

## Detailed listing of Rule changes commented on by the ERAA

### Clauses the ERAA considers should not be changed

Clause No.	SCO summary of clause change	SCO reason for alteration/insertion	ERAA issue
1.10	Clause deleted	The civil penalties fund is being wound up and transitional provisions will provide that all monies standing to the credit of it will vest in the AEMC.	Fund should be retained and monies used for market purposes, eg advocacy or AEMC costs.
2.11.3(b)(6)	Clause deleted	Deletion consequent on winding up of NECA and abolition of NET. Funding arrangements for advocacy panel are to be the subject of separate arrangements to apply after 30 June 2005	Important that consultation occurs on proposed arrangements.
5.2.3(d)(9)	Clause deleted.	... This test does not now entail any determinations being made by the Inter-regional Planning Committee. In any event, clause 5.6.5 has now been replaced.	Requirement to provide data to other TNSP should be retained to meet clis 5.3 obligations.
5.6.5	Imposition of a new requirement on NEMMCO to conduct an annual national transmission review (in consultation with Registered Participants and interested parties) and to publish an annual national transmission statement.	Reflects new Rule provisions developed as part of the MCE work stream on transmission.	This removes the obligation on the Jurisdictional Planning Bodies to supply data and expertise to support the ANTS process. In the absence of alternate obligations, it may be difficult for NEMMCO to access planning data and build the capacity to process this data into meaningful projections.
S6.8.1	Replaced with a provision that no charges will apply to Generators for new network investment.	This represents the current situation, although a subsequent rule change may alter it.	Changes presumption that beneficiary generators will pay for new elements in the network, which was the high-level conclusion of the transmission pricing review. MCE has never released a policy overturning this conclusion. The Review into the detailed mechanism is substantially complete and ERAA's policy position is to see it effected.
S6.8.2	Deletion of reference to rule changes following a review under clause 6.5.10, and drafting changes.	Consequential changes, largely resulting from the amendments to clause S6.8.1.	

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8.2.1(h)	New clause inserted.	In so far as previous clause 8.2.1(h)(1) is concerned, the concept of reviewable decisions is no longer relevant. However, the decisions of NEMMCO which are categorised as reviewable decisions under the National Electricity Code have been listed in clause 8.2.1(h). This means that such decisions continue not to be subject to the dispute resolution process in clause 8.2, although they will be susceptible to judicial review (see National Electricity Law, section 68). In so far as previous clause 8.2.1(h)(2) is concerned, the AER (which will assume most of NECA's enforcement role) is not subject to the dispute resolution process in clause 8.2. This previous clause has therefore been deleted.	Clauses were not disputable because they were reviewable. Should now be disputable.
8.2.5(e)	Inclusion of requirement to notify the Registered Participants who are party to the dispute, the AER and the AEMC of the referral of the dispute to a DRP.	It is appropriate that both the regulator (the AER) and the rule-maker (the AEMC) be notified of a dispute that is referred to a dispute resolution panel as this may indicate a need for some monitoring or enforcement action or a deficiency in the National Electricity Rules. It is also appropriate that such a referral be notified only to Registered Participants who are party to the dispute.	AEMC and AER only need to know at the end of the dispute. It may be agreed by parties to the dispute to keep the matter confidential.
8.5.4	Clause deleted.	The National Electricity Law provides for the manner in which the new regulator (the AER, which is to replace NECA in this regard) is to enforce alleged breaches of the National Electricity Rules. The contents of previous clause 8.5.4(f)(1) have been amended and incorporated into Chapter 5 as a new clause 5.9.4A as this clause relates to involuntary disconnection (which is dealt with in clause 5.9).	No similar clause included in Law. This clause provides substantial
8.6.4	Clause deleted	NECA is being wound up. The AER and the AEMC are subject to provisions regarding confidential information under the Trade Practices Act 1974 (Cth) (section 44AAF) and the Australian Energy Market Commission Establishment Act 2004 (SA) (section 24), respectively.	Confidentiality of market information an issue
8.7.3 (also related clauses 8.6.1 to 8.6.4)	Clause deleted.	The use of confidential information by the relevant National Electricity Market institutions is now governed by the Australian Energy Market Commission Establishment Act 2004 (SA) (section 24) (in the case of the AEMC) and the Trade Practices Act 1974 (Cth) (section 44AAF) in the case of the AER.	Confidentiality of market information an issue
8.7.3 (also related clauses 8.6.1 to 8.6.4)	Clause deleted.	The use of confidential information by the relevant National Electricity Market institutions is now governed by the Australian Energy Market Commission Establishment Act 2004 (SA) (section 24) (in the case of the AEMC) and the Trade Practices Act 1974 (Cth) (section 44AAF) in the case of the AER.	Confidentiality of market information an issue

