

Australian Energy Market Commission

Rule Determination

**National Electricity Amendment (Process for
region change) Rule 2007**

Rule Proponent
Ministerial Council on Energy

20 December 2007

Signed:


John Tamblin
Chairman

For and on behalf of
Australian Energy Market Commission

Commissioners

Tamblin
Carver
Woodward

Inquiries

Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

E: aemc@aemc.gov.au

T: (02) 8296 7800

F: (02) 8296 7899

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About the AEMC

The Council of Australian Governments, through its Ministerial Council on Energy, 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. It is a statutory authority. 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

The National Electricity Market (NEM) is a regional market. A spot price for wholesale electricity is set separately for each region for each half-hour trading interval. There are currently six regions: Queensland, New South Wales, Snowy, Victoria, South Australia and Tasmania. The National Electricity Rules (Rules) provide for changes to the boundaries of these regions in rule 3.5, although since the NEM commenced in 1998, the regions have not changed. In fact, the recent Australian Energy Market Commission (AEMC or Commission) decision to abolish the Snowy region from 1 July 2008 will be the first such region change.

In October 2005, the Ministerial Council on Energy (MCE) submitted a Rule change proposal to reform the criteria and process for region change in the NEM. The MCE proposed to replace the current technically-based criteria and review process in the Rules with an application initiated process and forward looking economically-based market criteria, which must be satisfied before a region change can be made by the Commission. In considering this Rule proposal on the process for region change, the Commission has consulted with stakeholders and has had regard to the procedural and analytical experience it has gained through the related Rule change proposals involving the review of the Snowy region boundaries. The Commission has also ensured consistency between this *National Electricity Amendment (Process for Region Change) Rule 2007 No.11*, the "Rule as made" and the draft findings of its more general review of congestion management in the NEM.

The MCE's proposal seeks to implement the key policy principles set out in its May 2005 Statement on NEM Transmission. In that Statement, the MCE stated the importance of stability and predictability in a region structure, with changes to regions only occurring if they provide a net improvement to the efficient operation and investment environment of the market. The Commission agrees that these key principles provide an important framework that promotes region change as a means for addressing transmission congestion only when it is enduring and material and when there is a clear economic case for the change. This, in turn, can promote efficient investment options in transmission, generation and load to address congestion in the stages prior to considering a region change.

The Rule as made reflects the original policy framework contained in the MCE's Rule proposal. In addition, the Commission has incorporated into the process and implementation of a region change the key lessons from the assessment of the various Snowy region related Rule change proposals and the implementation of the abolition of the Snowy region. The Commission has assessed the Rule as made against the statutory Rule making test and the NEM Objective and concludes that the Rule as made satisfies the statutory Rule making test as it is likely to promote the NEM Objective. This Rule determination presents the Commission's analysis in support of its decision, and sets out how the Commission has modified the Rule proposed by the MCE in the light of the Commission's more recent experience.

One example of a refinement added by the Commission is the inclusion of a preliminary consultation stage prior to formally accepting a region change application. This stage provides an opportunity for interested stakeholders to

provide comment on the region change application and for the Commission to take into account those comments in deciding whether the application should go forward.

In assessing the Snowy region proposals, the Commission learned that it is not possible to analytically assess how a region change will affect the efficiency of dispatch and trading in the market without undertaking quantitative modelling. This modelling requires the network constraint equations that would be used by the National Electricity Market Management Company (NEMMCO) dispatch engine if the proposal was adopted. The Commission understands the time consuming and costly process for deriving such network constraint equations and therefore has included an initial consultation period for stakeholders to evaluate whether there is merit in further investigating the proposed region change application.

The Commission views the Rule as made as an important component part of the regime for managing congestion in the NEM. An efficient and robust process for assessing and implementing region change will support the efficient evolution of the market over time. The Commission agrees with the MCE that region change should only occur in circumstances where there is material and enduring transmission congestion and where there is a clear case that region change will improve the economic efficiency of the market. The Commission considers that the criteria and process for consideration of applications for region change set out in the Rule as made and described in more detail below, represents an efficient and robust process for region change in the NEM.

Criteria for region change

The MCE considered that the criteria for assessing a region change should be forward looking and economically based. A net improvement to the efficiency of dispatch was considered a reasonable basis for the revised criteria. The MCE also considered that there should be an economic benefit threshold, such as [\$xxx] or [x%] of the gross value of energy traded in the market.

In light of its experience considering the Snowy region related proposals, the Commission has elaborated on and refined the MCE's proposed criteria. The criteria set out in the Rule as made require the Commission to be satisfied that the region change solution will materially improve economic efficiency, which includes but is not limited to, improvements in productive efficiency, efficiency in relation to the management of risk and the facilitation of forward contracting, and long term dynamic efficiency. The region change must also be an appropriate and timely course of action in all the circumstances, having regard to the alternative congestion management options and must also be consistent with power system security and reliability. Finally, where the period for implementing the region change is proposed to be greater than or less than the standard three years, the person proposing that implementation period must explain why it should be different.

Accepting a region change application

The process for region change in the draft Rule commences with an application, which may only be made by NEMMCO or a Registered Participant.^a A key component of the MCE proposal was for applicants to be required to provide a substantive case in support of their application, as a means of deterring misconceived applications. The Commission has given effect to this policy intent by introducing into the Rule as made a formal step at the start of the process. This requires an application from either a Registered Participant or NEMMCO to be “complete”. A complete application must:

- Demonstrate the presence of a material and enduring congestion problem;
- Present a technically competent proposal for region change (with information from NEMMCO if required);
- Provide a preliminary case that the region change will or is likely to materially improve the economic efficiency of the market; and
- Present a case that supports a region change as the procedurally appropriate and timely response, given the alternative means of managing congestion.

One new inclusion in the Rule as made is the power for NEMMCO to provide confidential information to an applicant (or alternative proponent) for the purposes of preparing a technically competent application or undertaking supplementary economic analysis. The Commission considers it important for intending applicants to have access to all information necessary to prepare and supplement their region change applications. The new exception (clause 8.6.2(o)) means NEMMCO can disclose information that it may consider is commercially sensitive to an intending applicant. The exception prevents NEMMCO from disclosing any information provided to it by a third party on a confidential basis. It also requires the recipient of the confidential information to execute a confidentiality agreement not to disclose the information, except to the AEMC.

Once the Commission has received an application that complies with the requirements set out in the Rule as made, it will undertake a preliminary consultation of 21 business days. This early consultation provides stakeholders with the opportunity to make submissions at an early stage on whether the region change application should proceed through a full process for region change.

Having taken account of any comments from this preliminary consultation, the Commission must determine whether or not to accept the region change application.

^a A *Registered Participant* is “a person who is registered by NEMMCO in any one or more of the categories listed in clauses 2.2 to 2.7 (in the case of a person who is registered by NEMMCO as a *Trader*, such a person is only a *Registered Participant* for the purposes referred to in clause 2.5A). However, as set out in clause 8.2.1(a1), for the purposes of some provisions of clause 8.2 only, NEMMCO and *Connection Applicants* who are not otherwise *Registered Participants* are also deemed to be *Registered Participants*.” National Electricity Rules version 16, Chapter 10, Glossary.

If the Commission considers that it should not proceed, it may make a decision to not accept the application and publish its reasons for its decision. If it is satisfied that the application is complete the Commission will make a decision to accept the region change application and commence first round consultation. Once the Commission accepts an application and commences first round consultation, an applicant is unable to withdraw the region change application.

First round consultation

The first round consultation stage (75 business days) is a critical stage of the region change process set out in the draft Rule. At this stage and only at this stage, other parties can propose alternative region solutions that seek to address the same material and enduring congestion problem identified by the applicant. These alternative region solutions must meet the same initial criteria as the region change application in relation to an alternative region solution.

Also at this stage, the Commission may direct the applicant, or a person putting forward an alternative region solution in a submission, to provide supplementary economic analysis (which may include economic modelling). The Rule as made empowers the Commission to direct NEMMCO to provide information, e.g. constraint equations orientated to the proposed region change, to support the preparation of this supplementary economic analysis.

Draft region determination and second round consultation

The Commission's draft region determination will consider the region change application and any accepted alternatives against the "base case" of the continuation of the then prevailing regions, and against each other. It will be guided by the economic criteria specified in the Rule as made as well as the NEM Objective. This process enables the Commission to consider all alternatives together and adopt a region change solution that is the best available solution to an identified congestion problem. The Rule as made requires the Commission to publish its draft region determination within 60 business days of the end of first round consultation. Second round consultation on the draft region determination is also 60 business days.

Final region determination and implementation

After considering any submissions from second round consultation, the final stage of the region change process is for the Commission to issue a final region determination within 40 business days of the end of the second round consultation.

Regarding implementation of a region change, NEMMCO must prepare and publish a "Region Change Implementation Procedure" on the recommended region change option as presented in the draft region determination no later than the close of second round consultation. This provides stakeholders an opportunity to consider implementation issues associated with a region change option before the decision is finalised. The default lead time for implementing a region change will be three years

after the final region determination is issued, however, the Rule as made provides flexibility in the implementation lead times.

The MCE proposal recommended consultation with jurisdictions that may be affected by a region change prior to issuing a final region determination. The Commission agrees that consultation with jurisdictions that may be affected by a region change is appropriate and the Rule as made requires the Commission to do so.

The MCE proposal also recommended that the Commission have a role to undertake an ex post review of the impacts of an implemented region change. The Commission considers that such a review would arguably introduce an unnecessary degree of regulatory risk to the overall region change process. It does not consider that there is a role for such a review as part of the region change process, and has accordingly not included such a provision in the Rule as made.

The Commission notes that the specified consultation and assessment timetables for the region change process are longer than the standard timetables for a Rule change given the complexity of the issues under consideration. The Rule as made also provides the Commission with the flexibility to extend timetables if required.

1 The Rule change proposal

On 5 October 2005, the Chairman of the Ministerial Council on Energy (MCE), the Hon Ian Macfarlane MP, submitted a Rule change proposal on behalf of the MCE to reform the criteria and process for region change in the National Electricity Market (NEM).

1.1 An Overview of the policy context for the proposed Rule change

Regions perform a critical role in the NEM design. According to the MCE proposal, their purpose:

“is to allow market prices to reflect the effect of significant ‘pinch-points’ that lead to congestion in the transmission network ... Regional boundaries facilitate the price rationing of transmission resources where generation and demand patterns require more capacity than is available from the transmission system.”¹

Region boundaries are intended to transparently identify physical points of material and enduring congestion, so that market participants can more efficiently manage the risks associated with inter-regional trade. Price separation between regions, which occurs when key transmission flow paths become congested, can also provide a locational signal for efficient new generation investment and load.

There are currently six regions within the NEM. The New South Wales, Victorian, Queensland, South Australian and Snowy regions were established at market start in December 1998. The Tasmanian region was added when Tasmania joined the NEM in 2005. These regions have remained unchanged since their establishment. The Commission’s final Rule determination² and Rule³ to abolish the Snowy region, with effect from 1 July 2008, is the first change to an existing region since market start.

The initial regions are largely based on jurisdictional boundaries at NEM commencement. This reflected the state-based nature of power system development prior to market start, with regional power systems independently developed by electricity utilities serving each State and Territory. As a consequence, interconnection was typically weak, or non-existent, at jurisdictional boundaries. This made the boundaries between jurisdictional transmission systems a logical place to establish the initial set of NEM region boundaries.

Ideally, regions should be areas within the power system that are free of material congestion. In practice, the trade-offs made between the granularity of the regional

¹ Ministerial Council on Energy (MCE), *National Electricity Rules – Rule Change Request Reform of Regional Boundaries*, Rule change proposal, 5 October 2005, p.3. (MCE Rule change proposal)

² AEMC 2007, *Abolition of Snowy Region*, Final Rule Determination, 30 August 2007, Sydney.

³ National Electricity Amendment (Abolition of Snowy Region) Rule 2007 No. 7.

structure and transaction costs mean that some degree of congestion is likely to remain.

Regional market designs, such as the NEM, do not seek to identify all points of congestion nor do they seek to dynamically adjust for transitory changes in the location of congestion. They seek to strike a balance between the granularity of the regional structure and the likely transaction costs associated with trading across many region boundaries, with a view to maximise incentives for efficient operational and investment behaviour at least cost. Their purpose is to identify physical “choke” points of material and enduring congestion.

The inherent volatility associated with wholesale power flows implies that most points of congestion are unlikely to be both material and enduring. However, power systems are dynamic, with changes to underlying flows resulting from growth and development of the system possibly leading to the emergence of new points of material and enduring congestion over time.

The NEM market design recognises these practical realities and incorporates a process to trigger region change, to ensure that regions evolve to reflect points of material and enduring congestion across the integrated NEM.

The previous rules governing the evolution of region change, were reflected in rule 3.5 of the National Electricity Rules and largely relied on a technical trigger and technical assessment criteria to determine the merits of a potential change. The trigger conditions and criteria were established to facilitate a relatively dynamic approach to region change as a primary response to address material congestion, which was not addressed within a relatively short period by operational or investment responses. The previous rules do not incorporate economic criteria into the assessment process.

Policymakers have noted the fundamental uncertainties, arbitrary nature, and potentially high transaction costs associated with this relatively dynamic approach to managing changes to the regional structure. The MCE proposal seeks to introduce a more stable and efficient evolution of NEM regions and region boundaries with the least disruption and cost to the market; this approach is consistent with its incremental approach to congestion management.

