



Australian Energy Market Commission

RULE DETERMINATION

National Electricity Amendment (Early Implementation of Market Impact Parameters) Rule 2010

Rule Proponent

Grid Australia

Commissioners

Tamblyn
Henderson

11 March 2010

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For and on behalf of the Australian Energy Market Commission

**RULE
CHANGE**

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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 to be the rule maker for national energy markets. The AEMC is currently responsible for rules and policy advice covering the National Electricity Market and elements of the natural gas markets. We are an independent, national body. Our key responsibilities are to consider rule change proposals, conduct energy market reviews and provide policy advice to the Ministerial Council as requested, or on AEMC initiative.

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Summary

On 30 April 2009, Grid Australia submitted a Rule change request to the Australian Energy Market Commission (AEMC or Commission) proposing to introduce new provisions in the Rules to allow one component of the service target performance incentive scheme under clause 6A.7.4 of the National Electricity Rules (NER or Rules), which applies to transmission network service providers (TNSPs) to be implemented earlier than currently permitted under the Rules.

Currently the Rules provide that any amendment or replacement of the incentive scheme will not apply to a TNSP in respect of a regulatory control period that has commenced before, or will commence within 15 months of, the amendment or replacement to the service target performance incentive scheme coming into operation. The Rule change request proposed to insert savings and transitional provisions in Chapter 11 of the Rules to allow one component of the incentive scheme, the market impact component which is a new component in the incentive scheme published in March 2008, to be implemented earlier than currently permitted under the Rules.

The Commission published a notice under section 95 of the National Electricity Law (NEL) initiating the Rule change process on 6 August 2009.

In the draft Rule determination the Commission assessed the Rule change request and agreed with the intent of the Rule change request to allow the early implementation of the market impact component than currently permitted under the Rules. The Commission considered that this should be a one-off provision to provide TNSPs an option to bring forward the implementation of a new component of the incentive scheme and that any future amendment or replacement of the incentive scheme would be subject to the existing commencement date requirements under clause 6A.7.4(f) of the Rules. The Commission's draft Rule was a proposed more preferable Rule, as the Commission considered the draft Rule provided a more rigorous process than the one proposed by Grid Australia.

The final Rule determination and Rule as Made are largely reflective of, and consistent with, the draft Rule determination and draft Rule. The Commission has made one change, which provides for the AER to determine a start date for the early implementation of the market impact component for a TNSP. Other minor clarifications have been made to the final Rule.

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1 Overview of the Rule change process

1.1 The Rule change request

On 30 April 2009, Grid Australia lodged a Rule change request with the Australian Energy Market Commission (AEMC or Commission) regarding the application of the service target performance incentive scheme (Rule Change Request). The Rule Change Request relates to clause 6A.7.4 of the National Electricity Rules (NER or Rules), which requires the Australian Energy Regulator (AER) to publish a service target performance incentive scheme (incentive scheme) that applies to transmission network service providers (TNSPs).

The Rules provide that any amendment or replacement of the incentive scheme will not change the application of the scheme to a TNSP in respect of a regulatory control period that has commenced before, or will commence within 15 months of, the amendment or replacement to the incentive scheme coming into operation.¹ The Rule Change Request proposed to insert savings and transitional provisions in Chapter 11 of the Rules to allow one component of the incentive, the market impact component, to be implemented earlier than currently permitted under the Rules.

1.2 Rule change request rationale

Grid Australia considered that the earlier implementation of the market impact component of the service target performance incentive scheme would allow the potential benefits of the market impact component to be realised sooner. The benefits would include:

- providing improved incentives to ensure the transmission system is available at times most valued by the market; and
- encourage improvements in the quality and reliability of the transmission network experienced by network users.²

1.3 Background to the proposal

Clause 6A.7.4 of the Rules requires the AER to publish the incentive scheme and was introduced in 2006 as a part of the amendments to the Rules following the Commission's Review of Electricity Transmission Revenue and Pricing Rules.³

Incentive schemes are part of the overall economic regulatory regime defined in Chapter 6A of the Rules. They operate alongside the revenue cap form of regulation,

¹ Clause 6A.7.4(f) of the Rules.

² Grid Australia, *Proposed Rule Change: Early Implementation of Market Impact Parameter*, 30 April 2009.

³ AEMC, *National Electricity Amendment (Economic Regulation of Transmission Services) Rule 2006*, Rule Determination, 16 November 2006, Sydney.

which allows TNSPs to earn up to a maximum allowed revenue (MAR) each regulatory year. Under this framework, TNSPs can maximise their profits by reducing their costs below the forecast levels. Cost reductions could be achieved through improved efficiency, however, they could also potentially result from reduced service quality.

The aim of the incentive scheme is to link regulated revenues to the TNSPs' performance in order to ensure that cost reductions do not come at the expense of reduced service quality. The incentive scheme provides incentives for TNSPs to improve their performance by rewarding them when performance standards increase and penalising them when performance standards decline. That is, the TNSPs' MAR would be adjusted in accordance with the provisions in the incentive scheme to reflect the TNSPs' performance in each calendar year.

The AER published a service target performance incentive scheme in March 2008.⁴ This incentive scheme includes two components:

- a service component which provides incentives for TNSPs to minimise the number and duration of loss of supply events, and to maximise circuit availability (implemented through the application of "performance incentive parameters"); and
- a market impact component which provides incentives for TNSPs to minimise the market impact of transmission outages (implemented through the application of "market impact parameters").⁵

The financial incentive available under the market impact component is calculated by comparing a TNSP's performance in a calendar year against its market impact parameters. The financial incentive available will fall within a range of 0 to 2 percent of the TNSP's MAR.⁶

The Rule proposed, if made, would apply to all TNSPs. However, in effect, it would only apply to SP AusNet, ElectraNet, Powerlink, Murraylink and Directlink as:⁷

- TransGrid has already implemented the incentive scheme as published on March 2008, which comprises of both the service component and the market impact component; and

⁴ AER, *Electricity transmission network service providers - Service target performance scheme*, Final, March 2008.

⁵ A TNSP's performance would be measured against the market impact parameters. The market impact parameters would be calculate for each TNSP based on the number of dispatch intervals where an outage on a TNSP's network resulted in a network outage constraint with a marginal value greater than \$10/MWh over the previous five years. The TNSP's performance in the current calendar year would then be compared against the parameters to determine any applicable incentive. This is set out in Appendix C of the incentive scheme.

⁶ AER, *op cit*, p. 11.

⁷ SP AusNet and ElectraNet have implemented the initial scheme, which has the service component only.

- Transend and EnergyAustralia (and VENCorp) are currently exempted from the market impact component of the incentive scheme.⁸

1.4 Commencement of Rule making process

On 6 August 2009, the Commission published a notice under section 95 of the NEL advising its intention to commence the Rule change process and first round consultation on 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 Rule Change Request was open for public consultation for eight weeks. Submissions closed on 2 October 2009.

The Commission received four submissions on the Rule Change Request as a part of the first round of consultation. The submissions are available on the AEMC website.⁹ A summary of the issues raised in submissions and the Commission's response to each issue is contained in Appendix A.

1.5 Publication of draft Rule determination and draft Rule

On 10 December 2009, the Commission published a notice under section 99 of the NEL and a draft Rule determination in relation to the Rule Change Request. The draft Rule determination included a draft Rule to be made (Draft Rule).

