on 1 July 2024, so the capacity of the ENGIE units cannot be considered by AEMO for out-of-market reserve contracts until 1 July 2025.

The Minister considered that an additional 138MW of large flexible generation may significantly increase AEMO’s ability to prevent load shedding during periods of unserved energy (USE) in the upcoming summer.

### A.3 It proposed to do so by allowing AEMO to consider two additional generators for reserves this summer

The Minister proposed a two-year jurisdictional derogation from clauses 3.20.3 (g) and (h) of the NER. This would give AEMO the ability to negotiate with ENGIE to procure the services of the Port Lincoln and Snuggery generators as an “out-of-market reserve”.

The Minister proposed that the rule change request be progressed as urgent.

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

### A.4 The process to date

On 28 November 2024, the Commission published a notice advising of the initiation of the rule making process and consultation in respect of the rule change request.<sup>83</sup> A consultation paper identifying specific issues for consultation was also published. Submissions closed on 2 January 2025.

The Commission considered that the rule change request was a request for an urgent rule as defined in section 87 of the NEL. Accordingly, the Commission initiated an expedited rule change process, subject to any written requests not to do so. The closing date for receipt of written requests was 12 December 2024.

No written requests to not carry out an expedited rule change process were received. Accordingly, the rule change request was considered under an expedited process.<sup>84</sup>

The Commission received eight submissions on the rule change request. The Commission considered all issues raised by stakeholders in submissions. Issues raised in submissions are discussed and responded to in this final rule determination. A summary of other issues raised in submissions and the Commission’s response to each issue is contained in appendix E.

81 Under clause 11.128.3 of the NER, for the purpose of procuring IRR, rule 3.20 (the RERT rule) applies as amended and supplemented by rule 11.128(the IRM rule). This means that the 12-month backward restriction set out in clause 3.20.3 (g) and (h) applies to contracts for IRR.

82 The rationale for the 12-month backward restriction is to ensure that the market remains the primary mechanism for meeting reliability in the national electricity market (NEM). Refer to appendix C.2 for further information on these clauses.

83 This notice was published under section 95 of the NEL.

84 Section 96 of the NEL.

## B Regulatory impact analysis

The Commission has undertaken regulatory impact analysis to make its final determination.

### B.1 Our regulatory impact analysis methodology

#### **We considered a range of policy options**

The Commission compared a range of viable policy options that are within our statutory powers. The Commission analysed these options: the rule proposed in the rule change request; a business-as-usual scenario where we do not make a rule; and a more preferable rule featuring a shorter end date for the jurisdictional derogation.

#### **We identified who will be affected and assessed the benefits and costs of each policy option**

The Commission's regulatory impact analysis for this rule change used qualitative and quantitative methodologies. It involved identifying the stakeholders impacted and assessing the benefits and costs of policy options. The depth of analysis was commensurate with the potential impacts. Where commensurate and feasible, the Commission has quantified the impacts. The Commission focused on the types of impacts within the scope of the NEO.

Table B.1 summarises the regulatory impact analysis the Commission undertook for this rule change. Based on this regulatory impact analysis, the Commission evaluated the primary potential costs and benefits of policy options against the assessment criteria. The Commission's determination considered the benefits of the options minus the costs.

**Table B.1: Regulatory impact analysis methodology**

Assessment criteria	Primary costs  Low, medium or high	Primary benefits  Low, medium or high	Stakeholders affected	Methodology  QT = quantitative, QL = qualitative
Improved system reliability	Continued reliance on higher-emitting resources (L)	<b>Avoided consumer load shedding (H)</b>	<ul style="list-style-type: none"> <li>Consumers</li> </ul>	<ul style="list-style-type: none"> <li>QT: Review of 2024 ES00 shortfall data for South Australia.</li> <li>QL: Review of weather forecasts from the Bureau of Meteorology and PEC timelines.</li> </ul>
Implementation considerations <ul style="list-style-type: none"> <li>Cost and complexity</li> <li>Timing and effectiveness</li> </ul>	Cost of availability, pre-activation and usage charges, if contracted (M)	Not complex, easily implemented by AEMO in a short timeframe (M)	<ul style="list-style-type: none"> <li>Consumers</li> <li>AEMO</li> <li>ENGIE</li> </ul>	Cost and complexity: <ul style="list-style-type: none"> <li>QL: Consideration of existing Rules that require AEMO to justify reserve contracting costs.</li> <li>QL: Consideration of stakeholder feedback to assess all benefits and costs against other options (particularly the use of directions).</li> </ul> Timing: <ul style="list-style-type: none"> <li>QT: Review of projected assessment of system adequacy (PASA) data on recall times.</li> <li>QL: Consideration of rule change effectiveness this summer in conjunction with AEMO, the AER and ENGIE.</li> <li>QL: Consideration of effectiveness of other options (namely, the use of directions).</li> </ul>
Principles of good regulation	Potential for market distortion if contracted (L)  Potential to set a	Can provide certain of the scope and duration of the derogation (M)	<ul style="list-style-type: none"> <li>Consumers</li> <li>Other reserve providers</li> </ul>	<ul style="list-style-type: none"> <li>QT/QL: Consideration of other potential reserve providers that could be impacted by allowing AEMO to consider the ENGIE units</li> <li></li> </ul>

