AEMC

RULE

Australian Energy Market Commission

DRAFT RULE DETERMINATION

NATIONAL ELECTRICITY AMENDMENT (THRESHOLD FOR PARTICIPANT COMPENSATION FOLLOWING MARKET INTERVENTION) RULE

PROPONENT

Australian Energy Market Operator

15 AUGUST 2019

INQUIRIES

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ABOUT THE AEMC

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

SUMMARY

1 The interventions framework in the National Electricity Rules (NER) provides the Australian Energy Market Operator (AEMO) with the tools to intervene in the market for reliability purposes (e.g. in the event of a breach of the reliability standard) or for power system security purposes (e.g. to maintain voltage).

2 Interventions are typically used as a last resort and include, for example, directing a generator to maintain system strength or using emergency reserves through the reliability and emergency reserve trader (RERT).

3 Intervention pricing is, with some exceptions, used to set prices in the NEM during an "AEMO intervention event" (encompassing the RERT and directions) to preserve market scarcity signals that would have existed had the intervention not occurred. At the same time, there is a compensation framework to ensure that participants who have been directed by AEMO to provide services are not "out-of-pocket". This framework also compensates participants affected by the intervention in order to put them in the position that they would have been in but for the direction or RERT activation.

4 Where AEMO issues a direction, compensation is payable to both "directed participants"[1] (those parties to whom the direction was issued) and "affected participants"[2] (participants whose dispatch targets change as a result of a direction being issued or the RERT being activated). Where AEMO activates the RERT, compensation is only payable to "affected participants" – reflecting that, in relation to the RERT, there are no "directed participants". Instead, the party providing services under the RERT is compensated pursuant to the relevant contractual arrangements.

5 Following a direction to provide energy or market ancillary services, a directed participant is entitled to formula-based compensation[3] and may claim additional compensation if that amount is insufficient to cover its net direct costs and lost revenue. Under the current rules a minimum threshold of $5,000 applies per intervention price trading interval for additional compensation claims from directed participants.[4]

6 An affected participant is entitled to receive from, or required to pay to, AEMO an automatic compensation amount that puts it in the position that it would have been in had the intervention not occurred[5] providing the absolute value of this amount is greater than $5,000.[6]

7 An affected participant may also submit a claim for additional compensation, or dispute its liability to repay revenue to AEMO, in respect of a single intervention price trading interval, if it considers that its entitlement or liability should be redetermined, providing that this value is

1 Clauses 3.15.7 to 3.15.7B of the NER
2 Clause 3.12.2(a)(1) of the NER.
3 Clause 3.15.7 of the NER.
4 Clause 3.15.7B(a4) of the NER.
5 Clause 3.12.2(b) of the NER.
6 Clause 3.12.2(d)(1) of the NER.

greater than $5,000 in respect of that intervention price trading interval.[7] The cost of both affected and directed participant compensation is recovered from market customers and, ultimately, consumers in the region that benefited from the direction.

8 On 17 December 2018 AEMO submitted a rule change request which seeks to amend the $5,000 per trading interval threshold below which compensation is not payable to affected participants, and below which additional compensation cannot be claimed by directed participants.

9 AEMO considers that where an intervention event is of a long duration, the calculated participant compensation amount could far exceed $5,000 over the entire event, without breaching the $5,000 threshold in any individual trading interval. As such, AEMO considers the potential for material under-compensation creates operational and financial risks for participants.[8]

10 AEMO proposes the $5,000 threshold be amended so that, for both directed and affected participants, it applies to each intervention event rather than to each trading interval. It suggests that the proposed rule change would provide market participants with efficient incentives to support the reliability and security of the power system and strike a fair balance between the interests of consumers and market participants.[9]

11 The Commission agrees that the rule change should be made in respect of the threshold for directed participant claims for additional compensation but not in respect of the threshold for affected participant compensation. This is because, as discussed in the Final report[10] of the *Investigation into intervention mechanisms in the NEM* (Final report), the Commission recommends that affected participant compensation should only be payable in respect of interventions which trigger intervention pricing, and has determined that (per the revised "regional reference node test") intervention pricing should not apply in connection with interventions to maintain system security.[11] Thus, if both changes are implemented, affected participant compensation would not be payable in connection with system security interventions.

12 The Commission notes that system security directions will continue to be needed in South Australia until such as time as synchronous condensers are commissioned in mid to late 2020. Until such time as the Commission receives a rule change request to narrow eligibility for affected participant compensation, the Commission does not consider it to be in the best interests of consumers to make the proposed rule as it applies to affected participants as this would increase the payment of compensation to affected participants at the expense of consumers. Based on analysis (see section 4.2.3) of the cost of affected participant compensation in connection with system strength directions in South Australia, the proposal to apply the $5,000 threshold on a per event rather than per trading interval basis could

7 Clause 3.12.2(i) of the NER.

8 AEMO, Electricity Rule Change Proposal, op cit, p. 5.

9 AEMO, Electricity Rule Change Proposal, op cit, p. 6.

10 AEMC, *Investigation into intervention mechanisms in the NEM, Final report*, 15 August 2019.

11 AEMC, *Application of the regional reference node test to the reliability and emergency reserve trader, Draft rule determination*, 15 August 2019.

result in a more than threefold increase in affected participant compensation costs.

13 The Commission's recommendation in the Final report to narrow eligibility for affected participant compensation seeks to increase consistency as between directions and constraints. A direction is a way of meeting, or satisfying, a physical constraint on the system where the constraint is not, or cannot be, represented in NEMDE. If it were possible to implement the system requirement as constraints, AEMO would do so. In that case, no compensation would be payable to participants whose output is affected as a result of the constraint. This reflects an underlying principle of the national electricity market (NEM) that generators do not have a right to be dispatched.

14 The Commission also considers that it is not appropriate to pay affected participant compensation which is calculated by reference to dispatch targets in the counterfactual "intervention pricing run" given that, where a system security direction has been issued, these targets are infeasible. That is, they would never be realised in practice because they represent an insecure system which has prompted AEMO to issue a direction, consistent with its obligation to maintain system security. Accordingly, the dispatch targets in the intervention pricing run are not a sound basis on which to calculate compensation to participants affected by the issuance of a system security direction.

15 Finally, the Commission notes that participants have the capacity to optimise their position with respect to affected participant compensation. Analysis of payments to and from affected participants highlights that one participant has received more than 30 per cent of the total amount of automatically calculated compensation paid out by AEMO to affected participants in connection with South Australian system strength directions over the two years from April 2017 to April 2019. The dispatch targets in the intervention pricing run are the product of a counterfactual which, as well as representing an insecure and therefore infeasible set of dispatch targets, can be influenced through participant bidding behaviour. This reinforces the Commission's view that eligibility for affected participant compensation should be narrowed.

16 In light of its recommendation in the Final report, the Commission considers it would not be appropriate or consistent with the national electricity objective (NEO) to increase the amount of compensation payable to or by affected participants by changing the $5,000 threshold so it applies per intervention event rather than per trading interval. Accordingly, the Commission has determined to make a more preferable draft rule.

17 Specifically, the more preferable draft rule will:

1. amend the NER so that the $5,000 threshold for additional compensation claims by directed participants will be applied per direction, rather than per trading interval; and
2. make no change to the application of the $5,000 threshold to affected participant compensation payments.

18 The Commission recognises that the more preferable draft rule may result in an increase in the quantity of compensation payable to directed participants, and that compensation costs are recovered from market customers and ultimately consumers. However, the Commission notes that there have been very few instances of directed participants lodging claims for additional compensation. Since April 2017, there have only been two claims for additional

compensation in connection with the South Australian system strength directions. By contrast, as at 31 July 2019, 267 system strength directions have been issued to generators in South Australia to maintain system strength in the period since April 2017. Prior to system strength directions become frequent, only very few additional compensation claims had been lodged.

19 Further, where claims for additional compensation have been made, independent experts engaged by AEMO to assess the claims have on two occasions (out of a total of four additional compensation claims received since December 2016) applied the threshold as if it applied per event, rather than per trading interval. In practice therefore, the cost to consumers of increased directed participant compensation arising from this rule change is not expected to be significant.

20 Finally, the Commission considers that, where a participant has been compelled by a direction to provide services that are needed by the market, they should not incur loss as a result of the application of the per trading interval threshold. Retaining the current per trading interval threshold could have a detrimental impact on directed participants' financial position, particularly where directions occur frequently and comprise many trading intervals. This would not be in the long term interests of consumers, particularly noting that the participants which are directed to provide services have the technical ability to provide the services needed by the market, and have been selected for direction by AEMO consistent with its obligation under clause 4.8.9(b)(1) to minimise the cost associated with directions.

21 The Commission has decided not to change the quantum of the threshold based on advice from AEMO as to its costs of processing additional compensation claims.

22 Submissions on this draft rule determination are due by 26 September 2019.

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APPENDICES

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1 INTRODUCTION AND BACKGROUND

1.1 Introduction

On 17 December 2018, AEMO submitted a request to the Australian Energy Market Commission (AEMC or Commission) to make a rule regarding the threshold for participant compensation following market intervention.

Where AEMO issues a direction, compensation is payable to both "directed participants"[12] (those parties to whom the direction was issued) and to or by "affected participants"[13] (those parties who are affected by the direction – for example, a generator whose output was reduced as a result of the direction). The compensation framework seeks to keep affected participants in the position that they would have been in but for the direction or RERT activation, thereby minimising market distortions resulting from the intervention.

Where AEMO activates the RERT, compensation is only payable to or by "affected participants" – reflecting that, in relation to the RERT, there are no "directed participants". Instead, the party providing services under the RERT is compensated pursuant to the relevant contractual arrangements.

