

Proposal to Amend Chapter 9 Part A of the National Electricity Rules

This proposal is drafted in accordance with the Australian Energy Market Commission (AEMC) *Guidelines for proponents: Preparing a Rule change proposal* (January 2012).

1. Introduction

1.1 Request for Rule Change

In accordance with Section 91 of the National Electricity Law (the NEL), the Victorian Government requests the Australian Energy Market Commission (AEMC) to make changes to the National Electricity Rules (the Rules) by way of a jurisdictional derogation in connection with the supply of electricity to the aluminium smelters at Point Henry and Portland in Victoria.

As required by Section 91(3) of the NEL, the Minister for Energy and Resources has consulted with the Ministers of the other participating jurisdictions before lodging this submission with the AEMC.

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1.2 Does the Proposal Regulate to a Jurisdictional or Participant Derogation?

The proposal relates to a jurisdictional derogation.

1.3 Content of submission

The remainder of this submission (in accordance with Section 92 of the NEL) contains:

- A description of the proposed Rule (to take the form of a jurisdictional derogation to Chapter 9 of the Rules);
- A statement of the issues concerning the existing Rules that are to be addressed by the proposed derogation and an explanation of how the derogation addresses these issues;
- An explanation of how the derogation would or would be likely to contribute to the achievement of the National Electricity Market Objective;
- An explanation of the expected benefits and costs of the proposed change and the potential impacts of the change on those likely to be affected; and

The annexure sets out the proposed drafting for the derogation requested in this submission.

2. Description of the Proposed Rule

Chapter 9, Clause 9.4.2 of Version 55 of the National Electricity Rules (**Rules**) sets out the jurisdictional derogations that relate to the Smelter Agreements¹ between the State Electricity Commission of Victoria (**SEC**)² and the counterparties. These Smelter Agreements dictate the supply of electricity to the aluminium smelters at Point Henry and Portland in Victoria.

Currently the Rules do not clearly differentiate between Smelter Agreements and cease to have effect until the termination of the last of the Smelter Agreements. Consequently the obligations of SEC for Port Henry will continue after the expiry of the Smelter Agreement because the Portland Smelter Agreement will still be valid.

The principal objective of the rule change is to clarify that the Smelter Agreement for a particular smelter facility need only apply under the Rules, until expiry of that agreement.

A draft of the proposed Rule is set out in the Annexure to this proposal.

3. Statement of Issues

3.1 Background

SEC negotiated long term agreements for the supply of electricity to the Point Henry smelter and Portland smelter in 1984. Originally it was envisaged that both agreements would commence at the same time, however as a result of the construction and commissioning of the Portland smelter being delayed the Point Henry Electricity Supply Agreement between SEC and Alcoa of Australia Limited was executed on 31 July 1984 (**Point Henry ESA**) and expires on 31 July 2014, whereas the Portland Electricity Supply Agreement between Portland Aluminium and SEC was executed on 31 October 1986 and expires on 31 October 2016.

Point Henry smelter receives electricity from two sources:

- (a) Anglesea power station which is connected directly to the smelter, both the station and connecting line are owned and operated by Alcoa of Australia Limited; and
- (b) the National Electricity Market through SEC as the Market Customer.

The Point Henry ESA governs the volume of electricity required by the smelter from the National Electricity Market (NEM), as a result of Anglesea power station not meeting smelter demand.

Both of these Smelter Agreements were entered into by SEC prior to privatisation of the Victorian electricity industry and before the commencement of the National Electricity Market (NEM). They were excluded from the privatisation process and retained by SEC.

3.2 Victorian Legislation and Chapter 9 of the Rules

Jurisdictional derogations in Chapter 9 of the Rules were sought by Victoria to allow these Smelter Agreements to operate within the new framework created by the NEM.

Clause 9.4.2 of the Rules works in conjunction with the *Electricity Industry (Residual Provisions) Act 1993 (Vic)* (**EIRP Act**).

Section 91AC(1)(c) of the EIRP Act provides that "*...no person other than SEC is authorised to sell electricity....to a person for use in connection with facilities or installations for which SEC is required to supply electricity under an agreement, contract or document referred to in Schedule 3*"

¹ 'Smelter Agreements' is defined in Clause 9.3.1 of the Rules with a reference back to Schedule 3 of the EIRP Act.

