



**Australian Energy Market Commission**

---

## **SECTION 108A REPORT**

### **Potential Generator Market Power in the NEM**

**Rule Proponent(s)**

Major Energy Users Inc

**Commissioners**

Pierce  
Henderson  
Spalding

7 June 2012

**RULE  
CHANGE**

## Purpose of report

The Australian Energy Market Commission (AEMC or Commission) is required under section 108A of the National Electricity Law (NEL) to publicly report on rules not made within 12 months of the publication of the notification of the commencement of the rule change process.

## Reason for the final rule determination not being made within 12 months

On 23 November 2010, the Major Energy Users Inc. (MEU) submitted a rule change request to the AEMC in relation to the potential exercise of market power by generators in the National Electricity Market (NEM).

The stated purpose of the proposed rule change is to prevent or constrain the exercise of market power by generators in the NEM. In particular, the MEU considers that during periods of high demand, some large generators do not face effective competition and have the ability to use their market power to increase the wholesale price. The MEU states that this issue is a particular concern in South Australia, but is also a potential issue in other NEM regions.

On 14 April 2011 the AEMC initiated its consideration of the rule change proposal, published a consultation document and a notice under section 107 extending the date for the draft rule determination until 30 April 2012. On 26 April 2012 the AEMC published a second section 107 extending the date for the draft determination until 7 June.

The MEU's rule change request raised a number of complex issues that have needed to be analysed and addressed as part of the rule change process. In the consultation document the AEMC outlined its assessment framework that would allow the AEMC to address these complex issues. The additional work required under the assessment framework and subsequent stakeholder consultation led to the AEMC extending the time for the draft rule determination.

## Assessment Framework

The assessment framework contains three steps:

1. Defining the problem
2. Assessing whether there is evidence of a problem
3. Assessing solutions to the problem

The AEMC has made considerable progress in its analysis of the MEU's rule change proposal.

## Current progress

On 14 April 2011, the AEMC published a consultation paper in relation to the MEU's rule change request. The stakeholder consultation period on this paper closed on 26 May 2011.

On 22 September 2011, consistent with step one of the assessment framework, the AEMC published a directions paper that provided a proposed definition of market power in the context of the NEM. The stakeholder consultation period on the directions paper closed on 17 November 2011.

The Commission held a public forum in Adelaide on 12 October 2011 to allow stakeholders to discuss the issues raised in the directions paper.

On 22 December 2011 consistent with undertaking the analysis required by step two, the Commission published a technical paper prepared by its consultants NERA Economic Consulting and Oakley Greenwood. The paper set out the details of the approach to estimating long run marginal cost. It also covered technical aspects of the Commission's proposed definition of substantial market power, such as the approach to calculating annual average prices and the test for determining the

appropriate geographic market definition. Responses to the technical paper closed on 2 February 2012.

On 26 April 2012 the Commission issued a section 107 extension notice extending the date for the draft rule determination to 7 June 2012.

On 7 June 2012, the Commission published its draft rule determination in which it decided to not make the rule change proposed by the MEU due to insufficient evidence supporting the existence of substantial market power. Consultation on this document closes on 20 July 2012.

Therefore, as identified at the time of commencing the rule change request additional time has been necessary in order to complete the analysis due to the complexity of the issues raised by the rule change proposal.

### **Expected time for making final rule determination**

The AEMC expects to publish a final rule determination on the MEU's rule change request on 30 August 2012.