



Australian Energy Market Commission

Rule Determination

**National Electricity Amendment (Extension of
Inter-regional Settlements Agreement) Rule
2006**

Rule Proponent:
Victorian Department of Infrastructure
Date: 13 July 2006

Signed:

A handwritten signature in black ink, appearing to read 'John Tamblyn', is written over a horizontal dotted line.

John Tamblyn
Chairman
For and on behalf of:
Australian Energy Market Commission

Commissioners
Tamblyn
Carver

Summary

In May 2006, the Victorian Department of Infrastructure (the Department) submitted a Rule change proposal (the proposed Rule) to the Australian Energy Market Commission (the Commission) relating to clause 3.6.5 of the National Electricity Rules (the Rules). The proposed Rule concerned arrangements for the recovery or distribution of settlements residue due to network losses and constraints.

The Department has requested that:

- Clause 3.6.5(a)(5)(ii) be amended to extend the date allowing arrangements for payments to be made by an importing region to an exporting region from 1 July 2006 to 1 July 2009; and
- Clause 3.6.5(a)(5)(iii) be amended so that the reference to the *“amount of the charge (that the importing region pays) as described”* refers to clause 3.6.5(a)(5)(ii) only and not to clause 3.6.5(a)(5)(i) which is a reference to the settlements residue itself.

The Department requested that the Rule change proposal be treated as non-controversial and expedited under section 96(1)(b) of the National Electricity Law (the NEL). The Commission agrees that the proposed Rule is non-controversial and has expedited its assessment.

The Commission considers that the proposed Rule will contribute to achieving the national electricity market objective and meets the Rule making test. The Commission has determined that the proposal will enable an ongoing recognition of the costs incurred by transmission network service providers (TNSPs) in exporting electricity to other regions. In turn this assists in providing appropriate price signals to encourage appropriate investment in and use of transmission networks.

In light of this, the Commission has decided to make the Rule as proposed by the Department with one amendment. This amendment provides for the interim arrangements to remain in place until comprehensive arrangements for inter-regional settlement payments are incorporated into the Rules, or, in the event that these arrangements do not eventuate, until 1 July 2009. This will enable the alignment of all jurisdictions with any uniform national framework for inter-regional payments arising out of the review of transmission pricing

This decision in no way anticipates the content of the forthcoming Rule Proposal for the Economic Regulation of Transmission Prices.

1 The Department's Rule Proposal

On 9 May 2006, the Commission received a Rule change proposal from the Victorian Department of Infrastructure. The proposed Rule relates to clause 3.6.5 of the Rules which concerns arrangements for the settlements residue due to network losses and constraints.

The Department requested that the Rule change proposal be expedited (under section 96(1)(b) of the NEL) as it was non-controversial.

Clause 3.6.5 allows for distribution or recovery of settlements residue between importing and exporting regions that is attributable to regulated interconnectors.

In accordance with the clause 3.6.5, the jurisdictions of Victoria and South Australia have an agreement that provides payment for the use of each other's transmission network for the transfer of electricity. The current provisions apply from market commencement until 1 July 2006.

The Department has sought an extension to the provision in clause 3.6.5(a)(5)(ii) until 1 July 2009.

The Department has indicated that the jurisdictions intend to sign a new agreement similar to the existing agreement. The Department is seeking an extension in order to settle the agreement in accordance with the Rules, and has acknowledged in its letter accompanying the Rule change proposal that it may be necessary to terminate any interim arrangement early if "comprehensive arrangements for inter-regional settlement payments" are introduced into the Rules.

The Department has also proposed the amendment of an anomaly in clause 3.6.5(a)(5)(iii). Currently, when referring to the charge to be paid by the importing region, there is an incorrect reference to the clause describing the settlements residue (clause 3.6.5(a)(5)(i)). The reference should be to clause 3.6.5(a)(5)(ii) only - which relates to the requirement for the importing region to pay a charge.

The Department requested that the Rule change be expedited in accordance with section 96 of the NEL on the basis that it is non-controversial. The Commission did not receive any objections to the expedition of the Department's proposal and is making a final determination in accordance with section 102 the National Electricity Law.

2 Rule Determination

In accordance with section 102 of the NEL, the Commission has determined to make the Rule set out in Appendix 1. The Rule will commence on 13 July 2006.