Assessment criteria	Primary costs	Primary benefits	Stakeholders affected	Methodology
	Low, medium or high	Low, medium or high		QT = quantitative, QL = qualitative
	precedent (L)			<ul style="list-style-type: none"> <li>QL: Consideration of how to limit the jurisdictional derogation to minimise market distortions and avoid setting an undesirable precedent.</li> </ul>
Emissions	<p>Potential emissions from diesel, if contracted and activated (L)</p> <p>Potential to cement reliance on fossil-fueled generators (L)</p>	Managing the risk of reliability events that may undermine the transition (M)	<ul style="list-style-type: none"> <li>Consumers</li> <li>Market institutions</li> </ul>	<ul style="list-style-type: none"> <li>QT: Review of emissions intensity of the ENGIE units in AEMO's integrated system plan data.</li> <li>QL: Consideration of the impact of blackouts on public sentiment and trust in the transition.</li> </ul>

## C Additional background and context

This section includes additional background and context for the final rule, including:

- the nature of the reliability concern in South Australia.
- the intent of the 12-month backward restriction in the reserve contracting provisions.
- the RERT principles and RERT guidelines.
- the IRM and IRR arrangements.

### C.1 The nature of the reliability concern in South Australia

The 2024 ES00 forecasts a 200MW reliability gap against the IRM (above 0.0006% USE) for summer 2024-25 in South Australia.<sup>85</sup>

**Figure C.1: 2024 ES00 reliability gap for South Australia**

**Table 12 Reliability gaps and equivalent gaps against the IRM**

Region	2024-25	2025-26	2026-27	2027-28	2028-29	2029-30	2030-31	2031-32	2032-33	2033-34
New South Wales	265	-	-	570	285	105	680	850	890	3,560
Queensland	-	-	-	-	-	-	-	-	-	-
South Australia	200	-	230	-	-	-	-	-	-	870
Tasmania	-	-	-	-	-	-	-	-	-	-
Victoria	10	-	-	130	605	635	675	785	1140	1,505

Source: AEMO, 2024 ES00, August 2024, p. 69.

AEMO notes some key changes between its 2023 ES00, its May 2024 update to the 2023 ES00<sup>86</sup> and its 2024 ES00 that have contributed to the forecast risks in South Australia.

Pages 64 to 65 of the 2024 ES00 note:<sup>87</sup>

In South Australia, reliability gaps are identified in 2024-25 and 2026-27 against the IRM.

- Reliability risks in Victoria and South Australia often occur at coincident times and vary subject to generation availability across both regions. Forecast risks across both regions in 2024-25 increased in the May 2024 Update to the 2023 ES00 due to the advised mothballing of Torrens Island B1, Port Lincoln and Snuggery power stations in South Australia.
- In the 2024 ES00, a change in the allocation of reliability risk between Victoria and South Australia has arisen in 2024-25 due to alternative network configurations applied between the Latrobe Valley and Melbourne at times of high demand, which reduces total risks across Victoria and South Australia, but results in reduced flows towards South Australia.
- These alternative network configurations allow direct access from Latrobe Valley generators to Melbourne via the 220 [kilo-Volt] kV network, reducing flows on the 500 kV

<sup>85</sup> AEMO, 2024 ES00, August 2024, p. 69.

<sup>86</sup> AEMO published a May 2024 Update to the 2023 ES00 in accordance with clause 3.13.3A of the NER. It was generally based on information available to AEMO as at 16 April 2024 unless otherwise indicated.

