RULE CHANGE

Australian Energy Market Commission

RULE DETERMINATION

National Gas Amendment (Short Term Trading Market - Market Schedule Variation) Rule 2011

Rule Proponent(s)

Australian Energy Market Operator

Commissioners

Pierce
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13 October 2011

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AEMC 2011, Short Term Trading Market - Market Schedule Variation, Rule Determination, 13 October 2011, Sydney

About the AEMC

The Council of Australian Governments, through its Ministerial Council on Energy (MCE), established the Australian Energy Market Commission (AEMC) in July 2005. The AEMC has two principal functions. We make and amend the national electricity and gas rules, and we conduct independent reviews of the energy markets for the MCE.

Summary

On 29 April 2011, the Australian Energy Market Operator (AEMO or the Proponent) submitted a Rule change request for consideration by the Australian Energy Market Commission (AEMC or Commission). The Rule change request was based on the proposal to amend the timing requirement for lodging Market Schedule Variation (MSV) transactions by trading participants, following a gas day. However, it also included a proposal for the timing provision of the MSV mechanism to be removed from the National Gas Rules (NGR or Rules), with the intention that an equivalent provision be inserted into the Short Term Trading Market (STTM) Procedures, and for the matter to be considered as a non-controversial Rule change. The Rule change request included a proposed Rule.

The Commission accepted that the Rule change request was of a non-controversial nature and published a notice on 1 September 2011 that it intended to commence assessment of the Rule change request under an expedited Rule making process. The notice invited both written requests not to expedite the Rule change request (with reasons), as well as submissions in relation to the Rule change request. No requests for the Commission not to expedite the Rule change request were received.

At the outset of its assessment of the Rule change request, the Commission determined that the substantive issues to be considered were in relation to whether the subject matter (the MSV transaction window) could be removed from the Rules and assessing whether it could be appropriately dealt with under the STTM Procedures. This is because removing the provision from the Rules would also effectively remove the specific question of amending the timing requirement from the Commission's consideration.

In its Rule change request, the Proponent had stated that removing this provision from the Rules, and inserting an equivalent provision into the STTM Procedures, would provide greater operational flexibility to effect further change in the future, should this be considered necessary. The Proponent also stated that moving the provision into the STTM Procedures was appropriate given its operational nature, and that there would be no impact on regulatory certainty for trading participants, since the STTM Procedure change and consultation requirements were set out in the Rules.

In this final Rule determination, the Commission has decided to make, with amendments, the Rule as proposed by the Proponent. The amendments will ensure that no regulatory gap is inadvertently created during the transitioning of the MSV transaction window provision from the Rules to the STTM Procedures.

The Commission is satisfied that the Rule as Made satisfies the Rule making test as set out in the National Gas Law (NGL), in that it is likely to contribute to the achievement of the National Gas Objective (NGO). In coming to this view, the Commission considers that the Rule as Made will benefit the market by:

- enabling future amendments to the timing requirements of MSV transactions to be made in a timely manner;

- avoiding the inefficient use of the Rule change process for what is effectively an operational matter;
- maintaining a similar level of regulatory certainty for trading participants as currently provided under the Rules; and
- enabling the more operational aspects of the MSV mechanism to be managed under a single document and process.

These benefits will help to minimise the impact on market and participant costs and resources in effecting future changes (where required), while continuing to promote good regulatory practice.

The Rule as Made will commence with effect from 13 October 2011.

Contents

1 Proponent's Rule change request

1.1 The Rule change request

On 29 April 2011, the Australian Energy Market Operator (AEMO or Proponent) submitted a Rule change request to the Australian Energy Market Commission (AEMC or Commission). The Rule change request concerned removing a provision relating to an operational aspect of the Short Term Trading Market (STTM) from the National Gas Rules (NGR or Rules). The provision relates specifically to the timing obligations of trading participants with regards to submitting Market Schedule Variation (MSV) transactions. The intention was that this Rule provision would then be replaced with an equivalent, albeit amended, provision in the STTM Procedures.[1]

Request for expedited process

The Proponent requested that the Rule change request be assessed under an expedited process as set out in section 304 of the National Gas Law (NGL) as it considered the proposed Rule to be non-controversial, noting that it would not have a significant effect on the STTM, trading participants, or gas market operations. The NGL defines a non-controversial Rule as a "Rule that is unlikely to have a significant effect on a market for gas or the regulation of pipeline services".[2]

The Commission accepted that the Rule change request related to a non-controversial Rule, as it was unlikely to have a significant effect on a market for gas, or the regulation of pipeline services. On this basis, on 1 September 2011, the Commission published a notice to expedite the Rule change request under section 304 of the NGL.

1.2 Rationale for the Rule change request

In this Rule change request, the Proponent sought to amend the MSV transaction window from four to seven days. In seeking this change, the Proponent considered that:

- the current four day window for submission of an MSV transaction after a gas day is problematic for some participants because the gas allocation data is not sufficiently stable in that timeframe to provide a reliable basis for those participants to enter into MSV transactions;[3] and
- the current timeframe does not take into account long weekends, such as Easter and Christmas, where both Fridays and Mondays are (or may be) public holidays. During these periods, participants have experienced difficulty in brokering MSV transactions and confirming data from other organisations.

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1 These procedures are managed by AEMO.

2 NGL, section 290.

3 AEMO's analysis highlights that this issue is experienced by some STTM participants at the Sydney hub; Rule change request, p. 4.