## Clauses where the changes have introduced errors

Clause No.	SCO summary of clause change	SCO reason for alteration/insertion	ERAA issue
2.2.6(i)	Reference to directions made in accordance with clause 4.8.9A deleted.	There is no clause 4.8.9A of the National Electricity Code.	Reference should be corrected not deleted. Should probably refer to 4.8.9.
Chapter 3 General inclusion of references to Scheduled Generators	References to Scheduled Generators have been included in numerous provisions in Chapter 3 which currently refer only to Market Participants. Different fix is required for Clauses 3.7.1; 3.7.2; 3.7.3; 3.8.3; 3.8.8; 3.8.9; 3.8.10; 3.8.17(g); 3.8.18(c); 3.8.19; 3.8.19(i),(j),(k); 3.8.21; 3.8.22; 3.8.22A; 3.11.7; 3.12.1; 3.12.A9; 3.13.1,2,3,4,6; S3.1.	There are numerous provisions throughout Chapter 3 where the Code refers to Market Participants but which are relevant to the operation of scheduled generating units. It is possible under Chapter 2 for a Generator to be registered in respect of a scheduled generating unit which is not also a market generating unit. The Generator would, in respect of that generating unit, be a Scheduled Generator (ie. a Generator who may participate in the market) but not a Market Generator (ie. a Generator who must participate in the market). In such a case, the Generator would not be a Market Participant. For each of those provisions which is intended to apply to a Scheduled Generator who may not also be a Market Participant, a reference to Scheduled Generators has been included.	In all cases, the clauses refer only to the operation of scheduled generators and scheduled load, potentially placing irrelevant obligations upon retailers. Should be changed to "scheduled plant".
3.1.3(c)	Clause deleted.	The Rules (including Chapter 3) apply to all persons referred to by them in accordance with their terms as the rules constitute law (see National Electricity Law, section 8). The designation of the persons to whom the Chapter applies is accordingly superfluous, and creates the possibility of inconsistency between the actual application of the Chapter and its application as stated in this clause.	The removal of this clause may allow NEMMCO more discretion to alter dispatch procedures (not directly Rule related) without consultation with the market. ERAA need to be assured that the Rule consultation procedure will apply to all changes.
3.15.21(k)	New clause.	Section 61 of the National Electricity Law permits the court to make an order for disconnection when a Registered Participant has breached the Rules. This clause makes it clear that the occurrence of a default event in relation to a Market Participant constitutes a breach of the Rules for the purpose of this section.	This new clause makes it a breach of the rules to suffer a <i>default event</i> in the NEM. This is inappropriate for all of the sub-clauses of 3.15.21(a), which defines the <i>default event</i> and is opposed by the ERAA.
3.6.1 (d)(3)(i)	Drafting and consequential changes.	... The change to paragraph (d)(3)(i) is for clarification, as the reference to "trading intervals" in the Code drafting was unclear.	Fix to definition of inter-regional loss factors regarding <i>trading intervals</i> appears to have inadvertently fixed them to an annual schedule rather than the present dynamic solution.
3.11.8(c)	Deletion of the requirement for certain factors to be fixed by NEMMCO for the 12 months following the market ancillary services commencement date, and consequential drafting changes.	As the 12 month period after the market ancillary services commencement date has expired, the requirement for NEMMCO to fix factors referred to in the clause has been deleted. The clause is now permissive rather than mandatory.	NEMMCO "must" converted to a "may" due to an apparent misunderstanding that the 4 week causer pays mechanism was transitional only.