<sup>87</sup> AEMO, 2024 ES00, August 2024, pp. 64-65.

network, and subsequently reducing flows over the 500 kV Heywood interconnector towards South Australia.

- While reliability risks are now forecast higher in the South Australian region due to these changed flows, most risks remain shared between both regions, and the alternative configuration was assessed to reduce the total risk across both regions. The alternative configuration improves overall expected USE outcomes until 2028 when Yallourn Power Station retires, and another network configuration was assumed.

In the rule change request, the Minister also raised that there is continued uncertainty and delays for connecting and energising the first stage of PEC. In relation to this, we note AEMO's commentary on page 56 of the 2024 ES00 that the capacity release and timing for PEC is conditional on availability of suitable market conditions and good test results.<sup>88</sup>

The potential for extreme weather may also exacerbate the forecast reliability risks. The ES00 notes that reliability outcomes in South Australia vary significantly depending on weather conditions.<sup>89</sup> The Bureau of Meteorology's climate outlook for January to March forecasts an increased chance of unusually high maximum temperatures across much of the southern two-thirds of Australia. Above average maximum and minimum temperatures are likely to very likely for southern Australia.<sup>90</sup>

### C.1.1 AEMO's tender for IRR in South Australia

AEMO issued a request for tender for IRR in South Australia in August 2024 and published a notice on 31 October 2024 that it intends to commence contract negotiations for the period commencing 1 January 2025 and ending 28 February 2025.<sup>91</sup>

In the rule change request, the Minister notes:<sup>92</sup>

"AEMO has informed the Government of South Australia that it is currently considering offers for approximately 120MW of reserve in the South Australian region (34 as IRR and 98 as short notice RERT). In recent years in the state, both short notice RERT and IRR has predominantly been provided by load reductions delivered by aggregations of small loads, rather than by the large flexible loads or generation increases available as reserves in other states."

In a subsequent update to its RERT tendering website, AEMO notes:<sup>93</sup>

"AEMO has now accepted all qualifying tenders provided in response to the Invitation to Tender but the total reserves contracted will not fully address the reliability gap forecast for the 24/25 summer in South Australia in the 2024 ES00. AEMO has been canvassing other options to secure additional reserves for South Australia and the South Australian government is currently seeking a jurisdictional derogation from the AEMC to allow AEMO to procure Interim Reliability Reserves from certain generators who would otherwise be ineligible under current out of market requirements. AEMO notes that even if this derogation is made and these additional generators are contracted to provide Interim Reliability

88 AEMO, 2024 ES00, August 2024, p. 56.

89 AEMO, 2024 ES00, August 2024, pp. 146-147.

90 Refer to [www.bom.gov.au/climate/outlooks/#/temperature/summary](http://www.bom.gov.au/climate/outlooks/#/temperature/summary)

91 Refer to [aemo.com.au/energy-systems/electricity/emergency-management/reliability-and-emergency-reserve-trader-rert/rert-tendering](http://aemo.com.au/energy-systems/electricity/emergency-management/reliability-and-emergency-reserve-trader-rert/rert-tendering)

92 South Australian Minister of Energy and Mining, Rule change request, p. 4.

93 Refer to [aemo.com.au/energy-systems/electricity/emergency-management/reliability-and-emergency-reserve-trader-rert/rert-tendering](http://aemo.com.au/energy-systems/electricity/emergency-management/reliability-and-emergency-reserve-trader-rert/rert-tendering)



Reserves, a forecast reliability gap will remain in South Australia for the period identified in the 2024 ES00.”

## C.2 The 12-month backward restriction

Clause 3.20.3 (g) and (h) set out the 12-month backward restriction on scheduled reserve contracts:

### Offering scheduled reserves into the market

(g) When contracting for the provision of scheduled reserves under scheduled reserve contracts, AEMO must not enter contracts in relation to capacity of scheduled generating units, scheduled bidirectional units, wholesale demand response units, scheduled network services or scheduled loads for which dispatch bids have been submitted or are considered by AEMO to be likely to be submitted or be otherwise available for dispatch at any time during:

- (1) the period from the date of execution of the scheduled reserve contract until the end of its term; and
- (2) the 12 month period immediately preceding the date of execution of the scheduled reserve contract, except where that capacity was dispatched under a reserve contract.