At present, the NER includes a $5,000 per trading interval threshold which limits the amount payable to, or by, affected participants. A $5,000 per trading interval threshold also limits the payment of compensation to directed participants in the event they claim additional compensation beyond the amount paid automatically (based on the 90th percentile price for energy or market ancillary services[14] or, for other services, based on a "fair payment price" determined by an independent expert[15]). The rule change request proposes that the current threshold of $5,000 apply per intervention event rather than per trading interval. A trading interval is a 30-minute period made up of six dispatch interval price periods, the average of which determines the spot price for the 30-minute trading interval.[16]

The Commission's draft rule determination is to make a more preferable draft rule which will change the application of the threshold for directed participants and leave it unchanged for affected participants. For directed participants, the draft rule provides that, in respect of a single direction, a directed participant may only make a claim for additional compensation if the amount of the claim is greater than $5,000. For affected participants, the draft rule makes no change such that the minimum threshold of $5,000 will continue to apply per trading interval.

12 Clauses 3.15.7 to 3.15.7B of the NER

13 Clause 3.12.2(a)(1) of the NER.

14 NER, clause 3.15.7.

15 NER, clause 3.15.7A.

16 On 28 November 2017 the AEMC made a final rule to change the settlement period for the electricity spot price from 30 minutes to five minutes, starting in 2021. However, the National Electricity Amendment (Five Minute Settlement) Rule 2017 No. 15 will omit "intervention price trading interval" wherever it occurs and substitute "intervention pricing 30-minute period" in relation to claims for additional compensation by directed participants, and affected participants' and market customers' entitlements to compensation in relation to an AEMO intervention event.

The AEMC published a consultation paper on the rule change request on 4 April 2019 and this draft determination is informed by stakeholder submissions on that consultation paper and the Commission's analysis.

This paper provides:

- a summary of, and background to, the rule change request
- a summary of the Commission’s reasons for making the rule
- an assessment of the issues identified in the consultation paper.

1.2 Background to the rule change request

This section provides background to the rule change request.

It also explains:

- the interventions framework set out in the National Electricity Rules (NER)
- the compensation framework set out in the NER
- the changing nature of interventions.

1.2.1 Interventions framework

The purpose of interventions is to help maintain and/or re-establish the reliability and security of the NEM when regulatory processes or market responses have not delivered desired outcomes. Reliability relates to whether the power system has an adequate amount of capacity (generation, high voltage transmission network and demand response) to meet consumer needs. This is distinct from the concept of security whereby a secure power system is one that operates within defined technical limits.

The reliability framework, which includes the reliability settings such as the market price cap, cumulative price threshold, administered price cap and market floor price, is designed to deliver reliability consistent with the level of the reliability standard set out in clause 3.9.3C of the NER.[17] However, in operating the power system AEMO is expected to try to avoid any unserved energy (i.e. load shedding) in real time,[18] including by using the intervention mechanisms available to it if necessary. Intervention mechanisms also enable AEMO to deal with system security issues by intervening in the market in certain limited circumstances.

The interventions framework comprises the reliability and emergency reserve trader (RERT), "directions" and "instructions" under clause 4.8.9 of the NER (clause 4.8.9 instructions). The RERT allows AEMO to contract for emergency reserves (generation or demand-side capacity that is not otherwise available to the market). AEMO can use these emergency reserves in the event that it determines that market participants are not meeting the reliability standard (i.e. the level of reliability that the market is expected to provide).

17 The reliability standard for generation and inter-regional transmission is a maximum expected unserved energy (USE) in a region of 0.002 per cent of total energy demanded in that region for a given financial year.

18 See clause 4.2.7 of the NER - AEMO is required to keep the system operating to a reliable operating state which implies no unserved energy.

AEMO can issue directions (in respect of scheduled plant or a market generating unit) to maintain system security and a reliable operating state. For example, it may direct a generator to increase its output, cancel or shift an outage or not to go off-line, if this is possible and can be done safely. Clause 4.8.9 instructions are another form of market intervention available to AEMO. These are typically used to instruct a transmission network service provider to shed load involuntarily as a last resort.

Intervention mechanisms are an acknowledged and important feature of the market design. However, the use of such mechanisms requires careful consideration as to the flow-on effects for investment signals and investor confidence, as well as costs for consumers.

1.2.2 The changing nature of interventions

Low system strength has emerged as an issue in South Australia as the generation mix in that region shifts from one dominated by synchronous generators to one with a growing proportion of asynchronous renewable generation. Currently, low system strength in South Australia is addressed through AEMO issuing directions to synchronous generators to operate in order to meet minimum system strength requirements. As at 31 July 2019, 267 directions have been issued to South Australian generators to maintain system strength, representing an unprecedented use of this intervention mechanism.

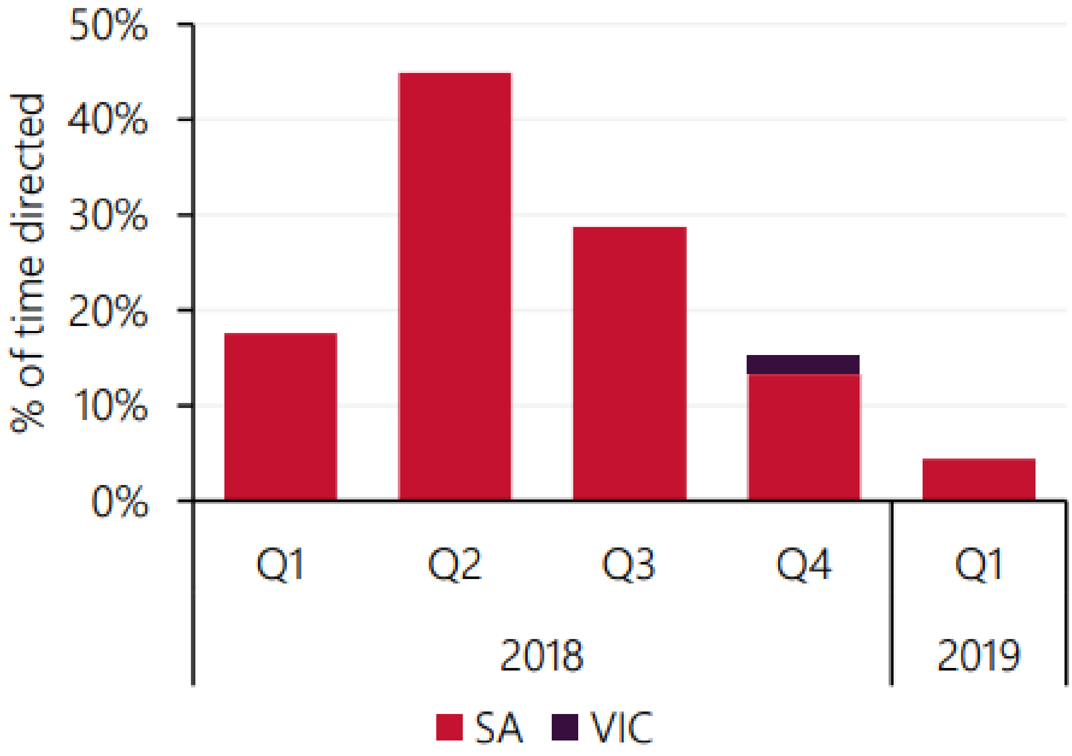
During 2018, directions were in place for around 30 per cent of the time. However, as shown below in figure 1.1, the percentage of time during which directions were in place fell significantly in the first quarter of 2019 to 5.4 per cent. This was due to higher synchronous generator availability, influenced by periods of high demand (which is typical for summer) and expectations of comparatively higher spot prices.[19]

For the first time in November 2018, AEMO issued directions to generators in Victoria to maintain system security relating to voltage control and system strength.[20] This suggests that low system strength can be expected to pose challenges in other NEM regions in the near to mid-term.

19 AEMO, *Quarterly Energy Dynamics - Q1 2019*, May 2019, p. 23.

20 AEMO, System strength directions briefing, 23 November 2018.

Figure 1.1: Directions for system security in South Australia and Victoria



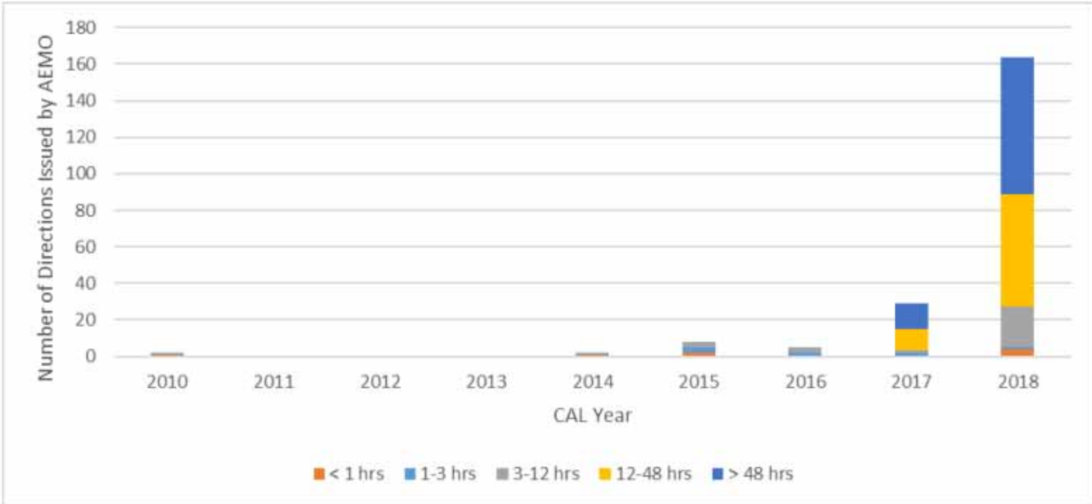
Source: AEMO, Quarterly Energy Dynamics, Q1 2019

AEMO advises that in the second quarter of 2019, directions were in place for 13.3 per cent of the time. Likely drivers for this increase relative to the first quarter of 2019 include reduced operational demand in South Australia, following the end of summer, and increased wind generation. However, unplanned coal outages in NSW resulted in higher levels of gas output in South Australia, which would have tended to suppress the number of directions relative to levels observed in the second quarter of 2018.

As shown in figure 1.2, the duration of interventions has also increased in the last two years, with direction events lasting on average three days and up to 22 consecutive days (for one direction event in April 2018).[21] This is particularly pertinent in considering AEMO's request to apply the current per trading interval compensation threshold on a per event basis.