Policymakers have placed a moratorium on the current region change process pending the outcome of this Rule change proposal through clause 3.5.4.

1.1.1 Policy principles governing region change

In December 2003, the MCE submitted a report to the Council of Australian Governments detailing its proposed policy response to the Parer Report.⁴ The MCE report included a package of electricity transmission reforms to establish, among other things, a new and more transparent process for the assessment of region

⁴ Council of Australian Governments Energy Market Review, *Towards a Truly National and Efficient Energy Market*, Final Report, December 2002.

changes for the NEM. The expectation was that these reforms would facilitate more efficient investment and operational responses.⁵

In May 2005, the MCE issued a Statement on NEM Electricity Transmission, which further clarified the key policy principles governing its approach to region change. Key conclusions relating to region change included:

- **“Regional Structure** - The regional structure for the wholesale market should be stable, based on current boundaries and with robust economic criteria to support incremental change as required. MCE accepts [Charles River Associates’ (CRA’s)] advice that no material efficiency benefits would be gained from a nodal pricing approach at this stage of market development.
- **Frequency of Boundary Change** - The existing process of annual boundary reviews will cease. Two alternative options will be considered by the MCE: periodic reviews with a longer interval between reviews (eg. the 5-yearly cycle recommended by CRA); or boundary change assessment by application (eg. participants would apply to the AEMC for a review of regional boundaries under the formal regional boundary Rule change process). The MCE supports giving advanced notice of a boundary change to allow registered participants the opportunity to adjust their contract trading positions and minimise their commercial risk.
- **Change Criteria** - Criteria to amend boundaries should be forward looking and economically based. A net improvement to the efficiency of dispatch is considered a reasonable basis for the revised criteria. The MCE will undertake further work to refine the thresholds which will trigger a change. This will be reflected in the Rule change to be initiated by the MCE. There will be consistency in the economic criteria used for assessing regional boundary changes and for assessing transmission investment.”⁶

These policy principles are reflected in the MCE’s Rule change proposal, which include the following:

- The region change process should support the maintenance of a relatively stable regional structure, based on the existing regions;
- The process should be integrated into a comprehensive congestion management framework that allows for incremental responses to address material and persistent congestion;
- Within this framework, region change should be viewed as an appropriate long term response to address enduring “choke points” of material congestion in the

⁵ MCE Rule change proposal, p.1.

⁶ MCE, *Statement on NEM Electricity Transmission*, May 2005, p.4-5.

absence of other economic responses, such as new investment. It is envisaged that region changes would be undertaken relatively infrequently;

- Proposed region changes should be assessed against forward-looking, economic criteria;
- Region changes should be implemented in a manner that minimises uncertainty and adjustment costs for market participants; and
- Potential region changes that may have consequences for retail pricing within a jurisdiction should be discussed with affected jurisdictions prior to publication of a final region determination.⁷

This incremental approach represents a departure from the previous policy paradigm which was based on more dynamic region changes to manage congestion, subject to deterministic region change criteria.

1.1.2 Related developments

This Rule determination has been developed contemporaneously with the Australian Energy Market Commission (AEMC or Commission) undertaking a Congestion Management Review (CMR) at the direction of the MCE. The Commission notes that Section 3.2 of the CMR Terms of Reference indicates that region boundary review criteria and review triggers should be considered in the context of formulating a comprehensive congestion management framework to manage material congestion issues until they are addressed through investment or a region change.

The Commission is conscious of the inter-relationship between this Rule change proposal and other work it is progressing on congestion management, in particular the CMR and the various Rule change proposals related to managing congestion in the Snowy region. In particular, the implementation of the abolition of the Snowy region has greatly informed the Commission's consideration of that aspect of this Rule change proposal.

Accordingly, the Commission's adopted approach has enabled it to consider these projects in parallel, with a view to developing a congestion management regime that is comprehensive, appropriately integrated and consistent with an incremental policy approach. The Commission's approach has been articulated in its June 2006 and December 2006 Statement of Approach documents, and most recently in the Congestion Management Review Work Program Update, which was foreshadowed in its March 2007 Congestion Management Review Directions Paper.⁸

⁷ MCE Rule change proposal, p.3.

⁸ See AEMC 2006, *Congestion Management Program - Statement of Approach*, 6 June 2006, Sydney; AEMC 2006, *Congestion Management Program - Statement of Approach December 2006*, 7 December 2006, Sydney; AEMC 2007, *Congestion Management Review Work Program Update*, 28 March 2007, Sydney; AEMC 2007, *Directions Paper, Congestion Management Review*, 12 March 2007, Sydney.

The Commission has drawn from work undertaken in the context of preparing its CMR Draft Report and from its Snowy region related Rule change experience in formulating this Rule determination on process for region change.

1.2 Overview of the MCE proposal

The Rule proposed by the MCE seeks to respecify the criteria and process for region change. Key features of the proposal include the following:

- Introducing new assessment criteria that move from a technically based assessment to an economic one;
- Introducing a new region change process, administered by the Commission. The proposal provides for a region change process initiated by an application from a registered participant or NEMMCO. The proposed process would incorporate greater transparency and more accountable decision-making against the NEM Objective, reflecting the Rule change process established in the National Electricity Law (NEL);
- Empowering the Commission to initiate a region change review to assess the economic merits of possible region boundary changes to address identified “choke points” of material and enduring congestion in the event that applications are not forthcoming. The Commission would be required to publicly report the findings of its review; and
- Empowering the Commission to undertake a post-implementation review of an implemented region change to assess whether the change was successful.

The next Section outlines the key features of the proposed assessment criteria and region change process.

1.2.1 Region change and review assessment criteria proposed by MCE

The MCE proposal envisages that region change applications will be assessed against “application” criteria to determine whether they are to be accepted for evaluation, and subsequently assessed against “evaluation” criteria to determine whether the proposed region change will be implemented.

The proposed application criteria focus on the nature and quality of the application including:

- Eligible Applicant Test. The MCE proposal restricts eligible applicants to registered market participants and NEMMCO (proposed clause 3.5.2(a)).
- Five-year Moratorium. The Commission can reject an application seeking the same or substantially the same region change as one considered previously during the previous 5 years. The Commission can accept an application that would otherwise be rejected under this criterion where it can demonstrate that material changes have occurred (proposed clause 3.5.2(b)).

- Information Requirements. Applications must be substantial, providing: a detailed description of the proposed region change; reasons for the proposed change; all relevant technical details; and detailed analysis suggesting that the proposal would result in material and enduring net economic benefits to all who produce, consume and transport electricity, consistent with the NEM Objective (proposed clause 3.5.2(d)). The Commission would be empowered to refuse to consider an application until the information requirements are met (proposed clause 3.5.2(e)).
- Misconceived or Lacking in Substance. The Commission can refuse to consider an application it considers to be misleading or lacking in substance, particularly where it is considered to be designed to discourage investment proposals (proposed clause 3.5.2(f)).

Proposed “evaluation” criteria focus on the extent to which the proposal would maximise net economic benefits, consistent with the NEM Objective, including:

- Economic Benefits Test. The Commission should base its determination on whether the proposed region change is likely to result in a material and enduring net economic benefit to all who produce, consume and transport electricity (proposed clause 3.5.2(c)). The MCE proposes that a net improvement in dispatch efficiency greater than a pre-determined threshold value would be a reasonable basis on which to make the assessment. The MCE also suggests that the evaluation be based on a forward-looking assessment of the net economic benefits.⁹
- Transparent and Consistent Application of the Process. The Commission must also have regard to the transparent and consistent application of the process across the market (proposed clause 3.5.2(c)(1)).
- Alternative Mechanisms Test. The Commission must consider the extent to which alternative mechanisms provided for in the Rules, or an alternative region proposal, may achieve greater benefits (proposed clause 3.5.2(c)(2)).

Proposed criteria governing the Commission’s decision to initiate a review of possible region changes focus on materiality and the likelihood of an investment response. Under the proposal, the Commission would be empowered to initiate a review of possible region changes where:

- Materiality of Congestion. A constraint has been identified on a national transmission flowpath in the Annual National Transmission Statement (ANTS) that the Commission considers material and enduring (proposed clause 3.5.2(p)(1)).
- Investment Response. The Commission considers that it is unlikely that an investment proposal will relieve the constraint within two years (proposed clause 3.5.2(p)(2)).

⁹ MCE Rule change proposal, p.6.

- Five year Moratorium. The constraint has not been considered as part of a previous region boundary change application during the previous five years (proposed clause 3.5.2(p)(3)).

1.2.2 Region change process proposed by MCE

The region change process proposed by the MCE is comparable to the standard Rule change process established in the NEL, incorporating a two-stage public consultation process, application of a region change test, and a final decision on whether or not to make a region change. A schematic summary of the proposed process of region change by application is provided in Figure 1.1. Key features of the proposed region change process include:

- Application-Driven Process. The MCE proposes that a process to change a region boundary would only be triggered by applications from eligible parties.
- Public Consultation. The MCE envisages a two-stage public consultation process, where the Commission invites submissions on accepted proposals and on the draft region determination (proposed clauses 3.5.2(g) & (l)). Stakeholders could also propose alternative region options to achieve a similar region change during the first public consultation round (proposed clause 3.5.2(h)(2)). The proposal also requires the Commission to convene a public hearing on request during the first and second public consultation rounds (proposed clauses 3.5.2(h)(3)-(i) & 3.5.2(l)(2)-(m)).
- Statutory Process Timeframes. The MCE proposal incorporates more generous statutory timeframes than the standard Rule change process, reflecting the inherent complexities and sensitivities associated with region change, and the consequential need for additional time to undertake consultation, analysis and assessment. Statutory timeframes proposed for key elements of the assessment process include:
 - first round consultation period – 40 business days after publication of Notice of Proposed Region Boundary Change (proposed clause 3.5.2(h)(2));
 - publication of draft region determination – within 60 business days after close of the first round submission period (proposed clause 3.5.2(j));
 - second round consultation period – 40 business days after publication of the draft region determination (proposed clause 3.5.2(l)); and
 - final region determination – within 40 business days after close of the second round consultation period (proposed clause 3.5.2(n)).
- Overall, it is envisaged that the proposed process from Notice of Proposed Region Boundary Change to publication of a final region determination would take 180 business days.
- No Expedited Process Option. Unlike the standard Rule change process, which incorporates an expedited process for routine, non-controversial rule changes (s.96 of the NEL), the MCE proposal does not include an expedited assessment

process. This reflects the inherent complexity and sensitivity associated with region boundary change.

- Three-year Minimum Implementation Period. The proposal incorporates a three-year implementation period following publication of the final region determination (proposed clause 3.5.2(p)).
- Review of Region Change. The MCE proposes that the Commission be empowered to initiate a review to determine whether a potential region change may meet the assessment criteria where certain threshold measures of congestion are met.¹⁰
- Post-implementation Evaluation. The MCE also proposes that the Commission undertake an evaluation of a region change after its implementation to assess whether it was “successful”.¹¹ However, this post-implementation evaluation process is not addressed in the proposed Rule.

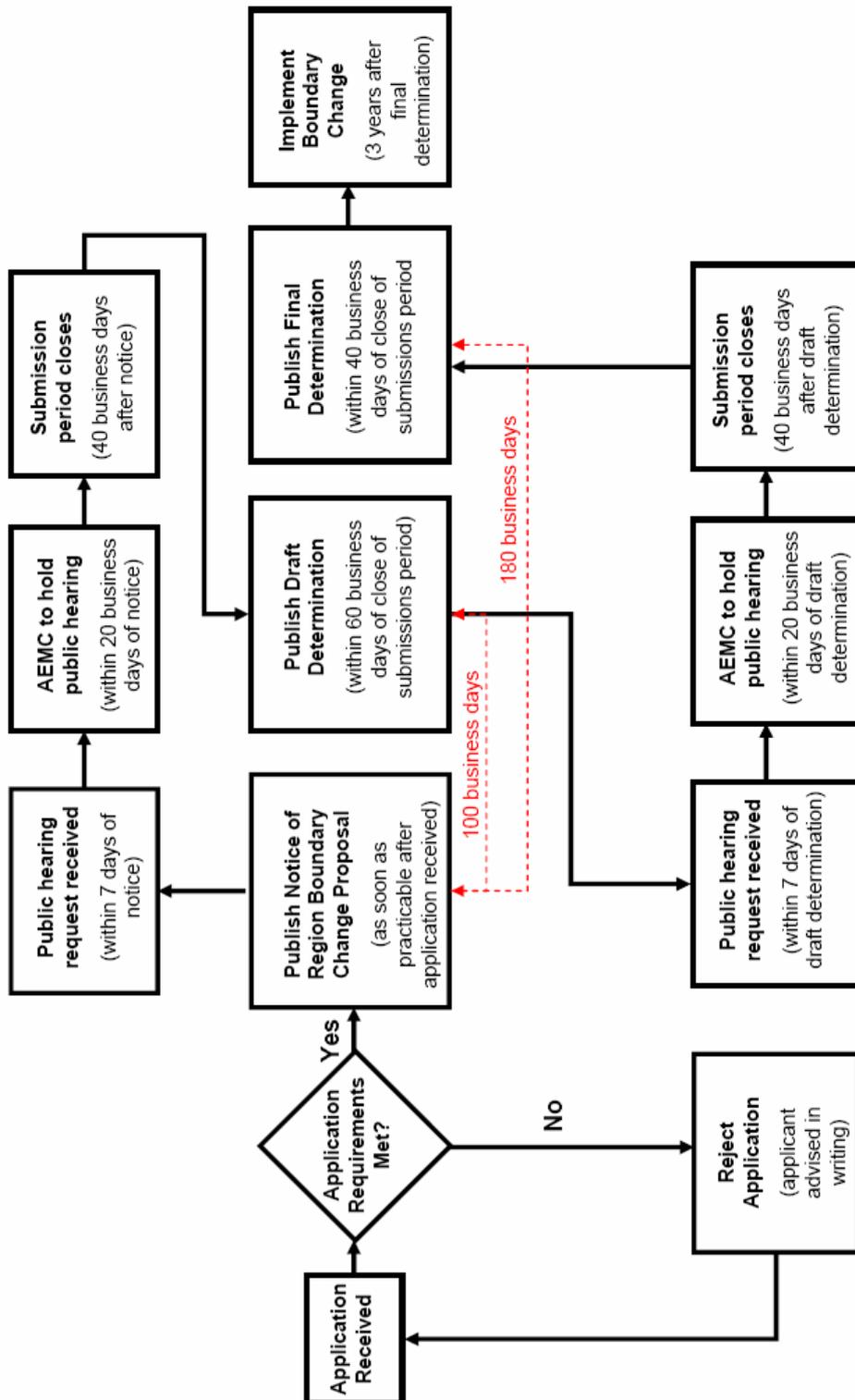
The MCE’s proposal also suggests that if a proposed region change may have implications for retail pricing within a jurisdiction that the Commission should consult with the relevant jurisdictions before publishing its final region determination.¹²

¹⁰ MCE Rule change proposal, p.4-5, 7, 12.

