



**Australian Energy Market Commission**

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## **RULE DETERMINATION**

### **National Electricity Amendment (Reliability Panel Public Meetings) Rule 2013**

**Rule Proponent**  
Reliability Panel

15 August 2013  
For and on behalf of the Australian Energy Market Commission

**RULE  
CHANGE**

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## **About the AEMC**

The Council of Australian Governments (COAG), through its then Ministerial Council on Energy (MCE), established the Australian Energy Market Commission (AEMC) in July 2005. In June 2011, COAG established the Standing Council on Energy and Resources (SCER) to replace the MCE. The AEMC has two main functions. We make and amend the national electricity, gas and energy retail rules, and we conduct independent reviews of the energy markets for the SCER.

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## Summary

The Australian Energy Market Commission (Commission) has decided to make a rule to give the Reliability Panel (Panel) more flexibility in the manner in which it conducts its public meetings.

The role of the Panel is to monitor, review and report on the safety, security and reliability of the national electricity system.<sup>1</sup> In carrying out its functions, the Panel is required under the National Electricity Rules (NER) to hold a meeting open to all Registered Participants for each review and determination that it makes. The Panel is also required to rotate the location of these meetings between the capital cities of the jurisdictions in the National Electricity Market (NEM).

On 19 February 2013, the Commission received the rule change request from the Panel. The Commission has determined to make a more preferable rule, which it considers will or is likely to better contribute to the achievement of the National Electricity Objective than the proposed rule.

The rule change proposed by the Panel seeks to remove the obligation to carry out its meetings on a rotating basis, allow the Panel to invite the public to its meetings, and to give the Panel greater discretion to determine the manner in which it conducts its public meetings.

While the Commission's final determination agrees that there is a case to make changes to the NER to give the Panel more flexibility, the Commission has determined to make a more preferable rule.

The rule as made addresses the issues raised in the rule change request by:

- removing the obligation on the Panel to rotate the location of its public meetings between the capital cities of the jurisdictions in the NEM;
- providing the Panel with the flexibility to decide the location of its public meetings;
- requiring the Panel to invite the public to the meetings that it holds for each determination and review; and
- providing the Panel with the flexibility to decide the manner in which to hold its meetings (via telephone or video conference for example).

The more preferable rule differs from the proposed rule in a number of ways. The Panel's rule change proposal seeks only to provide greater flexibility in the manner in which it conducts its public meetings, however the wording of the rule in the proposal completely removes the requirement on the Panel to hold public meetings. The more preferable rule maintains the requirement on the Panel to hold public meetings.

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<sup>1</sup> More information on the Reliability Panel can be found in Attachment B.

The more preferable rule also:

- provides for the meetings for each determination and review to be open to the public, rather than all Registered Participants and interested parties;
- provides even greater flexibility to the Panel to determine the location of its public meetings through removing the proposed requirement for the Panel to have regard to the level of interest in a particular matter when selecting the location of a public meeting; and
- clarifies that the Panel can carry out its meetings via any method of communication that it chooses.

The Commission considers the rule change request to be non-controversial and has made this determination under the expedited process.

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# **1 Reliability Panel's rule change request**

## **1.1 The rule change request**

On 19 February 2013, the Reliability Panel (Panel) made a request to the Australian Energy Market Commission (Commission) to make a rule regarding the manner in which the Panel conducts its public meetings.

Clause 8.8.3(f) of the National Electricity Rules (NER) requires the Panel to hold a public meeting for each of its reviews and determinations. Clause 8.8.3(g) of the NER requires these meetings to be held in the capital cities of the participating jurisdictions of the National Electricity Market (NEM) on a rotating basis. The proposal seeks to amend this requirement in the NER, in order to allow the Panel the discretion to determine the manner in which it conducts its public meetings.

The request also includes a proposed rule which is described in section 1.3 below.

## **1.2 Rationale for the rule change request**

The Panel considers that the obligation in the NER to rotate the location of each of its public meetings between the capital cities of the NEM is impractical because it places unnecessary costs on the Panel, its members and stakeholders.

For a number of projects to date, where the subject matter may have not been complex or contentious, it has been common for the Panel to hold the meeting in Sydney at the AEMC's offices and/or by teleconference. The Panel considers this to be a reasonable and practical approach which has saved administration and venue costs, and so sought to change the NER accordingly.

## **1.3 Solution proposed in the rule change request**

The Panel proposed to resolve the issues referred to above by amending clause 8.8.3 of the NER, specifically to amend:

- clause 8.8.3(f) and (g), to remove the requirement for the meetings to be held in the capital cities of the jurisdictions in the NEM on a rotating basis;
- clause 8.8.3(g), so that the selection of the relevant capital city for a particular meeting will be determined by the Panel having regard to the location of interested parties in the participating jurisdictions;
- clause 8.8.3(f), to clarify that all interested parties will be permitted to attend the meetings held by the Panel, and not just Registered Participants; and
- clause 8.8.3(f), to clarify that meetings may be conducted in person or by enabling technology such as teleconferencing or videoconferencing.

