



Australian Energy Market Commission

CONSULTATION PAPER

NATIONAL ELECTRICITY AMENDMENT (AER REPORTING ON MARKET OUTCOMES) RULE 2022

PROPONENT

Australian Energy Regulator

24 MARCH 2022

RULE

INQUIRIES

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ABOUT THE AEMC

The AEMC reports to the Energy Ministers' Meeting (formerly the Council of Australian Governments Energy Council). We have two functions. We make and amend the national electricity, gas and energy retail rules and conduct independent reviews for the Energy Ministers' Meeting.

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1 CONTEXT AND OVERVIEW

On 21 December 2021, the Australian Energy Regulator (AER or proponent) submitted a rule change request to the Australian Energy Market Commission (AEMC or Commission). The request seeks to amend clause 3.13.7 of the National Electricity Rules (NER) which relate to its reporting obligations on significant price variations and high price events in the NEM.

The AER considers that the current requirements are overly prescriptive and no longer fit for purpose. It has proposed to replace the current rule with a principles-based reporting framework supported by an AER guideline. The rule change request includes a proposed rule (see appendix A),¹ and may be found on the AEMC website, www.aemc.gov.au.

This consultation paper has been prepared to facilitate public consultation on the rule change request and invite stakeholder submissions. The paper provides a summary of, and background to, the rule change request, sets out issues for consultation, and outlines the process for making submissions.

1.1 Current arrangements

The AER undertakes a range of reporting on wholesale electricity market outcomes. The types of reporting are listed below:

- **Wholesale electricity market performance reports:** assess the state of market competition and efficiency according to the AER's obligations under s. 18C of the National Electricity Law (NEL), published every two years.
- **State of the energy market reports:** highlight trends and issues across the wholesale electricity and gas markets, the transmission and distribution networks, and energy retail markets, published annually.
- **Wholesale markets quarterly reports:** identify significant trends in each calendar quarter's electricity and gas markets.
- **Weekly electricity market reports:** contain analysis of spot market outcomes, rebidding behaviour, movements in the contract market, and reasons for significant price variations as required by clauses 3.13.7(a) and (b).²
- **Standalone special reports:** assess significant price events that the AER considers warrant a standalone report in accordance with its obligations under s. 18C of the NEL.
- **\$5,000/MWh reports:** standalone reports that identify and describe the factors contributing to the 30-minute spot price exceeding \$5,000/MWh or a market ancillary service price exceeding \$5,000/MW, as required by clauses 3.13.7(d) and (e).³

Clause 3.13.7 of the NER covers AER reporting requirements on specific price outcomes. It is not intended to cover broader reporting on market trends and performance, which is done

¹ AER, rule change request, pp. 6-7.

² The latest weekly electricity market report was published in September 2021 before the introduction of 5-minute settlement on 1 October 2021.

³ The AER continues to report on the price average of 6 trading intervals calculated the same way as under 30-minute settlement despite the introduction of 5-minute settlement.

through the AER's biennial wholesale electricity market performance reports, annual state of the energy market reports and wholesale markets quarterly reports as described above. The AER's reporting requirements under clause 3.13.7 are:⁴

- **Reporting on significant price variations:** clauses 3.13.7(a) and (b) require the AER to report quarterly on the reasons for significant price variations between forecast and actual prices (the AER covers this requirement in its weekly electricity market reports).
- **ACCC or AEMC requested reports:** clause 3.13.7(c) states that the AER may report on a particular market outcome at the request of the ACCC or AEMC.
- **Reporting on prices above \$5,000/MWh:** clauses 3.13.7(d) and (e) require the AER to report on the reasons for a 30-minute spot price or market ancillary service price exceeding \$5,000/MWh or \$5,000/MW respectively, which must include describing the withdrawal of generation capacity, network availability, whether rebidding contributed to the high price, and identifying marginal generating units and generating units with offers over \$5,000/MWh.

1.2 Issues raised in the rule change request

The AER considers the reporting requirements under clause 3.13.7 of the NER to be inflexible and no longer fit for purpose in the current market context. The issues raised with each of the requirements are outlined below.

1.2.1 Reporting on significant price variations (clauses 3.13.7(a) and (b))

The AER considers that the requirement to report on significant price variations is inflexible and irrelevant in the current market context.

The claim of inflexibility is made on the grounds that the criteria used to define significant price variations between AEMO's forecast spot price and the actual spot price are overly prescriptive.⁵ Further, the AER considers that the requirement under clause 3.13.7(a) to consult with the AEMC to determine the criteria creates inflexibility around adapting them.