¹¹ MCE Rule change proposal, p.6.

¹² MCE Rule change proposal, p.7.

Figure 1.1 MCE region change proposal: process schematic



1.3 Problems identified with the current Rules

The previous rules governing region boundary change envisaged a relatively dynamic regional structure, with region boundaries reviewed annually and changed once the level of congestion exceeds a range of technical thresholds specified in the Rules.

The MCE proposal summarises the problems it identifies with the previous rules governing region change, stating that:

“The boundary change process contained in the existing National Electricity Rules ... is technical and arbitrary, and does not necessarily provide the optimal boundary solution on an economic basis. The current boundary change process also provides inadequate guidance on the weighting of each criteria. There is therefore the potential for a region to be formed that would result in a negative net economic benefit for the NEM. The initial boundary change process also allowed boundaries to be reviewed and changed on a regular basis. This created unnecessary risk and uncertainty for industry resulting in an increased cost to business and reduced efficiency for the industry as a whole.”¹³

Accordingly, the proposal suggests that continuation of the current rules governing region change is unlikely to promote efficient market development, consistent with the NEM Objective.

When the initial Rules commenced on 1 July 2005, the MCE placed a moratorium on applying the existing rules governing region change until the develop and implementation of a revised criteria and process.

1.4 How the proposal seeks to address the identified problems

The MCE proposal seeks to address the identified problems by respecifying the assessment criteria and process for undertaking a region change. The proposed approach shifts the focus of the assessment from a technical to economic basis, consistent with the NEM Objective. It seeks to introduce a more transparent and accountable process for the Commission to administer.

This proposed market participant initiated application process would replace the current market institution based response, with its limited discretion to deterministic criteria. This has the potential to improve the efficiency and effectiveness of the process, while minimising the overall cost for market participants.

¹³ MCE Rule change proposal, p.3.

2 Rule determination

On 20 December 2007, the Commission determined in accordance with section 102 of the NEL to publish this Rule determination and in accordance with section 103 of the NEL to make the *National Electricity Amendment (Process for Region Change) Rule 2007 No.11*, the “Rule as made”. The Rule as made will commence on 1 July 2008. The reasons for this delayed commencement are set out in Section 3.2.3.

The Rule as made has sought to embody the key policy principles and intent of the original proposal, while reflecting the Commission’s current legal drafting standards and practice, and incorporating the important lessons learned through the process of considering region boundary change (and other) proposals in respect of the Snowy region.

2.1 Commission’s power to make the Rule

The MCE’s proposal seeks to establish a new process and assessment criteria for amending NEM region boundaries.

The Commission is satisfied that the Rule as made addresses a matter for which it can make Rules, pursuant to section 34 of the NEL. Section 34 of the NEL empowers the Commission to make rules for regulating: the operation of the NEM; the operation of the national electricity system to ensure safe, secure and reliable system operation; and the activities of persons participating in the NEM or involved in its operation. The Rule as made specifically relates to the:

“division of the national electricity market into regions for the purpose of the operation of the wholesale exchange operated and administered by NEMMCO.”¹⁴

The Commission is able to make a rule where it “is satisfied that the Rule will or is likely to contribute to the achievement of the national electricity market objective.”¹⁵

The National Electricity Market objective seeks to promote:

“efficient investment in, and efficient use of, electricity services for the long term interests of consumers of electricity with respect to price, quality, reliability and security of supply of electricity and the reliability, safety and security of the national electricity system.”¹⁶

This Rule determination sets out the Commission’s reasons for making the Rule as made. In developing the Rule as made, the Commission has taken into account:

¹⁴ See item 9, Schedule 1 to the National Electricity Law (NEL).

¹⁵ Section 88 of the NEL.

¹⁶ Section 7 of the NEL.

- The Commission's powers under the NEL to make the Rule;
- The proponent's Rule change proposal and proposed Rule;
- Submissions received;
- Relevant MCE statements of policy principles; and
- The Commission's analysis as to the ways in which the Rule as made will, or is likely to, contribute to the achievement of the NEM Objective, such that it satisfies the statutory Rule making test.

The Commission has examined the Rule as made and assessed it against the statutory Rule making test. Section 3 presents the Commission's analysis of key issues raised by the MCE proposal. This analysis supports the Commission's conclusion that the Rule as made satisfies the statutory Rule making test.

2.2 Consultation on the MCE proposal

First round consultation pursuant to s.95 of the NEL commenced on 12 January 2006. The first round consultation period closed on 10 March 2006. The Commission received 13 submissions from:

- NEMMCO;
- The Australian Energy Regulator (AER);
- CS Energy;
- Delta Electricity;
- Hydro Tasmania;
- The National Generators Forum (NGF);
- Origin Energy;
- Powerlink Queensland;
- Snowy Hydro Limited;
- TransGrid;
- The Energy Retailers Association of Australia (ERAA);
- Ergon Energy; and
- TRUenergy.

Second round consultation pursuant to s.99 of the NEL commenced on 27 September 2007 and closed on 9 November 2007. The Commission received two submissions from Powerlink and NEMMCO.

All submissions are available on the Commission's website.

From the outset, the Commission has recognised the inter-related nature of this process for region change proposal, the various Snowy region related Rule change proposals¹⁷, and the CMR. The Commission considered that it was in the public interest to align its consideration of these related projects so that they could be addressed in a comprehensive, integrated, and effective manner. To coincide the release of the MCE process for region change draft Rule determination with the evolving publication timeframe for the CMR Draft Report, the Commission issued various extensions to the publication date of the draft Rule determination.

The Commission also extended publication of this Rule determination from 6 December 2007 to 20 December 2007. It considered the extension was in the public interest in order to fully address the issues raised in second round submissions.

Table 2.1 summarises these extensions and the other key consultation dates related to the Process for Region Change proposal.

Table 2.1: Process for region change – key consultation dates

Stage of consultation	Notice type	Date of notice	Submissions close / Publication date
First round consultation	s.95	12 January 2006	10 March 2006
Extension publication Draft Rule Determination	s.107	4 May 2006	30 November 2006
Extension publication Draft Rule Determination	s.107	9 November 2006	14 December 2006
Extension publication Draft Rule Determination	s.107	14 December 2006	28 June 2007
Extension publication Draft Rule Determination	s.107	10 May 2007	30 August 2007
Extension publication Draft Rule Determination	s.107	30 August 2007	20 September 2007
Extension publication Draft Rule Determination	s.107	20 September 2007	27 September 2007
Publication Draft Rule Determination – second round consultation	s.99	27 September 2007	5 October 2007
Extension publication Final Rule Determination	s.107	6 December 2007	20 December 2007
Publication Final Rule Determination	s.102/103	20 December 2007	N/A

¹⁷ The Commission published its decisions on the three Rule change proposals related to managing congestion in the Snowy region on 30 August 2007. These included the final decision to accept the Abolition of Snowy Region Rule change proposal, and the two draft decisions to not accept the Split Snowy Region Rule change proposal and to not accept the Congestion Pricing and Negative Residue Management Arrangements for the Snowy Region Rule change proposal. These determinations are available on the Commission's website: www.aemc.gov.au.

These publication extensions were consistent with revised publication timeframes published in the Commission's June 2006 and December 2006 Congestion Management Program – Statement of Approach documents, and more recently in the CMR Work Program Update of 28 March 2007, which was foreshadowed in the March 2007 CMR Directions Paper.

Coordinated development of these projects has allowed the Commission to develop an integrated approach toward congestion management, which is reflected in the refinements it has proposed in the Process for Region Change Rule as made. The Commission's views have been informed by the experience it has gained from evaluating the Snowy region related Rule change proposals and from the analytical work undertaken in the context of preparing the CMR Draft Report. The benefits of this approach are reflected in the Rule as made.

At this stage in the Process for Region Change Rule change process, the Commission considers it to be in the public interest to publish its final decision on this proposal now, rather than waiting until the publication of the CMR Final Report to the MCE. The Commission does not consider that the issues still under consideration in the CMR would materially affect the policy intent of the new region change process. As such, there is not a compelling reason to further extend the publication of this Rule determination and the Rule as made.

2.3 Assessment against the NEM Objective

The MCE proposal cites several ways in which the proposed Rule is expected to better meet the NEM Objective compared to the current rules governing region change.¹⁸

The MCE's incremental congestion management approach primarily relies on the creation of robust incentives promoting efficient investment responses to alleviate congestion. The proposal indicates that a predictable and stable framework for region change would help to encourage more efficient and timely investment responses to address material congestion by greatly reducing uncertainty over the role, function and likely implementation of region change. This would serve to encourage more efficiently timed and located new investments.

Under the Rule as made, new region boundaries can only be implemented where the net economic benefits for all who produce, consume and transport electricity are maximised, pursuant to the NEM Objective. This approach is expected to produce superior outcomes compared to the existing rules governing region change.

The Rule as made will help ensure that any future new region boundaries would reflect "choke points" of material and enduring congestion, creating clear price incentives for the more efficient location of loads and use of electricity services.

¹⁸ MCE Rule change proposal, p.8.

More efficient operational and investment responses resulting from efficient evolution of region boundaries could be expected to deliver reliable, least cost electricity services, consistent with the longer term interests of consumers.

The process for region change set out in the Rule as made is more open and transparent than the current process, which allows for better informed, more robust and accountable decision-making than under the previous Rules.

The Commission is satisfied that the Rule as made is likely to promote the NEM Objective. In reaching its conclusion, the Commission has taken account of the views expressed in submissions and analysis undertaken in the context of progressing related congestion management projects including the CMR and its assessment of the various Snowy region related Rule change proposals.

The Commission considers that application of the Rule as made will promote predictability, stability, and certainty in relation to future region boundary change, consistent with the policy principles underpinning an incremental congestion management approach and the clear stakeholder preference revealed in first round submissions. This should result in strengthening incentives for more efficiently timed and located investment over time. The Commission also considers that fundamentally changing the focus of a region change evaluation from a technical to an economic basis is more likely to result in region changes that maximise benefits under the NEM Objective.

The Commission also concludes that the reformed process for region change contained in the Rule as made will deliver greater efficiency, transparency, and accountability. Overall, the Commission considers that the Rule as made will promote efficient market development consistent with maximising outcomes under the NEM Objective. The Commission's views are more fully discussed in Section 3 of this Rule determination. This analysis supports the Commission's conclusion that the Rule as made satisfies the NEM Objective.

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3 The Commission's Rule as made: Structure and rationale

This Section explains the structure of the Rule as made that gives effect to the MCE proposal (Section 3.1). It then sets out the issues considered and reasoning behind the Commission's adopted approach. For ease of exposition, the issues are discussed in the sequence that would be followed for a hypothetical region change application:

- Section 3.2 sets out how the regions are defined and by whom;
- Section 3.3 steps through the initial stage of the process, including preparation of a region change application;
- Section 3.4 discusses the aspects of first round consultation for an accepted application;
- Section 3.5 summarises the requirements to make a region determination;
- Section 3.6 identifies the process for preparing and consulting on a draft region determination;
- Section 3.7 discusses the process for preparing a final region determination;
- Section 3.8 summarises and explains the various consultation stages and timeframes;
- Section 3.9 discusses the steps for implementing a region change in the NEM; and
- Section 3.10 references consequential amendments to definitions in the Rules.

3.1 Structure and location of the Rule as made

The Rule as made creates a new Chapter in the Rules (Chapter 2A). This new chapter contains all matters relating to the new process for region change into the Rules. The Commission considers it will be easier for stakeholders to understand the new process if it is presented in a new Chapter, rather than amending the already long Chapter 3. Also for ease of use, Schedule 2A defines terms specifically relevant to Chapter 2A. Part A of Chapter 2A of the Rule as made sets out the application process for region change. This includes elements such as eligibility criteria for applicants, what is required in an application, and what is the consultation process for a region change application. Part B of Chapter 2A of the Rule as made sets out the required steps to enable the efficient and effective implementation of a region determination made by the Commission.