² 'Smelter Trader' is defined in Clause 9.3.1 of the Rules

The pre-existing contracts referred to in Schedule 3, Part A of the EIRP Act include the Point Henry ESA³. The effect of the provisions in the EIRP Act is that for so long as SEC is required to supply electricity to the Point Henry smelter under the Point Henry ESA, no-one else may do so. The same applies with the Portland ESA.

In its current form, Clause 9.4.2 (a) does not clearly differentiate between the Smelter Agreements that relate to Point Henry and those which do not. Principally each agreement *ceases to have effect upon the termination of the last of the Smelter Agreements* (Clause 9.4.2 (b)). Consequently when the Point Henry ESA expires (31 July 2014) the provisions of Clause 9.4.2 continue to apply to Port Henry smelter until the expiry of the Portland ESA (31 October 2016).

3.3 The effect of not making the proposed rule

In its current form, Clause 9.4.2 (a) of the Rules and the legislative restrictions in the EIRP Act will enforce the contractual obligations of SEC for the Point Henry smelter and the Anglesea Power Station to continue after the expiry of the Point Henry ESA and only cease on expiry of the Portland ESA. Therefore during the period between agreement expiry dates, Alcoa of Australia Limited will not be able to assume its responsibilities under the Rules as Customer for the Point Henry smelter and as Generator for Anglesea Power Station. This outcome is inconsistent with the intention of the current derogation of the Rules and the EIRP Act.

If the proposed rule change is not implemented, Alcoa of Australia Limited will not be able to enter into a Use of System Agreement with AEMO (reflecting current market conditions) in relation to the Anglesea Power Station, therefore disallowing that power station from participating in the NEM. This will reduce the volume of electricity available for dispatch and may compromise the supply of electricity, potentially distorting the supply demand balance that presently exists within the NEM.

Once Point Henry ESA expires, it is in SEC interests that they do not carry any extra risks and liabilities associated with the expired arrangements. The proposed rule change will transfer the financial and regulatory liability from SEC to Alcoa of Australia Limited.

3.4 How the proposed rule will address the issues

The proposed rule change to Clause 9.4.2 addresses the unintended outcomes addressed in Section 3.3, by clarifying that the Smelter Agreements apply in respect of each smelter facility only for so long as the pre-existing contractual arrangements continue for that smelter.

The proposed rule change will ensure that both Market Customer (Point Henry Smelter) and Market Generator (Anglesea Power Station) can operate in the NEM and comply with National Electricity Rules like all other Market Generators and Market Customers in the NEM.

The deletions of paragraphs (4), (6), (8) and (9) reflect the fact that the role of SEC in relation to the Anglesea Power Station and Port Henry smelter is confined to the Point Henry ESA and should cease on expiry of that Smelter Agreement.

The proposed rule change also amends the definitions of Counterparties and Smelter Agreements so that they differentiate between facilities, which is reflected in changes to Schedule 9A3 tables 2, 10 and 13 where the reference to Smelter Trader is replaced with Alcoa of Australia Limited. This change will ensure that all technical references in relation to Anglesea Power station will be applicable to the person responsible for operation of Anglesea Power Station.

³ Smelter Agreement

4. National Electricity Market Objective

The National Electricity Objective (NEO) is set out in Section 7 of the NEL as follows:

The objective of this Law is to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to:

- (a) price, quality, safety, reliability and security of supply of electricity; and*
- (b) the reliability, safety and security of the national electricity system.*

The proposed rule will, if made, correct an oversight in the current derogation, avoiding the unintended outcome. It will ensure that a Smelter Agreement for a smelter trader will not continue inappropriately and will cease until expiry or termination of that agreement. It is in the interests of the NEO that derogations of this nature do not continue longer than necessary as they can have the effect of distorting the operation of the NEM, thus reducing the economic efficiency of its operation.

These concerns were raised in 1998 when the National Electricity Code (including the Victorian jurisdictional derogations described in current Rule 9.4.2) was authorised by the Australian Competition and Consumer Commission. In the NEC Determination (1997) the ACCC accentuated that these derogations along with similar provisions sought by New South Wales and South Australia could distort the NEM and reduce the public benefits of competition (at page 236 of the NEC Determination). The ACCC ultimately accepted that pre-existing contracts needed to be adhered to however emphasised that it wished to ensure that the Code did not add further obligations or extend the time of the agreements (at page 237 of the NEC Determination).