(h) A person must not enter into a scheduled reserve contract in relation to capacity for which dispatch bids were submitted, or that was otherwise available for dispatch at any time during the 12 month period immediately preceding the date of execution of the scheduled reserve contract, except where that capacity was dispatched under a scheduled reserve contract.

These clauses were introduced through the *Enhancement to the RERT* rule change in 2019.<sup>94</sup> The rationale was to minimise the potential for market distortions by making sure that only reserves that are not in the market are participating in the RERT.<sup>95</sup> The Commission determined that the market should be the primary mechanism by which reliability is achieved, and the 12-month rule aims to uphold that for scheduled emergency reserves.<sup>96</sup> Without the rule in place, there is a risk that providers would exit the market in order to be contracted (and potentially paid at a higher and/or more certain rate) for reserves, driving up prices.

The 12-month backward restriction applies to the capacity of scheduled resources. This includes the “capacity of scheduled generating units, scheduled bidirectional units, wholesale demand response units, scheduled network services or scheduled loads” (clause 3.20.3 (g)). Wholesale demand response units are those that directly participate in and are dispatched through the in-market wholesale demand response mechanism – so those demand response resources could not participate in the RERT/IRR if they had been dispatched via the wholesale demand response mechanism (i.e. in market) within the last 12-months.

There is also an equivalent provision on unscheduled resources in clause 3.20.3 (i) (such as demand response participating in retail programs that are not scheduled/dispatched via the NEM dispatch engine) to promote the integrity of the wholesale market. A person cannot enter

<sup>94</sup> AEMC, *Enhancement to the RERT*, Rule determination, 2 May 2019.

<sup>95</sup> AEMC, *Enhancement to the RERT*, Draft rule determination, 7 February 2019, p. 119.

<sup>96</sup> AEMC, *Enhancement to the RERT*, Rule determination, 2 May 2019, p. 163.

unscheduled reserve contracts for any trading intervals where it is already required under another contract or arrangement to offer capacity in-market (clause 3.20.3 (i)).

### C.2.1 Application of the 12-month backward restriction to mothballed units

At the time of the *Enhancement to the RERT* rule change in 2019, consideration was given to an exemption from the restriction for units that had provided three years' notice of closure and mothballed units. This reasoning is set out in the final determination on pages 163 to 165.<sup>97</sup>

It was determined that the RRO and other options available to jurisdictions would be fit for purpose to allow such units to contribute to meeting reliability. It was also determined that there would be an option for AEMO to direct the mothballed units under clause 4.8.9 of the NER, acknowledging however, this may not be practical in all cases.<sup>98</sup>

"Given they are still registered participants, mothballed plants are still able to be directed by AEMO for both power system security and power system reliability. However, the Commission acknowledges that in some instances, mothballed plants may not be able to be directed (and in time). For example, due to difficulty in getting fuel or due to non-maintenance of the unit while mothballed... if jurisdictions are concerned about mothballed generators being unable to be directed or generators having provided three-year notice of closure being unable to participate in RERT in time, there are options available to jurisdictions to address their concerns."

### C.2.2 Considerations for the mothballed ENGIE units in this final rule

As discussed in section 2.3.4 of this final rule determination, notwithstanding the limited exemption, the Commission considers the 12-month backward restriction is still valuable.

In submissions to the consultation paper, the majority of stakeholders also reinforced the value of the 12-month backwards restriction in the Rules.<sup>99</sup> Several stakeholders cited the rationale from the AEMC's *Enhancement to the RERT* rule change (2019) to justify their positions. For example:

- In justifying its position that the derogation should not proceed, Shell Energy noted the Commission's previous assertion that out-of-market restrictions were important.<sup>100</sup>
- In justifying its position that the derogation should proceed, AEMO noted that the context had changed since the 2019 rule determination and that an exemption is appropriate for this case given the units were a form of economically mothballed reserves.<sup>101</sup>

We agree with with Shell Energy that out-of-market restrictions remain important but, on balance, consider that a limited exemption is necessary in the current circumstances. We would like to reinforce the value and intent of the 12-month backward restriction, and do not consider that the need for this one-off exemption undermines that value; rather, it reflects the current state of the transition.

<sup>97</sup> AEMC, *Enhancement to the RERT*, Rule determination, 2 May 2019, pp. 163-165.