The Rule as made deletes the clauses of the Rules currently related to changing regions, clauses 3.5.1 to 3.5.5.

3.2 Starting position

3.2.1 Defining regions under Chapter 2A

Clause 2A.1.2(a) of the Rule as made establishes that the AEMC shall determine the regions for the purpose of conducting the spot market, and that a region may only be changed pursuant to an application under the Process for Region Change Rule as made. This represents a transfer in responsibility under the Rules from NEMMCO to the AEMC to both evaluate and determine region change proposals, consistent with the policy intent of the MCE proposal.

NEMMCO continues to have responsibility under the Rules for maintaining and updating the Regions Publication periodically, e.g. to ensure that mapping of connection point to regions is kept up-to-date. The Rule as made moves NEMMCO's power to publish the Regions Publication from clause 3.5.5 of the Rules to clause 2A.1.3 of the new Chapter 2A. The defining characteristics of each region cannot, however, be changed by any means other than through a region determination by the AEMC under the new Chapter 2A process for region change.

Clarity on who is responsible for defining the regions, and precision on the scope of what is being defined, are important elements of a robust, transparent process for an application initiated region boundary change. The Commission sought stakeholder comment on what, specifically, is determined when it makes a region determination. There were no submissions on this issue. The Commission has decided therefore that a region should be defined at any point in time by:

- The Regional Reference Node (RRN);
- A mapping of connection points to a Region; and
- A list of region boundary metering points.

3.2.2 Changing regions under Chapter 2A

Under clause 2A.1.2(b) of the Rule as made, the AEMC is the only body that can make a determination on a region changes. However, as mentioned above, the Commission considers that having determined these elements in its region determination, NEMMCO can update the mapping of connection points and the list of region boundary metering points in its periodic Regions Publication to ensure continuing accuracy, e.g. to reflect new connection points, or the construction of new transmission circuits between two Regions.

3.2.3 NEM regions at Rule commencement – 1 July 2008

On 1 July 2008, the current NEM regions will change following the abolition of the Snowy region. NEMMCO will publish its 2008/2009 Regions Publication, which identifies the "current regions", on 1 April 2008 under clause 11.13.10 of the Rules.

For the purposes of the Rule to be made, clause 2A.1.2(c) defines the “current regions” as those in the Regions Publication, published by NEMMCO by 1 April each year. To avoid the need to define two sets of “current regions”, i.e. before and after 1 July 2008, the Rule as made will commence on 1 July 2008.

In order for the definition of the current region to apply from 1 July 2008, the Rule as made includes a savings and transitional provision (rule 11.19 of the Rule as made) to cover the time between the commencement of the Rule to be made and the first publication of the Regions Publication under Chapter 2A on 1 April 2009. The savings and transitional provision ensures that Regions Publications made under the current clause 3.5.5 (which is deleted in the Rule as made) and clause 11.13.10 are taken to be made under Chapter 2A. This definition will only apply until the “start date” of a region change determination made under Chapter 2A. At the time that a start date occurs, the clause defining the initial regions will become irrelevant and therefore these references to the Regions Publication will also be irrelevant.

3.3 Initiating a process for region change

This Section discusses the various aspects of the initial stage of the process for region change. Section 3.3.1 discusses the merits of an application-based approach over periodic review. Section 3.3.2 highlights how much of the Commission’s refinement of detail around the MCE proposal has been informed by its work on the Snowy region related Rule change proposals. Section 3.3.3 steps through the preparation of an application, defining further the specific requirements for a “complete application”. Section 3.3.4 discusses the process once the Commission determines whether an application is complete or not. Section 3.3.5 sets out how the Commission decides to accept or not accept an application for region change. Section 3.3.6 comments on the Commission’s views on publishing guidelines to assist stakeholders in preparing region change applications.

3.3.1 Application versus periodic review

The MCE proposal discusses initiating a region change process either by applications from Registered Participants¹⁹ or NEMMCO or through a periodic assessment, possibly aligned with the five-year reset period for regulated transmission networks. The MCE concluded that an application initiated approach was more appropriate. In the first round consultation, some stakeholders supported this conclusion, making the following key points:

¹⁹ A *Registered Participant* is “a person who is registered by NEMMCO in any one or more of the categories listed in clauses 2.2 to 2.7 (in the case of a person who is registered by NEMMCO as a *Trader*, such a person is only a *Registered Participant* for the purposes referred to in clause 2.5A). However, as set out in clause 8.2.1(a1), for the purposes of some provisions of clause 8.2 only, NEMMCO and *Connection Applicants* who are not otherwise *Registered Participants* are also deemed to be *Registered Participants*.” National Electricity Rules version 16, Chapter 10, Glossary.

- An application initiated process would avoid the uncertainty, risk, and undue regulatory costs associated with a periodic assessment process;²⁰
- A periodic assessment process initiated by the Commission is likely to be unnecessary as commercial interests would bring forward a proponent for any region change that is likely to meet an economic benefits test;²¹
- Registered Participants are best placed to identify whether a region change is needed since they face the costs and benefits of region change;²² and
- The Commission does not currently have a market monitoring role.²³

These concerns echoed those in CRA's Final Report for the MCE on NEM transmission region boundary structure (CRA Final Report). This suggests that a region change process initiated by a regulatory body would be inconsistent with the notion of efficient market development being initiated by the independent decentralised decision-making of market participants.²⁴

However, the Commission also noted the views of stakeholders who supported a periodic assessment approach. The key arguments cited were:

- The current ANTS analysis provides an existing information source which could be used to trigger a review – which could be supplemented by an application-led approach, if required;²⁵
- The current ANTS could be extended to include a forward-looking economic assessment based on materiality threshold triggers – which could then prompt further assessment by the Commission;²⁶
- Periodic review would avoid the Commission having to handle frivolous applications;²⁷ and
- An application initiated approach:
 - requires resources that are not currently available;
 - disadvantages smaller market participants;

²⁰ CS Energy, first round submission, MCE Rule change proposal, p.1.

²¹ CS Energy, first round submission, p.1.

²² Origin Energy, first round submission, MCE Rule change proposal, p.2.

²³ Origin Energy, first round submission, p.3.

²⁴ Charles River Associates (CRA), *NEM – Transmission Region Boundary Structure*, Final Report, prepared for the Ministerial Council on Energy, May 2005, p.48.

²⁵ Delta Electricity, first round submission, MCE Rule change proposal, p.2-3.

²⁶ TRUenergy, first round submission, MCE Rule change proposal, p.3.

²⁷ Energy Retailers Association of Australia (ERAA), first round submission, MCE Rule change proposal, p.2.

- encourages misconceived behaviour – and imposes costs on other participants in responding to perceived misconceived behaviour; and
- increases uncertainty and mitigates against co-ordinated decision-making.²⁸

The Commission agrees with the MCE that a case can be made for adopting either approach, but that, on balance, the case for an application initiated approach is stronger. Periodic assessment may be procedurally more predictable, but might fail to address material congestion in a timely manner. It might also result in the imposition of an unnecessary additional layer of cost and risk if there is no economic case for changing the regions when the periodic review is due. While more frequent periodic review would address the former, it would potentially exacerbate the costs and risks associated with the latter.

Similar problems apply to the MCE's proposal that the Commission should be able to initiate a region change review if it has not received an application for an identified material and enduring congestion point. In addition, the Commission considers that the market perceptions of regulatory risk would be greatly magnified if the Commission were empowered to initiate a periodic review process. It could create the perception of an inherent conflict of interest where the Commission recommended a region change, as part of a review, which later is incorporated into a region change application to be determined by the Commission.

For example, if the Commission conducted such a review it may include a recommendation for a proposed region change. If a Registered Participant put forward a region change application with that very proposed region change, then the Commission would have to make a region determination on the very region change it recommended in its periodic review, promulgating the perception of an inherent conflict of interest.

An application initiated process would provide a more flexible and market-based mechanism for initiating region change. It would also substantially remove any perceptions of the Commission having any conflict of interests when it decides on region changes. Reliance on market participants to propose region change is more likely to ensure that meritorious options are identified and examined at an appropriate time, promoting efficient evolution of region boundaries. It is also likely to minimise overall compliance and regulatory costs compared to periodic assessment.

In the draft Rule determination, the Commission noted that in other contexts (e.g. the Last Report Planning Power (LRPP)) the Rules provide for a "safety net", if anticipated responses do not emerge. No submissions on the draft Rule determination commented on whether such a safety net provision is appropriate in the context of an application initiated region change process, given the issues raised above. The Commission has therefore determined not to include a periodic review process as part of the new region change process. The effect of this decision is that

²⁸ ERAA, first round submission, p.2-3.

unless the AEMC receives a region change application which forms the basis for a decision to change the regions, the regions will be remain unchanged.

3.3.2 Lessons learned from Snowy region related proposals

The Commission's experience in managing multiple Rule change proposals to change the Snowy region has provided practical information about an application process for region change. The Commission has made refinements at the practical level to the MCE's proposed process in light of this experience.

For example, the MCE proposed that the Commission be empowered to consider and accept, if appropriate, alternative region solutions put forward in submissions on a region change application. While there is merit in the intent of that proposal, the Commission's experience demonstrated the problems with receiving alternative proposals at later stages of the Rule change process. To avoid encountering those problems as part of the region change process, the Rule as made only permits alternative region solutions to be put forward in submissions as part of first round consultation and only by Registered Participants and NEMMCO (see Section 3.4). This will enable the Commission to consider all possible alternatives simultaneously when making a draft region determination.

The Commission's experience with the Snowy region proposals has also identified some gaps in the MCE's proposal, particularly related to the implementation of a region change. Since a region change had never been undertaken when the MCE proposed its Rule change, there is limited detail in the MCE proposed Rule on the actual implementation of a region change. While drafting the Rule to abolish the Snowy region, the Commission and NEMMCO identified the numerous steps required for implementing a region change. These are discussed in Section 3.9.

These, and other lessons, are elaborated on further in the below Sections.

3.3.3 Preparing an application for region change

An effective application initiated approach requires robust and objective criteria for initial acceptance of a region change application. This is important to minimise the scope for inadequate or misconceived applications. It also ensures that the costs and uncertainties of a region change process are only incurred when there is an economic case for doing so. The MCE proposal notes that the adoption of stringent application requirements, including meeting pre-conditions linked to key elements of the congestion management regime, will help to reduce the incidence of such applications.²⁹ The Commission considers that the following framework, based on the notion of a "complete" application, addresses these concerns effectively and proportionately.

Consistent with the MCE proposal, clause 2A.2.1(a) of the Rule as made empowers any Registered Participant or NEMMCO to make a region change application to the

²⁹ MCE Rule change proposal, p.4.

Commission, but requires that any application must be complete (clause 2A.2.1(b) of the Rule as made). For the avoidance of doubt, this requirement applies to any change to the regions, including changes that have the effect of abolishing existing regions. A complete application must address the following six criteria (clause 2A.2.1(c)):

- Identify a congestion problem (clause 2A.2.2);
- Present a preliminary case as to the economic efficiency of a proposed region solution (clause 2A.2.3);
- Propose a technically competent alternative (clause 2A.2.4);
- Demonstrate that the proposed region solution is the appropriate response (clause 2A.2.5);
- Demonstrate why a congestion problem should be reconsidered if it has been considered within the past five year period (clause 2A.2.6); and
- Propose an implementation period (clause 2A.2.1(c)(6))³⁰.

The Commission considers that, collectively, these requirements establish an appropriate and proportionate benchmark for a prospective applicant to meet before the matter is progressed any further, recognising the costs and uncertainty that can arise in the market through the prospect of a region boundary change. Sections 3.3.3.1 to 3.3.3.6 describe in more detail what an application must include in order to meet each of these criteria, and therefore, become a complete application.

The scope of the material required at this preliminary stage in the process is defined by the problem that the applicant is seeking to address. For example, it is not intended at this stage to require an applicant to provide detailed economic modelling of the likely impacts of the proposed solution to the problem being identified. As discussed in the following Sections, however, the applicant needs to provide sufficient information to satisfy the Commission that the application is genuine and meritorious, and that the applicant is prepared to commit the required resources to support more rigorous assessment through the process.

From its experience with the Snowy region, the Commission is cognisant of the resource intensive nature of analysing and assessing region changes. The Commission views that an initial application hurdle, while creating a direct compliance cost, is necessary and proportionate. A process which results in poorly specified or insubstantial region change proposals progressing to formal assessment and determination is likely to impose greater and potentially unreasonable costs on the Commission and stakeholders who are then burdened with analysing the potential effect of the application. The Commission also notes that detailed technical assessments of market developments in many cases constitutes prudent commercial practice, which suggests that the net additional compliance costs might be relatively limited in magnitude, and are unlikely to deter or delay substantive applications.

³⁰ The Commission made explicit this requirement following consultation on the draft Rule.

3.3.3.1 Defining a congestion problem

Clause 2A.2.2 of the Rule as made requires a complete application to identify a problem with the existing region boundary configuration, which is attributable to the presence of enduring network congestion, and which is likely to detract materially from economic efficiency if allowed to continue. For the avoidance of doubt, the Commission considers enduring congestion excludes congestion that occurs in non-system normal circumstances.