21 AEMO, Rule Change Proposal - Threshold for participant compensation following market intervention, p. 2.

Figure 1.2: Duration of interventions by calendar year



Source: AEMO

When AEMO intervenes in the market, it is required to compensate both market participants who were directed, and also those that were affected by the direction (or RERT activation). AEMO also implements "intervention pricing", a practice designed to minimise market distortion by preserving the price signals the market would have seen but for the intervention in the market. Intervention pricing is currently implemented every time the RERT is activated but does not apply every time AEMO issues a direction. Under what is known as the "regional reference node test", intervention pricing does not apply if a direction is to address a localised issue in a part of the network remote from the regional reference node.[22]

The increasing use of interventions in South Australia and Victoria has drawn attention to a number of issues regarding the intervention and compensation framework set out in the NER and prompted a number of reviews, as discussed below.

1.2.3 AEMO review of intervention pricing

In June 2017 AEMO engaged consultants (SW Advisory and Endgame Economics) to undertake a review of the intervention pricing and compensation process. The resulting report (completed in October 2017) outlined recommendations for improvements to the compensation process as well as alternative methodologies for intervention pricing.[23]

AEMO sought stakeholder feedback on the issues raised by the consultants' report through the establishment of its Intervention Pricing Working Group (IPWG). The IPWG was tasked

22 NER, clause 3.9.3(b) and (d). The regional reference node (RRN) is the location in each region at which spot prices are determined by the NEM dispatch engine (NEMDE) and by reference to which marginal loss factors are calculated. RRNs are typically located near the major load centre in each region - i.e. the capital city.

23 The report is included in the meeting pack for meeting 1 of the Intervention Pricing Working Group - available at https://www.aemo.com.au/Stakeholder-Consultation/Industry-forums-and-working-groups/Other-meetings/Intervention-Pricing-Working-Group

with considering the recommendations in the SW Advisory and Endgame Economics report, as well as discussing new approaches that had not been considered.[24] The IPWG met five times between November 2017 and May 2018. In addition to agreeing on changes to the Intervention Pricing Methodology, the IPWG also agreed that various rule changes should be proposed, including this rule change request.[25]

The final report of the AEMC's *Reliability Frameworks Review* noted that the changing nature and frequency of interventions had led to the identification of anomalies and inefficiencies within the intervention pricing and compensation frameworks.[26] The Reliability Frameworks Review recommended that the AEMC build on the work done by AEMO through the IPWG and review the current intervention pricing and compensation framework to make sure it is sufficiently nuanced to respond efficiently to the variety of contexts in which AEMO intervention events occur. The final report also recommended that the AEMC progress any rule changes submitted by AEMO on intervention pricing and compensation in conjunction with the review.[27]

Two rule change requests endorsed by the IPWG have already been finalised. On 30 May 2019, the AEMC made a final rule to streamline the intervention cost recovery process by aligning the timetables for compensation and settlement following an intervention. The rule also extended the deadline for participants to make additional compensation claims following an intervention, thereby allowing participants more time to assess the impact of intervention events.[28]

1.2.4 Investigation into intervention mechanisms and system strength in the NEM

Consistent with the Reliability Frameworks Review recommendations, the Commission has undertaken an investigation into intervention mechanisms and system strength in the NEM. As part of this investigation the AEMC has considered the experience to date with the current intervention and compensation framework, including any underlying issues within the framework. It is also considering whether any refinements are warranted to the system strength framework to support the power system in the most efficient manner possible and minimise the need for AEMO interventions and its consequences (e.g. compensation and intervention pricing).

On 4 April 2019, the Commission published a consultation paper exploring a range of issues relating to the intervention and system strength frameworks. Submissions in response to the consultation paper were submitted by 21 stakeholders.[29]

24 Terms of reference available at: https://www.aemo.com.au/-/media/Files/Stakeholder_Consultation/Working_Groups/Other_Meetings/IPWG/Intervention-Pricing-WG_Terms-of-Reference_Final.pd

25 https://www.aemo.com.au/Stakeholder-Consultation/Industry-forums-and-working-groups/Other-meetings/Intervention-Pricing-Working-Group. See in particular item 4.1 in the meeting pack for meeting 5.

26 AEMC, *Reliability Frameworks Review, Final Report*, 26 July 2018.

27 Reliability Frameworks review Recommendation 6, p112 https://www.aemc.gov.au/sites/default/files/2018-07/Final%20report_0.pdf

28 AEMC, Intervention compensation and settlement processes https://www.aemc.gov.au/rule-changes/intervention-compensation-and-settlement-processes

29 These are available at https://www.aemc.gov.au/market-reviews-advice/investigation-intervention-mechanisms-and-system-strength-nem

That paper also initiated consultation on the rule change request which is the subject of this draft determination, together with another AEMO rule change request relating to the "regional reference node test" (RRN test). As noted earlier, this test is used to determine whether intervention pricing should be used in connection with a direction. AEMO proposes to extend the RRN test so it applies to the RERT, as well as to directions, and to change the wording of the test to improve clarity.

On 15 August 2019 the Commission published a final report on its investigation into intervention mechanisms in the NEM. (A separate report on system strength will be published later in 2019.) At the same time, the Commission published two draft determinations: this one relating to the $5,000 compensation threshold and a draft determination on the regional reference node test.[30]

The Commission's draft more preferable rule changes the wording of the RRN test to clarify the circumstances in which intervention pricing should apply. In essence, the draft determination provides that intervention pricing is to apply in relation to interventions to obtain services which are traded in the market (energy or market ancillary services) but will not apply where interventions are used to obtain services which are not traded in the market (including security services such as system strength, voltage control and inertia). The draft determination also extends the reach of the test to encompass the RERT, thereby creating a consistent approach to intervention pricing as between directions and the RERT.

1.3 The compensation framework

1.3.1 Compensation for directed participants

“Directed participants” are eligible to receive compensation so that they can recover the cost of providing services under direction.[31] The NER definition of directed participant is broad, encompassing scheduled generators, semi-scheduled generators, market generators, market ancillary service providers, scheduled network service providers or market customers which are the subject of a direction.[32]

Where the directed participant has provided energy or market ancillary services, compensation is in the first instance paid automatically. AEMO adjusts the settlement process so that directed participants are paid for the energy or market ancillary services they provided pursuant to the direction at the 90th percentile price, calculated by reference to the spot or ancillary service price in the preceding 12 months.[33] Directed participants can also lodge a claim for additional costs, including loss of revenue, if payment at the 90th percentile

30 Further information is available on the AEMC website:https://www.aemc.gov.au/rule-changes/application-regional-reference-node-test-reliability-and-emergency-reserve-trader.

31 Clauses 3.15.7, 3.15.7A and 3.15.7B of the NER.

32 Direction is defined as having the meaning given in clause 4.8.9(a1)(1). That clause provides that a direction is where AEMO, or a person authorised by AEMO, requires a registered participant to take action in relation to scheduled plant or a market generating unit. Scheduled plant is defined, in respect of a registered participant, as meaning a scheduled generating unit, semi-scheduled generating unit, a scheduled network service or a scheduled load classified by or in respect to that registered participant in accordance with chapter 2.

33 Clause 3.15.7(c) of the NER.

price is not adequate to cover their costs.[34] However, a $5,000 threshold per trading interval applies to claims for additional compensation.[35]

The entitlement of directed participants to receive compensation was included in the NER following a review of directions by NEMMCO and NECA in 2000. That review concluded that directed participants should receive a “fair payment” that would cover the cost incurred by the participant in complying with the direction while minimising inequitable impacts on other market participants.[36]

1.3.2 Compensation for affected participants

Affected participants are those parties (being scheduled generators or scheduled network service providers) whose dispatch quantities have been affected as a result of an AEMO intervention event. The definition of affected participant in Chapter 10 of the NER also includes “eligible persons”, being SRD unit holders who are entitled to receive an amount from AEMO where there has been a change in flow of a directional interconnector.[37]

Affected participants are entitled to receive from, or pay to, AEMO an amount that puts them in the position they would have been in but for the direction or RERT activation.[38] To calculate these amounts, AEMO reruns NEMDE, doing both a "dispatch run" and an "intervention pricing run". These two runs are used by AEMO to calculate the intervention price at which the market clears when intervention pricing is implemented in accordance with clause 3.9.3 of the NER. Even if intervention pricing is not being implemented in connection with a given direction, AEMO is required to perform both runs of NEMDE in order to estimate the compensation payable to affected participants.

The dispatch run sets the dispatch targets for all generators across the NEM, including those providing services pursuant to a direction. The intervention pricing run sets the price at which the market clears. It excludes the effect of the intervention in order to set the price at the value which AEMO, in its reasonable opinion, considers would have applied but for the intervention. That is, the intervention pricing run does not include the dispatch targets for directed generators together with any generators to which AEMO has issued counteraction instructions.[39]

For example, if a generator generates less in the dispatch run than in the intervention pricing run, they will be paid compensation by AEMO to put them in the position that they would

34 Clause 3.15.7B of the NER.

35 Clauses 3.15.7B(a4).

36 NEMMCO and NECA, *Final Report – Power system directions in the National Electricity Market*, 2000, p. i, p.6.

37 SRD is shorthand for settlements residue distribution agreements. A SRD unit is defined in chapter 10 of the NER as "a unit that represents a right for an eligible person to receive a portion of the net settlements residue under clause 3.6.5 allocated to a directional interconnector for the period specified in a SRD agreement entered into between that eligible person and AEMO in respect of that right". These units are auctioned off by AEMO as part of the process of managing inter regional settlement residues.