However the Proponent also sought to move the MSV transaction window from the Rules to the STTM Procedures. The Proponent provided the following rationale for this request:[4]

- the MSV transaction window is different from other timing obligations prescribed in the Rules such as the obligations to submit offers and bids for gas, and STTM facility data, within specified timeframes. These timing obligations are "key elements of the market pricing and scheduling process and can have significant impacts on market and pricing outcomes";[5]

- the four day window was originally set on the basis that it was sufficient time for the allocation data to stabilise while limiting the length of time that the window was open to ensure completion in time for inclusion in the preliminary settlement calculations and statement. However current experience has shown that there is a case for an extension to enable participants to make more effective use of the mechanism;

- as the change process for STTM Procedures is managed by AEMO, moving the MSV transaction window provision to the STTM Procedures would provide greater flexibility, if required, to make subsequent amendments as the STTM matures, compared to the current change process. This is particularly in view of the STTM review (which is currently underway) and further operational experience; and

- without contradicting the above point, moving the MSV transaction window provision to the STTM Procedures would continue to provide a similar level of regulatory certainty for participants as currently delivered in the Rules, since there is a formal change and consultation process for procedures established in the Rules.

The option of amending the Rule in the proposed manner and retaining it in the NGR, rather than moving it to the STTM Procedures, was identified in the public consultation document that was published by AEMO on its website earlier this year.[6] That document acknowledged that, at first instance, retention of the amended MSV transaction window in either framework would be acceptable, since both could adequately address the timeframe issues and provide regulatory certainty.[7]

However, the Proponent considered that moving the MSV transaction window provision to the STTM Procedures was the preferred option because it would:

- provide AEMO with greater flexibility to make frequent and timely changes, whilst avoiding the inefficient use of the Rule change process in relation to any future amendments; and

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4 AEMO, Rule change request, p. 5.

5 Ibid.

6 AEMO, *STTM proposed Rule change - market schedule variation window*, 4 April 2011.

7 Ibid, at p. 6.

- enable the more operational aspects relating to the MSV mechanism to be contained in a single document (the STTM Procedures), providing for a consistent consultation and management of the MSV process.[8]

The Proponent also considered that delay in adjusting the MSV timing would increase the likelihood that trading participants would be unable to properly transact MSVs, or inadvertently create deviations through the process, thereby increasing the overall risk to those participants.

1.3 Solution proposed in the Rule change request

The Proponent proposed to resolve the issues referred to above by requesting the making of a Rule to:

- extend the MSV transaction window from four to seven days;
- delete the MSV transaction window from the Rules, with the intention that it be moved to the STTM Procedures; and
- have the Rule change request treated on an expedited basis by the AEMC.

The Proponent's Rule change request included a proposed Rule.

1.4 Relevant background

1.4.1 Overview of MSV transactions in the STTM

A high level overview of relevant STTM operations, including MSV transactions, is contained in Appendix A to this document.

1.4.2 Consultation undertaken by AEMO

During meetings of the STTM-CF[9] held in late 2010, the issue of gas allocation data stability, in the context of participants' ability to submit MSV transactions within the timeframe required by the Rules, was raised.[10]

Following a subsequent review, AEMO confirmed that the data was shown in one hub[11] to be unstable for some participants inside the current four day MSV transaction window permitted under the Rules, but had largely stabilised inside seven days.

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8 Ibid.

9 The STTM-CF is a standing forum managed by AEMO, and established for the purpose of providing effective and efficient consultation with stakeholders on development of the STTM in a manner that satisfies the National Gas Objective (see AEMO, *Short term trading market consultative forum (STTM-CF) - Terms of reference and operational procedure*, v1, June 2010). Membership of the STTM-CF is broad, and includes representatives from gas retailers, pipelines, producers, major energy users, generators and distribution networks.

10 EnergyAustralia, STTM-CF minutes, 28 September 2010 and 26 October 2010.

Accordingly, AEMO recommended to the STTM-CF that the MSV transaction window be extended from four to seven days. The recommendation included that the Rule requirement, insofar as it related to the MSV transaction window, be moved from the Rules to the STTM Procedures.[12] In a subsequent meeting, AEMO was also asked to seek an expedited process when submitting the Rule change request to the AEMC for consideration.[13]

On 4 April 2011, AEMO published a notice of consultation in relation to the proposal to submit a Rule change request to amend provisions relating to the STTM. Amongst other things, the consultation paper sought comments in relation to the following matters:

- the proposal to modify the MSV transaction window by extending it from four to seven days; and
- the proposal to request that the Rule change be considered as non-controversial.

AEMO's consultation paper discussed moving the provision relating to timing of the MSV transaction window from the Rules to the STTM Procedures, and provided some rationale for this. However, the consultation document did not specifically seek comments on this issue.

AEMO's consultation period closed on the 18th of April 2011 and no submissions were received.

1.5 Commencement of Rule making process

On 1 September 2011, the Commission published a notice under sections 303 and 304 of the NGL advising of its intention to commence assessment of the Rule change request under an expedited Rule making process, inviting both written requests not to make a Rule under the expedited process, and submissions for the first round of consultation in respect of the Rule change request. A consultation paper prepared by AEMC staff identifying specific issues or questions for consultation was also published with the Rule change request.