Submissions on the draft Rule determination and Draft Rule closed on 29 January 2010. The Commission received two submissions and these submissions are also published on the AEMC website. A summary of the issues raised in submissions and the Commission's response to each issue is contained in Appendix A.

⁸ AER, op cit, p. 3.

⁹ www.aemc.gov.au

2 Final Rule determination

2.1 Commission's determination

In accordance with sections 102 of the NEL the Commission has made this final Rule determination in relation to the Rule proposed by Grid Australia. In accordance with section 103 and section 91A of the NEL, the Commission has determined not to make the Rule proposed by Grid Australia and to make a more preferable Rule.

The *National Electricity Amendment (Early Implementation of Market Impact Parameters) Rule 2010 No. 1* (Rule as Made) is published with this final Rule determination. The Rule as Made is a more preferable Rule. Its key features are described in section 3.2.¹⁰

The Rule as Made will commence operation on 12 March 2010.

The Commission's reasons for making this final Rule determination are set out in section 3.1.

2.2 Commission's considerations

In making the Rule as Made, the Commission considered the following matters:

- the Commission's powers under the NEL to make the Rule;
- the revenue and pricing principles in section 7A of the NEL;
- the Rule Change Request;
- any relevant Ministerial Council on Energy (MCE) Statement of Policy Principles;¹¹
- submissions received during first and second rounds of consultation;
- outcomes of the Commission's Review of Electricity Transmission Revenue and Pricing Rules;¹² and
- the Commission's analysis as to the ways in which the Rule change request will or is likely to, contribute to the National Electricity Objective (NEO).

¹⁰ Under section 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.

¹¹ There is no relevant Statement of Policy Principles that apply to this Rule Change Request.

¹² AEMC 2006, op cit

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 matters set out in section 34(1)(a)(iii) of the NEL, which is the regulation of "the activities of persons (including Registered participants) participating in the national electricity market or involved in the operation of the national electricity system". Further, the Rule as Made falls within the matters set out in schedule 1 to the NEL as it relates to the service target performance incentive scheme that is a part of the framework for the economic regulation of TNSPs. The following items of schedule 1 are relevant:

"Item 15: the regulation of revenues earned or that may be earned by owners, controllers or operators of transmission systems from the provision by them of services that are the subject of a transmission determination"

"Item 20: the economic framework, mechanisms or methodologies to be applied or determined by the AER for the purpose of items 15 and 16 including (without limitation) the economic framework, mechanisms or methodologies to be applied or determined by the AER for the derivation of the revenue (whether maximum allowable revenue or otherwise) or prices to be applied by the AER in making a transmission determination"

"Item 23: incentives for regulated transmission system operators to make efficient operating and investment decisions including, where applicable, service performance incentive schemes"

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.

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 is satisfied that the Rule as Made will, or is likely to, contribute to the achievement of the NEL as the Rule as Made promotes economic efficiency and good regulatory practice giving consideration to regulatory certainty.

Economic efficiency

Incentive schemes are included in the regulatory framework to promote efficiency under monopoly conditions. The market impact component of the service target

performance incentive scheme addresses productive efficiency by seeking to reward TNSPs for maximising available network capacity when it is of most value to customers. The market impact component works by encouraging TNSPs to increase availability of the network during times that is of greater value to the market. It achieves this by measuring the TNSPs' performance during times where congestion on the network has resulted in spot prices above a defined level.¹³

Under the incentive scheme, TNSPs would be rewarded where their performance has improved from one year to the next. This potential reward creates an incentive for TNSPs to adopt operational and maintenance practices to increase the availability of the network and decrease incidents of congestion that are more efficient from the perspective of the market. Maximising network availability would contribute to better price and quality of service outcomes to consumers as:

- the need to dispatch higher-cost generation would be reduced; and
- the risk to each generator in managing its ability to dispatch into the network would be reduced, which would reduce the cost of business to manage these risks.

The Rule as Made would provide the opportunity to bring forward the application of the market impact component of the incentive scheme and, by doing so, allows potential benefits to be realised sooner. Taking this into account, the Commission is satisfied that the Rule as Made contributes to promoting economic efficiency.

Good regulatory practice - regulatory certainty

In considering whether the Rule as Made would promote good regulatory practice, consideration was given to the impact of the Rule as Made on regulatory certainty. Regulatory certainty is important as it promotes efficient decision making by allowing market participants to understand and predict the impact of the regulatory framework on business and operational decisions.

The Rule as Made provides a clearly defined framework that will maintain regulatory certainty by providing clarity to TNSPs and ensuring the AER will fulfil its regulatory functions in a transparent and consistent manner. The Rule as Made provides the opportunity for the AER to conduct a thorough review of any proposals for the earlier application of the market impact component of the incentive scheme and also includes the requirement for the AER to consult with stakeholders on any proposals received.

The Rule as Made provides an option for TNSPs to apply to the AER to seek earlier implementation of the market impact component of the incentive scheme than currently permitted under clause 6A.7.4(f) of the Rules. As it would be optional for TNSPs to apply for earlier implementation of the market impact component, TNSPs

¹³ The market impact parameters under the service target performance incentive scheme are currently calculated in relation to network outage constraints with a marginal value greater than \$10/Mwh. AER 2008, op cit, p. 45.

would be able to assess whether to make an application based on each TNSP's specific business requirements and readiness to participate in the incentive scheme early.

Although the Rule as Made provides an incremental increase in the flexibility of the regulatory framework, the provisions are bound by a clearly defined process which sets out specific requirements that must be met prior to the earlier implementation of the market impact component of the incentive scheme would be permitted for a TNSP. The early implementation of market impact parameters is also optional. For these reasons, the Commission considers the Rule as Made promotes good regulatory practice as it provides for regulatory certainty.

Compatibility with proper performance of AEMO's declared network functions

Under section 91(8) of the NEL, the AEMC may only make a Rule that has effect with respect to an adoptive jurisdiction if it is satisfied that the proposed Rule is compatible with the proper performance of AEMO's declared network functions. The Commission is satisfied that the Rule as Made is compatible with the proper performance of AEMO's declared network functions. The Rule as Made does not impact AEMO's declared network functions as AEMO is not currently subject to the incentive scheme.¹⁴

2.5 More preferable Rule

Under section 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 NEO.

Having regard to the issues raised by the Rule proposed in the Rule Change Request, the Commission is satisfied that the Rule as Made will, or is likely to, better contribute to the achievement of the NEO for the following reasons:

- the process under the Rule as Made is more rigorous and better balances the rights and obligations of market participants than the Rule proposed in the Rule Change Request. Hence, the Rule as Made allows benefits to consumers to be better captured as discussed in section 2.4 and chapter 4 of this determination; and
- the process under the Rule as Made is more consistent with the existing processes under Chapter 6A of the Rules than the Rule proposed in the Rule Change Request. Hence the Rule as Made promotes consistency of approach and administrative certainty.

¹⁴ The incentive scheme, having been published in March 2008, took into account the role of VENCORP as a provider of transmission services. The incentive scheme excludes VENCORP from the market impact component (section 2.2 of the incentive scheme) and does not have any parameters that apply to VENCORP for the service component (Appendix B of the incentive scheme).