The information and analysis required to satisfy this requirement needs to be forward looking in nature, although the application might present historical information to set the context. How applicants are required to demonstrate there is a congestion problem is an important design issue for the Rule as made.

The Commission notes the various measures that have been suggested as possible candidates for thresholds for accepting or assessing applications, e.g. measures of dispatch efficiency. The MCE proposed that the Commission consider the economic criteria and thresholds identified in the CRA Final Report, such as [\$xxx] or [x%] of the gross value of energy traded in the market for example.³¹ However, there is a significant risk that such an approach would be unduly partial and prescriptive. The Commission considers that it is important for the Rule as made to provide a degree of flexibility as to how the applicant seeks to demonstrate the economic case for changing regions. The analytical work undertaken by the Commission as part of CMR, and in assessing the Rule changes relating to congestion in the Snowy region, has clearly demonstrated that the economic impacts of congestion are multi-faceted and can vary on a case-by-case basis.

Several first round submissions noted the importance of clarifying the quantitative methodology used to inform the economic assessment, to support efficient preparation and evaluation of applications. It was suggested that the Commission should make key elements of the quantitative methodology explicit, to help reduce uncertainty and compliance costs, and to improve the predictability of decision-making from a participant perspective.³²

The Commission considers it appropriate within the Rule as made (clause 2A.2.2(3)) to specify a framework for presenting information and analysis on perceived economic inefficiencies with the prevailing regions, spanning but not limited to:

- Efficiency in relation to the impact on dispatch, including bidding incentives and dispatch outcomes;
- Efficiency in relation to risk management and forward contracting in the financial markets and the spot market; and
- Dynamic efficiency, including impacts on investment decisions.

³¹ MCE Rule change proposal, p.6.

³² Ergon Energy, first round submission, MCE Rule change proposal, p.1; ERAA, first round submission, p.1; NGF, first round submission, MCE Rule change proposal, p.2.

In its second round consultation submission, NEMMCO noted that the framework for analysis of economic efficiency did not specifically refer to allocative efficiency as a criterion.³³ The Commission considers that the draft Rule did not exclude allocative efficiency as a component of economic efficiency because the list in the draft Rule was not exhaustive. However, to avoid confusion clauses 2A.2.2(3)(i) and 2A.2.3(b)(1) of the Rule as made now include a more generic reference to economic efficiency. Applicants should consider the implications for all three types of economic efficiency, including productive, allocative, and dynamic, when preparing a region change application.

Within this broad framework, each applicant would have discretion as to how it wishes to marshal its information and analysis and present its case. However, as supported by the MCE in its proposal, the Commission would expect applicants to focus on forward-looking analysis using generally accepted quantitative techniques. Rather than requiring a specific quantitative methodology however, where economic modelling is used, the Commission would expect such modelling to be transparently and comprehensively documented – and based on accurate technical and commercial representations of the NEM and its market rules at the relevant point in time. Applicants would also be expected to make use of existing indicators of congestion and its effects, such as measures of “mis-pricing”, where appropriate and relevant to the case being made.

3.3.3.2 Presenting a preliminary case for change

Clause 2A.2.3 of the Rule as made requires a complete application to present a preliminary case explaining how the proposed region solution would or would be likely to materially improve economic efficiency. The Commission, consistent with its view on how the congestion problem should be defined, considers that the applicant should have a degree of flexibility in how it presents its case within the broad framework of the efficiency criteria discussed above.

The Commission expects applicants to make use of a range of analytical methods to demonstrate their case in particular circumstances, while retaining the focus on forward looking economic assessment. The Commission considers this approach, as compared to a prescriptive approach to thresholds and/or analytical methods required to demonstrate the attainment of such thresholds, as being an approach more conducive to robust, comprehensive assessment.

The MCE proposal raises the possibility of applying pre-determined threshold values to assess the materiality of any net economic efficiency dividends associated with a particular region change proposal. The MCE proposed that the thresholds identified in the CRA report should form the basis for consultation.³⁴ The MCE proposal also states that the Commission should be guided by stakeholder responses when setting

³³ NEMMCO, second round submission, MCE Rule change proposal, p.1.

³⁴ The CRA thresholds are reproduced in Section 1.1.3 of this Rule determination.

definitive thresholds, and that appropriate variations are within the scope of its Rule change request.³⁵

CRA acknowledges that its dispatch efficiency threshold is indicative and does not adequately address allocative and dynamic efficiency. However, CRA notes the problematic nature of forward-looking modelling, especially in relation to estimating the potential longer-term allocative and dynamic efficiency benefits that may be associated with a regional change. Despite these weaknesses, CRA concluded that use of partial indicators, such as its \$1 million per annum dispatch efficiency threshold, would provide a robust, relatively simple measure that would help to more clearly define materiality in this context and improve the predictability of decision-making for proponents.³⁶

In the first round consultation, responses were mixed on the nature, level, and appropriateness of using pre-determined thresholds in this context. Some submissions fundamentally questioned the appropriateness of prescribing arbitrary thresholds.³⁷ Others questioned the level of the threshold, noting that the margin for error associated with forward-looking modelling may be greater than the proposed threshold.³⁸ Views on what constitutes an appropriate dispatch efficiency threshold ranged from between \$1 million per annum up to \$5-\$10 million per annum.³⁹ CRA acknowledges this inherent weakness, noting that the level of the threshold is a matter of judgement.⁴⁰

The Commission's own quantitative analysis suggested dispatch efficiency gains from abolishing the Snowy region averaged around \$1 million per annum, depending on the contracting assumptions.⁴¹

While the Commission recognises the need to consider dispatch efficiency, and the value of forward looking economic modelling in this regard, it does not support the use of pre-determined thresholds. An assessment of region change options needs to examine short term and longer term impacts. While this requires the Commission to balance a range of information and analysis, some of which will be less certain and more qualitative, such a holistic assessment is preferable to a more deterministic, but partial assessment.

³⁵ MCE, p.6.

³⁶ CRA, Transmission Region Boundary Structure Final Report May 2005, p.47-52.

³⁷ For instance, see Ergon Energy, first round submission, p.2; Origin Energy, first round submission, p.5.

³⁸ For instance, see Origin Energy, first round submission, p.3; NGF, first round submission, p.3; ERAA first round submission, p.2.

³⁹ For instance, see Origin Energy, first round submission, p.3; Ergon Energy, first round submission, p.2; TRUenergy, first round submission, p.2; Delta Electricity, first round submission, p.2.

⁴⁰ CRA, Transmission Region Boundary Structure Final Report May 2005, p.51.

⁴¹ AEMC 2007, *Abolition of Snowy Region*, Rule Determination, 30 August 2007, Sydney, p.116.

3.3.3.3 Proposing a technically competent application

Clause 2A.2.4 of the Rule as made requires an application to be technically competent. The purpose of this requirement is to ensure that any application coming forward is coherent, i.e. if the application was progressed and subsequently implemented, then the result would be a set of clearly defined, functional regions. Clause 2A.2.4(a) sets out the specific technical requirements that the application must address. This requirement does not relate to whether the proposed change is desirable from the perspective of economic efficiency, or sensible and timely from a procedural perspective. It is a test of whether the application “makes sense” operationally. Examples of technically incompetent applications might be those which fail to define a RRN, or which result in a number of connection points not being allocated to a region, or to more than one region.⁴²

The Commission recognises that in order to provide a technically competent application, an applicant may require information from NEMMCO. Clause 2A.2.7 of the Rule as made provides an applicant the power to request information from NEMMCO in order to prepare a technically competent application, and requires NEMMCO to provide such information. Section 3.3.3.6 discusses clause 2A.2.7 in more detail.

A region change will require an “implementation period”. The implementation period is the period of time between publication by the Commission of its final region determination and the date on which the new regions take effect. The standard implementation period is three years from the date of final region determination. Where a region change application proposes an implementation period that is more or less than the standard three year period, that application must (in order to be technically competent) specify the reasons why a different period should be determined by the Commission (clause 2A.2.4(a)(2)).

3.3.3.4 Demonstrating the appropriateness of the region change response

In its proposal, the MCE notes that the Commission:

“should clarify the procedural order of regional boundary reviews within the broader investment framework, including the relationship between regional boundary arrangements, the regulatory test, congestion management and the [Last Resort Planning Power (LRPP)].”⁴³

The MCE envisages that:

- A local application of a congestion management regime would be applied where material congestion emerges;

⁴² Clauses 2A.2.4(a)(1)(ii) and 2A.2.5(b)(2) in the Rule as made contain minor drafting changes from the draft Rule to address minor points of clarity raised in NEMMCO’s second round submission. NEMMCO, second round submission, p.1.

⁴³ MCE Rule change proposal, p.4-5.

- Where commercially material congestion persists and is not addressed by market or regulated investment, it “may be appropriate” for the Commission to invoke the LRPP; and
- A region boundary review may be initiated by the Commission where the LRPP has been applied and there has been no commitment to complete an investment to address the congestion within two years.⁴⁴

Further clarification of the relationship between the region change process and other elements of the congestion management regime was supported in several submissions.⁴⁵

The Commission agrees that a region change is a long term response to material and enduring congestion issue. There are a number of steps other than region changes that support the management of congestion in the NEM over time, as highlighted by the MCE. These steps, and how they fit together with region change, are under consideration as part of the CMR. The Commission does not consider, however, that a clear sequence of events can be pre-defined. The circumstances of each region change application will differ, as will the relevance of particular means of managing congestion in those circumstances. The Rule as made reflects this reality.

The principle that does apply in all circumstances, however, is that region change should be considered only where there is enduring congestion with material economic effects. The Commission has concluded, in accordance with the MCE’s policy intent, that an applicant must demonstrate an awareness of the alternatives, and explain why they are less appropriate than a region change in the particular context of its application (clause 2A.2.5).

Within the NEM’s regional structure, price differences between regions provide important signals for the market. The regional structure needs to be sufficiently stable to enable these price signals to be understood and acted upon by market participants. The Rule as made therefore requires the applicant to demonstrate, under this part of its application, that the congestion problem will endure long enough for the proposed region change to deliver material net economic benefits allowing for efficient market-based response from generation or load, e.g. the location of a new generator or major industrial load (clause 2A.2.5(b)(1)).

The Rule as made also requires the applicant to be cognisant of the role of transmission solutions in managing congestion in the NEM (clauses 2A.2.5(b)(2) and 2A.2.5(b)(3)). Transmission Network Service Providers (TNSPs) have an important role to play in identifying and responding to demonstrated needs for transmission capability. Responses can involve investment solutions, such as the construction of a new transmission circuit, and non-build solutions, such as contractual arrangements

⁴⁴ MCE Rule change proposal, p.5.

⁴⁵ For instance, see CS Energy, first round submission, p.2; Hydro Tasmania, first round submission, MCE Rule change proposal, p.1-2; NGF, first round submission, p.1-2; Origin Energy, first round submission, p.4-5; Powerlink, first round submission, MCE Rule change proposal, p.1; Snowy Hydro, first round submission, MCE Rule change proposal, p.1-2; ERAA, first round submission, p.2; TRUenergy, first round submission, p.1-2, 4.

with loads or generators to support the provision of additional network capacity, e.g. by agreeing to reduce their load at short notice. The Commission has made substantial amendments to the Rules in respect of the regulation of TNSPs and the incentives they face to promote efficient operation. From the perspective of congestion management and region change applications, these processes need to be given time to operate. The Rule as made therefore requires an applicant to demonstrate why it considers the congestion problem to be an enduring issue in the light of efficient behavioural responses from TNSPs. This highlights an important interaction between region change and the Regulatory Test for transmission investment.

An element of the regulatory regime that an applicant must also have regard to is the LRPP. The MCE proposal also implies a sequential relationship between the LRPP and region change, with the LRPP being completed prior to initiating a region change process. The Commission do not consider this to be necessary. If the applicant can demonstrate why a region change is a more efficient response than a transmission reinforcement, and that this stands up to scrutiny through consultation with stakeholders, then the fact that the LRPP process has not been triggered appears to have only limited relevance. In fact, it might indicate that region change applicant has a strong argument.

While it might be the case that the submission of an application prompts the Commission to consider whether the LRPP should be exercised, this is a different consideration. In this event, the Commission would have the flexibility to run the LRPP and the region change process in parallel, as Origin Energy proposed in its first round submission.⁴⁶

In its proposal, the MCE anticipated a process where “commercially material” congestion would be “priced by a congestion management regime”, as specified in the Rules. If these signals suggested the commercial impact of the congestion was material and enduring, the MCE considered the AEMC should factor that into any assessment for a region change.⁴⁷

The Commission’s Draft Report on CMR discusses what role the Commission foresees for congestion pricing mechanisms, like that anticipated by the MCE, in the context of designing a congestion management regime for the NEM.⁴⁸ While its work on CMR is ongoing, in the context of considering applications for region change, the Commission does not consider at this time that a pricing mechanism is a necessary precondition that should be explicitly specified in the Rules.

3.3.3.5 Previous consideration of a region change application

A final element of the procedural case for change, and an important element of the MCE proposal, is the principle that the Commission should be able to reject an

⁴⁶ Origin Energy, first round submission, p.1-3.

⁴⁷ MCE Rule change proposal, p.5.