The consultation window for receipt of written requests not to make a Rule under the expedited process closed on 15 September 2011, and no such requests were received. Accordingly, the Rule change request was considered under an expedited process as set out in section 304 of the NGL.

The consultation window for receipt of submissions in relation to the Rule change request closed on 29 September 2011. The Commission received a total of two

11 The analysis confirmed that the data was unstable during the four day window in the Sydney hub, but only for some participants. Data instability was not shown to be an issue in the Adelaide hub.

12 STTM-CF minutes, 31 January 2011.

13 AGL, STTM-CF minutes, 1 March 2011.

submissions, both in support of the Rule change request, as part of the first round of consultation. These are available on the AEMC website[14].

A summary of the issues raised in the submissions and the Commission's response to each issue is contained in Appendix B to this document.

14 www.aemc.gov.au

2 Final Rule determination

2.1 Commission's determination

In accordance with section 311 of the NGL, the Commission has made this final Rule determination in relation to the Rule proposed by the Proponent. In accordance with section 313 of the NGL, the Commission has determined to make, with amendments, the Rule proposed by the Rule Proponent.

The Rule as Made includes a transitional provision that allows for the smooth transition of the operation of the MSV transaction window provision from the Rules to the STTM Procedures. This is to ensure that there is no resulting time or regulatory 'gap'.

The Commission's reasons for making this final Rule determination are set out in chapter 3 of this document.

The *National Gas Amendment (Short Term Trading Market - Market Schedule Variation) Rule 2011 No 6* (Rule as Made) is published with this final Rule determination. The Rule as Made commences on 13 October 2011. The Rule as Made is described in more detail in section 3.2 of this document.

2.2 Commission's considerations

In assessing the Rule change request the Commission considered:

- the Commission's powers under the NGL to make the Rule;
- the Rule change request;
- the fact that there is no relevant Ministerial Council on Energy (MCE) Statement of Policy Principles in relation to this Rule change request;[15]
- discussions of the STTM-CF and submissions received by AEMO during its consultation;
- relevant comments made by the AEMO Implementation Steering Committee (AEMO ISC) in its report, *Australian Energy Market Operator Establishment, Legislative framework: statement of proposed approach*, August 2008;
- relevant comments made by the Commission in its final Rule determination for the *National Electricity Amendment (Economic Regulation of Transmission Services) Rule 2006*;[16]

15 Under section 73 of the NGL the AEMC must have regard to any relevant MCE Statement of Policy Principles in making a Rule.

- relevant comments made by the Expert Panel on Energy Access (Expert Panel) in its *Report to the Ministerial Council on Energy*, April 2006; and
- the Commission's analysis as to the ways in which the proposed Rule will, or is likely to, contribute to the achievement of the National Gas Objective (NGO).

2.3 Commission's power to make the Rule

The Commission is satisfied that the Rule as Made falls within the subject matter about which the Commission may make Rules. The Rule as Made falls within the matters set out in section 74 of the NGL as it relates to:

- regulating AEMO's STTM functions and the operation of a STTM of an adoptive jurisdiction (s74(1)(va)); and
- the activities of registered participants, users, end users and other persons in a regulated gas market (s74(1)(vi)).

Further, the Rule as Made falls within the matters set out in Schedule 1 to the NGL, as it relates to:

- the operation and administration of a regulated gas market (clause 55B); and
- STTM functions (clause 55C).

2.4 Rule making test

Under section 291(1) of the NGL, the Commission may only make a Rule if it is satisfied that the Rule will, or is likely to, contribute to the achievement of the NGO. This is the decision making framework that the Commission must apply.

The NGO is set out in section 23 of the NGL as follows:

> "*The objective of this Law is to promote efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas.*"

For this Rule change request, the Commission considers that the relevant aspect of the NGO is the "*promotion of efficient operation and use of natural gas services for the long term interests of consumers with natural gas with respect to price, quality, safety, reliability and security of supply of natural gas*."[17]

16 AEMC 2006, *National Electricity Amendment (Economic Regulation of Transmission Services) Rule 2006*, final Rule determination, 16 November 2006.

17 Under section 291(2), for the purposes of section 291(1) the AEMC may give such weight to any aspect of the NGO as it considers appropriate in all the circumstances, having regard to any relevant MCE Statement of Policy Principles.

The Commission acknowledges that the benefits of moving the Rule provision into the STTM Procedures may appear to be marginal. Also, in the first instance, retention of the provision in either framework would be acceptable, since both could adequately address the timeframe issues and provide regulatory certainty.

However, the Commission considers that, overall, moving the provision to the STTM Procedures would be preferable because this option would likely benefit the market by:

- providing AEMO with greater flexibility to make frequent and timely changes to the window based on operational experience. This is particularly in view of the STTM review (which is currently underway) and further operational experience;
- avoiding the inefficient use of the Rule change process for any future changes to the MSV transaction window (where required), which is effectively an operational/procedural matter;
- providing a similar level of regulatory certainty for participants as currently delivered by having it in the Rules, since there is a formal change and consultation process for the STTM Procedures established in the Rules; and
- enabling the more operational aspects relating to the MSV mechanism to be contained in a single document (the STTM Procedures), providing for consistent consultation and management of the MSV process.

To facilitate the implementation of the Rule change and, therefore, delivery of the benefits, the Commission has also identified the possible need for transitional arrangements. This is to remove the likelihood of an inadvertent regulatory gap occurring between the time for removing the MSV transaction window provision from the Rules, and having an equivalent provision commence operation in the STTM Procedures.

