



Australian Energy Market Commission

RULE DETERMINATION

National Electricity Amendment (Tasmania Tranche 5a Procedure Changes) Rule 2011

Commissioners

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14 July 2011

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**RULE
CHANGE**

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About the AEMC

The Council of Australian Governments, through its Ministerial Council on Energy (MCE), established the Australian Energy Market Commission (AEMC) in July 2005. The AEMC has two principal functions. We make and amend the national electricity and gas rules, and we conduct independent reviews of the energy markets for the MCE.

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Summary

On the 23 May 2011, the Tasmanian Government (Rule Proponent) submitted the Tasmania Tranche 5a Procedure Changes Rule change. The Tasmanian Government has been incrementally introducing retail contestability since 2006 and sought to extend retail contestability to customers consuming between 50 and 150 MWh per annum (Tranche 5a customers) from 1 July 2011.

Amendments to a number of the Australian Energy Market Operator's (AEMO) technical and procedural instruments would be required to implement the Tasmanian Government's decision to extend retail contestability to Tranche 5a customers in the relevant National Electricity Market (NEM) systems. In particular, amendments would be required to: the metrology Procedures; Market Settlement and Transfer Solution Procedures (MSATS); and Business-to-Business (B2B) Procedures.

To carry out these amendments under processes outlined in the National Electricity Rules (NER), which includes the Rules consultation Procedures under rule 8.9 would take 85 business days (approximately 4 months). AEMO advised the Tasmanian Government that it would be unable to make these amendments by the required implementation date of 1 July 2011. Consequently, the Tasmanian Government proposed a one-off transitional Rule under Chapter 11 of the NER that would bring forward the amendments to those Procedures. However, as the Commission is under a legal obligation to follow the National Electricity Law (NEL) Rule change process, the earliest date that the Commission can implement this Rule is the 14 July 2011.

The Tasmanian Government proposed that its Rule change request be expedited and treated as non-controversial under section 96 of the NEL. The reasoning considered by the Tasmanian Government for the expedited process was that the main stakeholders likely to be affected by the Rule change, namely AEMO and Aurora Energy, were consulted prior to preparation of the Rule change request. Notwithstanding this, the Commission may only expedite a Rule change request as a non-controversial Rule if the Rule is 'unlikely to have a significant effect on the national electricity market'.¹ The Commission agreed that the Rule would be unlikely to have a significant effect on the NEM as few market participants would be affected and sufficient prior consultation was undertaken with those participants during the preparation of the Rule change request.

Therefore, on 2 June 2011, the Commission gave notice under section 95 of the NEL to initiate the Rule change request under the expedited Rule change process as a request for a non-controversial Rule. The period for written requests not to use the expedited process closed on the 16 June 2011, and no requests were received. Consequently, the Commission has assessed the Rule change request under the expedited process in section 96 of the NEL. Submissions on the Rule change were invited until 30 June 2011. One submission was received from Aurora Energy, confirming its support for the Rule change proposed by the Tasmanian Government.

¹ Section 87 of the NEL.

The Commission has decided to make, with amendments, the Rule as proposed by the Tasmanian Government. Those amendments would sufficiently constrain the power on AEMO in amending those Procedures such that they apply only to Tranche 5a customers in the Tasmanian jurisdiction.

The benefit of the Rule as Made is that it will facilitate the timely introduction of contestability for Tranche 5a customers in market systems by enabling AEMO to make amendments to its relevant Procedures without complying with any process specified in the Rules for the amendment of those Procedures.

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1 Tasmanian Government's Rule Change Request

1.1 The Rule Change Request

On 23 May 2011, the Tasmanian Government (Rule Proponent) made a request to the Australian Energy Market Commission (Commission) to make a Rule change that would allow the Australian Energy Market Operator (AEMO) to amend its metrology Procedure; Market Settlement and Transfer Solution Procedures (MSATS); and Business-to-business (B2B) Procedures without complying with any process specified in the Rules for the amendment of those Procedures, including the Rules consultation Procedures in rule 8.9 of the National Electricity Rules (NER). The purpose of amending these Procedures is to remove the current exclusions of Tasmania from relevant sections of those Procedures. This would support the extension of retail contestability to customers in Tasmania consuming between 50 - 150 MWh of electricity per annum (Tranche 5a customers), from 1 July 2011 (Rule Change Request).