⁴⁸ AEMC 2007, *Draft Report*, Congestion Management Review, 27 September 2007, Sydney.

application if it relates to a congestion problem which has already been considered in the last five years. The Commission considers that this should be discretionary, rather than mandatory. A mandatory bar on applications on these grounds might have unintended consequences, e.g. to encourage misconceived applications. It might also result in valid cases for region change not being able to be considered, e.g. if circumstances have changed substantially since the congestion issue was considered previously.

In the Commission's view, an effective way to incorporate this policy intent within the Rule as made is to require an applicant to demonstrate why it is appropriate for the Commission to reconsider an application relating to a congestion problem that has been the subject of a previous accepted application in the past five years (clause 2A.2.6).⁴⁹ If the applicant is unable to cite material changes in the circumstances since the earlier application, this would be a factor in the exercise of the Commission's discretion not to accept the application.

3.3.3.6 Requests for information from NEMMCO

Scope of information requested

In order to provide a technically competent application, the Commission recognises that a proponent may need to obtain information from NEMMCO. Clause 2A.2.7(a) of the Rule as made allows intending applicants to request information from NEMMCO in order to make a technically competent application. The information intending applicants request from NEMMCO under this clause should be directly related to preparing a technically competent application. NEMMCO is only obliged to provide the requested information if it relates to preparing a technically competent application. The Commission does not intend that intending applicants should be required to provide detailed economic modelling at this stage and therefore do not require the information necessary to undertake such modelling. The Commission considers that this information will be provided as part of the supplementary economic analysis at a later stage of the region change process.

In its submission, NEMMCO sought to clarify its own requirements for providing information to an intending applicant to prepare a technically competent application. NEMMCO also noted its concern that there may be circumstances where an intending applicant requests resource intensive information from NEMMCO that is beyond the scope of a technically competent application.⁵⁰ The Commission intended that applicants need only that information, without which, an application would not meet the criteria for technical competence. The Commission has therefore amended clause 2A.2.7(b) and added clause 2A.2.7(e) to ensure that NEMMCO is not required to provide information that might be requested under clause 2A.5.2 (for the purposes of supplementary economic analysis).

⁴⁹ Clause 2A.2.6(2) has been amended to clarify that an application must consider implications for both the NEM and the financial markets.

⁵⁰ NEMMCO, second round submission, p.2

NEMMCO also noted that there may be occasions when it receives a request for information that is unclear or flawed and suggested that it be given the discretion to refuse such a request.⁵¹ The Commission considers that the Rule should not include an explicit discretion for NEMMCO to refuse a request. By defining in the Rule the scope of the information that an intending applicant can request at this stage of the process (clause 2A.2.7), NEMMCO has clear guidelines as to what information it should provide. Clause 2A.2.7(b) of the Rule as made requires an intending applicant to include in its request the details of the information, sufficient for NEMMCO to identify the information being sought. If an request for information is unclear, NEMMCO should discuss the request with the applicant. This clause is designed to ensure NEMMCO has sufficient detail to identify the information it is required to provide to reduce the resource intensiveness of the request.

In its submission, NEMMCO stated that there may be occasions when providing information to an intending applicant requires information from TNSPs, in a timely manner.⁵² The Commission sees value in such an addition to the Rule and as such, clause 2A.2.7(d) includes a power for NEMMCO to direct TNSPs to provide such information.

To improve transparency and encourage more robust and considered information requests for NEMMCO to process, the Commission has included clause 2A.2.7(f), which states that NEMMCO is required to: (1) publish any requests for information under clause 2A.2.7(a); (2) publish any information it provides pursuant to such requests; (2) and provide details of the circumstances where it has not provided information because that information was outside of the scope of a technically competent application. The information would be outside scope if it, related to information that NEMMCO may be directed to provide under clause 2A.5.2. This process will also provide other stakeholders with as much forward notice as possible for a future region change application and may therefore facilitate early preparation of alternatives. The Commission has included a similar clause in 2A.5.2(d).

Confidential information

NEMMCO also stated in its second round submission that there was a small possibility that the provision of information to an intending applicant may encompass commercially sensitive or confidential information. NEMMCO requested that the Rules clarify its responsibilities regarding the provision of any such confidential information. It also requested clarity as to whether it should preserve the confidentiality of an intending applicant and the particulars of its request.

Under the Rules, NEMMCO is not required to make public any information that is marked confidential or commercially sensitive. There are a few exceptions to this however. The Commission considers there may be circumstances where an intending applicant may require commercially sensitive information from NEMMCO to prepare a technically competent application. Without the commercially sensitive

⁵¹ NEMMCO, second round submission, p.2.

⁵² NEMMCO, second round submission, p.2.

information, the intending applicant would be unable to meet the minimum requirements in clause 2A.2.4 of the Rule as made.

In order to provide intending applicants with sufficient information to engage in the region change process appropriately, the Commission has included in the Rule as made an exception under clause 8.6.2(o). This exception allows NEMMCO to disclose, use or reproduce historical information for the purpose of preparing a technically competent application to a Registered Participant, subject to three conditions: (1) the information is not information provided in confidence to NEMMCO; (2) the information is not information that the AEMC or the AER has stated is confidential information; and (3) the recipient of the information executes a confidentiality agreement not to disclose the information, except to provide it to the AEMC. This exception means that NEMMCO can disclose information to an intending applicant that it may consider is commercially sensitive.

3.3.3.7 NEMMCO's role in the process for region change

In its second round submission, Powerlink noted that the Rule makes NEMMCO responsible for providing information for a technically competent application while also allowing NEMMCO to be an applicant for a region change, putting NEMMCO in a conflicting role.⁵³ The Commission does not consider there is a conflict in NEMMCO's roles. NEMMCO is currently able to propose changes to a range of functions, like the pricing and settlement rules, even though it has an information advantage compared to other stakeholders. It would be inconsistent to allow NEMMCO to change pricing and settlement rules through a Rule change proposal but to exclude it from proposing such a change through a region change application. In addition, the information that NEMMCO would provide an applicant in order to prepare a technically competent application will be the same, regardless of whether the applicant is NEMMCO or another Registered Participant. The Commission does not consider there is a compelling case to exclude NEMMCO from proposing a change to regions through the region change process.

Similarly, Powerlink also felt that role of the Australian Energy Market Operator (AEMO) (as successor to NEMMCO)⁵⁴ may potentially have a conflicting role as the AEMO could propose a region change that could directly influence its own activities through the National Transmission Planner (NTP).⁵⁵ The Commission notes that the review of the NTP is ongoing and as a result, it is not possible to consider these issues as part of this Rule change proposal. The Commission will consider this issue further in the context of the NTP Review.

⁵³ Powerlink second round submission, MCE Rule change proposal, p.1.

⁵⁴ The role of the AEMO is part of the National Transmission Planner Review, proposed by the MCE, which is currently being undertaken by the AEMC. For more information, see the AEMC website: www.aemc.gov.au.

⁵⁵ Powerlink, second round submission, p.1.

3.3.4 Determining a complete application

The Rule as made requires the Commission to decide whether or not the region change application is complete. If the Commission does not consider that the application meets the requirements as discussed above, it must notify the applicant, in writing, of the reasons for its decision. It is not required to further consider the application until it is satisfied that the application is complete (clause 2A.2.8).

If the Commission decides that the proposed region change application is a complete application, it is required to publish the proposed application on its website and undertake a preliminary consultation on whether it should accept the application and therefore commence the full process of considering the region change (clause 2A.3.2(a)). The Commission is not required to publish confidential information obtained in accordance with clause 8.6.2(o) (clause 2A.3.2(b)).

The purpose of this preliminary stage of consultation is to obtain the views of informed and interested parties on whether the application is sufficiently well developed prior to formally accepting a region change application and commencing the full consultation process to assess that application. To the extent that the preliminary consultation identifies potential issues with the application, the Commission may invite the applicant to provide additional information or to amend its application before making a decision on whether to accept the application (clause 2A.3.2(c)).

The Commission considers that this additional and early procedural step is an effective means of obtaining views and information from third parties to inform its decision to accept or not accept an application.

3.3.5 Accepting a region change application

Having taken account of any comments raised in the preliminary consultation, the Rule as made requires the Commission to determine whether to accept a region change application. Under clause 2A.3.1(a) of the Rule as made, the Commission may only accept an application that it concludes is complete and in which the applicant has demonstrated its case substantively to the satisfaction of the Commission.

If the Commission considers an application is not a complete application or whether, as a result of comments received in preliminary consultation or otherwise, that the region change application should not precede, it may make a decision not to accept the application (clause 2A.3.1(b)). It will then publish its decision, together with its reasoning for not accepting the application (clause 2A.3.1(c)).

If the Commission is satisfied that the application is complete, addresses any issues raised during the preliminary consultation, and should be further considered, then it must accept the region change application and commence first round consultation (clause 2A.3.1(d)).

An applicant is unable to withdraw a region change application once the AEMC has determined to accept the application and published a notice of first round

consultation under clause 2A.4.1 (clause 2A.3.1(e)). The Commission believes that once a public consultation process has commenced, applicants should not be able to unilaterally withdraw an application from that public process.

3.3.6 Proposed guidelines

Several first round submissions suggested that the Commission prepare explanatory guidelines to improve certainty and reduce compliance costs for potential proponents.

In principle, the Commission agrees that guidelines have the potential to help clarify and improve transparency and reduce compliance costs. The Commission has, for example, published guidelines to promote effective implementation of other Rule changes; most recently with the LRPP Rule. However, the Commission is also mindful of the need to limit the publication of guidelines to instances where they add value to the process.

In the draft Rule determination, the Commission sought views on the need for, and detailed scope of, guidelines, given the level of prescription and guidance to applicants provided in the Rule itself. No second round submissions commented on this issue. The Commission considers that the Rule as made provides sufficient detail to prospective applicants as to what is required in a region changes application. Guidelines are therefore not necessary or required at this point in time.

3.4 First round consultation

Once the Commission accepts a region change application, it is required to commence first round consultation on the application. The consultation notice will contain the application and any further supporting information and analysis provided by the applicant, and will invite submissions and comments from any person within 75 business days (clauses 2A.4.1 and 2A.4.2).

The first round consultation notice may also invite interested persons to put forward alternative region solutions to those contained in the region change application. This may be by way of either a “formal” alternative region solution or an “informal” alternative region solution.

Clause 2A.4.3 of the Rule as made restricts the proposal of formal alternative region solutions to Registered Participants and NEMMCO only. The Commission considers this position is consistent with allowing only Registered Participants and NEMMCO to propose an initial region change application, as discussed in Section 3.3.1 of the Rule determination.

Any person may propose an informal alternative region solution in a first round submission. In the case of an informal proposal, the AEMC would not be bound to consider this as a fully developed proposal and it could not give rise to the potential for further supplementary analysis to be required. For a “formal” alternative region solution, there are a series of requirements and the AEMC may direct the production of economic analysis.

3.4.1 First round submission may propose an alternative region solution

The MCE proposal seeks to create an innovative evaluation framework based on the notion of a “parallel” assessment process. Under this process, stakeholders would have the potential during the first round consultation to identify practical alternatives to the proposal presented in a region change application. Similarly, the Commission would be able to identify alternatives other than those advocated by stakeholders.

A parallel assessment process may possess several advantages including:

- A significantly streamlined process, which would reduce administration costs and the duration of periods of market uncertainty over future region changes;
- Improvements to the quality of decision-making by enabling the Commission to undertake a comprehensive comparative assessment of all practical alternatives simultaneously;
- Increased transparency by enabling stakeholders to propose alternatives, and consider and comment on the full range of practical options within a single evaluation process; and
- Reduced incentives for inadequate applications by creating the possibility that an alternative proposed by a competitor or some refinement adopted by the Commission may proceed, which may be less compatible with the proponent’s commercial interests.

The lack of such a process in respect of the Rule changes relating to congestion in the Snowy region has, in the Commission’s view, resulted in a level of procedural complexity that is unnecessary and unhelpful going forward.

The Rule as made gives the MCE policy intent a more formal framework. Clause 2A.4.3 provides for a submission from a Registered Participant or NEMMCO to the first round consultation to be formally identified as an alternative region solution. A proposed alternative region solution must be clearly marked as such (clause 2A.4.3(b)). Clause 2A.4.4 requires a formal alternative region solution put forward in a submission to meet the same informational requirements to describe that solution as a region change application (set out in clauses 2A.2.3-2A.2.5).

A formal alternative region solution is not required to demonstrate that there is a congestion problem, since this would already have been identified in the original region change application. A submission from a Registered Participant that proposes an alternative region solution for formal consideration would, however, need to demonstrate that the solution relates to the same congestion problem as the original application.

Finally, as is the case with a region change application, a Registered Participant’s submission that proposes an alternative region solution is only required to include a preliminary case as to the economic efficiency of the alternative region solution proposed when compared to the continuation of the prevailing regions.

That being said, any person in a submission may propose an informal alternative region solution. While any person is unable to request information from NEMMCO in order to meet the formal requirement of preparing a technically competent application, it is a submitter's best interest to provide as much detail as possible as to why they consider their information alternative region solution would be preferable to the one proposed in the initial region change application. This will assist the Commission in assessing the informal alternative region solution. The Commission is able to investigate any alternative region solution it considers may be a beneficial alternative. By providing a well-presented case in a submission for an informal alternative region change, any person may bring to the Commission's attention a possible alternative worth further investigation.

In its second round consultation submission, NEMMCO noted that it was unclear whether an alternative proponent of a proposed region change was able to request information from NEMMCO to prepare a technically competent application.⁵⁶ Clause 2A.2.7(a) of the Rule as made now clarifies that a Registered Participant who is a proponent of an alternative region solution can request from NEMMCO the information necessary to prepare its alternative region solution, in the same way as an applicant.