2.6 Other requirements under the NEL

Under section 88B of the NEL, the AEMC must take into account the revenue and pricing principles in making a Rule for or with respect to any matter or thing specified in items 15 to 24 and 25 to 26J of Schedule 1 of the NEL. As the Rule relates to items 15, 20 and 23 of Schedule 1 of the NEL, the Commission has taken into account the revenue and pricing principles. Some aspects of the revenue and pricing principles relate to providing a reasonable opportunity to service providers to recover efficient costs, effective incentives to promote efficiency and to ensuring that prices should allow for a return commensurate with the regulatory and commercial risks involved in providing the service. The revenue and pricing principles are not directly relevant to this Rule change as this Rule change concerns the timing of the implementation date of a scheme that is established under the Rules.

3 Commission's reasons

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

3.1 Assessment

The Commission considers there would be merit in bringing forward the implementation of the market impact component of the service target performance incentive scheme as it is an incentive scheme that has been developed under the Rules as a means of rewarding TNSPs if their behaviour supports more efficient outcomes. The market impact component of the incentive scheme is designed to influence the TNSPs' operational decisions and behaviour to decrease the economic impacts of congestion on the transmission network. That is, reduced availability or outages on the transmission network could prevent the lowest priced generation from being dispatched, which would result in productive inefficiency, leading to higher electricity prices and greater risks to generation businesses.

A Rule change will be required to allow TNSPs to apply to the AER to seek that the market impact component of the incentive scheme be implemented earlier than currently permitted under the Rules. This would be a one-off change given that the market impact component is a new provision (as opposed to an existing provision being amended) and that the early implementation will be applied prospectively. That is, the ability for TNSPs to apply for the earlier implementation of the market impact component only applies to the incentive scheme dated March 2008.

To allow the market impact component to be implemented earlier, an application and assessment process would need to be established to provide for TNSPs to make applications and to provide for the AER to undertake an assessment. The Commission has developed the Rule as Made giving consideration to the maintaining consistency with the current provisions under the Rules.

3.2 Rule as Made

The Rule as Made provides a process to allow a TNSP to apply for the earlier implementation of the market impact component of the incentive scheme than currently permitted under the Rules and the requirements for the AER to undertake an assessment of the application. The Rule as Made sets out:

- requirements that a TNSP would need to meet in completing an application for the early implementation of the market impact parameter;
- provisions for the AER to undertake a preliminary assessment of any applications received;

- the ability for the AER to request additional information and for the TNSP to provide the information;
- requirements for the AER to publish any applications received and conduct a consultation, providing a minimum of 10 business days for submissions to be made;
- factors that the AER must take into account in making its decision; and
- timeframes that apply to the applications and assessment processes.

The Rule as Made differs from that proposed by Grid Australia by setting out a more robust application process, which is based on the existing requirements under Chapter 6A of the Rules. The Rule as Made provides for the AER to conduct a preliminary examination of any applications from TNSPs. If, following the preliminary examination, the AER determines the application did not comply with the necessary requirements as set out in the Rule as Made, the TNSP would have the ability to resubmit its application to address any issues raised by the AER. The Rule as Made also has the requirement for the AER to conduct a public consultation on the application. The Rule as Made does not include provisions for “deemed acceptance” included in the Rule proposed by Grid Australia. In addition, if the AER determines to amend the parameter values in the TNSP’s proposal, the TNSP would not have the option to reject the amended values as it originally proposed by Grid Australia. Additional details and discussion on the differences between the Rule as Made and the proposed Rule is provided in Appendix B.

Following the consideration of submissions received on the draft Rule determination and draft Rule, the Rule as Made differs from the draft Rule in that the Rule as Made provides for the AER to make a decision on the applicable start date of the early implementation of the market impact component. The AER may decide to allow a start date that is earlier than the date proposed by the TNSP, giving consideration to any information the TNSP has provided in its application to the AER. The Rule as Made also includes clarifications on which TNSPs the provisions applies to. Additional details and discussion on the differences between the Rule as Made and the draft Rule is provided in Appendix B.

In developing the Rule as Made, the Commission took into account the following factors, which are discussed in detail in the following chapters of this Rule determination:

- the application and assessment process requirements;
- implementing future changes to the incentive scheme;
- whether the provisions for early implementation should also be applied to the service component of the incentive scheme; and
- the application of the Rule as Made to TNSPs.

4 Application and assessment process requirements

The Commission conducted a review of the Rules governing the regulation of electricity transmission revenue and pricing in 2005 and 2006. The revenue regulation aspects of the review was completed in November 2006 with the publication of the National Electricity Amendment (Economic Regulation of Transmission Services) Rule 2006 No. 18 (Revenue Rule) and a final Rule determination.¹⁵ The Revenue Rule provides a balanced regulatory framework with appropriate incentives for efficient network investment and operation. This included forming an incentive framework to include incentives for efficient capital expenditure, efficient operating expenditure, maintaining service standards and the management of uncertain project costs and timing.

In the Revenue Rule determination, in developing the incentive framework, the Commission noted that the joint application of multiple incentive mechanisms would require a degree of flexibility and experimentation to produce optimal outcomes over time. To this end, the Rules provide discretion to the AER, with appropriate guidance, to develop the service target performance incentive scheme as set out under clause 6A.7.4 of the Rules. The Rules outline the broad features of the incentive scheme and provide a set of principles that the AER is to comply with in developing the incentive scheme.¹⁶ The Rules also require the AER to consult with stakeholders during its development processes.¹⁷

The AER published the first service target performance incentive scheme (the initial scheme) in August 2007. The initial scheme focused on network availability and reliability and contained only the “service component”. Concurrent to the development of the initial scheme the AER also developed performance parameters based on the market impact of transmission congestion, which led to the publication of an amended draft of the incentive scheme in November 2007 that included a market impact component. A version of the incentive scheme was then published in March 2008; this version of the incentive scheme included both the service component and the market impact component.

The Rules provide that any amendments to the incentive scheme would not apply in respect of a regulatory control period that has commenced before, or that will commence within 15 months of the amendment or replacement of the incentive scheme coming into operation.¹⁸ That is, in effect, the incentive scheme published by the AER in March 2008 will not apply to a TNSP until the next regulatory control period that commences 15 months thereafter which means that this version of the incentive scheme will not be introduced for most TNSPs until 2012 onwards.

¹⁵ AEMC, *National Electricity Amendment (Economic Regulation of Transmission Services) Rule 2006*, Rule Determination, 16 November 2006.

¹⁶ AEMC 2006, op cit, p. 100.

¹⁷ Clause 6A.7.4(f) of the Rules.

¹⁸ Clause 6A.7.4(f) of the Rules.

To provide a process to allow TNSPs to apply to the AER for the early implementation of the market impact component of the incentive scheme, an appropriate process would need to be established to provide for TNSPs to make applications and the AER to assess the applications. The Rule as Made was developed giving consideration to maintaining consistency with the current provisions under the Rules. The Commission's assessment and analysis of various aspects of the implementation process are set out below.

If all TNSPs successfully apply to the AER bring forward the market impact component and perform such that the payments under the incentive scheme were maximised, the Rule as Made would make available to TNSPs collectively additional revenue of approximately \$90m. This estimate is based on determining the number of years that each TNSP would be able to "bring forward" the market impact component of the incentive scheme and assuming that each TNSP reaches the maximum two percent incentive in each year the market impact component is brought forward.¹⁹ For this reason, a balanced and rigorous application process has been established.