<sup>98</sup> AEMC, *Enhancement to the RERT*, Rule determination, 2 May 2019, p. 164-165.

<sup>99</sup> Justice and Equity Centre (p. 2), Shell Energy (p. 2), Snowy Hydro (p. 1), Origin (p. 1), EnergyAustralia (p. 1).

<sup>100</sup> Shell Energy, *Submission to the consultation paper*, 19 December 2024, p. 2.

<sup>101</sup> AEMO, *Submission to the consultation paper*, 20 December 2024, p. 3.

### C.3 The RERT principles and RERT guidelines

Under clause 3.20.2 of the Rules, AEMO must take all reasonable actions to ensure the reliability of supply by negotiating and entering into reserve contracts in accordance with the RERT principles and the RERT guidelines (among other items set out in clause 3.20.2(a)).

The RERT principles are:

- (1) actions taken should be those which AEMO reasonably expects, acting reasonably, to have the least distortionary effect on the operation of the market;
- (2) actions taken should aim to maximise the effectiveness of reserve contracts at the least cost to end use consumers of electricity; and
- (3) the average amount payable by AEMO under reserve contracts for each MWh of reserves for a region should not exceed the estimated average VCR for that region.

The Reliability Panel is responsible for developing and publishing the RERT guidelines (refer to clause 3.20.8).<sup>102</sup>

### C.4 The IRM and IRR arrangements

In 2020, Energy Ministers established the IRM as a temporary measure to protect customers from increasing reliability risks, particularly low-probability events that could have a high impact on reliability outcomes, while a longer-term market design is developed.<sup>103</sup> The IRM is set at 0.0006% unserved energy (USE). At this point in time, it will be in place until 30 June 2028.

The iIRR is a mechanism under the IRM (alongside the retailer reliability obligation (RRO)). It is an out-of-market capacity reserve that allows AEMO to enter reserve contracts where it forecasts that the IRM will not be met. The IRR rules expire on 31 March 2025, meaning that AEMO cannot enter into contracts for IRR after this date (however, the contract term can extend beyond this date).<sup>104</sup>

Reserve contracts for IRR differ from short notice RERT contracts because they require a full and fixed commitment of reserves and include strict performance requirements and testing conditions. The reserves contracted as IRR may not be varied and will be required to be 100% available on a firm basis for the duration of the agreement.<sup>105</sup>

Under clause 11.128.3 of the NER, for the purpose of procuring IRR, rule 3.20 (the RERT rule) applies as amended and supplemented by rule 11.128 (the IRM rule). This means that the 12-month backward restriction set out in clause 3.20.3 (g) and (h) applies to contracts for IRR.

Under the IRM, it is not necessary for there to be a declaration of 'low reserve' or 'lack of reserve' (as is the case under rule 3.20). Instead, the trigger for the IRM is a forecast that the IRM will not be met in a particular region (referred to as 'interim reliability exceedance' in the NER and as a 'reliability gap' here for simplicity).

Clause 11.128.4 also sets out additional requirements for IRR contracts, including multi-year IRR contracts. When entering into multi-year IRR contracts, AEMO must ensure that, at the time of entering into the contract, the amount of reserve procured under the reserve contract is no more than what AEMO considers is reasonably necessary to ensure reliability of supply in the relevant

<sup>102</sup> The guidelines are available on the AEMC's website here: [www.aemc.gov.au/regulation/electricity-guidelines-and-standards#reliability](http://www.aemc.gov.au/regulation/electricity-guidelines-and-standards#reliability)

<sup>103</sup> AEMC, Extending the application of the IRM to the RRO, Rule determination, 21 September 2023.

<sup>104</sup> Refer to clauses 11.128.1 and 11.128.2.

<sup>105</sup> Refer to: [aemo.com.au/en/energy-systems/electricity/emergency-management/reliability-and-emergency-reserve-trader-rert/rert-tendering](http://aemo.com.au/en/energy-systems/electricity/emergency-management/reliability-and-emergency-reserve-trader-rert/rert-tendering)

region (clause 11.128.4(i)(2)), among other items. These requirements apply in addition to the RERT principles and guidelines when procuring IRR.