The Commission is satisfied that the Rule as Made will, or is likely to, contribute to the achievement of the NGO by improving the efficiency, and costs, of participating in, and administering the STTM, while continuing to promote good regulatory practice, in the long term interests of consumers of natural gas.

2.5 Other requirements under the NGL

Compatibility with AEMO's declared network functions

Under section 295(4) of the NGL, the Commission may only make a Rule that has effect with respect to an adoptive jurisdiction if satisfied that the proposed Rule is compatible with the proper performance of AEMO’s declared network functions.

The Commission has considered this requirement and has determined that the Rule as Made will not impact on AEMO's declared system functions as it only amends the timeframe for lodgement of MSV transactions for a gas day in the STTM.

Adoptive jurisdictions

Under section 295(5) of the NGL, the Commission may only make a Rule that affects the allocation of powers, functions and duties between AEMO and a service provider for a declared transmission system if AEMO consents to the making of the Rule or the Rule is requested by the Minister of the relevant adoptive jurisdiction.[18]

In relation to this Rule change request, there is no requirement under section 295(5) of the NGL for AEMO to consent to the Commission making this Rule. This is because the Rule as Made does not affect the allocation of powers, functions and duties between AEMO and a service provider for a declared transmission system.

Participating jurisdictions

The Rule as Made will not apply in Western Australia.[19] The Rule as Made amends:

- Rule 423 specifically, as it relates to the window within which trading participants must lodge their MSV transactions for a gas day in the STTM; and
- Part 20 of the Rules generally, as it relates to the STTM.

18 The declared transmission system is the set of transmission pipelines for the declared wholesale gas market in Victoria.

19 Under section 21 of the NGL, the participating jurisdictions are the States, the Commonwealth, the Australian Capital Territory and the Northern Territory. The Rule as Made does not apply in Western Australia as it does not fall within the subject matters about which the Commission may make Rules under the National Gas Access (WA) Act 2009.

3 Commission’s reasons

The Commission has analysed the Rule change request and assessed the issues arising out of this Rule change request. For the reasons set out below, the Commission has determined that a Rule be made.

3.1 Assessment of issues

The Rule change request received from the Proponent sought to address a timing issue faced by some trading participants in relation to the lodgement of MSV transactions after a gas day, and to implement an alternative change process in relation to potential future changes in this provision by:

- extending the MSV transaction window from four to seven days; and
- deleting the MSV transaction window from the Rules, with the intention that it be moved to the STTM Procedures.

Given that the effect of deleting the provision relating to the MSV transactional window from the Rules would be to remove further consideration of it from the Rule change process, the Commission considered that the substantive issue to be assessed was whether the subject matter (of the Rule change request) could properly be removed from the Rules and dealt with within the STTM Procedures.

In relation to this substantive issue, the Proponent submitted that deleting the MSV transaction window from the Rules and inserting an equivalent provision into the STTM Procedures would provide AEMO, as the STTM market operator, with greater flexibility in making subsequent amendments to this provision based on further operational experience, and avoid inefficient use of the formal Rule change process for what is effectively a procedural matter. In addition, given that the change process for STTM Procedures is set out in the Rules, the level of regulatory certainty currently afforded to participants under the Rules would be largely undiminished.

The current arrangements that are relevant to the Rule change request, and the issues considered by the Commission in making this final Rule determination, are set out below.

3.1.1 High level principles

The issue of whether a regulatory obligation more appropriately sits within the Rules or Procedures, and defining the appropriate roles for each within the current energy market governance framework, has been previously considered in different contexts. In particular, the issue was discussed by the AEMO ISC[20] in the context of the transfer of the jurisdictional gas market rules to the national regulatory framework in 2009.

20 *Australian Energy Market Operator Establishment, Legislative framework: statement of proposed approach*, August 2008.

Similarly, this issue was reviewed by the Commission in relation to the regulation of transmission services in the electricity market,[21] and also by the Expert Panel on Energy Access Pricing in its report to the MCE.[22]

While these previous discussions must be viewed in their context, they are nevertheless useful in informing the current assessment approach. For example, taking them into account, rules may be viewed as more appropriate than procedures where the regulatory obligations:[23]

- impose (or impact on the) substantive rights, obligations and duties on (of) participants;
- potentially have significant financial implications for market participants;
- have a significant impact on the economic efficiency of the market and market design;
- have effects that are likely to change relatively infrequently over time and be subject to limited exceptions; and
- have industry wide application or impact.

The AEMO ISC also proposed that procedures are more appropriate where the purpose is to provide for "the technical and procedural detail supporting the [day-to-day] operation of the gas retail market."[24]

In regard to this Rule change request, the Commission considers that these principles provide a good framework for considering where an obligation should sit in the regulatory and institutional framework, consistent with the current governance arrangements. At the same time however, each Rule change request must be dealt with on a case by case basis and on its merits, for any particular circumstances that may apply. In addition, such principles should continue to be reviewed when necessary, and in the context of a developing market.