4.1 Consultation and timeframe requirements

The current arrangements under the Rules require a TNSP to submit the parameter values for the incentive scheme as a part of the revenue reset process, including parameter values for the market impact and service components of the incentive scheme.²⁰ This initial submission would be made 13 months prior to the start of the next regulatory control period.²¹ The AER would have the opportunity to conduct a preliminary assessment of the TNSP's applications.²² If the application did not comply with the relevant requirements, the TNSP would have the opportunity to amend and resubmit its application.²³ The AER would then publish the TNSP's revenue proposal and invite written submissions.²⁴

In its Rule change request, Grid Australia suggested that a TNSP would submit an application to the AER three months prior to the start of the regulatory year and the AER would make a determination within 30 business days. No specific provisions for consultation were included. In its submission to the first round of consultation, Grid Australia proposed that a 40 business day timeframe would be acceptable.²⁵

¹⁹ Detailed analysis and a table outlining the potential additional revenue was provided in the draft Rule determination, p. 16.

²⁰ Clause 6A.10.1 of the Rules, section 4.2 of the incentive scheme.

²¹ Clause 6A.10.1(a)(1) of the Rules.

²² Clause 6A.11.1 of the Rules.

²³ Ibid

²⁴ Clause 6A.11.3 of the Rules.

²⁵ Grid Australia, submission to the first round of consultation, p. 6.

Commission's conclusion

Under the current provisions of the Rules, a TNSP's proposed market impact parameters would be assessed as a part of the revenue determination process that has been designed to protect the interest of consumers. The process under the Rule as Made for the assessment of a TNSP's application for early implementation of the market impact component of the incentive scheme should be as rigorous as it would have been under the current Rules. Given that there is potentially an additional \$90m that could be gained by TNSPs, an equivalently rigorous process should be adopted, if practical, to ensure that the interest of consumers would be protected and promoted.²⁶ As the revenue determination process encompasses a much broader scope than the process to assess the earlier implementation of the market impact component of the incentive, the Rule as Made, in comparison, provides a condensed and simplified process.

Consultation on the TNSPs' proposals

The Rule as Made requires the AER to publicly consult on a TNSP's application for the earlier implementation of the market impact component of the incentive scheme, which would include the TNSP's proposed parameter values. Under the current provisions, the proposed parameter values, as a part of a TNSP's revenue proposal, would be subject to consultation. The consultation process increases transparency and allows all stakeholders the opportunity to participate in the market. However, as noted by the AER in its submission on the Rule Change Request, the process for setting the market impact parameters would be based on publicly available data and a "largely mechanical" process.²⁷ On balance, the Commission considers that a shortened consultation timeframe of 10 business days would be appropriate for the consultation on a TNSP's application for the earlier implementation of the market impact component of the incentive scheme (as compared to a 30 business day consultation period for a revenue proposal under the revenue reset process).

The AER would be required to publish on its website, and make available for inspection at its public offices, the applications received from TNSPs (the proposal or any revised proposal received) and the invitations for submissions. Although under the revenue determination process the AER would publish invitations for written submissions in a newspaper circulating generally throughout Australia, the Rule as Made does not include this requirement.²⁸ Given the process under the Rule as Made is limited in scope compared to the revenue determination process and the process for setting the market impact parameters would be largely mechanical, a simplified notification would be appropriate. In addition, stakeholders would be able to subscribe to the AER website to be advised of any updates and publications on the AER website.

²⁶ An analysis of the potential \$90m that could be gain was provided and discussed in the draft Rule determination, p. 16.

²⁷ AER, submission to the first round of consultation, 29 September 2009, p. 2.

²⁸ Clause 6A.11.3(a) of the Rules.

In its submission to the second round of consultation, the AER had noted that it supported the consultation process.²⁹

AER's assessment of proposals

The Rule as Made provides the AER with the ability to assess each proposal received and determine the appropriate market impact parameters that should be applied giving consideration to the requirements as defined under the incentive scheme. This provides a balance to the information asymmetry that may exist between businesses and the AER. In addition, the Rule as Made does not specify a number of days within which the AER must make a determination. The Rule as Made provides that a TNSP would be required to make an application at least 80 business days prior the proposed start date of the earlier implementation of the market impact component of the incentive scheme and the AER must make a decision at least 20 business days prior to the proposed start date.

This timeframe under the Rule as Made would provide approximately 60 business days within which the AER would conduct a consultation and make a determination. The Rule as Made also clarifies the ability for the AER to make a preliminary assessment of any application to ensure that the relevant requirements were met prior to progressing with the application process. In its submission, the AER had noted that the 30 business days outlined in the Rule change request could be insufficient in some circumstances and that it should have the option to extend the time if it were to consult with interested parties.³⁰ The Commission considers the Rule as Made provides consistency with the existing processes under the Rules and addresses some of the concerns raised by the AER while maintaining a similar timeframe for the assessment of applications to the original Rule change request.

In its submission to the second round of consultation, Grid Australia considered that the assessment process should be "comparatively straightforward" and, as such, did not warrant a three month timeframe that was proposed in the draft Rule.³¹ Grid Australia considered that a 40 business day timeframe, as proposed in its submission to the first round of consultation, would be more appropriate.³² In the Rule as Made the Commission has maintained the timeframe as set out in the draft Rules. This timeframe takes into account the requirement for the AER to conduct a consultation on any submissions received, and also to allow a TNSP to amend and resubmit its application if required. The timeframe also provides sufficient flexibility to allow the AER (and the TNSP) to address any unforeseen circumstance whilst providing a definite timeframe within which a decision would be made. However, the Rule as Made provides for the AER to determine a start date for the earlier implementation of the market impact component of the incentive scheme; this is discussed in section 4.3.

²⁹ AER, submission to the second round of consultation, 28 January 2010, p. 2.

³⁰ AER first round submission, op cit, p. 3.

³¹ Grid Australia, submission to the second round of consultation, 29 January 2010, p. 3.

³² Ibid

4.2 Approval of parameter values

Currently the AER would assesses the relevant proposed parameter values under the service performance target incentive scheme as a part of the revenue reset process and, in accordance with this process, make a determination. However, for the process for the earlier implementation of the market impact component of the incentive scheme, the Rule Change Request included the provisions that:

- the TNSP's proposed values in its application for the earlier implementation of the market impact component of the incentive scheme would be deemed to be accepted if the AER did not make a determination within 30 business days,³³ and
- the TNSP may, but would not be obliged to, accept any market impact parameter values amended by the AER.

Commission's conclusion

Consistent with the provisions under Chapter 6A of the Rules, the Rule as Made requires the AER to make a determination on the proposed market impact parameter values in a TNSP's application for the earlier implementation of the market impact component of the incentive scheme. The Rule as Made does not include provisions for "deemed acceptance". In addition, TNSPs would not have the option to reject any parameter values amended by the AER. The Rule as Made reduces the ability of TNSPs to benefit from information asymmetry and, hence, benefits for consumers would be better captured.