Clause No.	SCO summary of clause change	SCO reason for alteration/insertion	ERAA issue
3.12A.2	Drafting changes.	For consistency with the terms defined in Chapter 10 and (in relation to paragraph (a)(ii)) to reflect the fact that the relevant schedule is given in anticipation of a proposed mandatory restriction period.	Due to interactions with the settlement timetable, the mandatory restriction period was limited to a settlement day in the subsequent mandatory restriction procedure consultations.
3.12A.7(b1)	Drafting changes.	For consistency with the terms defined in Chapter 10 and (in relation to paragraph (a)(ii)) to reflect the fact that the relevant schedule is given in anticipation of a proposed mandatory restriction period.	This represents a fundamental change to the Mandatory Restriction capping arrangements by changing the application of caps from single accepted restriction offers to the total of all accepted restriction offers.
4.8.9 (a1)	Substitution of a reference to a market non-scheduled generating unit by a reference to any generating unit	The contemplated action should extend to all generating units.	This clause is in relation to direction given by NEMMCO to maintain the power system in a secure operating state. This clause now applies to non-market non-scheduled generators which, due to their small size and technical characteristics may not be able to respond as required. This is a clear change from the status quo and is unnecessary.
4.8.9A	Reintroduction of System security direction clause.	Applies strong obligation on participants to conform with system security directions.	The concept (classification) of system security directions (vs reliability or AS directions) was removed with the directions review. This clause seems to incorrectly re-introduce this classification.
6.4.3C	Substitution of the AER for the Regulator, correction of cross reference (clauses 6.4.3C(a), 6.4.3C(3)(2)), and insertion of a reference to amounts that the Transmission Network Service Provider was entitled to (but did not) recover under clause 6.5.8(c) (clauses 6.4.3C(b)(5)(ii), (c)(1)(i)).	The AER will be the regulator responsible for the economic regulation of transmission. The reference to the failure to recover amounts to which the Transmission Network Service Provider is entitled under clause 6.5.8(c) reflects clause 6.5.8(d) which provides for such amounts to be recovered under clause 6.4.3C. The other amendments are minor technical amendments, including for consistency in drafting style and with defined terms.	6.4.3C(b)(5)(ii) has had a "not" removed which changes the meaning markedly and may allow a TNSP to recover monies they were not entitled to.
S6.4.8	Drafting changes.	Minor technical amendments, including for consistency with other provisions (eg. clause S6.6.1.2).	Phrase "non asset related services" used incorrectly
S6.6 (opening paragraphs)	Inclusion of references to "distribution" systems and "distribution" networks, and drafting changes.	Minor technical amendments for clarificatory purposes, including for consistency with other provisions (such as clause 5.6.2 and Part D of Chapter 6).	Removal of reference to price caps, which can apply to distribution.