In this context, the Commission recognises that AEMO, as the STTM market operator, must continue to have adequate and appropriate levels of discretion to properly exercise its judgement and expertise in performing the more technical and detailed operational aspects of its role. While a high level of prescription in the Rules can promote certainty and stability of regulatory outcomes, and assist in the promotion of transparent policy assessment of the regulatory approach, it may also, conversely, reduce the regulator's (or in this case, the market operator's) ability to accommodate

21 AEMC, *Economic regulation of transmission services*, final Rule determination, November 2006.

22 Expert Panel on Energy Access Pricing, *Report to the Ministerial Council on Energy*, April 2006.

23 This list is not exhaustive, and is derived from the discussion and principles set out separately by the AEMO ISC in its 2008 report, ibid, and the Expert Panel in its 2006 report, ibid.

24 Ibid.

the particular circumstances of individual market participants in decisions and processes.[25]

3.1.2 Application

In the context of the current Rule change request, and taking the high level principles into account, the Commission considers that moving the MSV transaction window from the Rules to the STTM Procedures:

- does not impose or impact on the substantive rights, obligations and duties on/of market participants. This is because the MSV transaction window is simply the timeframe for participants to submit their MSV transactions, which are voluntary transactions in the sense that it requires a bilateral agreement between two counter-parties;
- does not have potentially significant financial implications for market participants. The MSV mechanism is designed to provide a financial incentive to participants to forecast their requirements more accurately, or remain within their ex ante market schedules. As such, its operation necessarily has some financial impact on participants. However, it is clearly not a transaction that directly impacts on the more fundamental financial transactions that underpin the market, such as the market pricing and scheduling processes, or on market and pricing outcomes;
- is unlikely to have a significant, adverse impact on the economic efficiency of the market or market design. However, given the operational nature of the provision, a small administrative benefit is likely to result from combining these operational aspects of the STTM into a single document, and the management of any future changes to the MSV transaction window by the market operator under the STTM Procedure change process, which is governed by the Rules;
- is appropriate because the MSV transaction window is a matter that, according to the Proponent, is likely to be subject to further change as a result of current and future STTM reviews, and with increasing operational experience. While the timing requirements for lodgement of an MSV transaction should have certainty, given the likelihood of change indicated by the Proponent, moving the provision to the STTM Procedures will allow for it to be amended as appropriate, in a timely manner by the STTM market operator, and in accordance with the STTM Procedure change process as set out in the Rules, thereby providing a sufficient level of regulatory certainty;
- will affect trading participants only, rather than the industry as a whole, and only to the extent that those participants seek to lodge MSV transactions; and
- clearly relates to a technical matter that supports the day to day operation of the STTM.

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25 This conflict was identified by the Expert Panel, ibid, at p. 26.

The Commission therefore considers that, on balance, the MSV transaction window is a matter that can be moved from the Rules to the STTM Procedures. In order to achieve this however, a Rule change is required as currently the MSV transaction window is a matter that is specified in the Rules.

3.2 Assessment of Rule

The Rule as Made amends Rule 423 by deleting the timing provisions contained in paragraphs (a) and (b) from sub-Rule 423(1), and inserting a direction that MSVs are to be submitted within the time periods set out in the STTM Procedures. Similar amendments are also made to the timing provisions contained in sub-Rule 423(5)(a)(I) and sub-Rule 423(6).

The Rule as Made includes an additional clause that provides for the amended sub-Rules to continue in force until such time as there are equivalent provisions in effect in the STTM Procedures. This will assist in facilitating a smooth transition of this provision from the Rules to the STTM Procedures, should this be necessary, and ensures that there is no inadvertent regulatory or timing 'gap' in the process.

3.3 Civil penalties

The Rule as Made does not amend any Rules that are currently classified as civil penalty provisions under the NGL or Regulations. The Commission does not propose to recommend to the MCE that any of the amendments in the Rule as Made be classified as civil penalty provisions.

3.4 Conduct provisions

Conduct provisions are Rules or provisions of the NGL for which any person (including the Australian Energy Regulator (AER)) may institute civil proceedings in respect of a breach.[26] A person (other than the AER) who suffers loss or damage by conduct of another person in breach of a conduct provision may recover their loss or damage by action against the other person in a court.[27]

The Commission does not propose to recommend to the MCE that any of the amendments in the Rule as Made be classified as conduct provisions.

26 Under section 229(3) of the NGL.

27 Under section 233 of the NGL.

4 Commission's assessment approach

This chapter describes the assessment framework that the Commission has applied to assess the Rule change request in accordance with the requirements set out in the NGL, and explained in chapter 2 of this final Rule determination.

In assessing the Rule change request against the NGL criteria, the first step is to consider the counterfactual arrangements against which the Rule change is being compared. In the present case, the counterfactual arrangements are that the provision relating to the MSV transaction window would remain in the Rules. Accordingly, any amendments to the transaction window would be required to go through a formal Rule change process in the usual manner.

The Commission has assessed this Rule change request against a number of high level principles, as identified in section 3.1.1. In this context, the Commission has also considered the following issues raised by the Proponent:

- the nature of the MSV transaction window provision;
- the efficiencies associated with moving the provision; and
- regulatory certainty.

These issues are addressed in more detail in chapters 5 to 7 of this final Rule determination, along with consideration of whether transitional provisions would be required in the circumstances.

5 Nature of the provision

5.1 Proponent's view

The Proponent considered that the provision relating to the MSV transaction window could be differentiated from other timing obligations under the Rules, such as the obligations to submit offers/bids for gas and STTM facility data within specified timeframes, on the basis that those latter timing obligations are "key elements of the market pricing and scheduling process and can have significant impacts on market and pricing outcomes".[28]

On the other hand, the MSV transaction window is simply the timeframe within which trading participants have to complete and submit their MSV transactions, and was originally prescribed with the view that it provided a sufficient time frame for allocation data to stabilise and within which trading participants could complete MSV transactions.