38 Clause 3.12.2(a)(1) of the NER.

39 In accordance with clause 4.8.9(h)(3) and 3.8.1(b)(11), AEMO is required as far as reasonably practical to minimise the number of affected participants and the effect of interconnector flows. Thus, AEMO may issue counteraction instructions to another generator, in the same region as the directed generator, to reduce its output in order to offset the amount of energy being provided by the directed generator. This is intended to confine the impact of the intervention to a single region and avoid impacts on interconnector flows.

have been in had the intervention event not occurred. That is, they will be paid the difference between the amount they would have received based on their dispatch targets in the dispatch run (combined with the price from the intervention pricing run), and the amount they have received based on their dispatch targets in the intervention pricing run (again combined with the price from the intervention pricing run).

By contrast, if a generator's output following an intervention is higher than it would have been had the intervention not occurred (i.e. it generates more in the dispatch run than in the intervention pricing run), it will be liable to pay an amount back to AEMO.

While such sums can be considerable, no information is publicly available as to the quantum of compensation paid to or by individual affected participants. Only the "compensation recovery amount" is published by AEMO.

This is the sum of the:

• compensation paid by AEMO to directed participants (net of the trading amounts retained by AEMO in accordance with clause 3.15.6(b) of the NER)

• compensation paid by AEMO to affected participants net of amounts paid by affected participants to AEMO, and

• costs paid by AEMO to independent experts who are engaged to determine additional compensation claims or disputes as to liability.

The only exception in terms of publicly available information is where an independent expert has been engaged to assess a claim by an affected participant for additional compensation, or where the affected participant disputes the amount it has to pay to AEMO and this is reviewed by an independent expert. A recent example is the review by Synergies Economic Consulting of a dispute by CS Energy of the amount it was required to pay to AEMO.[40]

This followed a system strength direction issued in South Australia on 29 August 2018 and the resultant impact on dispatch targets for Gladstone Power Station in Queensland. AEMO advised CS Energy that it was required to refund to AEMO an amount of just under $290,000 being the balance of additional revenue that it would not have received, and the additional costs that it would not have incurred, but for the direction. In its determination, Synergies concluded that CS Energy was not liable to repay the amount to AEMO on the basis that the sums in question would not have exceeded the $5,000 threshold per trading interval.

This illustrates the nature of the impact that AEMO's proposed rule change would have on the quantum of compensation paid to and by affected participants. For example, when the independent expert assessed the liability of CS Energy, it concluded that this should be set to zero on the basis that the threshold was not exceeded in any trading interval. Had the situation been reversed and this sum was the amount payable by AEMO to CS Energy, the proposed compensation threshold rule change would mean that market customers and, ultimately, consumers would be liable to cover the payment of $285,000 to CS Energy instead of $0.

40 Synergies Economic Consulting, *Independent Expert Determination on claim for Additional Compensation from Directions on 29 August 2018, Final Report*, January 2019.

As with directed participants, the compensation process for affected participants is automatic: affected participants need not lodge a claim for compensation. AEMO is required to notify affected participants of the estimated level at which they would have been dispatched had the intervention not occurred, and the trading amount they would have received had the intervention not occurred (less the trading amount already paid to the participant).[41] This additional amount is then incorporated into the participant's final statement for the relevant billing period.[42]

No compensation is payable to the affected participant, or payable by that participant to AEMO, if the amount payable is less than $5,000 per trading interval.[43] An affected participant may dispute the amount payable to them, or payable by them to AEMO, by making a submission to AEMO itemising and substantiating each component of the claim (as occurred in the above example involving CS Energy).[44]

Affected participants are entitled to receive compensation once a direction has been issued, regardless of whether intervention pricing has been implemented in connection with that direction.

1.3.3 Origin of the $5,000 threshold

As previously mentioned in section 1.3.1, the $5,000 threshold was included in the NER following the Review of Directions by NEMMCO and NECA in 2000. The report of that review noted that payment should only be made where the value at stake is sufficient to justify the significant administrative outlays in determining compensation. It proposed that consideration only be given to claims with a value exceeding $5,000 to each individual party, with amounts less than this deemed immaterial given the costs of settling claims.[45]

Following this review, the Code Change Panel recommended the inclusion of a provision in the following terms: "a directed participant may only make a claim pursuant to clauses 3.15.7B(a), 3.15.7B(a1) or 3.15.7B(a2) if the amount of the claim is greater than $5,000." Notwithstanding this recommendation, the provision as adopted includes a reference to trading intervals. It is unclear why this change was made to the provision as adopted.

The NER now provide that a minimum threshold of $5,000 per trading interval applies to claims for additional compensation by directed participants, to payments to and by affected participants, and affected participant claims for additional compensation or disputes as to liability.[46]

41 Clause 3.12.2(c) of the NER.

42 Clause 3.12.2(d) of the NER.

43 Clause 3.12.2(b) and (i) of the NER

44 Clauses 3.12.2(f) and (g) of the NER.

45 NEMMCO NECA, op cit, p.30.

46 Clauses 3.12.2(b), 3.12.2(i) and 3.15.7B(a4) of the NER.

2 AEMO'S RULE CHANGE REQUEST

2.1 The rule change request

On 17 December 2018, AEMO made a request to the AEMC to make a rule that would apply the minimum $5,000 threshold for participant compensation to each intervention event rather than each individual trading interval (rule change request). An "AEMO intervention event" is defined an event where AEMO intervenes in the market by issuing a direction or exercising the RERT.[47]

In order to manage security or reliability concerns, AEMO may need to intervene for a period of time until it considers that these concerns are alleviated. As such, an individual intervention event may comprise a number of trading intervals. Therefore, under the current approach, where an intervention event is of a long duration, the calculated participant compensation amount could far exceed $5,000 over the entire event without breaching the $5,000 threshold in any individual trading interval.[48]

2.2 Rationale for the rule change request

AEMO considers that "the potential for material under-compensation creates operational and financial risks for participants"[49] and that the proposed rule change would "efficiently incentivise participants to work collaboratively with AEMO without having to weigh this against the risk of financial losses from an intervention event".[50]

AEMO states that the application of the threshold to each trading interval could result in participants not being adequately compensated in respect of the intervention event and provides the following example. In a case where a participant's assessed eligibility for compensation is $4,000 per trading interval over 12 hours, the cost accumulated would be nearly $100,000 but the compensation payable would be zero. AEMO states that this is contrary to the objective that participants are not unreasonably "out of pocket" as a result of the intervention.[51] Of course, the same applies to affected participant liability to repay revenue to AEMO. The participant may have a total liability of nearly $100,000 but, as a result of the per trading interval threshold, their liability is set to zero (similar to the CS Energy dispute discussed in section 1.3.2).

2.3 Solution proposed in the rule change request

The rule change request proposes to amend the threshold for participant compensation so that it applies per intervention event, rather than per trading interval.

The rule change request proposes changes to clause 3.12.2 which deals with affected participants' and market customers' entitlements to compensation (both automatically

47 NER, Chapter 10, Glossary.

48 AEMO, Electricity Rule Change Proposal, op cit, p. 2.

49 ibid, p. 5.

50 ibid, p.6.

51 ibid, p. 5.

calculated compensation and additional claims or disputes as to liability), and clause 3.15.7B which deals with claims for additional compensation by directed participants.

AEMO proposes that clauses 3.12.2(b), 3.12.2(i) and 3.15.7B(a4) of the NER be amended by replacing each instance of "intervention price trading interval" with "AEMO intervention event", deleting clause 3.12.2(d) to remove inconsistency, and making a consequential amendment to clause 3.12.2(e).[52]

AEMO considers that clause 3.12.2(d) will be redundant because the $5,000 limit will be adequately covered in paragraph (b), and clause 3.15.10C addresses the inclusion of compensation amounts in settlement statements.[53]

A copy of the rule change request may be found on the AEMC website at www.aemc.gov.au

2.4 The rule making process

On 4 April 2019, the Commission published a notice advising of its commencement of the rule making process and consultation in respect of the rule change request.[54] A consultation paper identifying specific issues for consultation was also published. Submissions closed on 16 May 2019.

The Commission received 21 submissions as part of the first round of consultation. The Commission considered all issues raised by stakeholders in submissions. Issues raised in submissions are discussed and responded to throughout this draft rule determination. A summary of the issues raised in submissions and the Commission's response to each issue is contained in Appendix A.

2.5 Consultation on draft rule determination

The Commission invites submissions on this draft rule determination, including a more preferable draft rule, by 26 September 2019.

Any person or body may request that the Commission hold a hearing in relation to the draft rule determination. Any request for a hearing must be made in writing and must be received by the Commission no later than 22 August 2019.

Submissions and requests for a hearing should quote project number ERC0255 and may be lodged online at www.aemc.gov.au.

52 ibid

53 ibid

54 This notice was published under s.95 of the National Electricity Law (NEL).

3 DRAFT RULE DETERMINATION

The Commission's draft rule determination is to make a more preferable draft rule. For directed participants, the more preferable draft rule will set a minimum threshold of $5,000 for additional compensation claims for each direction as opposed to each intervention trading interval. The more preferable draft rule makes no change to the threshold as it applies to affected participant compensation.

The Commission's reasons for making this draft determination are set out in section 3.3.

This chapter outlines:

- the rule making test for changes to the NER
- the more preferable rule test
- the assessment framework for considering the rule change request
- the Commission's consideration of the more preferable draft rule against the national electricity objective (NEO)

Further information on the legal requirements for making this draft rule determination is set out in Appendix B.

3.1 Rule making test

3.1.1 Achieving the NEO

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 NEO.[55] This is the decision-making framework that the Commission must apply.

The NEO is:[56]

> 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.

3.1.2 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 issue or issues raised in the rule change request, the more preferable rule will or is likely to better contribute to the achievement of the NEO.

In this instance, the Commission has made a more preferable rule. The reasons are summarised below.

55 Section 88 of the NEL.
56 Section 7 of the NEL.

3.1.3 Making a differential rule

Under the Northern Territory legislation adopting the NEL, the Commission may make a differential rule if, having regard to any relevant MCE statement of policy principles, a different rule will, or is likely to, better contribute to the achievement of the NEO than a uniform rule. 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.

As the rule relates to parts of the NER that currently do not apply in the Northern Territory, the Commission has not assessed the rule against the additional elements required by the Northern Territory legislation.[57]

3.2 Assessment framework

The Commission has set out a number of principles to guide the assessment of the rule change request in addition to the NEO.