Grid Australia submitted that the deemed acceptance provision was included in its Rule change request "to provide a discipline on the AER to adhere to the approval timetable".³⁴ However, the Rule as Made provides a specific process and timeframe within which any application for the earlier implementation of the market impact component of the incentive scheme would need to be considered, which should provide sufficient discipline on the AER. The Commission considers that the deemed acceptance provision would not provide sufficient incentive to ensure TNSPs' proposals would maximise the potential benefits to consumers. The Rule as Made provides the AER to make a determination on the proposed values set out in the TNSP's application to ensure the parameters were calculated in accordance with the requirements under the incentive scheme. The rigour built into the assessment process would promote the protection of consumer interests.

Grid Australia submitted that the ability for a TNSP to reject amended values, or withdraw its application, would be important as "if an onerous performance target is set by the AER, a TNSP could be substantially disadvantaged from the early introduction of the scheme. Specifically, the TNSP will incur operating costs without

³³ In its submission to the first round of consultation, Grid Australia proposed that a 40 business day period would be acceptable.

³⁴ Grid Australia first round submission, op cit, p. 9.

any prospect of a financial return”.³⁵ However, as set out in the incentive scheme, the AER must accept any proposed values if they comply with the requirements of the scheme.³⁶ In accordance with the provisions of the incentive scheme, the risks faced by the TNSPs would be minimised as any well-considered proposals that meet the defined requirements would be accepted. TNSPs would be able to make a well-informed decision on whether to make an application for the early implementation of the market impact component of the incentive scheme, with a clear understanding of how the market impact parameters would be set.

In addition, the financial risks to TNSPs would also be reduced as the market impact component is a “bonus only” provision and, as such, no penalties would apply if a TNSP did not meet its performance targets.

4.3 Effective date

Currently the Rules, in effect, provide that any amendment or replacement of the service performance target incentive scheme would be applied from the start of the next regulatory control period.³⁷ The Rule Change Request proposed that provisions should be added to the Rules to allow TNSPs to apply for the early implementation of the market impact component of the incentive scheme to be brought forward to the start of the next regulatory year. In its submission on the Rule Change Request, Grid Australia proposed more flexibility on the start date.³⁸

Grid Australia also submitted in the second round of consultation that the one month timeframe between the AER's decision and the commencement of the early implementation of market impact parameters was unnecessary and should not be mandatory.³⁹ Grid Australia submitted:⁴⁰

“Whilst some TNSPs may prefer a delayed introduction to accommodate changes to operational practices, this requirement will vary between TNSPs. By mandating a fixed 1 month period between the AER's determination and the commencement of the market impact parameter, the Commission is introducing a degree of inflexibility and may be delaying the unnecessarily the benefits that the early introduction of the parameter could deliver.”

35 Ibid, p. 7.

36 AER Final incentive scheme, op cit, p. 10.

37 Clause 6A.7.4(f) of the Rules, which provides that any amendment or replacement of the incentive scheme would not be applied in respect of a regulatory period that has commenced, or that will commence within 15 months of, the amendment or replacement coming into operation.

38 Grid Australia first round submission, op cit, p. 12.

39 Ibid

40 Ibid

Commission's conclusion

The Rule as Made provides that a TNSP's application for early implementation of the market impact parameters of the incentive scheme may propose that the earlier implementation may commence at any time, subject to meeting the timeframe requirements of the application process.

The Rule as Made also provides that the AER would make a decision at least 20 business days prior to the proposed start date of the earlier implementation of the market impact component. This 20 business days timeframe would provide preparation time for the TNSP to make any operational and planning adjustments. However, the Commission acknowledges that some TNSPs may be prepared to implement the market impact parameter in a shorter time. For this reason, the Rule as Made provides for the AER to determine an earlier start date of the earlier implementation of the market impact component than the proposed start date in the TNSP's application.⁴¹ That is, in its application, the TNSP would still include a "proposed start date". However, in addition, the TNSP's application would also include any relevant information on its ability to commence earlier than the proposed start date. The AER would be required to make a decision within 20 business days of the proposed start date, however, it must now also determine an actual start date where the actual start date may be earlier than the proposed start date.

In considering the provisions for the effective date, the Commission noted that the service target performance incentive scheme currently provides for the TNSPs' performance against the parameter values to be measured on a calendar year basis. However, the incentive scheme also provides for the measurements to be adjusted to account for the start and end of the regulatory control period where periods do not span a full calendar year. As the incentive scheme already has provisions for periods of application that do not span a full calendar year, the Commission considers that there would be no benefits to limit the commencement date of the early implementation to the start of the regulatory year.

4.4 Administrative costs

To apply for the earlier implementation of the market impact component of the incentive scheme, TNSPs would need to submit an application, which would then be assessed by the AER. TNSPs and the AER would incur administrative costs in setting up and undertaking these process requirements.

Commission's conclusion

The Commission considers the process requirements under the Rule as Made would not add material costs to TNSPs and the AER. The implementation costs in setting up the process requirements for TNSPs to prepare proposals and for the AER to assess them, would be incurred in any case at the next revenue reset. The provisions under

⁴¹ It is noted that the start date for the commencement of the market impact component of the incentive scheme would have to be a future date but may be earlier than the proposed start date.

the draft Rules would bring forward these implementation costs, which would otherwise be incurred.

The administrative costs, to make an application by the TNSP under the Rule as Made and for the AER to assess the application, would be additional costs. However, once the processes have been set up, based on the information available, the Commission understands that the incremental administration costs would not be material.

5 Implementing future changes to the incentive scheme

Under the provisions of the Rules, the service target performance incentive scheme can be further developed and amended by the AER, in consultation with stakeholders.⁴² If a further amendment were to be made to the incentive scheme, clause 6A.7.4(f) of the Rules would currently require that the amendment would only be implemented in respect of a regulatory control period that has commenced before, or that will commence within 15 months of, the amendment or replacement coming into operation.

Given this Rule determination to permit the early implementation of the market impact parameters, the Commission considered the related question of how subsequent changes to the incentive scheme should be treated.

Commission's conclusion

The Commission considers that the provision to allow TNSPs to apply for the early implementation of the market impact component of the service target performance incentive scheme should apply to the market impact component of the incentive scheme as published by the AER in March 2008 only. That is, this should be a one-off provision to allow the TNSPs the opportunity to apply for the early implementation of the market impact component given as it is a new provision under the incentive scheme. The implementation of any future amendments to the scheme would be subject to clause 6A.7.4(f) of the Rules. Should market participants, including the AER, wish to implement a future amendment of the scheme earlier than that provided for under clause 6A.7.4(f), a Rule change request may be made.

In its submission to the second round of consultation, Grid Australia submitted that the Rule should make accommodations for future changes to the incentive scheme.⁴³ In regards to the approach taken by the Commission, Grid Australia noted:⁴⁴

“... that any changes to the market impact component are unlikely to change the Commission's finding that allowing the early introduction of the scheme will promote the achievement of the National Electricity Objective. On the other hand, the costs and time involved in submitted a new Rule change proposal to accommodate any change in the market impact component are not insignificant, and could further delay its timely introduction.”

As discussed above, regulatory certainty is an important consideration. The five year revenue control period provides certainty by setting out a specific timeframe that allows TNSPs to make decisions with a level of certainty. Although the Commission considers that the Rule as Made promotes regulatory certainty, the analysis was based on the market impact component being a new component of the incentive scheme and

⁴² Refer to clause 6A.7.4(f) of the Rules.

⁴³ Grid Australia's second round submission, op cit, p. 4.