In making this determination, the Commission has taken into account:

1. The Commission's powers under the NEL to make the Rule;
2. The proponent's Rule change proposal and proposed Rule;
3. Submissions received;
4. Relevant Ministerial Council on Energy (MCE) statements of policy principles;
5. The Reviews of Transmission Revenue and Pricing currently underway by the Commission;
6. The Commission's assessment of the ways the proposed Rule will, or is likely to, contribute to the achievement of the national electricity market objective so that it satisfies the statutory Rule making test.

2.1 The Commission's Power to Make the Rule

The Commission may make Rules about subject matters set out in section 34 of the NEL and more specifically in Schedule 1 to the NEL.

The proposed Rule is within the matters set out in section 34, as it relates to the operation of the NEM and the activities of persons participating in the NEM. Items 15 of Schedule 1 of the NEL also states that the AEMC may make Rules with respect to:

"The regulation of revenues earned or may be earned by owners, controllers or operators of transmission systems from the provision by them of services that are the subject of a transmission determination".

In addition, the matter of inter regional charging is being considered as part of the Review of Transmission Prices.

The Commission is satisfied that the proposed Rule is a subject matter about which it can make a Rule.

2.1.1 Assessment as a Non-controversial Rule Change Proposal

The Commission considers that the Rule change proposal is non-controversial as it seeks to extend an existing date for the application of interim arrangements and the interim arrangements are still applicable because the Commission's final determination on the transmission pricing Rule is still pending.

The second part of the proposal seeks to amend an anomaly in the referencing to the charge and settlements residue. The anomaly was discussed in the Commission's

Transmission Pricing Issues Paper¹. This is clearly an administrative matter and is not controversial.

It is the Commission's view that the proposed Rule was non-controversial as it had little chance of creating a significant change to the current arrangements operating in the national electricity market and it is unlikely to have a negative (or any) impact on any other party.

No submissions were received regarding expedition.

2.2 Submissions Received

The Commission has received two submissions on the Department's Rule proposal from VENCORP and NRG Flinders (on behalf of NRG Flinders, AGL, Origin and International Power). An additional submission was received from the Department responding to the submission from NRG Flinders.

2.2.1 VENCORP Submission

The submission from VENCORP supports the Department's proposal. VENCORP has stated that it "believe[s] it would be beneficial to both States to continue the existing interim agreement."²

2.2.2 NRG Flinders Submission

The submission from NRG Flinders does not support the extension of the sunset date in the interim arrangements. The submission argues that extension of the interim provision would perpetuate an anomaly in the market, on the basis that only South Australia and Victoria have entered into arrangements to make payments under clause 3.6.5 in respect of net flows between the two regions. NRG Flinders believes that the requirement has not been applied to any other connecting region, nor is it in place anywhere else in the NEM, despite inter-regional flows occurring elsewhere. In NRG Flinders' view, extension of the sunset date would perpetuate the treatment of customers in South Australia as a "special case"³. NRG Flinders also drew attention to what it considers to be "limited consultation and transparency"⁴ in the process by which payments are agreed.

The Rule change proposal from the Department notes that it may be appropriate for the interim arrangements to be terminated earlier if comprehensive arrangements to allocate transmission costs for inter-regional transfers are incorporated into the Rules prior to 30 June 2009. NRG Flinders has acknowledged this point, but has also emphasised that no reference to this situation was made in the Department's Rule change proposal or proposed drafting.

¹ AEMC, 14 November 2005, Transmission Pricing: Issues Paper, pp.65-66

² VENCORP, 8 June 2006, Submission, p.1

³ NRG Flinders, 20 June 2006, Submission, p1

⁴ NRG Flinders, 20 June 2006, Submission, p1

NRG Flinders has suggested that at a minimum the proposed Rule should be amended to require the arrangement to terminate once the current review of Transmission Revenue and Pricing Rules is concluded in order to ensure that seamless interregional charging arrangements are established across the NEM, based on the outcomes of the review.

2.2.3 Supplementary Submission from the Department of Infrastructure

The Department's supplementary submission responded to the issues raised by NRG Flinders.

The Department's view is that the proposed Rule change does not unduly burden South Australian customers, as it applies equally to flows into and out of both South Australia and Victoria and applies across all regions, if those regions were to adopt similar payment arrangements, and not solely to South Australia.