1. Equity: does the proposed approach strike a fair balance between the interests of directed and affected participants, and consumers?

The Commission has considered the implications of the rule change request for the position of directed participants, affected participants and consumers, and sought to strike an appropriate balance between them.

2. Efficiency: does the proposed approach achieve the objective of helping to recover the administrative outlays associated with processing compensation claims, and dissuading immaterial claims?

The Commission has considered the operation of the various provisions and their impact on eligibility to receive or pay compensation. The Commission has also had regard for the appropriate quantum of the threshold.

3. Transparency and predictability: is it clear how the proposed approach will affect the interests of market participants?

The Commission has considered how best to achieve transparency and predictability - for example, noting that there is no way to know in advance how many trading intervals a given intervention will comprise. This in turn has a bearing on considerations as to the appropriate quantum of the compensation threshold.

57 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.

4. Risk allocation: does the proposed approach appropriately allocate risk to those parties best able to manage them?

The Commission has considered whether the current threshold represents an appropriate allocation of risk, and whether and to what extent the proposed rule will impact this. For example, the current per trading interval threshold creates financial risks for directed participants who have incurred costs as a result of a direction but are unable to recover them. While this reduces compensation costs to consumers, under-compensating directed participants may also create risks to system security and reliability (and thus consumers) where the directed participant provides a service that is required to keep the system secure/reliable and which was not provided under the normal operation of the market. It is therefore important to have regard for direct and indirect costs and risks.

3.3 Summary of reasons

Where an intervention event is of a long duration, the application of the $5,000 threshold on a per trading interval basis could have an adverse impact on the financial position of the directed participant. For example, if a direction spans a number of trading intervals and the directed participant's additional costs amount to a value just below the $5,000 threshold per trading interval, the cumulative costs over the duration of the direction may amount to significant additional costs for a directed participant. In this situation the directed participant would not be entitled to compensation for these additional costs.

Accordingly, the Commission considers it appropriate to adjust the threshold for directed participant additional compensation claims so that it applies per direction rather than per trading interval. The Commission acknowledges that the draft rule may result in greater costs being passed through to consumers. However, this is not expected to have a significant impact on consumers given the limited number of claims to date. (Since April 2017, when system strength directions began, there have been only two claims lodged for additional compensation. This is despite the fact that, as at 31 July 2019, 267 system strength directions have been issued in the period since April 2017.)

Further, the Commission considers that, where a participant is directed to provide services over a number of trading intervals, it should not incur loss as a result of the current per trading interval threshold. Negatively impacting the financial position of participants which have been compelled to provide services needed by the market is not in the long term interests of consumers.

In its Final report on the investigation into intervention mechanisms in the NEM, the Commission recommends that eligibility for affected participant compensation be narrowed such that affected participant compensation is only payable with respect to intervention events which trigger intervention pricing.

Reasons in support of this recommendation include:

- affected participant compensation is a cost to consumers that does not arise when the same outcome is achieved using constraints,

- the dispatch targets in the intervention pricing run which are used to calculate affected participant compensation are infeasible because they represent an insecure system and thus would not be realised in practice; as such they do not provide a sound basis for calculating affected participant compensation
- participants can optimise their position with respect to affected participant compensation and this is not considered to be in the long term interests of consumers.

As such, the Commission has recommended that a rule change request be submitted to narrow eligibility for affected participant compensation. If made as proposed, this would have the effect of removing affected participant compensation in the circumstances where a direction is issued for system security purposes.[58] Until such time as this change is made to the rules, the Commission considers that it would not be in the interests of consumers to change the application of the $5,000 threshold to each intervention event rather than each trading interval.

Accordingly, the Commission has determined to make a more preferable rule which changes the compensation threshold in respect of directed participants but makes no change to the threshold as it applies to affected participants.

58 This assumes that the regional reference node test is amended as set out in the draft determination for the National Electricity Amendment (Application of the regional reference node test to the reliability and emergency reserve trader) Rule 2019.

4 ISSUES RAISED AND COMMISSION'S CONCLUSIONS

This chapter outlines the issues as raised by AEMO in the rule change request, alongside stakeholder submissions, the Commission's analysis and conclusions pertaining to:

- application of the $5000 threshold per intervention event to directed participants
- application of the $5000 threshold per intervention event to affected participants.

4.1 Application of the $5000 threshold per intervention event to directed participants

A directed participant may claim additional compensation if it believes compensation based on the 90th percentile price (for energy and market ancillary services) or based on the "fair payment price" for other services is insufficient to cover its net direct costs and lost revenue.[59] A minimum threshold of $5,000 per trading interval applies to claims for additional compensation from directed participants. The principle behind the threshold is to prevent or limit claims for which the processing and determination costs are likely to exceed the compensation payable.

4.1.1 AEMO's view

AEMO proposes that the $5,000 threshold for additional compensation claims by directed participants be applied per intervention event, rather than per trading interval.

AEMO provides the following example in its rule change request outlining how participants may incur significant additional costs but not be entitled to any payment. For example, in a situation where the assessed compensation is $4,000 per trading interval over 12 hours, the cost accumulated would be nearly $100,000 but the compensation payable would be zero. AEMO notes that the application of the $5,000 threshold per trading interval could result in participants not being adequately compensated in respect of the intervention event.[60] This is contrary to the objective that participants are not unreasonably "out of pocket" as a result of the intervention.

In its submission to the consultation paper, AEMO notes that the primary purpose of the threshold is to prevent or limit claims for which the processing and determination costs are likely to exceed the compensation payable.[61] It also notes that the smallest directed and affected participant compensation claims received by AEMO since the beginning of 2017 have been approximately $20,000.[62]

AEMO notes that there have been very few claims for additional compensation from directed participants. Since April 2017 when system strength directions in South Australia began,

59 Clauses 3.15.7, 3.15.7A and 3.15.7B of the NER.

60 AEMO, Rule change proposal: Threshold for participant compensation following market intervention, p 5.

61 AEMO, Submission to consultation paper, p.7.

62 ibid, p. 8.

there have been only two additional cost claims by directed participants, suggesting that the 90th percentile spot price compensation is rarely insufficient to cover the costs of directed participants.[63]

4.1.2 Stakeholder views

As shown in table 4.1 below all stakeholders who commented on the issue supported applying the compensation threshold on a per event basis.

Submissions from AGL, Australian Energy Council, EnergyAustralia, Engie, Powershop, Origin and SnowyHydro support AEMO's proposal to apply the $5,000 threshold per event rather than per trading interval as this will prevent market participants being adversely affected where an intervention event comprises a number of trading intervals.

Origin notes that, while the threshold mainly exists to minimise the administrative burden of processing compensation, a direction over a relatively longer duration can result in accumulated costs which far exceed the administrative cost of calculating compensation, and therefore the threshold should apply on a per event basis rather than per trading interval.[64]

Snowy Hydro supports AEMO's rule change request to have the $5,000 threshold apply to each event, rather than each trading interval so that market participants are not adversely affected where an intervention event comprises a number of trading intervals.[65]

AGL supports the AEMO rule proposal to apply the threshold per intervention event. AGL believes that the application of this threshold in a heightened "directions" environment has meant that significant costs have been unable to be recovered.[66]

The Australian Energy Council also supports the proposal to apply the threshold on a per event basis. It acknowledges that making this change increases the likelihood of smaller additional compensation claims being made but considers that such claims will not be frequent given the basis on which automatically calculated compensation is determined (i.e. the 90th percentile price).[67]

Table 4.1: **Stakeholder views on compensation threshold**

APPROACH	STAKEHOLDERS
Change threshold to apply per event	AGL, AEC, EA, ERM, Powershop, SnowyHydro, Origin (7)
Continue to apply per trading interval	None

Source: AEMC analysis

63 ibid, p.7.

64 Origin, Submission to consultation paper, p.3.

65 SnowyHydro, Submission to consultation paper, p.6.

66 AGL, Submission to consultation paper, p.3. The Commission notes that AGL lodged one of only two additional compensation claims made in relation to system strength directions in the period since April 2017. In that case, the independent expert engaged by AEMO applied the $5,000 threshold on a per event basis rather than on a per trading interval basis: Synergies, *Final report on claims for additional compensation arising from directions on 25 April 2017*, September 2017 .

67 Australian Energy Council, Submission to consultation paper, p.3.

4.1.3 Commission's analysis and conclusions

In the case of directed participants, the threshold applies to claims for additional compensation where the automatic compensation (calculated based on the 90th percentile price, or for services other than energy and market ancillary services, a fair payment price calculated under clause 3.15.7A) has not been adequate to cover the participant's costs.

Where the intervention event is of a long duration, the application of the $5,000 threshold on a per trading interval basis could have an adverse impact on the financial position of the directed participant as illustrated by the example provided by AEMO.

Accordingly, the Commission consider it appropriate to adjust the threshold for directed participants so that it applies per direction rather than per trading interval. While the AEMO rule change request proposed to amend clause 3.15.7B(a4) by changing the words "in respect of a single intervention price trading interval" to "in respect of a single AEMO intervention event", the Commission has opted for a slightly different approach.

This is because "AEMO intervention event" comprises both the RERT and directions and no directed participant compensation is payable in respect of the RERT (instead, parties providing services under the RERT are paid in accordance with contractual agreements). As such, there is no need to use the wider term, "AEMO intervention event", in a clause dealing solely with directions.

The Commission also wishes to make clear that the $5,000 threshold is to apply to additional compensation claims in respect of a single direction only - notwithstanding clause 1.7.1(b) of the NER which provides that "words importing the singular include the plural and vice versa". The Commission acknowledges that, in practice, AEMO often groups directions issued to the same participant in the same billing week for settlement and reporting purposes. However, the Commission intends that the threshold should apply to a single direction and not to a group of directions.