The claim of irrelevance is made on the grounds that the AER is unaware of any stakeholders who use the significant price variation analysis included in its weekly electricity market reports.⁶ In its view, this is largely due to the criteria no longer being relevant as they were developed in relation to the 30-minute settlement framework. Clause 3.13.7(b) requires the AER to identify and review each significant price variation event despite the criteria capturing hundreds of instances each week which the AER considers to be mostly unproblematic.⁷

⁴ See clause 3.13.7 of the NER.

⁵ AER, rule change request, p. 8.

⁶ Ibid.

⁷ The number of trading intervals where actual prices varied significantly from forecast prices according to the current criteria revealed 233 instances per week on average in 2020 and 204 instances per week on average in 2019, approximately 69% and 61% of all 30-minute trading intervals in an average week of each year respectively: AER, *Weekly electricity report*, 12-18 September 2021, p. 2.

1.2.2 ACCC or AEMC requested reports (clause 3.13.7(c))

The AER considers that the provision under clause 3.13.7(c) for the ACCC or AEMC to request the AER to report on a particular market outcome is outdated. This claim is made on the grounds that its other wholesale market reporting requirements already sufficiently capture a range of market outcomes, and the AER has collaborated with the ACCC and AEMC on reports in the past without the use of this clause.

The AER has broad reporting requirements under s. 18 of the NEL which it considers sufficient to allow it to report on a range of possible market outcomes which the ACCC or AEMC may otherwise request. For example, the AER prepares biennial reports assessing the state of market competition and efficiency in the NEM under the requirement in the NEL to review the performance of the wholesale electricity market.

It has also produced standalone special reports that the NEL or NER do not directly require, which include reports done in collaboration with the ACCC or AEMC.⁸ The AER further noted that the current provision already gives the AER discretion to decide whether to prepare a requested report and that it has never historically been used in any case.

1.2.3 Reporting on prices above \$5,000/MWh (clauses 3.13.7(d) and (e))

The AER considers that the requirements under clauses 3.13.7(d) and (e) lack flexibility and are outdated. Under the requirements, the AER must report on any instances where:

- the 30-minute spot price exceeds \$5,000/MWh, and
- any market ancillary service price significantly exceeds the spot price over a period, or exceeds \$5,000/MW for a number of 30-minute periods within that period.

The AER considers the \$5,000/MWh threshold to be outdated as it was introduced in 2001 as part of a suite of amendments to increase the price cap from \$5,000/MWh to \$10,000/MWh.⁹ The AER understands that the requirement was designed to address a concern that with the increase of the price cap, generators would have an increased incentive to make bids strategically that would force prices up.

The AER considers the requirements to be inflexible as it is required to assess whether rebidding contributed to the price outcome and must identify all marginal generating units and generating units with offers over \$5,000/MWh,¹⁰ when potential market gaming and rebids are often not relevant to the high price event.¹¹ The AER noted that due to this inflexibility and high level of prescription, the current rule is no longer useful under the 5-minute settlement framework, and may additionally no longer be appropriate if a capacity market is introduced.

8 For example, *AER, Winter energy prices, June 2016* covered high prices in eastern and southern Australia, *AER, Electricity wholesale performance monitoring - Hazelwood advice, March 2018* covered the impact on Victoria and South Australia of the Hazelwood power station closure, and *AEMC, Gaming in rebidding assessment (Grattan response), 28 September 2018* was done in collaboration with the AER and assessed generator rebidding.

9 AER, rule change request, p. 10.

10 See clauses 3.13.7(d)(2), (d)(3) and (e)(5) of the NER.

11 For example, on 22 January 2021 the spot price reached \$5,031/MWh in South Australia for the 4am trading interval because the Pelican Point power station tripped, and the AER was required to undertake a competition assessment despite the cause being a technical issue: *AER, Prices above \$5,000/MWh - 2 January 2021 (SA), 16 March 2021*.

2 ISSUES FOR CONSULTATION

This section outlines the assessment framework the Commission proposes to base its decision on, the proponent's proposed solution, and the issues that stakeholders are encouraged to comment on.

2.1 Assessment framework

Under 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 national electricity objective (NEO).¹² This is the decision-making framework that the Commission must apply.

The NEO is:¹³

to promote efficient investment in, and efficient operation and use of, electricity services for the longer 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.