1.2 Rationale for the Rule Change Request

The Tasmanian Government has requested this Rule change to support the introduction of reforms from 1 July 2011 for Tranche 5a customers. The Tasmanian Government has gradually been introducing retail contestability since July 2006. Currently, only electricity customers with an annual consumption of 150 MWh or above have the ability to choose their own retailer. Therefore, the Tasmanian Government has requested this Rule change to facilitate the introduction of retail contestability to approximately 3,500 Tranche 5a customers in July 2011.

The proposed Rule submitted by the Tasmanian Government would allow AEMO to amend its metrology, MSATS, and B2B Procedures. Consequently, retail contestability for Tranche 5a customers was proposed to be implemented in the National Electricity Market (NEM) systems by 1 July 2011.

Ordinarily, to amend these Procedures, AEMO is required to comply with the processes specified in the Rules, which include the Rules consultation Procedures in rule 8.9 of the NER that would take approximately 85 business days. Therefore AEMO advised the proponent that it would be unable to make these changes by 1 July 2011. To address this issue, the Tasmanian Government has proposed the implementation of a one-off transitional Rule, under Chapter 11 of the NER to help bring forward the implementation of contestability to Tranche 5a customers. The proposed transitional Rule would allow AEMO to amend its metrology, MSATS and B2B Procedures without complying with any process specified in the Rules for the amendment of those Procedures.

The Tasmanian Government also requested that the proposed Rule be considered as non-controversial by the Commission as it considers that those stakeholders most likely to be affected by the introduction of this Rule have been consulted with.

1.3 Solution proposed in the Rule Change Request

The Tasmanian Government considers that its proposed Rule would allow AEMO to amend its metrology, MSATS and B2B Procedures without the requirement to comply with any process specified in the Rules for the amendment of those Procedures, including the Rules consultation Procedures in rule 8.9 of the NER. Consequently, this would facilitate the Tasmanian Government in extending sooner retail contestability to Tranche 5a customers. The Rule proponent also requested that the Rule as Made be 'written in sufficiently broad terms to ensure that AEMO is empowered to make any necessary changes to these Procedures that are identified prior to 1 July 2011'.²

Section (a) of the Rule proposed by the Tasmanian Government states that AEMO may, despite any other provisions in the Rules, amend the metrology, MSATS and B2B Procedures without complying with any process specified in the Rules for the amendment of those Procedures.

Section (b) outlines that an amendment under paragraph (a) must be made prior to 1 July 2011 and for the purpose of introducing contestability for connection points located in the Tasmanian region with annual consumption between 50 and 150 MWh of electricity.

Section (c) states that within 3 business days of making any amendments under paragraph (a), AEMO must publish on its website revised versions of each of the Procedures incorporating those amendments.

1.4 Commencement of Rule making process

On 2 June 2011, the Commission published a notice under section 95 of the National Electricity Law (NEL) advising of its intention to commence the Rule making process.

The Commission considered that the Rule change request was a request for a non-controversial Rule because the proposed Rule is unlikely to have a significant impact on the National Electricity Market.³ Consequently, the Commission intended to expedite the Rule change request under section 96 of the NEL, subject to the receipt of written objections. The closing date for receipt of requests objecting to the expedited process was 16 June 2011. No written requests were received. Accordingly, the Rule change request was considered under an expedited process under section 96 of the NEL.

² Tasmanian Government, Rule change request, p. 2.

³ Section 87 of the NEL

2 Final Rule Determination

2.1 Commission's determination

In accordance with section 102 of the NEL, the Commission has made this final Rule determination in relation to the Rule proposed by the Tasmanian Government. In accordance with section 103 of the NEL, the Commission has decided to make, with amendments, the Rule proposed by the Rule Proponent.⁴ The Commission's reasons for making this final Rule determination and the Rule as Made are set out in section 3.

The *National Electricity Amendment (Tasmania Tranche 5a Procedure Changes) Rule 2011 No. 8* (Rule as Made) is published with this final Rule determination. The Rule as Made commences on 14 July 2011. The Rule as Made is substantially similar to the Rule proposed by the Tasmanian Government; however, it contains some amendments considered necessary by the Commission. Its key features are described in section 3.2.

2.2 Commission's considerations

In assessing the Rule change request the Commission considered:

- the Commission's powers under the NEL to make the Rule;
- the Rule change request;
- the fact that there is no relevant Ministerial Council on Energy (MCE) Statement of Policy Principles;⁵
- the submission received during consultation; and
- the Commission's analysis as to the ways in which the proposed Rule will, or is likely to, contribute to the achievement of the National Electricity Objective (NEO).