In addition, the Proponent also pointed to the voluntary and operational nature of the provision, and considered that these factors also made it appropriate to be incorporated into the STTM Procedures rather than the Rules.

5.2 Stakeholder views

Two submissions were received, from Alinta Energy (Alinta) and Origin Energy (Origin). These submissions both expressed support for the removal of the MSV transaction window from the Rules and its inclusion within the STTM Procedures.

5.3 Commission's assessment

The Commission considers that there is merit in the Proponent's view that the MSV transaction window provision may be differentiated from other timing obligations in the manner set out (by the Proponent). The basis of the Rule change request relates to the amendment of a provision of Rule 423, relating to the window of time prescribed for the operation of the MSV mechanism. This is the timeframe for participants to submit market MSV transactions, for differences between scheduled and delivered gas volumes on a gas day.

The need for such a mechanism in the Rules reflects, in part, on the importance of maintaining the physical requirements of gas transportation and transfer in gas market design. On the day before the day that gas is expected to flow AEMO, as the market operator, determines and publishes the ex ante market schedule.[29] This is based on the

28 AEMO, Rule change request, p.5.

29 The ex ante schedule sets out the quantity of gas that the shippers and users are expected to flow to/from each hub on a gas day.

supply offers and demand bids submitted by STTM trading participants, and the pipeline capacity of STTM facilities, as submitted by STTM facility operators.

In general, where participants deviate from their individual schedules, these deviations can attract a financial penalty. These penalties are designed to provide an incentive to trading participants to forecast their load more accurately, or stay within their scheduled loads. Amongst other things, this assists in balancing the gas supply, thereby minimising market costs for balancing and maintaining the integrity of the operating system.

The inclusion of the MSV mechanism in the STTM market design reflects a recognition that forecasting is an imperfect process, and allows participants flexibility to meet demand fluctuations on a gas day by adjusting their schedules after the gas day. It is a voluntary tool, in the sense that it requires a bilateral agreement between counter-parties, which allows each to match and 'net out' their respective deviations. MSVs also attract a penalty but these are significantly lower than those applied to deviations, and therefore allow the parties to minimise their costs in relation to those deviations.

The voluntary nature of the mechanism however does not reduce its potential value to trading participants as a means of minimising their operating costs. While the operation of the provision would not be expected to affect any physical gas flows on a gas day or market operations more generally, there is an impact on the ex poste financial position of trading participants.

However the Commission acknowledges that, as a component of the modified market schedules,[30] it may be consistent to retain the timing requirements of the MSV mechanism with the other components, in one document. In addition, the Commission also notes that the MSV transaction window provision is not wholly *inconsistent* with the technical and prescriptive nature of Part 20 of the Rules, which sets out the operation of the STTM, and is consistent with the current Rule and STTM delineation of requirements and obligations established at the outset.

5.4 Conclusion

Taking into account the matters above the Commission considers that, on balance, the nature of the MSV mechanism is such that its operation does not impact on the market in the same way as other requirements, such as the requirements to submit offers and bids. Changes to these latter requirements, would likely disrupt or otherwise have a significant impact on the operation the market.

The Commission also notes that the Proponent is not suggesting to remove the entire MSV mechanism from the Rules, only the provision relating to the timeframe for submission. The more substantive parts of the MSV mechanism will be retained within the Rules and will therefore still be subject to the formal Rule change process, if further change is contemplated in the future.

30 The other components being the market operator service and contingency gas.

6 Increased administrative efficiencies

6.1 Proponent's view

In the Rule change request, the Proponent indicated that there was a strong possibility that the transaction window might be changed again, following current and future reviews of the STTM,[31] and with the benefit of further operational experience. In light of this, the Proponent considered that moving the MSV transaction window to the STTM Procedures to be more efficient because it provided greater flexibility for making future changes to the provision, should it be considered necessary, and avoided the inefficient use of the formal Rule change process for what is effectively a procedural or operational matter.

In the context of the current need to amend the MSV transaction window, the Proponent suggested that delays doing so would increase the overall risk to trading participants due to the continued inability to transact MSVs efficiently, or the risk of inadvertently creating further deviations though through the process.[32]

6.2 Stakeholder views

Origin supported moving the MSV transaction window provision from the Rules to the STTM Procedures, and considered that it would allow for greater flexibility in pursuing other operational improvements.

6.3 Commission's assessment

The STTM is still a relatively young market, having commenced operation, in Adelaide and Sydney, in late 2010. Development of the STTM involved the establishment of an entirely new framework (i.e. was not replicated from an existing framework) and that framework is still undergoing its first round of formal reviews. These reviews must be conducted by AEMO within timeframes set down in the Rules,[33] and are in relation to the effective operation of various specified aspects of the STTM. The review to which the Proponent specifically refers in the Rule change request, is to be completed by 31 March 2012.

In the meantime, AEMO is continuing to build up its own operational knowledge via its day-to-day activities, and through its interaction with market participants, in its role as the STTM market operator. The Commission also notes that the Brisbane hub is scheduled to commence in December 2011.[34]

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31 AEMO is currently undertaking a series of reviews of the STTM as prescribed under Division 11, Part 20 of the Rules.