The Victorian Government anticipates the proposed rule change would contribute to the NEO, as it will ensure that the risk of financially controlling and operating the market generator will reside with the entity who can control the risks thus improving the reliability of the market generator and strengthening the security of electricity supply.

5. Expected Benefits of the Proposed Rule Change

The proposed rule will, if made, correct an oversight in the derogation and address the unintended outcome.

The expected benefit is that the entity responsible for the electricity supply to the Point Henry smelter (after the expiry of Point Henry ESA) will be managing the associated risk rather than leaving SEC exposed. This will effectively improve the reliability of the market generator and strengthen the security of electricity supply to a major industrial load in Victoria.

Other benefits, which also uphold the NEO, is that the proposed rule change will promote economic efficiency through increased competition in the electricity supply to customers, as well as reduce overheads and ensure appropriate risk allocation.

The proposed rule change will allow Alcoa of Australia Limited to enter into a Use of System Agreement with AEMO (reflecting current market conditions) in relation to Anglesea Power Station and ensure that all technical performance standards are agreed between the parties ensuring safety and security of the Victorian declared shared network.

There will not be any additional third party costs associated with the proposed change.

5.1 The Potential Impacts of the Change on Those Likely to be Affected

The stakeholders who will be affected by the proposed rule change are:

- State Electricity Commission of Victoria (SEC); and
- Alcoa of Australia Limited.

For Alcoa of Australia Limited, and SEC the proposed rule will:

- clearly remove from SEC the responsibility in the NEM for the Point Henry smelter connection point and for generation at the Anglesea Power Station, after expiry of the Point Henry ESA; and
- allow Alcoa of Australia Limited to assume these responsibilities under the Rules at that time.

Other stakeholders are:

- Australian Energy Market Operator; and
- SP AusNet (owner of the Victorian declared transmission shared network).

For AEMO and SP AusNet, the proposed rule change will allow direct contractual relationship with the entity responsible for the operation and maintenance of the assets that are connected to the Victorian declared shared network thus clearly defining obligations between the parties. This will ensure safety and security of the Victorian declared shared network and maintain the efficiency of electricity supply in Victoria.

5.2 Non-controversial Rule Change

The Victorian Government submit that this change is non-controversial within the meaning of Section 87 of the National Electricity Law as it is in the nature of a correction and is therefore unlikely to have a significant effect on the NEM. The Victorian Government asks that the AEMC consider application of the expedited rule making process under Section 96 of the National Electricity Law.

These non-controversial changes will make the Rules clearer to those affected and to the market generally. This is important because stakeholders rely on these Rules to inform their commercial transactions, and in turn improve the efficient use of electricity services.

This proposed rule change will directly impact two parties – SEC and Alcoa of Australia Limited. It will remove the financial and regulatory liability from SEC and allow for the liability to be transferred to Alcoa of Australia. This will effectively improve the reliability of the market generator and the security of electricity supply to a major industrial load in Victoria.

For the other stakeholders AEMO and SP AusNet, the proposed rule change will clearly define the obligations between the Customer, Generator and Operator. Therefore the proposed rule change is considered non-controversial because the change will ensure the continued efficient use of electricity services and therefore avoid any negative impacts to these stakeholders.

6. Timing

The proposed rule is intended to take effect on the date that the Point Henry ESA expires or is terminated (31 July 2014). At this time, Alcoa of Australia Limited will be able to assume its responsibilities under the Rules as Customer for the Point Henry smelter and as Generator for Anglesea Power Station.

Dated: August 2013

Annexure

Draft of the Proposed Rule

National Electricity Amendment (Smelter Trader) Rule 2013 No. ##

1. Title of Rule

This Rule is the *National Electricity Amendment (Smelter Trader) Rule 2013 No. ##*.

2. Commencement

Schedule 1 of this Rule commences upon the termination or expiry of the Point Henry Electricity Supply Agreement dated 31 July 1984 between State Electricity Commission of Victoria and Alcoa of Australia Ltd, referred to in Part A of Schedule 3 of the Electricity Industry (Residual Provisions) Act 1993 of Victoria.

