



Australian Energy Market Commission

**Rule Determination**

**National Electricity Amendment (NEMMCO  
Participant Derogation (Deferral of Settlement  
Payments due to APEC)) Rule 2007**

Rule Proponent  
NEMMCO

16 August 2007

Signed: .....

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For and on behalf of  
Australian Energy Market Commission

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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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## Contents

Contents .....	iii
Abbreviations .....	iv
Summary .....	v
1 NEMMCO's Rule proposal .....	1
2 Rule determination .....	3
2.1 The Commission's power to make the Rule .....	3
2.2 Assessment of the Rule: the Rule making test and the national electricity market objective .....	3
2.3 Consultation on the NEMMCO proposal .....	4
2.4 Expedited Rule making process .....	4
2.5 Differences between the proposed Rule and the Rule to be made .....	5
3 Matters arising from consultation and the Commission's analysis .....	7
3.1 Accessibility issues due to the APEC public holiday .....	7
3.2 Possibility of a default event occurring .....	8
3.3 Financial impact of Rule change on the market .....	9

## Abbreviations

AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
AFMA	Australian Financial Markets Association
APEC	Asia Pacific Economic Cooperation
Commission	see AEMC
CBD	Central Business District
MCE	Ministerial Council on Energy
NEL	National Electricity Law
NEM	National Electricity Market
NEMMCO	National Electricity Market Management Company
OTC	Over the counter
Rules	National Electricity Rules

## Summary

On 29 June 2007, the Commission received a Rule change proposal from the National Electricity Market Management Company (NEMMCO) seeking a participant derogation to defer all settlement payments to NEMMCO by one business day to Monday, 10 September 2007, due to the declaration of a public holiday in Sydney on Friday, 7 September 2007 (the APEC public holiday).

NEMMCO has advised that it is unusual for a public holiday in Sydney or Melbourne to coincide with a settlement day, as generally the National Electricity Market (NEM) is settled on a Friday, whereas jurisdictional public holidays often occur on a Monday.

The APEC public holiday is the first occurrence of a Sydney/ Melbourne public holiday coinciding with a business day (as defined in the Rules) and the day of settlement for a NEM billing period.

On 5 July 2007, the Commission commenced initial consultation on this Rule change proposal by publishing a notice under sections 95 and 96 of the NEL for a non-controversial Rule change. The Rule change was open for public consultation for four weeks, with submissions closing on 6 August 2007. Interested parties were required to advise the Commission in writing by 19 July 2007 of an objection to expediting the making of the Rule on the grounds that it was non-controversial. The Commission received one submission in support of the proposal from the Australian Financial Markets Association.

The Commission has considered the proposed Rule change and found that minimising operational risks to avoid any unintended default events occurring in the market on this particular NEM settlement day is in the long term interests of consumers and will ensure the stability of the NEM prudential framework.

Having considered the issues raised in the proposal and its own analysis, the Commission is satisfied that the proposed Rule will contribute to the achievement of the NEM objective and satisfies the Rule making test in section 88 of the NEL. In accordance with sections 102 and 103 of the NEL, the Commission has therefore decided to make a Rule.

This Rule determination sets out the Commission's reasons for making the Rule, in accordance with the requirements of the NEL.

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## 1 NEMMCO's Rule proposal

On 29 June 2007, the Commission received a Rule change proposal from the National Electricity Market Management Company (NEMMCO) seeking a participant derogation to defer all settlement payments to NEMMCO by one business day to Monday, 10 September 2007, due to the declaration of a public holiday in Sydney on Friday, 7 September 2007 (the Asia-Pacific Economic Cooperation (APEC) public holiday).

NEMMCO proposes that the following participant derogation be made:

*“Despite anything to the contrary in clause 3.15.16 of the Rules and the timetable, for the purposes of the billing period commencing 5 August 2007, payment by Market Participants to NEMMCO shall be made on the 21st business day after the end of the billing period.”*

NEMMCO proposes that the participant derogation expire on 31 December 2007.

NEMMCO has advised in its proposal that it is unusual for a public holiday in Sydney or Melbourne (the major Australian financial centres) to coincide with a settlement day, as generally the National Electricity Market (NEM) is settled on a Friday, whereas jurisdictional public holidays often occur on a Monday.

The APEC public holiday is the first occurrence of a Sydney/ Melbourne public holiday coinciding with a business day (as defined in the Rules) and the day of settlement for a NEM billing period.