2.1.1 The AER's assessment on how the proposed rule contributes to the NEO

The AER considers that the proposed rule change would contribute to the NEO by facilitating more insightful AER reporting into market events and outcomes.¹⁴ The AER noted that greater flexibility in reporting will enable it to better tailor its reports according to changing market conditions or the circumstances surrounding an event to provide greater transparency and targeted analysis on the key drivers of market outcomes. This is considered to be more useful for policymakers, market participants and energy users to understand whether price outcomes reflect underlying supply and demand conditions, market inefficiencies or participant behaviour.¹⁵

2.1.2 Making a more preferable rule

Under s. 91A of the NEL, the Commission may make a rule that is different (including materially different) to a proposed rule (a more preferable rule) if it is satisfied that, having regard to the issues raised in the rule change request, the more preferable rule will or is likely to better contribute to the achievement of the NEO.

¹² s. 88 of the NEL.

¹³ s. 7 of the NEL.

¹⁴ AER, rule change request, p. 13.

¹⁵ Ibid.

2.1.3

Making a differential rule

Under the Northern Territory legislation adopting the NEL, the Commission may make a differential rule if it will, or is likely to, better contribute to the achievement of the NEO than a uniform rule.¹⁶

As the proposed rule relates to parts of the NER that currently do not apply in the Northern Territory, the Commission has not assessed the proposed rule against additional elements required by the Northern Territory legislation.¹⁷

2.1.4

Proposed assessment framework

The Commission will have regard to the following criteria in determining whether the rule change request contributes to achieving the NEO:

- **Improving information transparency:** expanding the AER's scope for more targeted reporting to increase the usefulness of the reports by allowing the AER to focus on the most relevant drivers of market outcomes. It should improve information transparency for policymakers, market participants and energy users by ensuring the most appropriate causes of price outcomes are reported on. This should contribute to more informed decision-making and help increase market efficiency.
- **Increasing flexibility:** increasing the flexibility of the rule to allow the reporting to remain relevant as the market evolves. It should reduce the need for possible future changes to the rule as it should be able to accommodate a range of market, technological, policy and other changes to ensure ongoing usefulness to stakeholders.
- **Principles-based approach:** avoiding excessively prescriptive requirements in the rule to reduce the regulatory burden and administrative costs incurred by the AER and associated stakeholders.

QUESTION 1: ASSESSMENT FRAMEWORK

- a) Is the proposed assessment framework appropriate for considering the AER's rule change request?
- b) Are there any other relevant considerations that should be included in the assessment framework?

¹⁶ A differential rule is a rule that varies in its term as between the national electricity system, and one or more, or all, of the local electricity systems, or does not have effect with respect to one or more of those systems but is not a jurisdictional derogation, participant derogation or rule that has effect with respect to an adoptive jurisdiction for the purpose of s. 91(8) of the NEL.

¹⁷ From 1 July 2016, the NER, as amended from time to time, apply in the NT, subject to derogations set out in regulations made under the NT legislation adopting the NEL. Under those regulations, only certain parts of the NER have been adopted in the NT (see the AEMC website for the NER that applies in the NT). National Electricity (Northern Territory) (National Uniform Legislation) Act 2015.

2.2 Proposed solution

The AER's proposal is to replace the current prescriptive requirements in clause 3.13.7 with a new principles-based framework for reporting on significant price outcomes, supported by AER guidelines.¹⁸ The AER considers that the principles-based framework will deliver more effectively on the original intent of the reporting requirement.

It argues that greater flexibility will promote better quality and more relevant reporting, as it can better tailor reports depending on the circumstances of an event and current market conditions. In its view, this will provide more useful information to policymakers, market participants and energy users on whether price outcomes reflect underlying supply and demand conditions, market inefficiencies or participant behaviour.¹⁹

QUESTION 2: MOVING TO A PRINCIPLES-BASED FRAMEWORK

- a) Do stakeholders agree that moving to principles-based reporting requirements will result in flexible reporting that delivers more transparent and relevant information as the market evolves?
- b) Are stakeholders concerned that some significant price events may not be reported on which should be?

The Commission encourages stakeholders to comment on the following four issues related to the proposed solution outlined below, as it intends to progress this rule change on an expedited basis with only one round of consultation (see section 3.1).

2.2.1 The criteria for significant price outcomes in the guidelines

The AER has proposed that its guidelines outline the criteria for determining which prices classify as significant price outcomes.²⁰ The proposed draft rule does not place any requirements on the development of the criteria.