#### **C.4.1 Reporting requirements for IRR**

In addition to the requirements for RERT reporting under clause 3.20.6 (as amended for IRR under clause 11.128.5), for contracts procured under the IRM, the RERT report must:

- identify the contracts entered for the interim reliability reserve including if they are multiyear contracts
- include an explanation of why AEMO considered the amount procured under each contract was reasonably necessary to ensure the reliability of supply in the region
- include an explanation of how AEMO had regard to any potential impact on, and interaction with the RRO when procuring IRR
- include the basis on which AEMO had regard to the RERT principles when entering reserve contracts for multi-year reserves
- for each multi-year reserve contract entered into in the relevant calendar quarter, include an explanation of whether the total payments made by AEMO under the contract are likely to be lower than the aggregate payments AEMO would have made under reserve contracts that are not multi-year reserve contracts for the same period.

## D Legal requirements to make a rule

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

### D.1 Final rule determination and final rule

In accordance with section 102 and 102A of the NEL, the Commission has made this final rule determination for a more preferable final rule in relation to the rule proposed by the Hon Tom Koutsantonis MP, Minister for Energy and Mining in South Australia.

The Commission's reasons for making this final rule determination are set out in chapter 2.

A copy of the more preferable final rule is attached to and published with this final determination. Its key features are described in chapter 3.

### D.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 section 34 of the NEL as it relates to regulating the operation of the NEM, the operation of the national electricity system for the purposes of the reliability of that system and the activities of persons participating in the NEM or involved in the operation of the national electricity system.

### D.3 Commission's considerations

In assessing the rule change request the Commission considered:

- its powers under the NEL to make the final rule
- the rule change request
- submissions received in response to the consultation paper
- the Commission's analysis as to the ways in which the final rule will or is likely to contribute to the achievement of the NEO
- the matters required under section 89 and section 91(3) of the NEL.

There is no relevant Ministerial Council on Energy (MCE) statement of policy principles for this rule change request.<sup>106</sup>

<sup>106</sup> Under s. 33 of the NEL, the AEMC must have regard to any relevant MCE statement of policy principles in making a rule. The MCE is referenced in the AEMC's governing legislation and is a legally enduring body comprising the Federal, State and Territory Ministers responsible for energy. On 1 July 2011, the MCE was amalgamated with the Ministerial Council on Mineral and Petroleum Resources. In December 2013, it became known as the Council of Australian Government (COAG) Energy Council. In May 2020, the Energy National Cabinet Reform Committee and the Energy Ministers' Meeting were established to replace the former COAG Energy Council.

## E Summary of other issues raised in submissions

Table E.1: Summary of other stakeholder issues not discussed in the body

Stakeholder	Issue	Response
EnergyAustralia	EnergyAustralia, noted there were a number of other activities being progressed to address reliability concerns in South Australia: "...it is one of several mechanisms currently being introduced to address reliability issues. Others include the South Australian Firm Energy Reliability Mechanism (FERM), the Orderly Exit Management Framework and tenders under the Capacity Investment Scheme." - EnergyAustralia, Submission to the consultation paper, 20 December 2024, p. 1.	<p>The other mechanisms discussed by EnergyAustralia may assist with reliability concerns in future but will not address the forecast shortfall that the final rule addresses in time.</p> <ul style="list-style-type: none"><li>• FERM: FERM is a framework proposed by the South Australian Government to support sufficient long duration firm capacity for secure, reliable and resilient electricity supply in South Australia, at least-cost to consumers. Submissions to the first consultation closed on 20 December 2024. Draft regulations are expected in the first half of 2025.</li><li>• Orderly Exit Management Framework (OEMF): The OEMF establishes a formal, opt-in process to assess whether the early exit of a generator would create or contribute to a system reliability or security gap. The OEMF seeks to resolve the system need's shortfall by identifying alternative solutions that may address it or by delaying the early exit of the generator. The OEMF legislation – the <i>National Electricity Laws Amendment (Orderly</i></li></ul>