Clause No.	SCO summary of clause change	SCO reason for alteration/insertion	ERAA issue
8.2.1 (a1)	The expanded definition of "Registered Participant" used for the purpose of clause 8.2 and contained in the opening paragraph has been amended to delete the references to NECA and Intending Participants and to include a reference to NEMMCO. This expanded definition does not apply to clauses 8.2.2(b)(4), 8.2.2(d), 8.2.3(a) or 8.2.3(b)(5), to clauses 8.2.3(b), (b)(3), (b)(4) or (c) (where that term first occurs in those clauses) or to clauses 8.2.4(a) or 8.2.9(c) (where that term last occurs in those clauses). These provisions have been included in new clause 8.2.1(a1).	NECA has no functions under the National Electricity Rules and the definition of "Registered Participant" in Chapter 10 expressly includes Intending Participants. Conversely NEMMCO is not a "Registered Participant" as defined in Chapter 10.	This expanded definition does not apply to clauses 8.2.2(b)(4), 8.2.2(d), 8.2.3(a), 8.2.3(b)(5), 8.2.3(b), (b)(3), (b)(4) or (c) (where that term first occurs in those clauses), 8.2.4(a) or 8.2.9(c) but NEMMCO is explicitly brought back.
8.8.4	Clause deleted.	A new rule change process has been included in Part 7 of the National Electricity Law and, under this process, the Reliability Panel has standing to request that rule changes be made. Any rule changes recommended by the Reliability Panel must go through this rule change process and the making by the Reliability Panel of recommendations in relation to rule changes will not of itself initiate a rule change.	Clause is required to give notice of standards changes recommended by the Reliability Panel and then included in the Rules.
6.5.8(c)	Deletion of reference to the procedure to apply prior to the publication of the ACCC's Guidelines for the Negotiation of Discounted Transmission Charges.	The relevant guidelines have been published and will be adopted as the AER's guidelines.	Unexplained reference change from 6.4.4 to 6.5.6
6.15	Drafting change.	Minor technical amendment.	New drafting has changed the sense of the clause.

### Unnecessary changes

Clause No.	SCO summary of clause change	SCO reason for alteration/insertion	ERAA issue
3.12.1(b)	Drafting changes and substitution of the date 1 July 2006 for 1 July 2005.	No reason given	Should be consequential on current consultation by Reliability Panel.
6.5.4(b)	Deletion of the reference to a Transmission Network Service Provider's discretion in relation to determining the variable pricing structure for Customer TUOS usage prices, and drafting changes.	There is no discretion in the sense that pars (1) and (2) specify how the pricing structure must be determined.	Unnecessary change that removes discretion

Clause No.	SCO summary of clause change	SCO reason for alteration/insertion	ERAA issue
6.5.4(e)	Substitution of AER for the Regulator, and drafting changes	The AER will be the regulator responsible for the economic regulation of Transmission. The drafting changes are minor technical amendments for clarificatory purposes and consistency (including with clause 6.5.6)	(e)(i) seems unnecessary

### Reviews that should be retained

Clause No.	SCO summary of clause change	SCO reason for alteration/insertion	ERAA issue
3.1.4(a2)(2)	Clause deleted.	The deletion of this clause, which refers to the review conducted in accordance with clause 3.13.11(c), is consequential on the deletion of clause 3.13.11(c).	Clause should be retained (as well as cl 3.13.11) to bring the outcomes of the NECA Ancillary Services review into the NEMMCO implementation of a usage market for FCAS (cl 3.1.4 (a1)(3))
3.13.11	Clause deleted.	The requirement for these reviews and procedures is not proposed to be mandatory under the Rules. To the extent such requirements are considered desirable, the reviews may be instigated by the AEMC itself or as a result of a reference by the MCE.	This review (Ancillary Services) has been substantially completed and its outcome should be adopted by the AEMC. This outcome is required for the correct operation of clause 3.14(a1)(3).
3.14.2	Deletion of review of clause 3.14.2	Not proposed to be mandatory under the Rules. Such reviews may be undertaken at the instigation of the AEMC or at the direction of the MCE	Should stay because it is designed to protect participants and was part of the approval of this change.
5.6.6C	Clause deleted	Relevant review is part of the separate review, that is being undertaken under the auspices of the MCE, of the regulatory test and the transmission planning regime	This review should remain unless explicitly picked up by the MCE DSR review.
6.5.10	Clause deleted.	To the extent such reviews have not been undertaken, the MCE could direct the AEMC to undertake them (see National Electricity Law, section 40).	Review is substantially complete. Needed to finish beneficiaries pays Code changes. Should be retained.
8.8.1(d), (e)	Clauses deleted	This review (which has not been undertaken) could instead be undertaken by the AEMC under section 44 of the National Electricity Law or at the direction of the MCE under section 40 of the National Electricity Law.	Review of relaxation of system security requirements was required to support a Code change. Should be explicitly retained.