⁴⁴ *ibid*, p. 5.

that the early implementation would be optional for TNSPs. This is a one-off provision which brings forward the start of a provision that some TNSPs would otherwise be precluded from for a number of years and does not impact any existing obligations.⁴⁵ However, any future changes to the market impact component would likely impact existing obligations.

The Rule as Made does not mandate the early implementation of the market impact component, which maintains regulatory certainty. In the same way that this Rule Change Request for the early implementation of market impact parameters was considered, should TNSPs or the AER wish for a future change to be implemented early, a Rule change request may be raised which would allow any potential impacts to be appropriately assessed at that time. The Commission notes Grid Australia's submission that Rule changes would incur costs. However, the Rule change process would ensure that any potential impacts would be appropriately assessed given that future changes could change existing obligations (as opposed to introducing a new provision).

⁴⁵ This was noted in Grid Australia's submission to the first round of consultation, p. 9.

6 Service component of the incentive scheme

As outlined above, the service target performance incentive scheme comprises the service component and the market impact component. The Rule as Made, consistent with the Rule proposed by Grid Australia, refers specifically to the ability for TNSPs to apply for the early implementation of the market impact component. The Commission considered whether the application could include early implementation of the service component as well.

The service component provides incentives for TNSPs to minimise the number and duration of loss of supply events and to maximise circuit availability (as opposed to the market impact component which provides incentives to minimise the market impact of outages). The service component formed the initial scheme (which did not contain the market impact component), which has been implemented for SP AusNet and ElectraNet.

The service component also subjects TNSPs to a potential penalty where the financial incentive that a TNSP may earn falls within a range of plus or minus one percent of the TNSP's MAR for each calendar year.

Commission's conclusion

Provisions for the early implementation of the service component of the incentive scheme should not be included at this time. The Commission understands the service component is subject to greater complexity and preparing for its implementation would likely require more extensive consultation and consideration by TNSPs and the AER. In this case, it is likely the additional time to prepare and assess an application would likely limit the ability to bring forward the start date.

Should TNSPs or the AER consider it appropriate to bring forward the implementation of the service component, a Rule change request could be raised to allow the relevant issues to be considered.

7 Clarification of the TNSPs to which the Rule would apply

In its submission to the second round of consultation, Grid Australia considered that the draft Rule could potentially exclude ElectraNet and SP AusNet from applying for the early implementation of the market impact component as the draft Rules refers to the service target performance incentive scheme dated March 2008 while ElectraNet and SP AusNet have implemented the incentive scheme dated 1 January 2007. In addition, it considered that the draft Rules may not apply to Powerlink as it is subject to the transitional provisions under Chapter 11 of the Rules, which refer to the service guidelines that were in place at the time the transitional revenue determination was made.⁴⁶

Commission's conclusion

The Commission notes that the early implementation provisions would be available to ElectraNet, SP AusNet and Powerlink. The incentive scheme as published by the AER in March 2008 states the intention that the market impact component apply to all TNSPs (with the exception of VENCORP, EnergyAustralia and Transend).⁴⁷ Taking this into consideration, it follows that ElectraNet, SP AusNet and Powerlink would be subject to the scheme and would be able to apply for the early implementation of the market impact component. The Commission further notes that as the market impact component is a new component of the service target performance incentive scheme, separate to the service component, it would apply in addition to the service component that is set out in the earlier version of the incentive scheme (where the provisions under the service component of the incentive scheme as published in January 2007 would continue to apply for the relevant TNSPs). The Rule as Made has been amended from the draft Rule to clarify that all TNSPs that are subject to the market impact component of the incentive scheme may apply for its earlier implementation.

In the case of Powerlink, the Commission considers that the early implementation provisions should also apply. Powerlink is currently subject to a "transitional regulatory control period" where Powerlink's transitional revenue determination was made pursuant to the old Chapter 6 of the Rules as its last revenue reset concurred with the Commission's review of the revenue Rules. As the market impact component of the incentive scheme is a part of the incentive scheme under Chapter 6A of the Rules, specific consideration was given as to whether Powerlink should be able to bring forward the implementation of the market impact component.

In the development of Chapter 6A of the Rules, through specific savings and transitional provisions, the Commission had ensured that Powerlink was neither in a better or worse position than other TNSPs as a result of the application of a transitional regulatory control period.⁴⁸ The savings and transitional provisions that applied to Powerlink for its transitional regulatory control period provided that the same

⁴⁶ Grid Australia's submission to the second round of consultation, op cit, pp. 5-6.

⁴⁷ AER, op cit, p. 21.

⁴⁸ AEMC 2006, op. cit. p. 126

principles under Chapter 6A of the Rules would apply to Powerlink in its transitional regulatory control period. Although Powerlink is subject to the service guidelines that were in place at the time the transitional revenue determination was made, these service standard guidelines did not include a market impact component.⁴⁹ Given the transitional provision that were put in place, and the application of these provisions by the AER, the Rule as Made notes that the "maximum allowed revenue" as determined by the AER in Powerlink's transitional revenue determination may be used in the calculation of incentive payments under the incentive scheme.

⁴⁹ The service standard guidelines gave consideration to factors that correspond with the "service component" of the current incentive scheme. The market impact component is a new component that was finalised in the March 2008 version of the incentive scheme. Refer AER, *Statement of principles for the regulation of transmission revenues - Service standard guidelines*, 12 November 2003.

Abbreviations

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
Commission	See AEMC
incentive scheme	service target performance incentive scheme
MAR	maximum allowed revenue
NEL	National Electricity Law
NEO	National Electricity Objective
NER	National Electricity Rules
NGF	National Generators Forum
Rule Change Request	Grid Australia, <i>Proposed Rule Change: Early Implementation of Market Impact Parameter</i> , 30 April 2009
Rules	National Electricity Rules
TNSP	transmission network service provider

A Summary of submissions

A.1 First round of consultation

This table provides a summary of the issues raised in submissions received in the first round of consultation on the Rule change request. Submissions were received from the Australian Energy Market Operator (AEMO), the AER, the National Generators Forum (NGF) and Grid Australia.

	Stakeholder	Issue	AEMC response
General Issues			
1.	AER	Interaction with the National Electricity Law (NEL) - the AER noted that the proposed Rule could raise questions regarding retrospectivity under section 33(1) of Schedule 2 of the NEL. The AER noted it did not have any views on this issue but would expect the AEMC to consider this when assessing the Rule change request. p. 1	The AEMC has considered this issue and the Rule as Made is consistent with the provisions under the NEL.
2.	AER	The AER recognised that limiting the amendments to the revenue determination maintains the integrity of the framework for economic regulation. However, in this instance, the AER considers that permitting the early implementation of the market impact parameter is warranted as there are clear benefits to market participants. p. 2.	The AEMC does not consider the Rule as Made impacts other aspects of the regulatory framework.
3.	AER	The AER submitted that there was merit in allowing subsequent changes to the incentive scheme to also be implemented early, ahead of the next regulatory control period. However, it noted that it should be provided with some level of discretion to assess when changes may be implemented early. p. 5.	The provisions for early implementation of the market impact parameters is a one-off provision. Further changes to the scheme in any way would be subject to the existing requirements under the Rules. This is discussed further in section 5.