2.3 Commission's power to make the Rule

The Commission is satisfied that the Rule as Made falls within the subject matter about which the Commission may make Rules. The Rule as Made falls within section 34 of the NEL as it relates to regulating:

- the operation of the national electricity market (section 34(a)(i)); and

⁴ Under section 103(3) of the NEL the Rule that is made in accordance with section 103(1) need not be the same as the draft of the proposed Rule to which a notice under section 95 relates or the draft of a Rule contained in a draft Rule determination.

⁵ Under section 33 of the NEL, the AEMC must have regard to any relevant MCE Statement of Policy Principles in making a Rule.

- the activities of persons (including Registered Participants) participating in the national electricity market or involved in the operation of the national electricity market (section 34(a)(iii)).

2.4 Rule making test

Under section 88(1) of the NEL the Commission may only make a Rule if it is satisfied that the Rule will, or is likely to, contribute to the achievement of the NEO. This is the decision making framework that the Commission must apply.

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

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

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

For this Rule change request, the Commission considers that the relevant aspect of the NEO is the 'efficient use of electricity services for the long term interests of consumers'.⁶

The Rule as Made is likely to contribute to the NEO by facilitating earlier introduction of competition in the supply of electricity to Tranche 5a customers and therefore promoting more efficient use of electricity services. The Commission considers that the Rule as Made will have an incremental efficiency benefit because the effect of it is to bring forward amendments that were supported through a prior consultation process. The Commission notes that customers with an annual consumption of 50 – 150 MWh of electricity in other jurisdictions of the NEM have been able to choose their retailer for some years and this Rule change request would have the effect of extending that benefit to these Tasmanian customers earlier than would be the case were the Rule not made.

This will benefit Tranche 5a customers as they will be given the opportunity (as of July 2011) to choose the retailer that best suits their needs. The Rule as Made will assist in bringing forward an increase in the number of contestable customers and consequently this will create opportunities for second-tier retailers to enter the electricity market. Ultimately, the Rule as Made will result in bringing forwards the opportunity for more choice and greater competition in the Tasmanian electricity market.

The Commission considers that the Rule as Made will further contribute to the achievement of the NEO because it is likely to bring forward efficient investment in,

⁶ Under section 88(2), for the purposes of section 88(1) the AEMC may give such weight to any aspect of the NEO as it considers appropriate in all the circumstances, having regard to any relevant MCE statement of policy principles.

and efficient use and operation of, electricity services resulting in price benefits in the long term interests of Tranche 5a customers. As more retailers will be encouraged to enter the Tasmanian electricity market, operation of and investment in the market should increase and become more efficient.

2.5 Compatibility of the Rule as made with the proper performance of AEMO's declared functions

Under section 91(8) of the NEL the Commission may only make a Rule that has effect with respect to an adoptive jurisdiction if satisfied that the proposed Rule is compatible with the proper performance of AEMO's declared network functions. The Rule as Made is compatible with AEMO's declared network functions because it will not interfere with or impede AEMO's performance of these functions.

3 Commission's reasons

The Commission has analysed the Rule change request and assessed the issues/propositions arising out of this request. For the reasons set out below, the Commission has determined that a Rule be made. Its analysis of the Rule proposed by the Rule Proponent is also set out below.

3.1 Assessment of issues

The Tasmanian Government seeks to extend retail contestability to Tranche 5a customers. This will entail amendments to a number of AEMO's Procedures, namely the metrology, MSATS and B2B Procedures. The Rule as Made will allow AEMO to amend those Procedures without complying with any process specified in the Rules for the amendment of those Procedures, which is required to introduce contestability for Tranche 5a customers by the implementation date. Consequently, this would bring forward opportunities to increase competition in the State.

3.2 Assessment of Rule

The Commission is of the view that as the proposed Rule would enable AEMO to make changes to Procedures without consultation, the power to amend those Procedures should be constrained as far as possible to give certainty to participants in other jurisdictions. For this reason, some amendments were made to the proposed Rule.