Under clauses 3.13.7(d) and (e), the AER noted that the current fixed price threshold of \$5,000/MWh is inflexible as it requires reporting on one 30-minute price exceeding \$5,000/MWh in one region, but not hours of prices reaching \$4,900/MWh across multiple regions.²¹ The proposed draft rule does not explicitly require the criteria to capture such instances, for example by requiring the guidelines to determine price thresholds being reached for a specified duration or frequency, e.g. three occurrences of the price cap being reached within a one-hour trading interval.

¹⁸ See proposed draft rule in appendix A.

¹⁹ AER, rule change request, p. 13.

²⁰ See clause 3.13.7A(a)(i) of the proposed draft rule in appendix A.

²¹ AER, rule change request, p. 10.

QUESTION 3: DEFINING SIGNIFICANT PRICE OUTCOMES IN GUIDELINES

- a) Is it appropriate for the rules to specify requirements on the criteria for significant price outcomes in the guidelines?
- b) If so, what requirements? For example, a requirement for the AER to establish, in its reasonable opinion, price thresholds and the duration or frequency of these thresholds being met.

2.2.2

The timing of reporting

The AER has proposed that significant price outcomes must be reported on each calendar quarter within a collated quarterly report, with the ability to report on a significant price outcome outside of the quarterly report where appropriate.²² Its guidelines would specify the criteria for issuing a more timely standalone special report covering an individual significant price event.²³

The AER noted that consolidating multiple significant price outcomes into a single quarterly report may reduce regulatory burden and administrative costs, and allow for reporting that can accommodate a range of market, technological, policy and other changes.

QUESTION 4: FREQUENCY OF REPORTING

Do you consider that the AER's proposed time frames contribute to improving information transparency through more useful reporting, and increase flexibility to accommodate future changes in the market?

2.2.3

The factors that will be considered in reporting

While the AER's proposed draft rule does not specify which price outcomes must be reported on, it does specify which factors must, and may, be considered in analysing the key drivers of price outcomes.

The proposed draft rule requires the AER to consider the withdrawal of generation capacity, network availability and participant offer behaviour. Further, the AER may consider broader and ongoing market trends, any events and behaviours that may be detrimental to effective competition and efficient market operation, and any other matters the AER considers relevant.²⁴

²² See clauses 3.13.7(a) and (d) of the proposed draft rule in appendix A.

²³ AER, rule change request, p. 7.

²⁴ See clauses 3.13.7(b) and (c) of the proposed draft rule in appendix A.

QUESTION 5: PRINCIPLES FOR REPORTING

Do the AER's proposed principles effectively cover information that will be most useful for stakeholders to understand the key drivers of market outcomes?

2.2.4

The consultation process for the guidelines

The AER has proposed that it must consult with persons it considers appropriate in developing and publishing its guidelines.²⁵ The proposed draft rule requires this consultation for the development of the guidelines, but does not explicitly require consultation for any future amendments to the guidelines.

The AER is of the view that subjecting the guidelines to the rules consultation procedures would be excessive as this currently requires two rounds of consultation and the reporting requirements are unlikely to have a material impact on stakeholders.²⁶

QUESTION 6: CONSULTATION PROCESS FOR GUIDELINES

- a) Should the AER consult with persons it considers appropriate, or should there be an explicit requirement for consultation to be open to all in a public process?
- b) How many rounds of consultation should be required?
- c) Should a consultation process be required for future significant amendments to the guidelines, and if so, should this process be different to the process required for the establishment of the guidelines?

²⁵ See clause 3.13.7A(b) of the proposed draft rule in appendix A.

²⁶ The AEMC is currently progressing a rule change request from the Australian Energy Market Operator to make the Rules Consultation Procedures more adaptable to different circumstances (rule 8.9 of the NER), and will publish a draft determination on 14 April 2022 for further stakeholder feedback.

3 PROCESS FOR THIS RULE CHANGE

This section sets out the process to be undertaken for this rule change request, including its treatment as non-controversial, and the process for lodging a submission.

The key dates for stakeholders in this process are as follows:

- Commencement of this rule change process: 24 March 2022
- Objections to an expedited process to be received by: 7 April 2022
- Submissions to the proposal to be received by: 21 April 2022
- Final decision to be published under an expedited process by: 19 May 2022

3.1 Treatment as a non-controversial rule change

The Commission considers the rule change request to be non-controversial and unlikely to have a significant impact on the NEM.²⁷ This means it may be processed under an expedited (faster) process under which there is only one round of consultation and the AEMC is required to publish its final rule determination within six weeks of commencing the rule change process.²⁸

This is because amending the AER's wholesale electricity market reporting requirements is unlikely to have a material impact on the wholesale market, market participants or consumers; nor will it introduce material costs for industry.