NEMMCO also noted in its submission that under clause 2A.4.3 of the Draft Rule, it was difficult to see where the Commission could put forward its own alternative solution.⁵⁷ Clauses 2A.6.1(a)(4) and 2A.6.1(a)(5) of the Rule as made provide the Commission with the power to determine a region change solution that is different to a solution proposed in either an application or an alternative region solution. While the Commission is not obliged to raise its own options prior to issuing a draft region determination, the Commission may choose to disclose information about any such alternatives at an earlier stage if it considers such actions to be appropriate in the circumstances.

3.4.2 Provision of supplementary economic analysis

Once accepted, the Commission may direct the applicant of a region change application to submit supplementary economic analysis to strengthen and deepen the information base for assessment (clause 2A.5.1(a)). The same applies to NEMMCO or a Registered Participant who has put forward an alternative region solution in a submission, which the Commission has accepted (clause 2A.5.1(b)). The Commission may not direct NEMMCO or a Registered Participant to provide supplementary economic analysis if their submission does not expressly identify that the submission is to be treated as a formal alternative region solution (clause 2A.5.1(b)). If the Commission gives a direction for supplementary economic analysis, it may do so anytime after the start of first round consultation (clause 2A.5.1(d)). The Commission's direction may specify the period of time for providing supplementary economic analysis (clause 2A.5.1(c)).

⁵⁶ NEMMCO, second round submissions, p.3.

⁵⁷ NEMMCO, second round submissions, p.4.

Supplementary economic analysis may include economic modelling, which may require NEMMCO to provide information, e.g. a set of system network constraints oriented to the proposed new region configuration. Clause 2A.5.1(e) provides for the Commission (or its representative) to prepare supplementary economic analysis for any region change option.

The Commission's experience in handling the Rule change proposals relating to congestion in the Snowy region demonstrated the benefits of such analysis, but also revealed that providing the supporting information to facilitate such analysis is a substantial undertaking for NEMMCO. The Commission considers, therefore, that only when a region change application has commenced first round consultation or when an alternative region solution put forward in a submission has been accepted as complete should the Commission contemplate whether supplementary analysis is required.

Neither a Registered Participant making a region change application or proposing a formal alternative region solution in a submission may require NEMMCO to provide information to support its supplementary economic analysis. The Rule as made empowers the Commission to request NEMMCO to provide factual information to support this task (clause 2A.5.2).⁵⁸ Clause 2A.5.2 also requires that the Commission provides NEMMCO with sufficient detail in order for NEMMCO to identify the required information to fulfil the request. NEMMCO is required to provide that information. In its second round submission, NEMMCO noted that it would require a minimum of 40 business days to provide information for the supplementary economic analysis.⁵⁹ The Commission will consult informally with NEMMCO, at the time of an application, as to what constituted a reasonable period of time to allow for its provision of supporting information before it issues a direction for the submission of supplementary information.

If required, the Rule as made also empowers NEMMCO to direct the relevant TNSPs to provide information related to network constraints with respect to a region change application or an alternative region solution and that the TNSP must provide that information to NEMMCO as soon as reasonably practicable (clause 2A.5.2(c)).

As discussed in Section 3.3.3.6, the Commission has included in clause 2A.5.2(d), a requirement for NEMMCO to publish any request that it receives for information for the purpose of undertaking supplementary economic analysis and to also publish any information that is provided in response.

Also discussed in Section 3.3.3.6, the Rule as made includes clause 2A.5.2(e), which obligates the AEMC to treat as confidential any information provided as part of a supplementary economic analysis and obtained under clause 8.6.2(o).

⁵⁸ Clause 2A.5.2 has been amended to clarify that the AEMC is not required to publish information that is provided to it in accordance with clause 8.6.2(o).

⁵⁹ NEMMCO, second round submissions, p.4.

3.4.3 Timeframes for first round consultation

The Commission recognises that compliance with a direction to provide supplementary economic analysis is a significant undertaking, requiring substantial time and resources. To assist directed parties, the Commission has increased the MCE proposed timeframes for consultation from 40 business days to 75 business days, with discretion for longer timeframes if required, e.g. to ensure consistency with Commission direction in respect of the submission of supplementary information (clause 2A.9.1). The timeframes for the region change process are discussed further in Section 3.8 below.

In its second round consultation submission, NEMMCO sought clarification on whether the period of time given for written submissions to be made on an accepted region change application (i.e. 75 business days) would also apply to a written submission on an alternative application.

The Commission feels that the purpose of the first round consultation is to encourage stakeholders to propose alternative region solutions. If the Commission extended the first round consultation period each time a Registered Participant submitted an alternative region solution, applicants could find it easy to influence the process and therefore submit alternative region solutions in order to deliberately delay consideration of any region change option. In addition, the Commission has the discretion to extend any consultation period relating to the region change process under clause 2A.9.1 for legitimate reasons (see Section 3.8.1). For these reasons, the Commission does not consider an automatic extension to first round consultation appropriate.

3.5 Making a region determination

3.5.1 Commission powers to make region determination

Clause 2A.6.1 of the Rule as made sets out the scope of the Commission's discretion in making a region determination. In making a region determination, the point of reference for the exercise of the Commission's discretion is the congestion problem identified by the original region change application. The Commission is empowered to:

- Accept or reject the region change solution proposed in the original application;
- Accept or reject a formal alternative region solution put forward in a submission;
- Determine a materially different region change solution than the one proposed in the original application;
- Determine a materially different region change solution than a formal alternative region solution proposed in a submission; and
- Determine that no region change should be made.

The Commission is able to adopt the region change solution that it considers provides the best available solution to the congestion problem identified in the original region change application (clause 2A.6.1(b)).

The Commission considers that the level of discretion proposed has the potential to improve the efficiency of the region change process and allow for more effective market development outcomes, consistent with its duties under the NEL. It notes that its Rule change experience to date suggests that applications motivated by self interest alone may not always disclose the “best” options from a market development perspective. It also notes that region change is fundamentally about efficient market development, not Rule change. Greater latitude afforded by the proposed level of discretion would potentially allow the Commission to identify the best option for the market as a whole. The Commission’s discretion is constrained by the congestion problem identified by the region change application.

3.5.2 Matters for consideration when making a region determination

The Commission may only make a region determination to adopt a region change solution if it satisfied that the solution meets a defined set of criteria (clause 2A.6.2). In addition, the NEL requires the Commission to have regard to the NEM Objective in exercising any of its functions, which would include making a region determination. The Rule as made is designed to expand at a more specific level on the issues the Commission should consider when making a region determination.

In formulating these criteria, the Commission has had regard to its experience in assessing the Rule changes relating to congestion in the Snowy region. The final Rule determinations published by the Commission in respect of the Snowy region related Rule change proposals applied a set of seven assessment criteria:

- The likely effect on the economic efficiency of dispatch;
- The likely implications for allocative and dynamic efficiency of associated pricing outcomes and related participant responses;
- The likely effect on inter-regional trading and risk management and its implications for allocative and dynamic efficiency, and competition;
- The likely effect on power system security, supply reliability, and technical operation;
- Consistency with good regulatory practice;
- The likely long-term implications and consistency with public policy, including any MCE policy statements; and
- Implementation implications.

The Commission considers that this set of criteria provided a broad and robust framework for its assessment of these proposals on a comparative basis. This has direct relevance to the assessment of region change more generally going forward. The assessment criteria specified in the Rule as made are, however, more limited in

scope than the criteria adopted for assessing the Snowy region related Rule change proposals, focusing on the economic efficiency and power system security. The Rule as made has itself been structured to deliver a procedure that is consistent with good regulatory practice and with long term policy settings. As such, it appears unnecessary to include such considerations formally at the end of process in assessing the individual merits of particular region change solutions.

In making a region determination, clause 2A.6.2 of the Rule as made proposes that the Commission must be satisfied that a region change:

- Addresses a material and enduring congestion problem;
- Is technically competent;
- Represents a timely and appropriate response to the identified congestion problem having regard to alternative means of managing congestion;
- Represents the region change best calculated, having regard to the accepted application and any accepted alternatives, to promote economic efficiency in the NEM in the short and long term, where economic efficiency shall include, but is not limited to:
 - productive efficiency;
 - efficiency in risk management (including allocative efficiency); and
 - dynamic efficiency;
- Is consistent with the continuing safe, secure and efficient operation of the power system; and
- Can be implemented effectively and efficiently.

3.6 Draft region determination

The Commission must issue a draft region determination (rule 2A.7) for the purposes of a second round of consultation. The standard period for the Commission to issue its draft region determination is within 60 business days of the end of first round consultation (clause 2A.7.1). The Rule as made provides for a longer period of time to be set, if required (clause 2A.9.1). This might, for example, be appropriate if a number of alternatives are proposed and accepted, and if substantial supplementary analysis is deemed to be required to inform the Commission's assessment.

When publishing a draft region determination, the Commission must also publish a second round consultation notice, inviting submissions from any person within 60 days of the publication of the notice (clause 2A.7.2(b)).

A draft region determination must contain the Commission's reasons for its decision with reference to the assessment criteria as discussed above in Section 3.5.2 (clause 2A.7.1(b)(1)). A draft region determination must also contain a proposed implementation period (clause 2A.7.1(b)(2)). The draft region determination will

present a comparative assessment of the original region change application and all accepted alternative region solutions, against the base case of the continuation of the prevailing regions and against each other. It will use the cumulative information and analysis gathered through its preliminary and first round consultation, and any supplementary economic analysis, to re-appraise the questions originally considered in accepting the application or an alternative, and will examine the wider questions of the relative impacts on the operation of the power system and the practical question of effective implementation.

NEMMCO's second round consultation submission commented that the Rule should explicitly state that the Commission will consider written submissions in preparing its region determinations.⁶⁰ The Commission feels that considering submissions is a matter of good regulatory practice and is implied in the Rules by the application of the region change process. As such, including a specific requirement to consider submissions as part of the region change process does not appear necessary.

3.7 Final region determination

The final stage in the consultation process is for the Commission to issue a final region determination within the standard period of 40 business days from the close of second round consultation (clause 2A.8.1(a)). The final region determination will review the assessment made at the draft region determination stage in the light of stakeholder submissions and any other relevant new information, and present a final decision and reasons for that decision (clause 2A.8.1(b)(1)). The Commission will also specify the implementation period (clause 2A.8.1(b)(2)). The Commission must publish a notice of the region change if it determines to make such a change in its final region determination (clause 2A.8.2). The notice published on both the Commission's website and in the South Australian Government Gazette must include: (1) the publication date of the final region determination; (2) the implementation period; and (3) the start date (clause 2A.8.2(b)). The final region determination will also trigger the implementation of the associated region change(s).

3.8 Consultation provisions

3.8.1 Standard consultation timeframes

The MCE proposal recognises that the process of region change will generally require more time than considering a standard Rule change proposal. However it also notes the need for timeframes to be specified in the Rules as made. It proposes 180 business days from "Notice of Proposed Region Boundary Change" to publication of a final region determination, compared to 110 business days at present for a standard Rule change process.

⁶⁰ NEMMCO, second round submission, p.4.

Few first round submissions responded on the standard consultation timeframes proposed for the evaluation process. CS Energy suggested that the assessment timeframes should be kept to a minimum to reduce market uncertainty that could affect financial contracting and investment decision-making.⁶¹ Delta Electricity noted similar concerns about uncertainty, suggesting that the evaluation process needs to be transparent and predictable to allow participants to effectively manage related operational disruptions.⁶²

The Commission agrees that a region change process is different to a Rule change, and that timeframes should be specified in the Rule. Its work on the Snowy region related proposals has demonstrated the significant time and material resources required to consider a region change. However, as with the Rule change process, these timeframes should be capable of being adjusted by the Commission if required. Clause 2A.9.1 of the Rule as made sets out the Commission's power to extend specific periods of time in the region change process.

In the draft Rule, clause 2A.9.1 gave the AEMC the power to extend a period of time in the region change process, if an issue of sufficient complexity or difficulty was raised or there was a material change in circumstances and it was in the public interest to extend. This power was a similar power to the power under section 107 of the NEL, which allows the Commission to extend a period of time under the Rule change process in similar circumstances.

As part of the amendments to the NEL that commence on 1 January 2008, section 107 of the NEL has been amended such that the Commission can extend a period of time if there is an issue of sufficient complexity or difficulty or there has been a material change in circumstances, if it is necessary that the period of time be extended. For consistency, the Commission considers that the criteria of "necessary" rather than "public interest" should also apply in the Rule as made. As such, if an issue of sufficient complexity or difficulty or there has been a material change in circumstances is raised, the Commission has the power to extend the relevant period of time if it is necessary to do so. The Commission amended clause 2A.9.1 accordingly.

The Commission considers the interpretation of "necessary" in the context of clause 2A.9.1 of the Rules as made would be similar to how the term has been interpreted in other pieces of legislation. The Commission considers that the application of the term would be based on what is reasonably necessary. That is, an extension under clause 2A.9.1 is reasonably required or legally ancillary in the context of the period of time being extended. The Commission notes that the concept is one that is applied in other pieces of legislation and the principles of statutory interpretation would apply in any interpretation of this concept.