32 AEMO, Rule change request, p. 9.

33 NGR, Division 11 - Market Reviews.

34 Queensland Government Gazette, No. 55.

Against this backdrop, it is not surprising that AEMO, and the market participants, might see the benefit of being able to access the operational procedures from time to time, to implement minor, ad hoc adjustments, particularly as the market matures and becomes more active over time.

The Commission also observes that the MSV mechanism was designed to assist in the market balancing process, and provides an incentive for trading participants to either provide more accurate forecasts or to remain within their modified market schedules. Where, through no fault of the trading participant, circumstances arise such that the mechanism cannot effectively be utilised, then this frustrates the purpose of the incentive and creates further inefficiencies. Where the issue concerns a relatively mechanical aspect of the MSV device, then the Commission considers that it is appropriate that there is sufficient flexibility to adapt that aspect to better meet the individual circumstances in a timely manner, provided that other trading participants are not adversely affected by any change.

This can be contrasted with the Rule change process. Currently, where any change is sought to the Rules, the Proponent must lodge a Rule change request to be assessed by the AEMC in the usual manner. These processes are set out in the NGL.[35] While there are mechanisms within the NGL that allow a Rule change process to be expedited (as in the current Rule change request)[36] or fast tracked,[37] these are generally by exception, and proponents must satisfy additional requirements before such processes are approved.

In the usual course of events, a Rule change will generally take up around 26 weeks, from formal commencement to publication of the final Rule determination, and includes two rounds of public consultation.

The STTM Procedures include a change process that is set out in the Rules.[38] For a new matter, the standard change process would take a total of approximately 21 weeks,[39] although there is also an expedited option that significantly reduces this timeframe.[40] Both the standard and expedited processes include a single consultation period and publication of specified documentation.

6.4 Conclusion

On balance, the Commission is of the view that there is likely to be a minor increase in administrative efficiency, due to the nature of the MSV transaction window provision

35 NGL, Part 3 - Procedure for the making of a Rule by the AEMC.

36 NGL, s 304.

37 NGL, s 305.

38 NGR, Part 15B - Procedures.

39 This includes the maximum time allowed for the preparation and publication of an impact and implementation report as required under the NGR, Rule 135ED.

40 This includes the preparation and publication of an impact and implementation report as referred to under the previous note.

itself, and the difference in the processing time under the Rules for changes to the STTM procedures.

The Commission also notes that removing this provision from the Rules and inserting an equivalent provision into the STTM Procedures will not distort the original policy intention behind the mechanism, and may enhance it (by making it more accessible to all trading participants).

7 Regulatory certainty

7.1 Proponent's view

In its Rule change request, the Proponent stated that retention of the MSV transaction window in a regulatory instrument such as the STTM Procedures means that the process for change is subject to a procedure that is set out in the Rules (as described in chapter 6), which provides regulatory certainty for trading participants.[41]

7.2 Stakeholders' views

In its submission, Origin stated that the STTM Procedure change and consultation processes are sufficiently robust to provide sufficient certainty and predictability for STTM participants, and that it was not necessary to set any parameters in the Rules to limit the scope of further changes to the MSV transaction window provision.

7.3 Commission's assessment

Regulatory certainty is an essential element of good regulatory practice, whereby parties are entitled to know in advance, what is required of them and what the market parameters for their operations are. Due to the need for a bilateral agreement, the MSV mechanism is not a mandatory obligation, however to the extent that it is designed to be used, and provides benefit to both the trading participants and the market (in terms of the increasing the overall operating efficiency), then equally, trading participants should have clarity on the requirements for its use.

7.4 Conclusion

The Commission considers that, due to the fact that the change process for STTM Procedures is governed by the Rules (which provides transparency by incorporating requirements for publication and consultation), placement of the MSV transaction window provision in the STTM Procedures would continue to provide sufficient regulatory certainty for trading participants.

41 AEMO, Rule change request, p. 9.

Abbreviations

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AEMO ISC	AEMO Implementation Steering Committee
AER	Australian Energy Regulator
Commission	See AEMC
Expert Panel	Expert Panel on Energy Access
MCE	Ministerial Council on Energy
MSV	Market Schedule Variation
NGL	National Gas Law
NGO	National Gas Objective
NGR	National Gas Rules
Proponent	See AEMO
Rules	See NGR
STTM	Short Term Trading Market

A Overview of MSV transactions in the STTM

This section describes the relevant STTM operations that are affected by this Rule change request and the role of MSVs in this process.[42]

The STTM is a "market based wholesale gas balancing mechanism established at defined hubs[43] to facilitate the short term trading of gas between pipelines, participants[44] and production centres."[45] The STTM is designed as an 'ex ante' market in which gas is traded a day before it is scheduled to flow along the pipeline, with trading participants[46] submitting their various offers (sellers) and bids (buyers) for quantities of gas, forecasted gas requirements and pipeline capacity information from pipeline operators to the STTM, within the required timeframes for that gas day.[47]

The information submitted by participants is used to create the ex ante market schedule,[48] via an automated process which is managed by AEMO as the STTM market operator. This process matches offers with bids, scheduling them in price order for dispatch[49] with a view to ensuring that a physical gas balance is maintained at the hub. The market price for the gas traded (ex ante market price[50]) is set a day ahead of the gas day and is the price that is applied to all gas that is allocated[51] through the hub on the gas day.