## **1.4 Commencement of rule making process**

On 4 July 2013, the Commission published a notice under section 95 of the National Electricity Law (NEL) advising of its intention to commence the rule making process, along with a consultation paper which had been prepared by AEMC staff identifying specific issues and questions to be considered.

The Commission proposed to treat the request as non-controversial because it considered it unlikely that the rule change would have a significant impact on the NEM.

Under section 96 of the NEL, non-controversial rule change requests go through the expedited rule change process which is substantially shorter than the normal process. It includes only one round of consultation in which stakeholders can object to the expedited process and the content of the proposal. Within two weeks of the close of the consultation period, the Commission makes its final rule determination.

The closing date for objections to the expedited process was 18 July 2013 and no objections were received. Accordingly, the rule change request was considered under an expedited process under section 96 of the NEL.

Submissions on the content of the request were to be received by 1 August 2013 and one was received which supported both the expedited process and the proposed changes to the NER.

## **2 Final rule determination**

### **2.1 Commission's determination**

In accordance with section 96 of the NEL, the Commission makes this final rule determination in relation to the rule change request from the Panel. In accordance with section 91A of the NEL, the Commission has determined to make a more preferable rule.<sup>2</sup>

The Commission's reasons for making this final rule determination are set out in section 3.

The *National Electricity Amendment (Reliability Panel Public Meetings) Rule 2013 No 4* (Rule as Made) is published with this final rule determination. The rule as made is a more preferable rule and commences on 15 August 2013. Its key features are described in section 3.1 of this final rule determination.

### **2.2 Commission's considerations**

In assessing the rule change request the Commission considered:

- the Commission's powers under the NEL to make the rule;
- the rule change request;
- submissions received during consultation;
- 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 Electricity Objective (NEO); and
- the purpose and function of the Panel.

The Standing Council on Energy and Resources (SCER) has not issued a statement of policy principles which is relevant to this rule change request.<sup>3</sup>

### **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 falls within the matters set out in

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<sup>2</sup> Under s. 91A of the NEL the AEMC may make a rule that is different (including materially different) from a market initiated proposed rule (a more preferable rule) if the AEMC is satisfied that having regard to the issue or issues that were raised by the market initiated proposed rule (to which the more preferable rule relates), the more preferable rule will or is likely to better contribute to the achievement of the national electricity objective.

<sup>3</sup> Under s. 33 of the NEL the AEMC must have regard to any relevant SCER statement of policy principles in making a rule.

section 34(1)(a)(iii) of the NEL, as it relates to the activities of persons (including Registered Participants) participating in the NEM or involved in the operation of the national electricity system.

## **2.4 Rule making test**

Under section 88(1) of the NEL 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 NEO. This is the decision making framework that the Commission must apply.

The NEO is set out in section 7 of the NEL as follows:

“The objective of this Law is 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.”

The Commission considers that the more preferable rule will contribute to the achievement of the NEO by promoting the efficient operation of electricity services for the long term interests of consumers with respect to the price of the supply of electricity. This is due to the fact that the rule would potentially reduce the costs faced by the Panel, its members, and stakeholders in organising and travelling to attend the Panel's public meetings, and reduce the marginal costs which ultimately flow through to consumers as a result of these meetings.

In addition, the Commission considers that the more preferable rule would contribute to the achievement of the NEO by promoting the efficient operation and use of electricity services for consumers with respect to the reliability and security of the supply of electricity, and the reliability, safety and security of the electricity system.

It does this by contributing to the efficient functioning of the Panel. By clarifying that attendance at meetings is open to the public, and providing the Panel with the means to use any method of communication that it chooses, the rule may encourage greater stakeholder participation in the Panel's deliberations. Increased stakeholder participation at meetings may contribute to more informed discussion thereby increasing the potential for effective decision making and efficient policy outcomes.

### **3 Commission's reasons**

The Commission has considered the rule change request and assessed the issues and propositions arising out of this rule change request. For the reasons set out below, the Commission has determined to make a more preferable rule. The Commission's analysis of the proposed rule is also set out below.

#### **3.1 More preferable rule**

The Commission broadly agrees with the intent of the proposal, but has made some changes to the drafting of the Panel's proposed rule which has resulted in the making of a more preferable rule.

While the rule change request sought to remove the requirement on the Panel to rotate its public meetings between the capital cities of the NEM, the wording of the proposed rule that was submitted with the rule change request removed entirely from the NER the obligation on the Panel to hold public meetings.

The more preferable rule also:

- provides for the meetings to be open to the public, rather than all Registered Participants and interested parties;
- provides even greater flexibility to the Panel to determine the location of its public meetings through removing the proposed requirement for the Panel to have regard to the level of interest in a particular matter when selecting the location of a public meeting; and
- clarifies that the Panel can carry out its meetings via any method of communication that it chooses.

In addition, the final rule also rectifies a typographical error in the heading of section 8.8.3 of the NER to clarify that the section refers to the Panel's review process.

While different to the drafting of the Panel's proposed rule, the Commission considers the more preferable rule better reflects the policy intent contained in the Panel's rule change request. It executes the intent of the proposal but maintains the obligation on the Panel to hold public meetings for each determination and review.