The Commission has decided to use an expedited process to consider this rule change request provided that it does not receive any valid requests not to use the expedited process by 7 April 2022. To be valid, an objection should set out the reasons why the rule change request will have a significant impact on the NEM.

3.2 Lodging a submission

The Commission invites requests not to make a rule under the expedited process and written submissions on this rule change proposal.

All enquiries on this project should be addressed to Antonia Flowers on (02) 8296 7800 or antonia.flowers@aemc.gov.au.

3.2.1 Lodging a request not to make a rule under an expedited process

Written requests not to make a rule under the expedited process in s. 96 of the NEL must include reasons for the request, and must be lodged with the Commission by **7 April 2022** online in accordance with the process specified below.

²⁷ s. 87 of the NEL.

²⁸ The AEMC has published a notice under ss. 95 and 96 of the NEL to commence and assess this rule change request as a non-controversial rule.

3.2.2

Lodging a submission to this rule change request

Written submissions on the rule change request must be lodged with Commission by **21 April 2022** online via the Commission's website, www.aemc.gov.au, using the "lodge a submission" function and selecting the project reference code ERC0340.

The request or submission must be on letterhead (if submitted on behalf of an organisation), signed and dated.

Where practicable, submissions should be prepared in accordance with the Commission's guidelines for making written submissions on rule change requests.²⁹ The Commission publishes all submissions on its website, subject to a claim of confidentiality.

²⁹ This guideline is available on the AEMC website, www.aemc.gov.au.

ABBREVIATIONS

ACCC	Australian Competition and Consumer Commission
AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
Commission	See AEMC
NEL	National Electricity Law
NEM	National Electricity Market
NEO	National Electricity Objective

A AER'S PROPOSED DRAFT RULE

In its rule change request, the AER provided a draft rule which it proposes to take effect from 1 July 2022.³⁰ The AER also provided a draft transitional rule to apply to any high price events which occur before the commencement of the rule change and for which a report has yet to be issued.³¹

The draft rule is outlined below:

3.13.7 Reporting on significant wholesale price outcomes by the AER

- (a) The *AER* must monitor and report on significant price outcomes in the *wholesale electricity market* each calendar quarter.
- (b) In reporting on significant price outcomes under clause 3.13.7(a), the AER must:
 - i. consider the factors that contributed to the significant price outcomes which may include, but are not limited to, withdrawal of *generation* capacity, *network* availability and participant offer behaviour.
- (c) In reporting on significant price outcomes under clause 3.13.7(a), the AER may also consider:
 - i. broader and ongoing *market* trends that may be contributing to high price events;
 - ii. any events and behaviours that may be detrimental to effective competition and the efficient operation of the market; and
 - iii. any other matters that the *AER* considers relevant.
- (d) The *AER* may report on significant price outcomes in the wholesale electricity market at times other than as required under clause 3.13.7(a).

3.13.7A Reporting on significant wholesale price outcomes by the AER

- (a) The *AER* must *publish* guidance outlining, at a minimum:
 - i. the criteria and methodology it uses to decide what is a significant price outcome relevant to clause 3.13.7; and
 - ii. the content and timeframes for reports prepared under clause 3.13.7(a) and (d).
- (b) The *AER* must consult with persons it considers appropriate in developing and *publishing* guidance as described in clause 3.13.7A(a).

³⁰ AER, rule change request, pp.6-7.

³¹ AER, rule change request, p. 15.

The draft transitional rule is outlined below:

Definitions

In this rule [insert rule number]:

amending Rule means the [insert title of amending Rule];

effective date means the date of commencement of the amending Rule (being 1 July 2022)

new clause 3.13.7 means clause 3.13.7 of the *Rules* as in force on and from the effective date

old clause 3.13.7 means clause 3.13.7 of the *Rules* as in force immediately before the effective date

new clause 3.13.7A means clause 3.13.7A of the *Rules* as in force on and from the effective date.

Publishing of Guidance and reporting obligations arising after the effective date

- (a) By the effective date, the *AER* must have published its guidance in accordance with new clause 3.13.7A.
- (b) The *AER* is not required to comply with old clause 3.13.7 in respect of any reporting obligation which has arisen under that clause, but which the *AER* has not yet published a report, as at the effective date.
- (c) The *AER* may, in its complete discretion, apply the new clause 3.13.7 with respect to any significant price outcome which occurred prior to the effective date.