The market has mechanisms in place (generally in the form of financial penalties) for participants to keep to their schedules, providing an incentive to keeping the gas supply system balanced. On the day after a gas day, the ex post imbalance price[52] is calculated and published, which takes account of deviations that occurred on that gas

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42 The information and definitions used in this section have been generally derived from AEMO, *STTM concepts and overview (Qld)*, 2011, and *STTM glossary of terms*, v2, 1 March 2010. More detailed information on the STTM may be accessed from www.aemo.com.au.

43 A hub is a notional gateway defined by physical custody transfer points between gas pipelines and distribution systems.

44 This is a generic term used to refer to the various parties that interact with the STTM.

45 AEMO, *Queensland STTM Project*, 2011, Attachment C, p. 1.

46 This is a more specific term that refers to either the STTM shippers (transport gas to the hub) or users (usually a retailer or end user).

47 A gas day is currently defined as the 24 hour period (commencing at 6.30am AEST) over which the STTM schedules deliveries and withdrawals of gas at a hub.

48 This is the schedule that is issued by AEMO that sets out the price and quantities of gas that trading participants are scheduled to withdraw from, and deliver to, a gas hub on a gas day.

49 This ensures that the lowest price offers are dispatched ahead of higher priced offers.

50 This is the price of gas for a gas day at a hub and is set out in the ex ante market schedule.

51 In the context of the STTM, an 'allocation' is a generic term that describes the quantity of gas allocated to a trading participant.

52 That is, the price that is calculated after a gas day and reflects what the ex ante market price would have been if the actual allocations for a gas day had been reflected in the market schedule.

day. A deviation is the difference between the quantity of gas that is scheduled to flow for a participant and the actual quantity that has flowed. [53]

The MSV is a mechanism provided for in the Rules which 'recognises' that forecasting is an imperfect process and that deviations will inevitably occur.[54] This mechanism provides participants with some flexibility to meet gas demand fluctuations on a gas day by allowing them to adjust their ex ante market schedules, via the submission of an MSV transaction to AEMO to cover any deviations that occurred on a gas day. This ensures that their ex ante market schedules are better aligned with their actual allocations on a gas day. While costs will still be incurred, these will be significantly lower than if no MSV transaction is submitted.[55]

The decision to enter into an MSV transaction is voluntary and requires determining the volume of the deviation from the indicative gas allocation data for a gas day,[56] and a bilateral agreement with a counter party that has an equal and opposite deviation (so that there is a zero net impact on flows at the hub). Once parties determine to enter into such a transaction however, the Rules set out certain requirements that must be met before the transaction can be validated by AEMO.[57]

One such requirement of the MSV transaction window is the timeframe within which trading participants must submit/confirm their matching MSV transactions to AEMO. Currently participants have until 5.00pm AEST on the fourth day after a gas day to submit/confirm their MSV transactions for that gas day,[58] and for these to be included in the preliminary settlement calculations that are run at month's end and issued by AEMO.

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53 Deviations will, at first instance, attract penalties calculated from standing tables based on either the volume or percentage size of the deviation. Deviation charges or payments (depending on whether the deviation has led to an increase or a decrease in gas flows to, or from, the hub) are calculated by way of a series of complex algorithms designed to meet Rule requirements for such occurrences. These calculations are managed by AEMO as part of the settlements process (see Division 10, Subdivision 2 of the Rules).

54 Rule 423.

55 Variation charges are calculated in a similar manner to deviation charges, but based on different standing tables.

56 This is usually based on indicative metered data.

57 Rule 423(2).

58 Rule 423(1)

B Summary of issues raised in submissions

Stakeholder	Issue	AEMC response
Alinta Energy	Supports extending the MSV transaction window from four to seven days to improve the use of the mechanism, and to allow settlement calculations to be better informed by the available data (p. 1).	This comment is noted by the Commission, although the subject of amending the timeframe itself, has been determined to be out of scope of the Rule change request.
Alinta Energy	Supports the removal of the MSV transaction window from the Rules and its inclusion in the STTM Procedures, provided appropriate transition arrangements are put in place to eliminate any regulatory gap (p.1).	In making the final Rule, the Commission has amended the Rule as proposed by the Proponent to deal with any potential regulatory gap.
Alinta Energy	Agrees that it is appropriate that the STTM Procedures determine MSV processes in the context of ongoing implementation and review of the STTM.	The Commission notes that only the part of Rule 423 relating to the timing of the MSV transaction window will be removed from the Rules, not the mechanism itself, which will be retained in the Rules.
Origin Energy	Supports extending the MSV transaction window from four to seven days, which will enable more efficient decision making by participants.	This comment is noted by the Commission, although the subject of amending the timeframe itself, has been determined to be out of scope of the Rule change request.
Origin Energy	Supports moving the operational aspects relating to the timing of MSVs from the Rules to the STTM Procedures, as it will allow for greater flexibility in pursuing other operational improvements.	This comment is noted by the Commission, although the Commission further clarifies that only the timing provision of the MSV mechanism is being removed from the Rules.

Stakeholder	Issue	AEMC response
Origin Energy	STTM Procedure change and consultation processes are robust enough to provide sufficient certainty and predictability to participants.	This comment is noted by the Commission.
Origin Energy	Do not consider that it is necessary to set parameters in the Rules that would limit the scope of changes to the MSV transaction window, as this would operate to negate the flexibility benefits.	This comment is noted by the Commission.