The Commission is satisfied that the rule as made will, or is likely to, better contribute to the achievement of the NEO than the proposed rule. Maintaining the requirement on the Panel to hold public meetings will ensure a more consistent level of stakeholder interaction and participation which should increase the potential for efficient decision making and effective policy outcomes.

### **3.2 Reasons for the Commission's decision**

The rule primarily has administrative benefits and the Commission does not consider that the rule will impose any additional costs on stakeholders or the market.

The Commission considers that removing the requirement on the Panel to rotate the location of its public meetings is practical and will reduce the potential costs faced by the Panel and stakeholders in organising and travelling to attend public meetings.

The more preferable rule provides even greater flexibility than the proposed rule to the Panel to determine the location of its public meetings. While the proposed rule required that the Panel have regard to the level of interest in a participating jurisdiction when deciding the location of a meeting, the Commission considers that the Panel's decision should not be constrained by any particular factors because there may be a number of factors to consider when deciding on the location of a meeting.

The rule as made will permit the public, not just Registered Participants to attend the Panel's public meetings. In practice, the Panel already invites all interested parties to attend its meetings, but the rule change will clarify the right for the public to have access to the meetings.

The more preferable rule clarifies that the Panel can carry out its meetings via any method of communication that it chooses. The proposed rule requested that the Panel could hold meetings 'via telephone, videoconference or like method of real-time communication'. The Commission consider that replacing this phrase with 'other method of communication' to be clearer and more appropriate.

While the Panel already makes use of enabling technologies in its meetings, the rule will clarify the Panel's discretion regarding whether to conduct meetings in person, by telephone or video conference. Providing the Panel with the means to use enabling technologies may encourage greater stakeholder participation, thereby resulting in more robust and informative discussion. Both teleconference and video conference facilities are readily available in the marketplace. Further, the costs which stakeholders incur though attending meetings in person could be considered a disincentive which is removed by allowing the Panel the flexibility to hold its public meetings by other methods of communication.

The benefits of holding public meetings by teleconference were evident on two occasions over the last four years, where there were a very small number of registered attendees and the public meeting was cancelled and a teleconference was held in its place. On those occasions, a greater number participated in the teleconference than had registered to attend the public meeting. The Commission therefore considers that a flexible approach for the Panel to carry out its meetings, which could result in a greater number of attendees, may be beneficial for the functioning of the Panel.

One submission to the proposal was received from Alinta Energy which supported the proposed change and the benefits outlined by the Panel in its proposal, provided that

the frequency and quality of the Panel's meetings do not in any way decrease.<sup>4</sup> In the more preferable rule, the Commission maintains the requirement for the Panel to hold public meetings, which will ensure that the frequency of meetings is not reduced.

### **3.3 Conclusion**

In consideration of the views of stakeholders and its own analysis, the Commission is satisfied that the more preferable rule will, or is likely to, better contribute to the achievement of the NEO than the proposed rule because it:

- maintains the requirement for the Panel to hold a public meeting for each determination and review;
- provides for the meetings to be open to the public, rather than all Registered Participants and interested parties;
- provides even greater flexibility to the Panel to determine the location of its public meetings through removing the proposed requirement for the Panel to have regard to the level of interest in a particular matter when selecting the location of a public meeting; and
- clarifies that the Panel can carry out its meetings via any method of communication that it chooses.

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<sup>4</sup> Alinta Energy, consultation paper submission, p 1.

## Abbreviations

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
Commission	See AEMC
NEL	National Electricity Law
NEM	National Electricity Market
NEO	National Electricity Objective
NER	National Electricity Rules
Panel	Reliability Panel
SCER	Standing Council on Energy and Resources

## A Submission summary

Stakeholder	Issue	AEMC response
Alinta Energy	The submission was supportive of the proposed change, provided that the quality and frequency of the Panel's meetings does not decrease.	The submission was noted by the Commission.

## **B The Reliability Panel**

The Panel was established by the AEMC under the NEL. The NER sets out the membership requirement, functions, and responsibilities of the Panel. The functions and powers of the Panel are:

- to monitor, review and report on, in accordance with the NER, the safety, security and reliability of the national electricity system;
- at the request of the AEMC, to provide advice in relation to the safety, security and reliability of the national electricity system; and
- any other functions or powers conferred on it under the NEL and the NER.<sup>5</sup>

Membership of the Panel (under clause 8.8.2 of the NER) must consist of a Commissioner of the AEMC appointed to act as Chairperson of the Panel, the Chief Executive Officer or a delegate of the Australian Energy Market Operator, and at least five but not more than eight other persons appointed by the AEMC for a period of up to three years, such persons to include:

- a person representing Generators;
- a person representing Market Customers;
- a person representing Transmission Network Service Providers;
- a person representing Distribution Network Service Providers; and
- a person representing the interests of end use customers for electricity.

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<sup>5</sup> Greater detail about how the Panel carries out its functions can be found in clause 8.8.1 of the NER