	Stakeholder	Issue	AEMC response
4.	Grid Australia	Grid Australia submitted that it does not support the early implementation of changes becoming a permanent feature of the regulatory regime. p. 9.	The Rule as Made provides for a one-off change to allow TNSPs to apply for the early implementation of market impact parameters. This is discussed further in section 5.
Implementation Process			
5.	AER	The AER submitted that as the process for determining the parameters to apply would be a largely mechanical process, the Rule should explicitly state that the AER does not need to consult before making its determination. p. 2	A short consultation period will apply. This is discussed further in section 4.1.
6.	AER	The AER submitted that a 40 business day period, instead of 30 as proposed by Grid Australia, should be provided for the AER to assess any applications. The AER also noted that an option to extend this time should also be provided if any complex issues were raised. pp. 2-3.	The Rule as Made defines an overall timeframe that would apply to the process. This is discussed further in section 4.1.
7.	AER	The Rule proposed by Grid Australia provides that the parameter values proposed by a TNSP would be deemed to be accepted by the AER if the AER failed to make a determination within the required timeframe. The AER submitted that it did not support this approach and considered that it would deviate from the approach taken under Chapter 6A of the Rules and could lead to undesirable outcomes. p. 3.	The proposed Rule requires the AER to make a determination. This is discussed further in section 4.2.
8.	AER	The AER submitted that it did not support the ability for a TNSP to reject the AER's amended performance target. The AER considered this would be inconsistent with the current regime and would not provide TNSPs with a strong incentive propose well-considered targets. p. 3.	The AER's determination would need to be applied. This is discussed further in section 4.2.

	Stakeholder	Issue	AEMC response
9.	Grid Australia	Grid Australia submitted that it did not agree that the Rule change proposal fails to provide TNSPs with a strong incentive to propose well considered targets. On the contrary, the AER's approval of proposed targets is required before the market impact component can become operational.	The Rule as Made provides a robust application process that provides the TNSP with the ability to specify the date on which it applies to commence the market component while providing for the AER to conduct a preliminary assessment of any applications and conduct consultations. This is discussed further in section 4.1.
10.	AER	The AER noted that the Rule would need to refer to all the relevant requirements under the incentive scheme such as information and reporting requirements, compliance auditing, timing of performance and adjustments to the maximum allowed revenue. p. 4.	This has been addressed in the Rule as Made where the obligations to comply with the relevant provisions under the incentive scheme have been captured.
11.	AER	The AER noted that Transend has explicitly been excluded from the market impact component of the incentive scheme and that the Rule should clarify whether Transend would be able to apply to amend its revenue determination. p. 4.	The early implementation provisions would not change the actual provisions of the incentive scheme. As Transend is currently excluded from the incentive scheme, this exclusion would not be changed by the Rule as Made. This clarification has been addressed in the Rule as Made.
Data requirements			
12.	AEMO	AEMO noted that it collects and publishes the data necessary to calculate the market impact parameters and considers that no additional burdens should arise from AEMO, from a data perspective, from the early implementation of this parameter for all TNSPs. p. 1.	The AEMO's processes have been noted.
13.	NGF	The NGF submitted that AEMO should supply the relevant data to the AER and that TNSPs should have no role in providing the required data. p. 3.	The Commission considers that TNSPs need to maintain ownership of the application process and need to provide well-considered proposals. As the data would be used by the TNSPs in their calculation of proposed parameter values, it would be inappropriate for another party to be responsible for submitting the data to the AER.

	Stakeholder	Issue	AEMC response
14.	Grid Australia	Grid Australia did not support the view put forward by the NGF that AEMO should supply the data to the AER.	As noted above.
Other issues			
15.	NGF	The NGF submitted that it supported a change to the market impact parameter that obliges the TNSPs to account for the severity of the impact of congestion on the market. It further noted that while the current provisions offer value, "TNSPs will pay more attention to a scheme that makes them liable for the severity of impact of congestion on the market". pp. 2-3.	The Commission notes the issue raised by NGF, however these issues relate to the design of the incentive scheme, which would be considered by the AER in its continued development of the incentive scheme. Consideration of such issues is outside the scope of this Rule change request.
16.	NGF	The NGF submitted that it supported a change to the provisions "that puts at risk a higher share of a TNSP's regulated revenue (up to 10%) when it fails to achieve its targets under the [incentive scheme] in the next regulatory period". pp. 2-3.	As noted above, such issues are outside the scope of this Rule change request.
17.	NGF	The NGF hoped that the provisions would be strengthened such that linking an expanded market incentive parameter to the contingent project framework might encourage TNSPs to spend extra capital to ease constraints. pp. 2-3.	As noted above, such issues are outside the scope of this Rule change request.

A.2 Second round of consultation

This table provides a summary of issues raised in submissions received in the second round of consultation on the Rule change request. Submissions were received from the AER and Grid Australia.

	Stakeholder	Issue	AEMC's response
General Issues			
1.	AER	The AER noted that it had a number of concerns with the original Rule change request and that the AEMC's draft Rule determination had addressed these concerns. pp. 1-2.	The AER's comments are noted.
2.	Grid Australia	The draft Rule determination noted that the early implementation provisions would not change the provisions of the incentive scheme itself. That is, Transend is currently excluded from the market impact component of the incentive scheme, which would not be changed by any provisions to allow the early implementation of the market impact component. Grid Australia noted that it accepts this conclusion. p. 1.	Grid Australia's comments are noted.
Timeframes			
3.	AER	The AER supports the three month timeframe provided to the AER to conduct a consultation and make a determination. p. 2.	The AER's comments are noted.
4.	Grid Australia	Grid Australia does not accept the proposed timeframe for assessing applications and considers that the timeframe is too lengthy and inflexible. pp. 1-2.	The timeframe defines a period within which the AER must make its decision while providing sufficient flexibility to allow the AER to conduct a consultation and allow the TNSP to provide additional information where required. This is discussed further in section 4.1.

	Stakeholder	Issue	AEMC's response
5.	Grid Australia	Grid Australia considers that the AER's determination would be relatively straightforward and would not warrant a 3 month or 60 business day timeframe; a 40 business day timeframe would be more appropriate. p. 3.	See above.
6.	Grid Australia	Grid Australia considers that the Rule should explicitly state the timeframe in which the AER should make its determination (which in Grid Australia's view should be 40 business days). p. 3.	In effect, the Rule as Made defines a maximum three month timeframe in which a decision must be made by the AER. This is discussed further in section 4.1.
7.	Grid Australia	Grid Australia notes that, in its view, the timeframe allowed by the draft Rule does not recognise that data collection and outage classification would be undertaken by AEMO and the AER and that few, if any, data-related issues would arise. p. 2.	The timeframe allows for the AER to make an initial assessment of the application; the TNSP to submit any additional information, if required; the AER to conduct a consultation; and would accommodate any unforeseen issues. This is discussed further in section 4.1.
8.	Grid Australia	Grid Australia notes that the timeframe does not take into account that the process for setting the parameter values is defined by the incentive scheme and is substantially mechanistic. p. 2.	See above.
9.	Grid Australia	Grid Australia does not accept that the Rule should mandate a fixed one month period between the AER's determination and the commencement of the market impact component. Grid Australia considers that the Commission is introducing a degree of inflexibility that would unnecessarily delay the introduction of the market impact component. p. 3.	The Rule as Made has been amended to allow the AER to determine an earlier start date. This is discussed further in section 4.3.
10.	AER	The AER supports the condensed 10 business day consultation process. p. 2.	The AER's comments are noted.