The Commission acknowledges that changing the threshold to apply per direction rather than per trading interval may result in greater costs being passed through to consumers. However, this is considered acceptable given the importance of ensuring that a participant which has been compelled to provide services under direction does not incur loss as a result. Retaining the current per trading interval threshold could have a detrimental impact on directed participants' financial position, particularly where directions occur frequently and comprise many trading intervals. This would not be in the long term interests of consumers, particularly noting that the participants which are directed to provide services have the technical ability to provide the services needed by the market, and have been selected for direction by AEMO consistent with its obligation under clause 4.8.9(b)(1) to minimise the cost associated with directions.

In practice, the Commission does not expect that the amendment will have a significant impact on consumers given the limited number of claims to date. Since April 2017, there have only been two claims for additional compensation in connection with the South Australian system strength directions.[68] By contrast, as at 31 July 2019, 267 system strength directions have been issued to generators in South Australia to maintain system strength. Prior to system strength directions becoming frequent, only very few additional compensation claims had been lodged.

AEMO notes in its submission to the Consultation paper that: "The smallest directed and affected participant compensation claims received by AEMO since the beginning of 2017 have been approximately $20,000. It could be inferred that this represents an upper bound on the minimum cost of submitting an additional compensation claim."[69] That is, given the administrative effort required for a directed participant to lodge an additional compensation claim, it is unlikely that claims will be lodged where the sum involved is less than $20,000. This is relevant in considering the degree to which the proposed rule will result in additional claims and more compensation costs being passed through to consumers.

The Commission also notes that, where claims for additional compensation have been made, independent experts engaged by AEMO to assess the claims have on two occasions (out of a total of four additional directed participant compensation claims received since December 2016) applied the threshold as if it applied per event, rather than per trading interval.[70] In practice therefore, the cost to consumers of increased directed participant compensation arising from this rule change is not expected to be significant.

The Commission acknowledges that the Final report on intervention mechanisms recommends that AEMO lodge a rule change request to change the basis on which directed participant compensation is currently calculated. This reflects concern that the current framework (which calculates compensation for energy and FCAS directions based on the 90th percentile price) may result in some generators being over-compensated.

Should any change be made to the compensation framework to address such concerns, the Commission recognises that there could be an increase in additional compensation claims. However, the cost implications for consumers of any increase in additional claims would likely be offset or more than offset by the savings achieved by changing the basis on which initial compensation is automatically calculated.

Therefore, the more preferable draft rule amends the NER so that the $5,000 compensation threshold for additional compensation claims by directed participants applies per direction, rather than per trading interval.

68 One of these concerned the direction issued in April 2017 to Hallett power station. This was the first system strength direction issued in South Australia. Hallett power station is not a generator which is included the generator combinations developed by AEMO to maintain adequate system strength in South Australia. It has not been directed on for system strength since April 2017.

69 AEMO, Submission to consultation paper, p. 8.

70 This issue was discussed in the consultation paper in section 6.1.3. Table 6.1 on page 97 analysed the approach adopted in five independent expert reports. Of these, four reports related to claims by directed participants while one report related to an affected participant.

4.2 Application of the $5000 threshold per intervention event to affected participants

An affected participant is entitled to receive from, or required to pay to, AEMO an amount that puts it in the position that it would have been in had the intervention not occurred.[71]

A minimum threshold of $5,000 per trading interval applies both to the automatic calculation of affected participant compensation and to claims for additional affected participant compensation, or disputes as to affected participant liability to repay revenue to AEMO.[72] As with directed participant compensation, the principle behind the threshold is to prevent or limit claims for which the processing and determination costs are likely to exceed the compensation payable.

4.2.1 AEMO's view

AEMO proposes that the $5,000 compensation threshold apply per intervention event rather than per trading interval for automatically calculated affected participant compensation and additional compensation claims/disputes by affected participants.

AEMO's rule change request set out analysis it presented to the Intervention Pricing Group (IPWG) in May 2018 detailing two intervention events which involved directions for system strength in early 2018.[73]

The analysis showed that for the first event (12 - 15 January 2018) estimated compensation to affected participants under the current per trading interval threshold was $400,000. By contrast, the estimated compensation payable had the $5,000 threshold been applied per event would have been $822,000. For the second event (23 - 26 February 2018), estimated compensation payable under the current per trading interval threshold was $0 and the estimated compensation had the $5,000 threshold been applied per event would have been $114,000.[74]

AEMO comments that this analysis demonstrates the risk of affected participants being under-compensated under the current rules. However, AEMO also acknowledges that the proposed changes may increase the compensation cost payable by market customers and ultimately consumers, noting that the impact of the proposed rule is dependent on the extent, timing and complexity of the direction.

While AEMO acknowledges it is difficult to predict the impact of the rule, it did undertake analysis which showed that in the third quarter of 2018 the estimated amount of additional compensation payable to affected participants under a "per event" threshold approach would have been around $1.4 million.[75]

71 Clause 3.12.2 of the NER.

72 Clauses 3.12.2(b) and 3.12.2(i) of the NER. An affected participant may submit a claim for compensation if it considers that its entitlement or liability should be redetermined.

73 AEMO, Rule change request: *Threshold for participant compensation following market intervention*, p.5.

74 ibid.

75 AEMO, Rule change request: *Threshold for participant compensation following market intervention*, p.7.

4.2.2 Stakeholder views

As noted earlier in section 4.1.2, submissions from AGL, Australian Energy Council, EnergyAustralia, Engie, Powershop, Origin and SnowyHydro support AEMO's proposal to apply the $5,000 threshold per event rather than per trading interval. Stakeholders consider that the proposed rule change will prevent market participants being adversely affected where an intervention event comprises a number of trading intervals.

Powershop believes a market participant should be compensated to the position they would have been in prior to the intervention occurring.[76]

Similarly, SnowyHydro notes that, as with directed participants, compensation costs paid to affected participants should also reflect what the market participant should receive had the intervention not occurred, thereby minimising market distortion from the intervention.[77]

Origin states that a direction over a relatively longer duration can accumulate impacts which far exceed the administrative cost to AEMO of determining compensation, and therefore the compensation threshold should apply on a per event basis.[78] EnergyAustralia notes that affected participants become more exposed to material under-compensation under the current compensation threshold arrangements as the frequency of intervention events increase.[79]

ERM Power supports the continued provision of "fair" compensation to parties financially disadvantaged by any market intervention event, and supports AEMO's rule change to alter the threshold for compensation or repayment to AEMO.[80]

AGL expresses strong support for the proposal, stating that application of the current threshold in a heightened "directions" environment has meant that significant costs have been unable to be recovered.[81]

Uniting Communities notes that, unlike directed participants, there is potential for affected participants to optimise their position with respect to compensation. In other words, there is potential for affected participants to behave in a manner that is not in the best interests of consumers.

Uniting Communities also expresses concern that South Australian consumers, in addition to compensating directed generators, are bearing the cost of compensating scheduled generators across the NEM whose dispatch targets are impacted as a result of system strength directions being issued in South Australia.[82]

76 Powershop (MEA Group) submission to consultation paper, p.5.
77 SnowyHydro, Submission to consultation paper, p.6.
78 Origin, Submission to consultation paper, p.3.
79 EnergyAustralia, Submission to consultation paper, p.3.
80 ERM Power, Submission to consultation paper, p12.
81 AGL, Submission to consultation paper, p.3.
82 Uniting Communities, Submission to consultation paper, p.13.

4.2.3 Commission's analysis and conclusion

The Commission's final report of the Investigation into intervention mechanisms recommends that the circumstances in which affected participant compensation is payable should be narrowed, limiting it to those instances where intervention pricing applies in connection with an intervention event in accordance with the revised regional reference node test.[83]

Reasons for the recommendation to narrow affected participant compensation eligibility include:

- no affected participant compensation is payable when system security is achieved through the use of constraints, so removing affected participant compensation for system security interventions will increase consistency and reduce costs to consumers.
- affected participant compensation is calculated based on dispatch targets in the intervention pricing run. These dispatch targets are infeasible in the sense that they represent an insecure system (which prompted AEMO to intervene in the market to change the mix of generators online). As such, it is not considered appropriate to compensate participants by reference to targets which would never be realised in practice.
- analysis by the Commission of data provided by AEMO indicates that participants are able to optimise the amount of affected participant compensation they receive. For example, one affected participant (out of a total of 25 affected participants) has received more than 30 per cent of the total amount paid out by AEMO to affected participants in the period April 2017 to April 2019. This participant received compensation on 43 occasions and only had to repay revenue to AEMO on two occasions.

As discussed in the Final report, these factors support the Commission's conclusion that affected participant compensation is not warranted in connection with system security interventions and is not in the long term interests of consumers.

In addition to recommending that affected participant compensation eligibility be narrowed in this way, the Commission has published a draft determination and rule which provides that intervention pricing should only be triggered in certain circumstances: essentially, where the purpose of an intervention is to obtain a market traded commodity (energy or market ancillary services). Intervention pricing would not apply when the purpose of an intervention is to obtain a system security service which is not traded in the market (e.g. system strength, voltage control, inertia).

The Draft rule determination for the National Electricity Amendment (Application of the regional reference node test to the reliability and emergency reserve trader) Rule 2019 has been published in conjunction with this draft determination and the Final report of the interventions investigation. If the final rule is consistent with this draft rule, intervention pricing will not in future be implemented in connection with directions for system strength or other security services such as voltage control and inertia.

83 AEMC, *Application of the regional reference node test to the reliability and emergency reserve trader, Draft rule determination*, 15 August 2019.

If the Commission's recommendation in the Final report to narrow eligibility for affected participant compensation were also to be actioned through a future rule change request, the end result would be that affected participant compensation would only be payable in limited circumstances - such as where AEMO directs a generator to provide energy or market ancillary services in response to region-wide scarcity (or localised scarcity which coincides with the regional reference node), thereby triggering intervention pricing. Affected participant compensation would not be payable in respect of directions for system strength or other security services.

Until such time as the Commission receives a rule change request to narrow eligibility for affected participant compensation, the Commission does not consider it to be in the best interests of consumers to make the proposed rule for affected participants (since it would increase the amount of compensation already payable to such participants at the expense of consumers).