The key changes to the proposed Rule are:

- an additional qualification providing that Procedure amendments must not affect the application of those Procedures in other participating jurisdictions;
- provision that the amended Procedures must be published no later than the effective date of the Procedure;
- include a definition of the term 'relevant Procedure' so that the term refers explicitly to the metrology, MSATS and B2B Procedures; and
- AEMO may only amend the relevant Procedures prior to 31 July 2011.

4 Commission's assessment approach

This chapter describes the analytical framework that the Commission has applied to assess the Rule change request in accordance with the requirements set out in the NEL (and explained in Chapter 2).

In assessing any Rule change request against the NEO, the first step is to consider the counterfactual arrangements against which the Rule change is being compared. In the present case the counterfactual arrangements are to require the relevant Procedures to be made under the relevant arrangements outlined in the Rules. The relevant arrangements under the Rules include consultation under rule 8.9, the Rules consultation Procedures that outline the timeframe within which normal consultation would occur, which is 85 business days.

In assessing this Rule change request, the Commission has considered the following issues:

- whether the proposed Rule would promote regulatory certainty for electricity market participants and adequately address any perceived risks from not complying with the processes specified in the Rules for the amendment of AEMO's Procedures; and
- whether it is likely to create a precedent that may impact on transparency in the Procedures and processes in the NER.

The Commission has focused on this set of issues because:

- the effect of the proposed Rule on electricity market participants as a result of AEMO not complying with the processes outlined in the Rules for amending Procedures are an important consideration. Those processes in the Rules are an integral element of regulatory certainty and process transparency for market participants operating in the NEM and care should be taken not to undermine that certainty; and
- the Rule as Made may create a potential precedent for future similar Rule change requests in relation to the Procedures and processes underpinning the NEM.

5 Assessment of the issues

This chapter sets out the Commission's considerations regarding whether the Rule as Made will:

- promote regulatory certainty for electricity market participants as a result of AEMO not complying with any process specified in the Rules for the amendment of the relevant Procedures; and
- be likely to create a precedent that may impact on the transparency of the Procedures and processes in the NER.

5.1 Rule Proponent's view

The Tasmanian Government is of the view that the amendments will have the effect of including Tasmania where it had otherwise been excluded from certain national Procedures. Further to this, the Rule change will have no impact on market participants other than AEMO and Aurora Energy, and is likely to promote competition in the retail electricity sector in Tasmania.

The Tasmanian Government considers that the marginal cost of implementing the proposed Rule is essentially zero, as the work required by AEMO and Aurora Energy to implement the changes required by the amended Procedures would be required even without the Rule change. The Rule as Made will allow AEMO to amend its Procedures without complying with any process specified in the Rules for the amendment of those Procedures including the Rules consultation Procedures in rule 8.9 of the NER, such that retail contestability for Tranche 5a customers can be brought forward.

The Tasmanian Government outlined two benefits of the Rule change:

- retail contestability for Tranche 5a customers will be implemented earlier than would be the case if the Rule was not made. This group of customers will benefit as they will be able to choose their electricity retailer; and
- both customers and retailers will have confidence in the ongoing reform process of introducing retail contestability to Tasmania. Second-tier retailers and retail market brokers will be encouraged to participate in the Tasmanian electricity market. Consequently, new entrant participants to the market will increase the level of choice and efficiency in the Tasmanian market.

5.2 Stakeholder views

The Commission received one submission from Aurora Energy stating its support for the Rule change. Aurora Energy notes that the Rule change request 'is simply applying aspects of current national market Procedures to the Tasmanian jurisdiction that

presently do not apply'.⁷ Aurora Energy also considers that 'there is no manner in which the Rule [change request] materially alters the relevant Procedures, bar the application of current market Procedures onto the Tasmanian jurisdiction'.⁸

5.3 Assessment

The Commission considers it important that adequate consultation is undertaken in respect of any amendments to Procedures made under the Rules. The objective of that consultation is to allow market participants to consider all the relevant issues and be comfortable that the proposed solution adequately addresses those issues and their needs. The Commission understands that there is a risk of unintended consequences arising in circumstances where amendments are made without sufficient consultation. However, for the Tasmanian Government's Rule change request, the Commission appreciates that the proposed amendments are minor and prior consultation has been undertaken.