Stakeholder	Issue	Response
		<p><i>Exit Management) Bill 2024</i> – was enacted on 5 December 2024 and the relevant rules – the National Electricity Amendment (Orderly Exit Management) Rule 2024 – came into effect on 16 January 2025. Pursuant to section 118AB of the NEL, prior to the OEMF coming into effect in a jurisdiction, that jurisdiction must make a regulation specifying how the relevant part of the NEL applies. South Australia is yet to make a regulation doing so.</p> <ul style="list-style-type: none"> <li>Capacity Investment Scheme (CIS): The CIS is an underwriting scheme to accelerate investment in renewable generation and clean dispatchable capacity.</li> </ul> <p>In addition, the South Australian Government’s Electricity Development Plan will help to ensure the state’s energy supply remains reliable, resilient and affordable. This new report will be published annually.</p>
EnergyAustralia	<p>EnergyAustralia suggested that “In considering the specifics of this rule change proposal, we recommend the Commission give careful consideration to... whether the Commission or the South Australian Government should clarify up front what happens to the reinstated units at the end of their reserve contracts. For example, would these assets be eligible to bid under the FERM (including being counted towards the FERM target), as well as potential interactions with</p>	<p>If contracted for IRR, at the end of the contract period, the ENGIE units can either stay out-of-market or re-enter the market. This would be a commercial matter for ENGIE to consider.</p> <p>The South Australian Government may wish to consider EnergyAustralia’s comments on the interaction between reserve contracts and FERM as they progress the development of this new</p>

Stakeholder	Issue	Response
	closure notice obligations.” - EnergyAustralia, Submission to the consultation paper, 20 December 2024, p. 3.	mechanism.
EnergyAustralia	<p>EnergyAustralia raised a question for AEMO on its network modelling in the ESOO for the Victorian and SA regions: “Our reading of AEMO’s ESOO analysis is that it presumes it will operate the Latrobe Valley to Melbourne system in a parallel mode at times of high demand. The Commission should confirm that AEMO actually intends to operate the system in this way over the coming summer, and whether it has some flexibility to respond to reliability risks in real time for SA customers.” - EnergyAustralia, Submission to the consultation paper, 20 December 2024, p. 1.</p>	<p>Alternative network configurations are one option, alongside others, including reserve contracting and the use of directions, that AEMO can use to maintain system reliability.</p> <p>Page 63 of the 2024 ESOO discusses the allocation of risk between South Australia and Victoria:</p> <ul style="list-style-type: none"> <li>• “Reliability risks in Victoria and South Australia often occur at coincident times and vary subject to generation availability across both regions. Forecast risks across both regions in 2024-25 increased in the May 2024 Update to the 2023 ESOO due to the advised mothballing of Torrens Island B1, Port Lincoln and Snuggery power stations in South Australia.</li> <li>• In the 2024 ESOO, a change in the allocation of reliability risk between Victoria and South Australia has arisen in 2024-25 due to alternative network configurations applied between the Latrobe Valley and Melbourne at times of high demand, which reduces total risks across Victoria and South Australia, but results in reduced flows towards South Australia.</li> </ul>



Stakeholder	Issue	Response
		<ul style="list-style-type: none"> <li>These alternative network configurations allow direct access from Latrobe Valley generators to Melbourne via the 220 kV network, reducing flows on the 500 kV network, and subsequently reducing flows over the 500 kV Heywood interconnector towards South Australia.</li> <li>While reliability risks are now forecast higher in the South Australian region due to these changed flows, most risks remain shared between both regions, and the alternative configuration was assessed to reduce the total risk across both regions. The alternative configuration improves overall expected USE outcomes until 2028 when Yallourn Power Station retires, and another network configuration was assumed.”</li> </ul> <p>AEMO has advised the Commission that it does not anticipate that alternative network configurations would apply for prolonged periods throughout summer, however such configurations remain a option in the toolkit for AEMO Operations that may be utilised to manage consumer risks should LOR conditions be forecast.</p>

## Abbreviations and defined terms

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
COAG	Council of Australian Government
Commission	See AEMC
ESOO	Electricity Statement of Opportunities
EUAA	Energy Users Association of Australia
IRM	Interim reliability measure
IRR	Interim reliability reserves
kV	kilo-Volt
MCE	Ministerial Council on Energy
MT PASA	Medium Term Projected Assessment of System Adequacy
MW	Megawatts
NEL	National Electricity Law
NEO	National Electricity Objective
NER	National Electricity Rules
PASA	Projected Assessment of System Adequacy
PEC	Project EnergyConnect
Proponent	The individual / organisation who submitted the rule change request to the Commission (see the Minister)
RERT	Reliability and Emergency Reserve Trader
Rules	See NER
The Minister	The Hon Tom Koutsantonis MP, Minister for Energy and Mining in South Australia
USE	Unserved energy
VCR	Value of customer reliability