The Commission notes that the position of affected participants is qualitatively different to that of directed participants. Affected participants are not subject to compulsion, as are directed participants, and have the capacity to influence their dispatch targets through rebidding.

This is because the intervention pricing run is a dynamic process which produces notional dispatch targets (for pricing purposes only) every five minutes, just like the dispatch run which is used to set actual dispatch targets for the market in the "real world". Intervention prices are published every five minutes and are automatically available to the market.

Dispatch targets in each run are set having regard for dispatch offers and bids. Given this, it is possible for a participant to optimise its position. When a generator's dispatch targets change due to an intervention and it recognises that it is an affected participant, the generator can optimise its bidding and hence its target in the pricing run in order to optimise its affected participant compensation.[84] The Commission considers that bidding to optimise eligibility for compensation is not in the interests of consumers.

In the period April 2017 to April 2019, a total of just under $4.7m was paid out to a group of 25 participants who were affected (i.e. dispatched differently) at various times as a result of system strength directions. This represents the amount automatically calculated by AEMO. In addition, AEMO paid out more than $400,000 in additional compensation to two claimants in respect of five intervention events (giving a total affected participant compensation payout of $5.1m).

During that two year period, payments to affected participants were made on 181 occasions. By contrast, a total of just over $1m was repaid by affected participants to AEMO across 52 occasions. (The fact that repayments to AEMO are smaller than payments by AEMO is not surprising. This is because, when AEMO directs on gas fired generators in South Australia,

84 Where a participant is actually dispatched more as a result of the direction, it will need to repay additional revenue earned to AEMO, net of additional costs incurred. This occurs when a unit's dispatch targets in the dispatch run are higher than those in the intervention pricing run.

other scheduled generators across the NEM will typically be dispatched less, not more, than would have occurred but for the intervention).

The net result is that just under $4.1m was paid out to affected participants (taking into account both payments to and from affected participants) and recovered from South Australian market customers, and thus end consumers, via the "compensation recovery amount".

As noted earlier, AEMO's analysis is that the additional cost of adopting a per event threshold would have resulted in an increase in affected participant compensation payments of $1.4 million in the third quarter of 2018.[85] The Commission notes that, during the third quarter of 2018, directions were in place for just under 30 per cent of the time (see figure 1.1 on page 4). As such, this quarter is roughly representative of the use of directions over the 2018 calendar year, noting that directions were in place for around 30 per cent of the time on average during 2018.

To provide some indication of the impact of the proposed rule change over time, the $1.4 million figure can be multiplied by four to derive an indicative annual cost estimate of $5.6 million. While this estimate is based on extrapolation of available data, it gives some idea of the cost implications of the proposed rule change.

As noted above, just under $4.1 million has been paid out in affected participant compensation (net of revenue paid back to AEMO by affected participants) in the period April 2017 to April 2019. Again for the purposes of deriving an indicative annual cost estimate, halving this total net payout gives an annual net affected participant compensation cost of $2.05 million.

As can be seen, the potential impact of adopting a per trading interval compensation threshold is not insignificant, potentially increasing net payments of affected participant compensation from around $2.05 million per annum to around $7.65 million (again, based on extrapolation from available data). This equates to more than a threefold increase in compensation costs recovered from market customers and, ultimately, consumers.

While these sums are not large when considered in the context of the volume of energy traded in the NEM, it is nonetheless important to consider whether affected participant compensation is warranted and appropriate in connection with system security directions, and whether it is appropriate to increase the amount of compensation payable by changing the threshold in the manner proposed. The Commission notes that consumers cannot manage the risk created by the requirement to pay affected participant compensation costs (in addition to directed participant compensation and higher wholesale prices when intervention pricing is invoked).

Of the automatically calculated compensation (total of ~$4.7m), a significant proportion was paid to a group of three affected participants. The ratio of compensation paid by AEMO to this group compared with revenue repaid by them to AEMO was in excess of 9:1. By contrast,

85 AEMO, Rule change request, op cit, p. 7.

the ratio for other generators who received numerous payments were either around or somewhat below a ratio of 3:1.

Within this group of three, one participant has received more than 30 per cent of the total amount of automatically calculated compensation paid out by AEMO to affected participants. This participant received compensation on 43 occasions (representing 23 per cent of instances when AEMO paid compensation to affected participants) and only had to repay revenue to AEMO on two occasions. The quantum of its average payment across these 43 occasions was 40 per cent higher than the average of all payments made by AEMO to affected participants.

The Commission's analysis indicates that a participant in South Australia was also a major recipient of affected participant compensation, underscoring the concerns raised by ERM that some participants may be receiving both directed and affected participant compensation. This may (depending on the circumstances) constitute paying twice for the same energy, an issue that has implications for costs borne by consumers. (The extent to which this occurs is difficult to ascertain based on the data available to the Commission.)

The Commission agrees with ERM's support for "'fair' compensation to any party who is financially disadvantaged by the invoking of market intervention". ERM also considers that "no party should receive a 'windfall' gain due to market intervention". The Commission shares this view, although noting that the Commission has reached a different conclusion to ERM (ERM supports changing the $5,000 compensation threshold with respect to both affected and directed participants, whereas the Commission recommends that this change be made only in relation to directed participants).

The Commission also shares Uniting Communities' concern that there is potential for participants to behave in a manner that is not in the best interests of consumers, and their view that affected participant compensation should not be paid where there is not a clear and transparent case for it. The Commission notes that the 2000 Review of directions by NEMMCO and NECA recommended that "third parties whose market dispatch is affected by a direction should be compensated so that their financial position is *unaffected* by the direction" [emphasis added].[86]

The above analysis suggests that affected participant compensation is not achieving this objective: rather than simply shielding participants from losses arising from a direction to another party, as appears to have been intended, several participants are benefiting significantly from the payment of affected participant compensation. Thus, their financial position is positively "affected", rather than kept neutral, and consumers are bearing the cost of this.

This has a bearing on whether it is appropriate to adjust the threshold in such a way that payments to affected participants would increase more than threefold (based on analysis of available data) at the expense of consumers.

86 NEMMCO and NECA, *Power system directions in the National Electricity Market*, May 2000, p. i.

The Commission considers that no change should be made to the threshold as it applies to affected participants.

4.3 Should the quantum of the threshold change?

The consultation paper considered whether the $5,000 threshold should remain at the level of $5,000 or be adjusted upwards if the threshold is to be applied per intervention event rather than per trading interval.[87]

The consultation paper notes that the SW Advisory Report[88]referenced in the AEMO rule change request and the Harding Katz report,[89] both consider the threshold should be set at a higher level if it is to apply per intervention event, rather than per trading interval.

As discussed in the consultation paper, a key challenge in determining the optimal approach to the compensation threshold is that there is no prescribed method by which to determine the appropriate length of AEMO intervention events. These can range from a few hours to, in one case, 21 days (in April-May 2018). The result is that the application of the threshold, if applied per intervention event, can have widely varying impacts (both on generators and consumers), depending on the length of each given intervention event.[90]

The consultation paper flagged an alternative approach which was adopted in the AEMC Final Determination regarding Participant compensation following market suspension. Rather than apply a threshold per trading interval or per market suspension, that framework imposes a fee per claim (to be determined by AEMO under its Market Suspension Compensation Methodology). This applies when a participant lodges a claim for additional compensation but does not apply to automatically calculated compensation. This is designed to achieve the objective of the compensation threshold, namely, deterring immaterial claims and helping to recoup the administrative outlays associated with determining compensation claims.

4.3.1 Stakeholder views

As indicated in table 4.2 three stakeholders supported further consideration of the compensation threshold quantum.

AGL states in its submission that, should the threshold apply per event as proposed, it may be appropriate to raise the $5000 threshold to a higher set amount.[91]

Engie noted that the basis for setting the threshold at a particular level or reference point needs further consideration and that some assessment of the costs involved to process a

87 AEMC, Investigation into system strength in the NEM consultation paper.

88 SW Advisory and Endgame Economics, op cit. The report recommends "that the Rule be changed such that a threshold – not necessarily $5,000 – apply for the whole intervention rather for each trading interval on its own": p. 51.

89 Harding Katz considered "there is a case for seeking an amendment to clause 3.15.7B(a4) (and possibly 3.12.2(b)) so that the threshold applies at the direction level. It is less clear what this threshold amount should be, noting that it may be substantially more than $5,000." Harding Katz, *Compensation for Directions in Queensland on 28 and 29 March 2017*, September 2017, p. 3.

90 AEMC, Consultation paper, op cit, p. 110.

91 AGL, Submission to the consultation paper, p.3.

compensation adjustment would inform considerations of whether the threshold should be changed.[92]

TasNetworks notes that changing the compensation threshold to apply per intervention event could have widely differing effects on generators and consumers given the variable length of each intervention. Given this, it is questionable whether the $5,000 threshold would remain appropriate under such a change and TasNetwork suggests further investigation and quantification of this issue is undertaken to ascertain the impacts of changing the threshold.[93]

While one stakeholder submitted that five-minute settlement will have the effect of making the threshold six times larger, this is not the case. The five-minute settlement rule amends clauses 3.12.2 and 3.15.7B to refer to a 30-minute period rather than a trading interval. (The more preferable draft rule proposes to refer in clause 3.15.7B(a4) to a "single direction" rather than a single trading interval. As a result, this obviates the need to amend this paragraph to give effect to five minute settlement.)[94]

AEMO's submission notes its compensation determination costs are approximately $5,000 per event and states that these costs are unlikely to increase with the number of trading intervals covered by an intervention.[95]

Table 4.2: **Stakeholder views on compensation threshold quantum**

APPROACH	STAKEHOLDERS
Further consider threshold quantum	AGL, Engie, TasNetworks (3)

Source: AEMC analysis

4.3.2 Commission's conclusion

The Commission has opted not to change the quantum of the threshold as it applies to directed participant additional compensation claims. This is based on advice from AEMO that its costs of determining compensation for directed participant claims are approximately $5,000 per event.[96] As such, the Commission does not consider it necessary to change the quantum of the threshold, noting that adopting a higher threshold would create a risk that a directed participant would incur loss if it was unable to recover its costs due to the application of the threshold (even if applied per direction rather than per trading interval).