NEMMCO's concerns relate to its perception of heightened risk of settlement process failure as a result of the APEC public holiday. Namely, that the most critical day in the NEM settlements cycle has not been tested in circumstances where it is likely that a large number of potentially critical staff in the various institutions involved in the settlements process are away and at a time where there may also be limited access to some business premises, particularly in the Sydney financial sector.

NEMMCO's concerns relate more specifically to:

- limited access to facilities in the Sydney CBD may impose a higher than normal risk to NEMMCO's ability to settle the NEM in a timely manner;
- Australian over-the-counter (OTC) markets tend to operate in a reduced capacity on NSW public holidays, which may delay processing of a settlement payment;
- if a Market Participant encounters any issues with their settlement payment, it is likely that their Sydney-based bank relationship manager will be observing the public holiday and will delegate responsibilities to staff that may not be familiar with the financial status of the affected Market Participant to resolve the issue in a timely manner; and

- if NEMMCO needs to contact a Credit Provider's bank contact person in the event of a non-payment of settlement, there is a increased risk that critical bank staff cannot be contacted in a timely manner;

which may result in higher than normal operational risks and possible commencement of unwarranted default event proceedings.

NEMMCO's proposal is to defer all settlement payments to the next business day, ie Monday, 10 September 2007, which will be a normal business day under the Rules and for OTC markets, with full access to the necessary staff, facilities and processes to ensure smooth processing of settlements.

## **2 Rule determination**

The Commission has determined in accordance with section 102 of the National Electricity Law (NEL) to make, with amendments, this Rule determination and in accordance with section 103, the attached Rule. The Rule to be made (the Rule) is attached to this determination, which is different to the proposed Rule put forward by the proponent. The Rule commences operation on 16 August 2007.

This determination sets out the Commission's reasons for making the Rule. The Commission has taken into account:

1. the Commission's power under the NEL to make the Rule;
2. the proponent's Rule change proposal and proposed Rule;
3. submissions received;
4. relevant MCE statements of policy principles; and
5. the Commission's analysis as to the ways in which the Rule will or is likely to contribute to the achievement of the NEM objective so that it satisfies the statutory Rule making test.

### **2.1 The Commission's power to make the Rule**

The Commission is satisfied that the Rule proposed by NEMMCO falls within the subject matters for which the Commission may make Rules, as set out in section 34 of the NEL and in Schedule 1 to the NEL.

The Rule satisfies the criteria of section 34 of the NEL as it relates to the regulation of the operation of the NEM.

In addition, the Rule specifically relates to matters which the Commission may make Rules that are provided for in clause 34 of Schedule 1 of the NEL where:

- clause 34(a) states that the AEMC may make Rules with respect to the payment of money (including the payment of interest) for the settlement of transactions for electricity or services purchased or supplied through the wholesale exchange operated and administered by NEMMCO.

### **2.2 Assessment of the Rule: the Rule making test and the national electricity market objective**

The Rule making test, as provided in section 88 of the NEL, requires the Commission to be satisfied that a Rule that it proposes to make will, or is likely to, contribute to the achievement of the NEM objective.

The test requires the Commission to consider the implications of the proposed new Rule for efficient investment in, and efficient use of electricity services, in respect of price, quality, reliability and security of supply, and reliability, safety and security of

the NEM, which impact on the long term interests of end users of electricity. The Commission has applied the Rule making test to NEMMCO's proposal and found that it satisfies the Rule making test.

The proposed Rule seeks to minimise operational risks on the timely settlement of payments for the NEM billing period commencing 5 August 2007, created by the APEC public holiday in Sydney. The proposal also avoids late payments or non-payments in the settlements process that may be attributable to the APEC public holiday.

By minimising operational risks, NEMMCO believes this would avoid any unintended default events, as defined in the Rules, occurring on this particular NEM settlement day. The Commission considers that there is merit in the arguments put forward by NEMMCO to support its proposal, and that it is in the long term interests of consumers to ensure the stability of the NEM prudential framework.

The NEL also requires the Commission to have regard to any MCE statements of policy principles in applying the Rule making test. The Commission notes that currently, there are no relevant MCE statements of policy principles relating to this proposal.

### **2.3 Consultation on the NEMMCO proposal**

NEMMCO submitted its Rule change proposal to the Commission on 29 June 2007.