Contrary to what is suggested by NRG Flinders, the Department believes the negotiation of interim arrangements does utilise adequate transparency and consultation measures, including the setting of a cap on payments under clause 3.6.5(a)(5)(iii). The Department also drew attention to the level of scrutiny applied to inter-government agreements and the ability of affected parties to make representations to their respective government.

In response to the suggestion by NRG Flinders that the Rule proposal be amended to terminate once the AEMC's review of revenue and pricing has concluded, the Department has argued that this may produce undesirable consequences if the review was to conclude before any recommendations are implemented as Rule changes. Furthermore, the interim arrangements that concluded on 30 June 2006 provide for the termination of the agreement upon implementation of a comprehensive inter-regional TUoS regime.

The Department's submission has also drawn attention to the ability of the Commission to implement savings or transitional Rules, which could be identified once the outcome of the transmission pricing review have been identified. In the view of the Department, this would be a more appropriate means of addressing the transitional issue than the solution proposed by NRG Flinders.

2.3 Relevant MCE Statements of Policy Principles

The Commission is required, by the NEL, to have regard to any MCE statements of policy principles in applying the Rule making test. There are no MCE statements of direct relevance to this particular issue.

2.4 Public Hearing

A public hearing was not held for this Rule proposal as none was requested.

2.5 Assessment of the Proposed Rule: the Rule Making Test and the National Electricity Market Objective

The Commission is required under section 88 of the NEL to only make a Rule if it is satisfied that the Rule contributes to achieving the NEM objective.

The Rule change proposal allows the continuation of jurisdictional arrangements that provide for the reallocation of the inter-regional settlements residue based on the use of the networks between importing and exporting regions. The Rule change proposal would provide certainty to the Victorian and South Australian jurisdictions.

The Rule change proposal would promote efficiency by allowing for the importing region to contribute to the costs associated with the flow of electricity from the exporting region. The signalling, to some extent, of the costs for the use of the network is in the long term interests of consumers.

The Rule proposal addresses issues that were identified as anomalies by the Commission in its Transmission Pricing Issues Paper. The Commission believes that the current anomaly in the referencing in clauses needs to be amended in order to enhance understanding of the intention of the provisions in relation to the distribution or recovery of settlements residues under the Rules.

Therefore, the Commission has decided to accept the Rule proposal presented by the Department with one amendment.

The proposed Rule meets the Rule making test in the following ways:

- Provides certainty to the Victorian and South Australian jurisdictions. The Rule will allow continuation of jurisdictional arrangements that provide for the reallocation of the inter-regional settlements residue based on the use of the networks between importing and exporting regions.
- Promotes economic efficiency. The Rule provides a regulatory mechanism for an importing region to contribute to the costs associated with the flow of electricity from the exporting region. Users in the importing region are contributing to the costs of the exporting regions network which based on the value of the flows between the regions. The signalling to users of network usage costs promotes economic efficiency.
- Enhances understanding of the Rules. The current anomaly in the referencing in clauses needs to be amended in order to enhance understanding of the intention of the provisions in relation to the distribution or recovery of settlements residues under the Rules.
- It also promotes certainty and economic efficiency for the NEM by promoting the alignment of interim jurisdictional arrangements with arrangements for inter-regional settlement payments in the event that such arrangements are implemented as a result of the review of transmission revenue and pricing

Overall, the Commission believes that the Rule change proposal promotes the national market objectives and so meets the Rule making test under section 88 of the

NEL. The Commission has decided to make the Rule proposed by the Victorian Department of Infrastructure, with one amendment.

2.6 Amendment to the Proposed Rule

The Commission has decided to include a provision in the Rule to be made that the interim arrangements remain in place until 1 July 2009, or until alternative provisions for inter-regional settlement payments are incorporated into the Rules, whichever is earlier.

This amendment ensures certainty for the market through the provision of a definite expiry date for interim arrangements as was proposed in the Department's Rule change, but also provides the potential for the resolution of the issue of inter-regional settlements through the review of the transmission pricing rules under s.35 of the NEL.

Attachment 1: Rule to be Made

Refer to the AEMC website www.aemc.gov.au. See "Final Rule as Made" document under **Current Rule Changes - Inter-regional Settlements Agreement - Regulated Interconnectors**.