The Commission notes that the administrative cost to a directed participant of lodging an additional compensation claim may, in practice, mean that smaller claims are not pursued (AEMO's submission to the consultation paper notes that it has not received claims for less than $20,000[97]). However, the Commission considers that directed participants should have

92 Engie, Submission to the consultation paper, p.6.
93 TasNetworks, Submission to the consultation paper, p.7.
94 Engie, Submission to the consultation paper, p. 6.
95 AEMO, Submission to the consultation paper, p.8.
96 AEMO, Submission to consultation paper, p. 8.
97 ibid

the ability to lodge a claim for any amount in excess of $5,000 if it wishes to do so. This will be particularly important to prevent directed participants incurring loss in the event they are subject to frequent directions of relatively short duration.

The Commission notes that there is no simple and predictable alternative approach to determining the threshold quantum, such as setting the threshold having regard for the length of the direction. As noted in the consultation paper, there is no prescribed method to determine the length of a given intervention event. The Commission considers that this is appropriate given that the conditions giving rise to the need for an intervention event cannot be known in advance. Further, AEMO is required to revoke a direction as soon as it is no longer required.[98] Accordingly, if a generator indicates to AEMO that it wishes to participate in the market voluntarily then AEMO must cancel the direction.[99] In other words, the duration of an AEMO intervention event is not within AEMO's control as it is a function of exogenous factors. Imposing requirements on AEMO to confine intervention events to a particular duration in order to adopt an appropriately targeted threshold quantum would inefficiently curtail AEMO's ability to intervene in the market as circumstances require.

The Commission has also not opted to adopt the approach set out in the Final determination regarding Participant compensation following market suspension (i.e. requiring AEMO to determine a fee for processing compensation claims).[100] The fee in that case is designed to help offset the cost to AEMO of processing additional compensation claims. However, in the case of directed participants, the threshold does not operate as a fee but as a condition precedent which determines whether compensation is payable. That is, if a claim for additional compensation exceeds the $5,000 threshold and is accepted (by AEMO or, for larger claims, the independent expert), the amount claimed will be paid in full. Again, this is considered appropriate given that the directed participant is subject to compulsion and cannot refuse to comply with a direction on the basis that doing so will result in financial loss.

Accordingly, and having regard for AEMO's advice as to its administrative costs of processing compensation claims, the Commission considers it appropriate to retain the threshold at its current level and apply the threshold per direction rather than per trading interval.

98 NER, clause 4.8.9(b)(2)

99 Similarly, the NER provide that the RERT should only be used to address an anticipated reliability issue or, where practicable, a power system security issue: NER, rule 3.20.

100 AEMC, *Participant compensation following market suspension, Rule Determination*, 15 November 2018.

ABBREVIATIONS

AEC	Australian Energy Council
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
Commission	See AEMC
IPWG	Intervention Pricing Working Group
MCE	Ministerial Council on Energy
NEL	National Electricity Law
NEM	National electricity market
NEMDE	National electricity market dispatch engine
NEO	National electricity objective
RERT	Reliability and emergency reserve trader
RRN	Regional reference node test

A SUMMARY OF ISSUES RAISED IN SUBMISSIONS

This appendix sets out the issues raised in the first round of consultation on this rule change request and the AEMC's response to each issue.

Table A.1: **Summary of issues raised in submissions**

<table>
<tr><th>STAKEHOLDER</th><th>ISSUE</th><th>AEMC RESPONSE</th></tr>
<tr><td>AGL</td><td>AGL strongly supports the AEMO rule proposal to apply this threshold per intervention event. AGL accepts that, should the rule be made, it may be appropriate to raise the $5000 threshold to a higher set amount. (P.3.)</td><td rowspan="4">The more preferable draft rule applies the threshold per direction for directed participant additional compensation claims and makes no change to the threshold as it applies to affected participants.

The preferred draft rule will provide directed participants with clarity and certainty during AEMO intervention events.

Changes to the affected participant compensation threshold would increase costs passed through to customers and, noting the Commission's recommendation to narrow affected participant compensation eligibility, no change is proposed to the threshold applicable to affected participants.</td></tr>
<tr><td>Australian Energy Council</td><td>The Energy Council supports AEMO’s rule change request to have the $5,000 threshold apply to each event, rather than each trading interval. Although it does increase the likelihood of smaller claims, the starting point for additional costs of the 90th percentile of the 12-month RRP does reduce the probability that its exercise will be unnecessarily frequent. (P.3.)</td></tr>
<tr><td>Engie</td><td>Engie notes that independent experts have taken different approaches to the “per trading interval” definition, so at a minimum there is value in clarifying this. (P.6.)

It would also avoid ambiguities in the per trading interval definition and issues arising over the appropriateness of the threshold when 5-minute settlement is introduced, which would indirectly make the threshold six times greater. (P.6.)</td></tr>
<tr><td>ERM Power</td><td>ERM Power supports the continued provision of “fair” compensation to parties financially disadvantaged by any market intervention event, and considers that no party should receive a “windfall” gain due to any</td></tr>
</table>

STAKEHOLDER	ISSUE	AEMC RESPONSE
	intervention event. Accordingly, ERM supports AEMO's rule change to alter the threshold for compensation or repayment to AEMO of any "windfall" gain from an "intervention price trading interval" basis to an "AEMO intervention event". (P.12.)	
Powershop	Powershop is supportive of the proposal to change the threshold to apply per intervention event. (P.6.)	
Snowy Hydro	Support AEMO's rule change request to apply the $5,000 threshold apply to each event, rather than each trading interval. This will allow market participants to not be adversely affected where an intervention event comprises a number of trading intervals. (P.6.)	
Origin	Origin agrees that the compensation threshold should apply per event, and not per trading interval. Origin understands that the threshold mainly exists to minimise the administrative burden of processing compensation where small amounts of money are involved. However, a direction over a relatively longer duration can result in impacts which far exceed the administrative cost of calculating compensation. (P.3.)	
EnergyAustralia	EnergyAustralia supports AEMO's rule change proposal noting that the more frequent occurrence of intervention events means that compensation not payable under the current threshold can now easily become material to affected participants. (p.3)	
AEMO	The $5,000 threshold currently applies to both directed and affected participants. AEMO's administrative cost of determining compensation to/from affected participants is not materially different to the administrative cost of processing additional compensation claims from directed participants. Therefore, AEMO does not believe that different compensation thresholds should apply to directed and affected	Based on advice from AEMO as to its cost of processing compensation claims, the Commission has determined that it is not necessary to change the quantum of the current threshold. Adopting a higher quantum would increase the risk that a directed participant

STAKEHOLDER	ISSUE	AEMC RESPONSE
	participants. (P.9.)	would incur loss as a result of the application of the threshold.
TasNetworks	The consultation paper correctly identifies that changing the compensation threshold to apply per intervention event could have widely differing effects on generators and consumers given the variable length of each intervention. Given this, it is questionable whether the $5,000 threshold would remain appropriate under such a change. TasNetworks suggests further investigation and quantification of this issue is undertaken to ascertain the impacts of changing the threshold. This investigation should examine changes to the threshold level as well as the impact of standardising the lengths of interventions. (P.7.)	

B LEGAL REQUIREMENTS UNDER THE NEL

This appendix sets out the relevant legal requirements under the NEL for the AEMC to make this draft rule determination.

B.1 Draft rule determination

In accordance with s. 99 of the NEL the Commission has made this draft rule determination in relation to the rule proposed by AEMO.

The Commission's reasons for making this draft rule determination are set out in chapter 4.

A copy of the more preferable draft rule is attached to and published with this draft rule determination. Its key features are described in section 3.3.

B.2 Power to make the rule

The Commission is satisfied that the more preferable draft rule falls within the subject matter about which the Commission may make rules. The more preferable draft rule falls within s. 34 of the NEL as it relates to operation of the national electricity market and the activities of persons (including Registered Participants) participating in the national electricity market or involved in the operation of the national electricity system.[101]

B.3 Commission's considerations

In assessing the rule change request the Commission considered:

- its powers under the NEL to make the rule
- the rule change request
- submissions received during first round consultation
- the Commission's analysis as to the ways in which the proposed rule will, or is likely to, contribute to the NEO

There is no relevant Ministerial Council on Energy (MCE) statement of policy principles for this rule change request.[102]

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 Australian Energy Market Operator (AEMO)'s declared network functions.[103] The more preferable draft rule is compatible with AEMO's declared network functions because it is unrelated to them and therefore it does not affect the performance of those functions.

101 Section 34(1)(a)(i) NEL.

102 Under s. [33 of the NEL/ 73 of the NGL/ 225 of the NERL] the AEMC must have regard to any relevant MCE statement of policy principles in making a rule. The MCE is referenced in the AEMC's governing legislation and is a legally enduring body comprising the Federal, State and Territory Ministers responsible for energy. On 1 July 2011, the MCE was amalgamated with the Ministerial Council on Mineral and Petroleum Resources. The amalgamated council is now called the COAG Energy Council.

103 Section [91(8) of the NEL.

B.4 Civil penalties

The Commission cannot create new civil penalty provisions. However, it may recommend to the COAG Energy Council that new or existing provisions of the NER be classified as civil penalty provisions.

The draft rule does not amend any clauses that are currently classified as civil penalty provisions under the NEL or National Electricity (South Australia) Regulations. The Commission does not propose to recommend to the COAG Energy Council that any of the proposed amendments made by the draft rule be classified as civil penalty provisions.

B.5 Conduct provisions

The Commission cannot create new conduct provisions. However, it may recommend to the COAG Energy Council that new or existing provisions of the NER be classified as conduct provisions.

The draft rule does not amend any rules that are currently classified as conduct provisions under the NEL or National Electricity (South Australia) Regulations. The Commission does not propose to recommend to the COAG Energy Council that any of the proposed amendments made by the draft rule be classified as conduct provisions.