Attachment A of the Rule change request outlines the extent of amendments required for each of the three Procedures identified.⁹ In most cases, the Commission notes the extent of any changes are minor and predominantly consists of removing words that exclude the application of those Procedures to the Tasmanian jurisdiction.¹⁰ The Commission agrees with Aurora Energy that these amendments are not likely to materially alter the Procedures, or impact on their application in jurisdictions other than Tasmania. However, to avoid any unintended consequences, the Rule as Made by the Commission seeks to appropriately constrain the power to amend the Procedures. Thereby, AEMO may only make changes to any relevant Procedures prior to 31 July 2011 and only if the amendment is required for the purpose of introducing contestability to Tranche 5a customers in Tasmania and does not affect the application of those Procedures in other participating jurisdictions.

Furthermore, the Commission considers that sufficient prior consultation has been undertaken. For example, the covering letter from the Tasmanian Government to its Rule change request indicated that AEMO and Aurora Energy are the main stakeholders likely to be impacted by the Rule change and have been involved extensively in the preparation of the Rule change proposal. The Tasmanian Government also advised that in collaboration with AEMO, all NEM participants were advised of its intention to submit a Rule change request to the Commission in AEMO Communication No. 611 (dated 29 March 2011).¹¹ Furthermore, the Tasmanian Government states that AEMO wrote to each of the committee members of the Information Exchange Committee (IEC) informing them of the proposed Rule change

⁷ Aurora Energy submission, 30 June 2011, p. 1.

⁸ *ibid.*

⁹ Tasmanian Government Rule change request, May 2011, Attachment A, pp. 1-3.

¹⁰ For example, in clause 5.1.1 of the AEMO Metrology Procedure: Part A National Electricity Market, the change would consist of the removal of 'but does not apply to the Tasmanian jurisdiction' and its replacement with 'and Tasmania'.

¹¹ Tasmanian Government Rule change request, May 2011, p. 2.

and the process to be undertaken. In response to that consultation, a single response was received from an IEC member who agreed with the procedural changes in principle but indicated the need for full consultation under the Rules consultation Procedures. The Tasmanian Government further advised that AEMO contacted the IEC member and informed them of the approach being undertaken and the time constraints involved and the IEC member was satisfied with the explanation and has raised no further concerns.¹²

In summary, the Commission is confident that sufficient consultation has been undertaken prior to receipt of the Tasmanian Government's Rule change request to allow AEMO to alter the relevant Procedures without complying with any process specified in the Rules for the amendment of those Procedures. Furthermore, the Commission considers that the power on AEMO to amend these Procedures has been constrained sufficiently to apply only to Tranche 5a customers in the Tasmanian jurisdiction.

5.4 Conclusion

The Rule as Made will facilitate the Tasmanian Government's plan of introducing retail contestability to Tranche 5a customers in Tasmania. The Commission is satisfied that sufficient consultation has previously been undertaken to allow AEMO to alter the relevant Procedures without complying with any process specified in the Rules for the amendment of those Procedures.

The Commission also considers that the Rule as Made will contribute to the NEO as bringing forward retail contestability for Tranche 5a customers increases the opportunity for competition in the Tasmanian energy market thereby promoting efficient use of electricity services in the long term interests of consumers in terms of the price of electricity.

¹² *ibid.* at p. 3.

Abbreviations

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|----------------------|---|
| AEMC | Australian Energy Market Commission |
| AEMO | Australian Energy Market Operator Limited |
| B2B | Business to Business |
| IEC | Information Exchange Committee |
| MCE | Ministerial Council on Energy |
| MSATS | Market Settlement and Transfer Solution |
| NEL | National Electricity Law |
| NEM | National Electricity Market |
| NEO | National Electricity Objective |
| Tranche 5a customers | Small business customers in Tasmania consuming between 50 - 150 MWh of electricity annually |

A Summary of submissions to the Rule change proposal

One submission was received in relation to the Rule change from Aurora Energy on the 30 June 2011. The submission stated that Aurora Energy is supportive of the Rule change and outlined the reasons why. The table below provides a summary of this submission.

| Stakeholder | Issue | AEMC response |
|---------------|--|--|
| Aurora Energy | <p>The submission received from Aurora Energy states that it supports the Rule change because:</p> <ul style="list-style-type: none">• it considers the Rule change proposal to be non-controversial;• the Rule change is simply applying aspects of current national market Procedures to the Tasmanian jurisdiction that presently do not apply; and• the Rule is essential to allowing the progression of contestability in Tasmania to occur in line with the policy intent of the State Government. | <p>The Commission notes that Aurora Energy is supportive of the Rule change. No response required by the Commission.</p> |