On 5 July 2007, under sections 94 and 95 of the NEL, the Commission commenced initial consultation on this proposal by publishing a notice under sections 95 and 96 of the NEL and also seeking objections to the Commission's decision to expedite the making of the Rule on the grounds that it is non-controversial. The Rule change was open for public consultation for four weeks, with submissions closing on 6 August 2007. Interested parties were required to advise the Commission in writing by 19 July 2007 of an objection to expediting the making of the Rule as a non-controversial Rule change.

The Commission received one submission in support of the proposal from the Australian Financial Markets Association (AFMA), an industry body whose membership involves many NEM participants.

### **2.4 Expedited Rule making process**

NEMMCO requested that this Rule change proposal be treated as non-controversial on the basis that:

- the Rule would improve administrative efficiency of the NEM by avoiding settlement at a time when key staff may not be available;
- the APEC public holiday is a one-off unforeseen event;
- the Rule will have an insignificant effect on the market as a whole; and

- NEMMCO's informal discussion with market participants has not identified any opposition to the proposal.

The Commission noted that this participant derogation relates to the APEC public holiday on 7 September 2007 and that its benefits cannot be captured unless expedited under section 96 of the NEL.

The Commission considered that, in accordance with section 87 of the NEL, this Rule change proposal is unlikely to have a significant effect on the NEM, given the small volume of money involved as identified by NEMMCO in its proposal and the fact that the proposal is aimed at minimising administrative inefficiency, and therefore the Commission expedited the Rule change as non-controversial in accordance with section 96 of the NEL.

The Commission did not receive any written objections under section 96(2) of the NEL to the expedition of this Rule making process. Therefore, the Commission proceeded directly to this final determination under section 96 of the NEL.

## **2.5 Differences between the proposed Rule and the Rule to be made**

As discussed in section 3 of this determination, the Commission has adopted the substance of NEMMCO's proposal but has made some amendments to the proposed Rule to clarify the application of the clause and address the consequential effect of the derogation on clause S3.3.1.

Clause 8A.3.2(a) provides for NEMMCO to undertake settlement day on the 21<sup>st</sup> business day for the purposes of the billing period commencing on 5 August 2007. That 21<sup>st</sup> business day is deemed to be the 20<sup>th</sup> business day for the purposes of clause 3.15.16 and the timetable (as defined in the Rules). The reason behind the "deeming" is to provide NEMMCO with sufficient flexibility to ensure everything under the Rules that is linked to that settlement day is not unintentionally invalidated by the change of day and very little administrative changes will be required for NEMMCO.

Clause 8A.3.2(b) addresses the situation where NEMMCO would have to recalculate the maximum credit limit (under clause S3.3.1) as a result of the change in settlement day. The Commission is of the view, which NEMMCO agrees, that in the interests of administrative efficiency, the settlement day for the purposes of this clause (S3.3.1(b)(6)(ii)) should continue to be the 20<sup>th</sup> business day.

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### **3 Matters arising from consultation and the Commission's analysis**

In this section, the Commission addresses a number of issues that have emerged from consultation and during its analysis.

In developing the Rule, the Commission has examined a number of issues. These include:

- accessibility issues due to the APEC public holiday;
- the possibility of a default event occurring in the market; and
- the financial impact of the proposed Rule on the market.

This section details the Commission's analysis and reasons underlying its Rule in relation to each of the issues identified above.

#### **3.1 Accessibility issues due to the APEC public holiday**

NEMMCO's proposal asserts that "access to the northern part of the Sydney Central Business District (CBD) will be restricted on the APEC public holiday. Although the banking sector is expected to operate, limited access to facilities in the Sydney CBD imposes a higher than normal risk to NEMMCO's ability to settle the NEM in a timely manner"<sup>1</sup>.

The APEC 2007 Taskforce has indicated, through its Sydney Bulletin No. 4, that:

"The security operations will intensify around the northernmost sector of the CBD and in the vicinity of the major venues. Members of the public should expect a significant security presence, large numbers of police, safety barricades, identification checks and the possibility of vehicle or personal searches".<sup>2</sup>

"Further and more precise detail on the security overlay in the northern CBD, including the proposed declaration of smaller restricted areas within the declared area [areas of Sydney CBD, Hickson Road, Darling Harbour and parts of the Harbour off Circular Quay] under the APEC Meeting (Police Powers) Act 2007, will be released closer to the event."<sup>3</sup>

"Only people with accreditation issued by the APEC 2007 Taskforce, or identified residents, business representatives and business clients will be able to access a restricted area."<sup>4</sup>

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<sup>1</sup> NEMMCO, APEC public holiday in NSW Rule change proposal, 29 June 2007, p1.