3. Amendment of the National Electricity Rules

The National Electricity Rules are amended as set out in Schedule 1.

Schedule 1 Amendments to the National Electricity Rules

[1] Clause 9.3.1 General Definitions

In clause 9.3.1, omit the definition for "Counterparties" and substitute:

Column 1	Column 2
Counterparties	In relation to each Smelter Agreement, means as applicable Portland Smelter Services Pty Ltd, Aloca of Australia Limited or any other party to that Smelter Agreement (other than SEC).

[2] Clause 9.3.1 General Definitions

In clause 9.3.1, omit the definition for "Smelter Agreements" and substitute:

Column 1	Column 2
Smelter Agreements	Each of the agreements, contracts and deeds referred to in Part A of schedule 3 to the <i>EI (RP) Act</i> in their form as at 1 July 1996 (other than the Portland and Point Henry Flexible Tariff Deeds between SEC and the State Trust Corporation of Victoria) in each case until that agreement, contract or deed expires or is terminated.

[3] Clause 9.4.2 Smelter Trader

Omit clause 9.4.2(a)(1) and substitute:

- (1) Smelter Trader is deemed to be entitled to register as a *Customer* in respect of the *connection points* used to supply electricity under a Smelter Agreement for so long as those *connection points* are used to supply electricity under that Smelter Agreement;

[4] Clause 9.4.2 Smelter Trader

In clause 9.4.2(a)(2), omit "the electricity supplied under the Smelter Agreements" and substitute "electricity supplied under a Smelter Agreement".

[5] Clause 9.4.2 Smelter Trader

In clause 9.4.2(a)(3), after "electricity supplied under", omit "the Smelter Agreements" and substitute "a Smelter Agreement".

[6] Clause 9.4.2 Smelter Trader

Omit clause 9.4.2(a)(4) in its entirety and substitute "[Deleted]".

[7] Clause 9.4.2 Smelter Trader

Omit clause 9.4.2(a)(5) and substitute:

- (5) Alcoa of Australia Limited is deemed to be entitled to register as a *Generator* and a *Market Generator* in relation to the *generating systems* forming part of the Anglesea Power Station; and

[8] Clause 9.4.2 Smelter Trader

Omit clause 9.4.2(a)(6) in its entirety and substitute "[Deleted]".

[9] Clause 9.4.2 Smelter Trader

Omit clause 9.4.2(a)(7) and substitute:

- (7) no Counterparty to a Smelter Agreement is or is to be taken to be entitled to become a *Market Participant*, an *Intending Participant* or a *Customer* in respect of electricity supplied under that Smelter Agreement.

[10] Clause 9.4.2 Smelter Trader

Omit clause 9.4.2(a)(8) in its entirety and substitute "[Deleted]".

[11] Clause 9.4.2 Smelter Trader

Omit clause 9.4.2(a)(9) in its entirety and substitute "[Deleted]".

[12] Schedule 9A3 Jurisdictional Derogations Granted to Generators

In Tables 2, 10 and 13 in clauses 5, 13 and 16 of Schedule 9A3 in Chapter 9, omit "Smelter Trader" and substitute "Alcoa of Australia Limited".

[END OF RULE AS MADE]

Part A Jurisdictional Derogations for Victoria

9.2 [Deleted]

9.3 Definitions

9.3.1 General Definitions

For the purposes of this Part A:

- (1) a word or expression defined in the glossary in Chapter 10 has the meaning given to it in the glossary unless it is referred to in column 1 of the following table; and
- (2) a word or expression referred to in column 1 of the following table has the meaning given to it in column 2 of the table:

Column 1	Column 2
Counterparties	In relation to the Smelter Agreements, means Portland Smelter Services Pty Ltd, Alcoa of Australia Limited or any other party to one or more of the Smelter Agreements (other than SEC).
CPI	The Consumer Price Index: All Groups Index Number Melbourne compiled by the Australian Bureau of Statistics.
distribution licence	<i>A licence to distribute and supply electricity.</i>
Distributor	<i>A person who holds a distribution licence.</i>
EI Act	<i>Electricity Industry Act 2000 (Vic).</i>
EI (RP) Act	<i>Electricity Industry (Residual Provisions) Act 1993 (Vic).</i>
ESC	The Essential Services Commission established under section 7 of the <i>ESC Act</i> .
ESC Act	<i>The Essential Services Commission Act 2001 (Vic).</i>
licence	<i>A licence within the meaning of the EI Act or deemed to be issued under the EI Act by operation of clause 5 of Schedule 4 to the EI (RP) Act.</i>
Quarter	The respective 3 monthly periods adopted by the Australian Bureau of Statistics for the compilation and issue of the CPI.
SEC	State Electricity Commission of Victoria established under the <i>State Electricity Commission Act 1958 (Vic)</i> .

Column 1	Column 2
Smelter Agreements	Agreements, contracts and deeds referred to in Part A of schedule 3 to the <i>EI (RP) Act</i> in their form as at 1 July 1996 other than the Portland and Point Henry Flexible Tariff Deeds between SEC and the State Trust Corporation of Victoria.
Smelter Trader	SEC in its capacity as Smelter Trader.
System Code	The code of that name sealed by the Office of the Regulator-General under the <i>Office of the Regulator-General Act 1994 (Vic)</i> on 3 October 1994 and saved and continued in operation by section 67 of the <i>ESC Act</i> .
VENCorp	Victorian Energy Networks Corporation established under Division 2A of Part 2 of the <i>Gas Industry Act 1994 (Vic)</i> and continued under Part 8 of the <i>Gas Industry Act 2001 (Vic)</i> .
Victorian Distribution Network	In relation to a person that holds a distribution <i>licence</i> , the <i>distribution systems</i> in Victoria to which that <i>licence</i> relates and includes any part of those systems.
Victorian Minister	The Minister who, for the time being, administers the <i>National Electricity (Victoria) Act 1997 (Vic)</i> .
Victorian Transmission Network	The <i>declared shared network</i> of Victoria.
Wholesale Metering Code	The code of that name sealed by the Office of the Regulator-General under the <i>Office of the Regulator-General Act 1994 (Vic)</i> on 3 October 1994, as in force immediately before <i>market commencement</i> .

9.4 Transitional Arrangements for Chapter 2 - Registered Participants, Registration and Cross Border Networks

9.4.1 [Deleted]

9.4.2 Smelter Trader

- (a) For the purposes of the *Rules*:
- (1) Smelter Trader is deemed to be entitled to register as a *Customer* in respect of the *connection points* used to supply the electricity supplied under the Smelter Agreements;
 - (2) Smelter Trader is deemed to be registered as a *Customer* and as a *Market Customer* in relation to the electricity supplied under the Smelter Agreements;
 - (3) the electricity supplied under the Smelter Agreements is deemed to have been classified as a *market load* and the *connection points* used to supply

- that electricity are deemed to have been classified as Smelter Trader's *market connection points*;
- (4) Smelter Trader is deemed to be the person that must register as the *Generator* in relation to the *generating systems* forming part of Anglesea Power Station;
 - (5) Smelter Trader is deemed to be registered as a *Generator* and a *Market Generator* in relation to the *generating systems* forming part of the Anglesea Power Station;
 - (6) Smelter Trader is only a *Market Generator* in respect of the *generating systems* forming part of the Anglesea Power Station to the extent to which the electricity generated by those *generating systems* is available to the Smelter Trader for sale under the Smelter Agreements;
 - (7) none of the Counterparties is or is to be taken to be entitled to become a *Market Participant*, an *Intending Participant* or a *Customer* in respect of the electricity supplied under the Smelter Agreements;
 - (8) none of the Counterparties or any person that operates or controls the *generating systems* forming part of the Anglesea Power Station (other than Smelter Trader) is or is to be taken to be entitled to register as a *Generator* in relation to the *generating systems* forming part of the Anglesea Power Station; and
 - (9) each of the Counterparties and any person that owns, controls or operates the *generating systems* forming part of the Anglesea Power Station (other than Smelter Trader) is taken to have been exempted from the requirement to register as a *Generator* in relation to the *generating systems* forming part of the Anglesea Power Station.
- (b) This clause 9.4.2 ceases to have effect upon the termination of the last of the Smelter Agreements.