The process for region change set out in the Rule as made includes a preliminary consultation stage before a region change application is accepted. This is not a standard feature of a Rule change, and reflects the Commission's views that an

⁶¹ CS Energy, first round submission, p.2.

⁶² Delta Electricity, first round submission, p.2.

application should be fully formed and subject to initial scrutiny before the process is initiated, particularly given the significant costs and uncertainty involved in initiating a process to change region definitions in the NEM. Any person may also provide a written submission during the second round consultation period (clause 2A.7.3).

Timeframes need to be set at levels consistent with timely decision making, but should also be consistent with effective stakeholder engagement. This is particularly important for the region change process because of the role of stakeholders in helping guard against misconceived applications, and in developing alternative region solutions to ensure each application and alternative is assessed effectively and completely. The Commission considers, in the light of stakeholders views and its own experience in handling the Snowy region Rule change proposals, that the following timescales represent appropriate defaults for inclusion in the process for region change Rule as made:

- Twenty-one business days for stakeholders to provide submissions and comments on the preliminary consultation as to whether or not the Commission should to accept a region change application (clause 2A.3.2);
- Seventy-five business days for stakeholders to provide submissions and comments (including the submission of alternative region solutions) in response to the first round consultation (clause 2A.4.1(b)(2));
- Allow sixty business days from the end of the first round consultation period for the Commission to prepare its draft region determination (clause 2A.7.1(a));
- Allow sixty business days for stakeholders to respond to the second round consultation (clause 2A.7.2(b)(2)); and
- Allow forty business days from the end of the second round consultation period for the Commission to prepare its final region determination (clause 2A.8.1(a)).

The standard consultation periods proposed above imply a period of 256 business days from the start of the preliminary consultation to the issuing of the final region change determination. This compares to 180 business days proposed by the MCE and the 110 business days for the standard Rule change process. The Commission considers that planning for a region change process to take five months longer than a standard Rule change is realistic and proportionate. In the draft Rule determination the Commission sought views on these standard consultation periods. There was no response to this issue. The Commission has therefore determined to accept the timeframes as proposed in the draft Rule determination.

3.8.2 Consultation meeting

The MCE proposal incorporates provisions requiring the Commission to convene a public hearing on request during the first and second consultation rounds. Effective consultation is a critical component of the proposed parallel evaluation process. However, it is not clear whether the proposed provisions that require the

Commission to convene a public hearing if requested by registered participants or interested parties will necessarily add to the effectiveness of the consultation process.

The standard Rule change process also includes provisions for public hearings during first and second round consultation. However, the Commission has discretion to refuse a request for a public hearing under the standard Rule change process. Such discretion allows the Commission to pursue a public hearing where it would make a material contribution to the efficiency and effectiveness of a Rule change process. It also reduces the potential for a public hearing to be used to distort or delay a Rule change process. In view of the complex nature of assessing a region change application and the relatively tight timeframes proposed for undertaking a region change process, it would seem appropriate for the Commission to exercise similar discretion in this context (clause 2A.9.2).

A consultation meeting might be appropriate, for example, when numerous alternative region solutions have been proposed and accepted by the Commission, or where the Commission has received numerous pieces of supplementary economic analysis. A consultation meeting, before the end of first round consultation, might be an effective means of enhancing the ability of interested parties to engage in the consultation in an informed manner.

In the draft Rule determination, the Commission sought the views of stakeholders on the value of convening a consultation meeting during the first round consultation and/or second round consultation stage. No submissions commented on this issue. As a result, the Rule as made enables stakeholders to request a consultation meeting (clause 2A.9.2(a)). It also provides the Commission with the same discretion as under the Rule change process, to decide not to hold a consultation meeting; the Commission must provide its reasons for declining to hold a consultation meeting (clause 2A.9.2(b)). Clause 2A.9.2(c) provides the Commission with the option to hold a consultation meeting on its own initiative. If the Commission decides to hold a consultation meeting, clause 2A.9.2(d) requires the meeting to be before the end of the respective (first or second) consultation period and for the Commission to publish on its website a notice advertising the meeting.

3.8.3 Consultation with jurisdictions

The MCE proposal suggests that the Commission should consult with affected jurisdictions where a proposed region change may have implications for retail pricing. Some submissions expressed concern about this requirement, suggesting that it may unduly compromise Commission decision-making.

The Commission considers such consultation to be consistent with good regulatory practice, and notes that it is not bound by the views of jurisdictions expressed during such consultations. The Commission also notes that such consultation is essentially an operational practice that does not need to be codified in the Rule. Hence, the Commission did not include reference to this practice in the Rule as made. The Commission intends to continue its practice of consulting with jurisdictions which may be affected by a proposed region change.

3.9 Implementation

The Commission's experience in handling the Rule change proposals relating to the Snowy region illustrated the need to consider implementation issues, ideally at a relatively early stage in the process. It considers that a number of detailed issues would have been identified, and could have been resolved, earlier as a result. Part B of the Rule as made seeks to create a generic regime that would allow for the implementation of a region change in a variety of circumstances. Rule 2A.10 sets out the purpose and application of Part B of Chapter 2A.

3.9.1 NEMMCO Region Change Implementation Procedure

It is best to identify issues of implementation as early in the process as possible. Following from its Snowy region experience, the Commission believes that implementation procedures have a general value to the consultation process in advance of the Commission making a final region determination.

The Commission considers that an effective and proportionate means of providing greater visibility to implementation issues at an earlier stage in the region change process is for NEMMCO to have an obligation to compile and publish a draft "Region Change Implementation Procedure" for publication no later than the end of the second round consultation period, i.e. following publication by the Commission of its draft region determination. This would enable stakeholders to comment on the implementation issues associated with a region change option that the Commission is minded to implement before the decision is finalised. This, in turn, allows the Commission to have full regard to implementation issues, informed by stakeholder comments, when it makes its final region determination. Rule 2A.11 of the Rule as made sets out the requirements on NEMMCO for preparing and finalising the Region Change Implementation Procedure.

Clause 2A.11.1(a) requires NEMMCO to prepare a draft Rule Change Implementation Procedure in respect of the region solution adopted by the Commission in its draft region determination. Clause 2A.11.1(b) identifies what the draft Region Change Implementation Procedure should include: the proposed implementation period; an implementation plan; and the implementation functions (referred to in rule 2A.12) that NEMMCO proposes to exercise to implement the adopted region solution.

Clauses 2A.11.1(c) to 2A.11.1(e) set out the process for amending a draft Region Change Implementation Procedure and approving the Region Change Implementation Procedure. Clause 2A.11.1(c) requires NEMMCO to provide the AEMC with the draft Region Change Implementation Procedure before the end of the second round consultation period. Clause 2A.11.1(d) of the Rule as made now specifies that NEMMCO may, in consultation with the AEMC, make amendments to the draft Region Change Implementation Procedure that are necessary to implement a final region determination.⁶³ Under clause 2A.11.1(e), the AEMC approves the

⁶³ The Commission amended clause 2A.11.1 to clarify the roles of the AEMC and NEMMCO in determining the region change implementation procedure.

Region Change Implementation Procedure in respect of a final region determination that determines to make a region change.

Clause 2A.11.2 of the Rule as made requires NEMMCO to publish the approved Region Change Implementation Procedure. It also provides NEMMCO with the power to amend the Procedure as necessary, including reasons why an amendment is necessary.

3.9.2 NEMMCO region change implementation functions

Rule 2A.12 of the Rule as made sets out the implementation functions NEMMCO requires in order to implement a region change. This rule covers general implementation functions, which must be referable to the published Region Change Implementation Procedure (2A.12.2). Clause 2A.12.3 of the Rule as made refers specifically to NEMMCO's ability to amend its Regions Publication and Loss Factors Publication as part of the implementation of a region change. Clause 2A.12.1 also provides NEMMCO with a general implementations function power. While clause 2A.11.1(b)(3) requires NEMMCO to specify the implementation functions required to implement a region change, clause 2A.12.1 provides NEMMCO with the ability to respond to an unexpected or unplanned event not explicitly identified in its Region Change Implementation Procedure.

In its second round submission, NEMMCO sought clarity between an implementation step and an implementation function (clause 2A.11.1(b)). NEMMCO also requested clarity around the interaction between the Region Change Implementation Procedure (rule 2A.11) and the general implementation functions (clause 2A.12.1).⁶⁴

Clause 2A.11.1(b)(3) of the Rule as made now clarifies that the implementation functions are the functions that NEMMCO needs to undertake in order to implement a region change as set out in the implementation procedure. The implementation functions in clause 2A.12.2 are explicitly related to the steps that NEMMCO identifies in its implementation plan.

NEMMCO also suggested that the Rule should include a process for resolving uncertainty or disputes on the regional allocation of new connection points.⁶⁵ The Commission does not consider that this level of detail on one specific component of the Regions and Loss Factors Publication would be consistent with the approach taken to all other components of that publication. In addition, the Commission feels that this process does not specifically relate to the process for region change and therefore falls outside the scope of this Rule change proposal.

⁶⁴ NEMMCO, second round submission, p.5.

⁶⁵ NEMMCO, second round submission, p.5-6.

3.9.3 Continuity of regions

Rule 2A.13 defines what the regions are on and from the start date of a region change as determined in a final region determination.

3.9.4 Lead times

The MCE proposed that region changes should have an implementation lead time of three years from the date of the final region determination. First round submissions were generally supportive of the proposed three year implementation period, noting that it would represent a reasonable minimum transition period during which contracting positions could be efficiently adjusted and trading platforms developed to accommodate a new region configuration. A significantly shorter implementation period may have the potential to add undue cost and uncertainty to the region change process.

However, other stakeholders made more general observation about the duration of the whole process, recognising potential interactions with other processes, e.g. the LRPP process. Several stakeholders including Powerlink, TRUenergy and ERAA noted the possibility for delays, especially in relation to the potential interaction between the LRPP and the region change process, and suggested that the Commission should adopt a flexible approach to ensure that efficient region changes are not unduly delayed.

The Commission considers that implementation lead times shorter than three years might be appropriate in some circumstances, and there might be value in providing for this flexibility in the Process for Region Change Rule as made. The Commission sought stakeholder views on accelerating the implementation phase where this course of action can be demonstrated to be in the best interests of the market and is broadly supported by stakeholders. There were no second round submissions on this issue. The Rule as made therefore provides flexibility in the implementation lead times.

In their submissions to the first round consultation, Delta and the NGF commented that the Commission should have a power under the process for region change Rule to reverse its decision on region change if there are material changes in circumstances during the three year implementation period. The Commission views that this would introduce an unnecessary and unacceptable degree of risk to the process, which conflicts with the rationale for implementation lead times. While it is extremely important for the process leading to a final region determination to be as robust as possible, including full consideration of the whether a congestion problem is enduring or not, the Commission does not consider a process that allows for decisions made under this process to be reversed lightly (with potential retrospective effects) is consistent with good regulatory practice.

3.9.5 Ex post evaluation

The MCE proposal proposes that the Commission conduct an ex-post review of region changes to evaluate the extent to which they have been successful.⁶⁶ However, the MCE proposal does not elaborate on the nature or features of the proposed review, nor does its proposed Rule.

The lack of detailed guidance in the proposed Rule or in the MCE proposal raises some threshold process design questions for the Commission. How should a region change evaluation be accommodated in the Rule? What process should be adopted to undertake a region change evaluation? What criteria should be used to evaluate the “success” of a region change?

First round submissions were also largely silent on these matters. NEMMCO and the AER both noted that the evaluation proposal was not addressed in the proposed Rule and concluded that the Commission should seek to clarify the nature and intent of the proposed evaluation.⁶⁷ There were no other specific comments of substance on this issue. Generally though, stakeholders registered a clear preference for the region change process to promote predictability, transparency and consistency, to reduce regulatory risk and uncertainty.

The notion of an ex post review is not a feature of the standard Rule change process; it arguably introduces a degree of regulatory risk to the overall process. In particular, it could create a perception of “conflict of interest” as the Commission would essentially be reviewing its own decision. This is the same sort of conflict of interest that the Commission considers would arise if it were to have a region change review function in absence of a region change application to address material and enduring congestion, as discussed in Section 3.3.1.

Further, the Commission notes the existing provisions under the National Electricity Law for the MCE to direct the Commission to undertake reviews of particular aspects of the market arrangements. This power could be exercised to direct the Commission to undertake an ex post review of a region change, and would provide greater flexibility in the focus and terms of such a review.

In the draft Rule determination, the Commission sought views from stakeholders on the value or otherwise of having an ex post review function. There were no submissions on this issue. The Commission does not therefore consider that including an ex post review function of region changes in the Rule as made would promote the predictability, transparency, consistency, or certainty sought by stakeholders in the NEM. The Rule as made does not provide for an ex post review.

⁶⁶ MCE Rule change proposal, p.6.

⁶⁷ NEMMCO, first round submission, MCE Rule change proposal, p.3; Australian Energy Regulator, first round submission, MCE Rule change proposal, p.2.

3.10 Definitions

As discussed earlier, Schedule 2A.1 contains the glossary for Chapter 2A. This Schedule defines terms specifically related to the process for region change. All terms bolded in Chapter 2A are defined in Schedule 2A.1.

The Rule as made also amends the Chapter 10 Rules definitions for “region, regional”, “Regions Publication”, and “regional reference node”. These amendments are consequential changes resulting from the relocation of the region change process from rule 3.5 of the Rules to Chapter 2A.

This is the last page of the Rule determination