## Allocation of powers to the AER/AEMC

Clause No.	SCO summary of clause change	SCO reason for alteration/insertion	ERAA issue
2.5.1(d) & (e)	This clause has been amended to make it clear that the exemption guidelines are those issued by the AER (which is to assume NECA's functions in this regard). This clause has also been amended to delete the reference to the Code objectives.	Largely consequent on the winding up of NECA and the allocation of its functions relating to network service provider exemptions to the AER, and on the removal of the concept of Code objectives. In relation to clause 2.5.1(d)(2), it is also noted that the MCE is currently reviewing the access arrangements that are to apply to the national electricity market (as well as to gas). These arrangements will be settled by the time the National Electricity Rules commence and (to the extent necessary) will be reflected in the National Electricity Rules.	Rules and extension to rules by guidelines should be AEMC. AER and NEMMCO should develop administrative and procedural guidelines.
2.9.3	References have been included to the AER exempting erstwhile Network Service Providers from being registered if an intermediary is instead registered by NEMMCO.	Only the AER can exempt a person from the requirement to be registered as a Network Service Provider (see National Electricity Law, section 10(2)(b)).	It seems onerous to seek separate exemption during registration as an NSP if an intermediary is in place. Law should allow NEMMCO to exempt.
3.14.2(c)(3), 3.14.6, 3.15.10	Not a single issue	Allocation of responsibilities to AEMC/AER	ERAA considers that defining rules and extension of rules is the role of the AEMC and that operation of the rules is NEMMCO or AER. Compensations and threshold applications of price-caps in all cases should be by an operational team within the AER.
6.2.5(e)	Substitution of the AER for the ACCC.	The AER (instead of the ACCC) will be responsible for the economic regulation of transmission.	Confidentiality retained for TNSPs. We agree with this but it is inconsistent with treatment of market participants
7.2.8(a)	Drafting change	Minor technical amendment	This clause gives NEMMCO the power to make rules or policy -this function should properly lie with AEMC
8.7.2	Substitution of the AER for NECA, and inclusion of references to NEMMCO (in addition to the references to Registered Participants).	NECA is being wound up and its monitoring functions have been largely allocated to the AER. NEMMCO is not a Registered Participant, but it was a Code Participant for the purposes of clause 8.7.2 of the National Electricity Code.	Rule extensions should be AEMC.

## Textual comments

Clause No.	SCO summary of clause change	SCO reason for alteration/insertion	ERAA issue
1.7.1 (last paragraph)	Specifies those provisions of the interpretation schedule in the National Electricity Law (Schedule 2) that apply to the National Electricity Rules – namely, clauses 12, 16, 18, 20, 21, 24 to 27 (inclusive), 32 to 35 (inclusive), 40, 43 and 44.	The application of most of the provisions of the interpretation schedule in the National Electricity Law to the National Electricity Rules can be retained or displaced for the purposes of the National Electricity Rules (clause 1 of Schedule 2 of the National Electricity Law).	Numbering
4.8.9(g)	Clause deleted. Removal of Rules maker's obligation to report on NEMMCO's power to issue directions	Proposed that regulations will be made under AEMC Act requiring this matter to be reported on in the AEMC's Annual Report. Another similar clause has been removed from chapter 3	Need to see regulations to understand implications. Obligation to do this reporting should have been transferred to the AEMC.
6.2.4 (c)(2)	Not noted in amendment summary	Duplicate NEL requirements to cover costs of standards	Change in Law increased AER requirement to accept Jurisdictional legislative costs. More generally 6.2.3 and 6.2.4 seem to duplicate some provisions in the law.
8.8.3	"As soon as practical" should be deleted.	Expired part of clause	Consistency with deleted expired provisions.
8.8.3(a)(3)	Drafting change noted in table	Minor technical amendment for consistency with clause 8.8.1(a)(4).	Not actually changed