	Stakeholder	Issue	AEMC's response
Decision and Approval Provisions			
11.	AER	The AER supports the provisions which permit the AER to make a preliminary determination on whether a TNSP's proposal complies with the relevant information requirements in the submission guidelines. p. 2.	The AER's comments are noted.
12.	AER	The AER considers that the proposed assessment framework affords sufficient certainty to TNSPs and agrees with the approach whereby TNSPs will not have the option to reject any values amended by the AER. p. 2.	The AER's comments are noted.
13.	AER	The AER agrees that the deemed acceptance provision is unnecessary. p. 2.	The AER's comments are noted.
Future Revisions to the Incentive Scheme			
14.	Grid Australia	Grid Australia considers that the provisions should accommodate future revisions to the market impact component of the service target performance incentive scheme. p. 2.	The provisions is a one-off provision to allow a new component of the incentive scheme to be introduced. Any future changes to the incentive scheme would be subject to the implementation timeframe provisions as set out in clause 6A.7.4(f). This is discussed further in section 5.

	Stakeholder	Issue	AEMC's response
15.	Grid Australia	In relation to allowing any future amendments to the incentive scheme to also be implemented early, Grid Australia considers that either options (b) or (c), as set out in its submission, would be preferable. ⁵⁰ In particular, options (b) and (c) ensure that the market impact component is capable of being introduced early. pp. 2, 5.	See above.
16.	Grid Australia	Grid Australia notes that the Commission's approach would require a further Rule change proposal in the event that the market impact component of the incentive scheme is amended by the AER. p. 5.	The Commission notes that this would be the case in order to ensure any potential impacts on market participants and consumers would be appropriately assessed. This is discussed further in section 5.
17.	Grid Australia	Grid Australia notes that any changes to the market impact component are unlikely to change the Commission's finding that allowing the early introduction of the scheme will promote the achievement of the National Electricity Objective. It further notes that on the other hand, the costs and time involved in submitting a new Rule change proposal to accommodate any changes in the market impact component are not insignificant and could further delay its timely introduction. p. 5.	Currently the market impact component has not been implemented. However, once it has been implemented, any changes to the incentive scheme could potentially change existing obligations. The potential impacts would not be known at this time. This is discussed further in section 5.
18.	Grid Australia	Grid Australia concurs that the principle of introducing changes to the service target performance incentive scheme should not be permanent feature of the Rules. p. 5.	Grid Australia's comments are noted.

⁵⁰ On page 4 of its submission, Grid Australia outlines the options for accommodating future revisions to the incentive scheme as follows: Option (b) "Preserve the market impact component of the scheme as set out in the March 2008 version, even if this scheme is subsequently revised"; and Option (c): "Adopt the latest version of the market impact component".

	Stakeholder	Issue	AEMC's response
Rule Drafting			
19.	Grid Australia	Grid Australia notes that a possible unintended consequence of these provisions under the draft Rules is that the draft Rules may not apply to ElectraNet or SP AusNet because these TNSPs are not currently subject to the service target performance incentive scheme dated March 2008. A similar issue arises for Powerlink.	The Rule as Made has been clarified such that the early implementation provisions would apply to ElectraNet SP AusNet and Powerlink. The differences between the draft Rule and the Rule as Made are set out in section 7.

B Comparisons of the proposed Rules, draft Rules and Rule as Made

B.1 Comparison of the Rule as Made with Grid Australia's proposal

The Commission has exercised its power under section 99 of the NEL to make a more preferable Rule. The Rule as made provides a process to allow the TNSPs to apply for the earlier implementation of market impact parameters but differs from the Rule proposed by Grid Australia. The differences between the Rule as Made and Grid Australia's proposal are summarised in the following table.

Grid Australia's Proposal	Rule as Made
A TNSP would lodge an application for the earlier implementation of the market impact component of the incentive scheme to the AER at least three months prior to the commencement of the regulatory year. (In its submission to the first round of consultation, Grid Australia proposed that an application could be made at any time) ⁵¹ .	A TNSP would lodge an application at least 80 business days prior to the proposed start date of the early implementation of the market impact component.
There were no specific provisions for the AER to request additional information from the TNSP.	The AER would conduct a preliminary examination of any application and the TNSP would be able to resubmit a proposal to the AER addressing any issues identified by the AER.
There were no specific provisions to require the AER to conduct a consultation on the TNSP's application.	The AER would be required to conduct a public consultation on any proposals received from TNSPs.
The AER would be required to make a determination within 30 business days. (In its submission to the first round of consultation, Grid Australia proposed that a 40 business day period would be acceptable). ⁵²	The AER would be required to make a determination at least 20 business days prior to the proposed start date of the earlier implementation of the market impact component of the incentive scheme.
If the AER did not make a determination within 30 business days, the AER is deemed to have accepted the TNSP's proposed parameters.	The AER would be required to make a determination on a TNSP's application. There are no provisions for deemed acceptance.
If the AER amends the TNSP's proposed parameter values, the TNSP would not be obliged to accept the AER's amended values.	TNSPs would not be able to reject any market impact parameter values amended by the AER.

⁵¹ Grid Australia first round submission, op cit, p. 3.

⁵² Ibid, p. 6.

Grid Australia's Proposal	Rule as Made
Any early implementation would commence from the start of the next regulatory year. (In its submission to the first round of consultation, Grid Australia proposed that the early implementation should be able to commence at any time). ⁵³	The TNSP can apply for the early implementation of the market impact component of the incentive scheme to commence at any time subject to meeting the timeframes under the application process.

B.2 Comparison of the Rule as Made with the draft Rule

The Rule as Made differs from the draft Rule as summarised in the following table. Detailed discussion of the changes are set out in sections 4 and 7.

Draft Rule	Rule as Made
In its application the TNSP would propose a start date and, subject to the AER approving the application, the proposed start date for the earlier implementation of the market impact component of the incentive scheme will be applied.	<p>In its application, the TNSP would propose a start date for the earlier implementation of the market impact component of the incentive scheme. The TNSP would also have the option of including any additional relevant information regarding its ability to commence the market impact component earlier than the proposed start date.</p> <p>In its decision, the AER will determine a start date which may be earlier than the proposed start date, giving consideration to the information contained in the TNSP's application.</p>
With the exception of TransGrid, who has already implemented the incentive scheme including the market impact component published by the AER in March 2008 and Transend and EnergyAustralia who are exempt from the market impact component, all other TNSPs would be able to apply for the early implementation of the market impact parameter. ⁵⁴	Clarifications have been added to the Rule as Made to clarify the intention that all TNSPs subject to the market impact component under the incentive scheme as published by the AER in March 2008 at the next regulatory control period would be able to apply for the earlier implementation of the market impact component of the incentive scheme.
The provisions under the Draft Rule were based on "months". That is, a TNSP would be required to submit its application for the early implementation of the market impact component of the incentive at least four months prior to the proposed start date; and the AER would be required to make a decision no later than one month prior to the proposed start date.	To maintain consistency with other provisions under the Rules, and for clarity, the provisions have been amended to refer to business days where "four months" has been amended to "80 business days" and "one month" has been amended to "20 business days".

⁵³ Ibid, p. 3.

⁵⁴ It is noted that the exemption from the market impact component also applied to VENCORP.