<sup>2</sup> APEC 2007 Taskforce, Sydney Bulletin No. 4, 15 July 2007, p8.

<sup>3</sup> APEC 2007 Taskforce, Sydney Bulletin No. 4, 15 July 2007, p8.

<sup>4</sup> APEC 2007 Taskforce, Sydney Bulletin No. 4, 15 July 2007, p8.

Although the Sydney CBD will remain open and accessible during the APEC public holiday, given the lack of precise details regarding access to facilities, premises and critical personnel in the Sydney financial sector and within market participant organisations, it would be prudent to take steps to minimise any possible barriers to NEMMCO's ability to settle the NEM in a timely manner.

The Commission agrees with NEMMCO's proposal that there are likely to be issues with accessing the northern part of the Sydney CBD, due to the APEC public holiday, and that it would be prudent to take steps to minimise any possible barriers to NEMMCO's ability to settle the NEM in a timely manner.

### **3.2 Possibility of a default event occurring**

NEMMCO's proposal claims that in settling the NEM on the APEC public holiday, "NEMMCO would be placed in the position of not knowing whether a delay in a settlement payment is the result of operational risks that have not been attended to in a timely manner, or financial inadequacy of the Market Participant due to the higher level of payments to be made. This could place NEMMCO in the position of having to manage the risk of financial inadequacy by Market Participant payers in a more conservative fashion and commence default proceedings in circumstances where they might not otherwise be warranted"<sup>5</sup>.

The Commission notes that, in accordance with clause 3.15.21 of the Rules, if a "Market Participant does not pay any money due for payment by it under the Rules by the appointed time on the due date", this is considered a default event. NEMMCO requires "Market Participants paying to NEMMCO must pay in cleared funds by 10:00am (Sydney time) on Settlement Day"<sup>6</sup>. If a default event occurs, "NEMMCO may:

1. issue a Default Notice to the defaulting Market Participant(s), to be remedied within 24 hours of the Default Notice being issued, and/or
2. draw upon credit support or security deposits provided by the defaulter(s) in order to recover funds necessary to meet settlement payment obligations from the relevant credit support providers"<sup>7</sup>.

The Commission notes that, given the current uncertainty regarding access to facilities and critical personnel in the Sydney financial sector and within market participant organisations, there may be delays in clearing NEM settlement transactions in accordance with NEMMCO's strict settlement timetable. Although the likelihood of a default event occurring in the market is unlikely, delays due to the APEC public holiday may lead to unwarranted default notices being issued, in accordance with NEMMCO's process and procedures.

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<sup>5</sup> NEMMCO, APEC public holiday in NSW Rule change proposal, 29 June 2007, p3.

<sup>6</sup> NEMMCO, NEM Settlements Process version 5, November 2006, p7.

<sup>7</sup> NEMMCO, NEM Settlements Process version 5, November 2006, p8.

Such actions could undermine the stability of the NEM prudential framework. The Commission therefore considers exercising caution to ensure the stability of the NEM prudential framework to be advantageous for the NEM as a whole. By moving settlement to the next business day, the Commission considers that potential administrative inefficiencies from the settlement process will be minimised, ensuring that only warranted default notices are issued.

### **3.3 Financial impact of Rule change on the market**

NEMMCO's proposal "estimates the cost to Market Participants that are paid by NEMMCO (mostly Market Generators) of a delay in settlement to the next business day (three calendar days in total) to be of the order of \$50,000. A similar saving would be expected from those who would be required to pay NEMMCO"<sup>8</sup>.

Although the Commission does not consider a cost of \$50,000 to be trivial, in the absence of any submissions which disagree with NEMMCO's proposal, this appears to be a cost the market is willing to bear to ensure the stability of the NEM prudential framework.

The Commission considers the financial impact of this Rule change proposal to be acceptable to the market, for the stability of the NEM prudential framework.

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**See attached Rule to be made.**

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<sup>8</sup> NEMMCO APEC public holiday in NSW Rule change proposal, 29 June 2007, p6.

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