



# **Generator notice of closure exemption guideline**

**Draft guideline**

June 2019



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AER Reference: 64847—D19/19238

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# 1 About this guideline

The National Electricity Rules (the Rules) require the Australian Energy Regulator (AER) to develop and *publish* a notice of closure exemption guideline.<sup>1</sup> This document is our draft **exemption guideline**.

## 1.1 Purpose of this guideline

The purpose of this guideline is to set out the process surrounding exemptions from a *generator's* obligation to provide three years' notice of their intention to close. It contains guidance around the information to be provided to us in submitting an application for exemption, and our procedures for handling requests for exemption. In doing so, this guideline promotes transparency and clarity for *generators* seeking to apply for exemption.

Granting an exemption to a *generator* could have significant implications for the market. We are very conscious that we must take significant care first in developing the exemption guideline and then in applying it.

We note that, in addition to setting out the information and procedures for applications for exemption, this exemption guideline also contains discussion of the relevant obligations in the Rules. However, this guideline is not a substitute for the Rules. In the event of any inconsistency between this guideline and the Rules, the Rules will prevail.

## 1.2 Background

The Finkel Review identified managing the retirement of the existing coal-fired *generators* as they reach the end of their life as a key challenge facing the National Electricity Market (NEM).<sup>2</sup>

In recent years, significant coal-fired capacity has been retired from the market, with 10 coal power stations exiting since 2012. Hazelwood Power Station was the most recent to leave and this had a significant impact on the market. Hazelwood's exit led to a tightening of supply and demand conditions and significant increases in wholesale electricity prices.<sup>3</sup> Engie, Hazelwood's owner gave five months' notice of its intention to close Hazelwood.

Such short notice is well below the potentially years-long lead time required for new capacity to be planned, financed and constructed. This is particularly important as *generators* may provide crucial reliability and security services to the market.

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<sup>1</sup> National Electricity Rules, clause 2.10.1(c5).

<sup>2</sup> Dr Alan Finkel AO et al, *Independent review into the future security of the national electricity market: blueprint for the future*. June 2017.

<sup>3</sup> AER, *Electricity wholesale performance monitoring — Hazelwood advice*, March 2018.

Recognising this, the Finkel Review identified that the most desirable transition from old to new generation assets involved a period of overlap. One of its recommendations was to put in place notice of closure requirements for large *generators*. This would provide greater planning visibility and encourage more timely investment behaviour.

Following this, the Chair of the Energy Security Board submitted a rule change to the Australian Energy Market Commission (AEMC). On 8 November 2018, the AEMC's final rule commenced, requiring large *generators* to provide at least three years' notice to the market before closing, unless granted exemption by the AER.<sup>4</sup>

As part of this, we must develop and *publish* guidelines that include the information a *generator* must provide to us when requesting an exemption. This guideline must also include the procedures for handling requests for exemption received from *generators*. *Generators* must comply with the new obligation to provide three years' notice of closure from 1 September 2019.

### 1.3 Relevant Rules

The requirement for us to develop an exemption guideline is contained within clause 2.10.1 of the Rules. In summary:<sup>5</sup>

- the AER may, in accordance with guidelines issued from time to time by the AER, exempt any *scheduled generator* or *semi-scheduled generator* from the requirement to provide three years' notice of closure or amendment of a notice of closure
- the AER, in accordance with the *rules consultation procedures*:
  - must develop and *publish* guidelines that include:
    - the information to be provided by a *generator* to the AER when requesting an exemption, and
    - procedures for handling requests for exemption received from *generators*
  - may amend these guidelines from time to time
- the AER may make minor and administrative amendments to the guidelines without complying with the *rules consultation procedures*.

### 1.4 Process for guideline revision

Clause 2.10.1(c5) allows us to amend this guideline from time to time. Should we receive any applications for exemption, we will review the operation of the guidelines

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<sup>4</sup> AEMC, *Generator three year notice of closure*, Rule determination, 8 November 2018.

<sup>5</sup> National Electricity Rules, clause 2.10.1(c4), (c5) and (c6).

and initiate changes as necessary. A version number and effective date of issue will identify every version of the guideline.

In making amendments, we must comply with the *rules consultation procedures*.

## **1.5 Definitions and interpretation**

In this exemption guideline, the words and phrases presented in italics have the meaning given to them in the Rules.

## 2 Applications should be submitted as soon as possible

A *scheduled* or *semi-scheduled generator* that intends to terminate any of its classifications of *generating units* must provide at least three years' advance notice. A generator must apply to the AER for exemption from this notice requirement if its intended *closure date* is in less than three years' time.

Clause 2.10.1(c4) provides the AER with the power to exempt any *scheduled generator* or *semi-scheduled generator* from the requirement to provide three years notice of its intended *closure date* to the Australian Energy Market Operator (AEMO) in accordance with clause 2.10.1(c2) and (c3). The requirement to provide notice to AEMO is in clause 2.10.1(a)(2).

Under clause 2.10.1(a)(2) of the Rules, a *generator* must provide AEMO a notice indicating its intention to terminate any of its classifications of *generating units*. Clause 2.10.1(c1) requires this notice to specify a *closure date*.

Under clause 2.10.1(c2) and (c3) a *generator* must ensure that:

- The first notified *closure date* for a *generating unit* must be no earlier than three years from the date the notice under 2.10.1(a)(2) is given, except where the *generator* has applied for, and is granted an exemption by the AER
- An amended *closure date* for a *generating unit* must not be a date that is earlier than the most recent *closure date* provided to AEMO, except where:
  - The amended *closure date* is no earlier than three years from the date the amended notice is provided to AEMO
  - The *generator* has applied for, and is granted, an exemption by the AER

### Our approach

A *generator* who wishes to apply for exemption, should submit an application immediately after it becomes aware of the need to do so.

Applications for exemption should be submitted to [noticeofclosure@aer.gov.au](mailto:noticeofclosure@aer.gov.au), with '*Notice of closure exemption application*' in the subject line.

In some cases, it may be appropriate for a *generator* to inform us that there is a credible possibility it may need to submit an application for exemption in the future, but this need is contingent on particular unforeseeable outcomes. This should be done as soon as possible, with updates provided to us as necessary.

For example, a *generating unit* may be nearing the end of its operational life but is not yet scheduled to close, and it experiences a failure. A *generator* may identify the need



for early closure as a credible outcome, but it needs to undertake a full economic and technical assessment of its options before reaching a final decision. In this case, it would be appropriate for that *generator* to notify us that an application for exemption may be a likely outcome, but it is currently investigating alternatives. The *generator* should keep us informed through this process.

In these cases, engagement will be done on a confidential basis, as it relates to an ongoing internal decision-making process. Importantly, in these cases we will not give any informal indication of the likelihood we will grant exemption, should the *generator* apply. Once we receive the formal application for exemption we will handle it in accordance with the procedure laid out in this guideline.

Given the potentially significant impacts of granting a *generator* exemption for the notice of closure requirements, it is important that any application for exemption is considered in a timely manner. *Generators* must contact us as soon as possible to minimise any potential implications for the market.

## 2.1 There is a need to maintain integrity of forecasts during the assessment period of any application

It is important that during the assessment period of any application that AEMO is able to factor in the potential granting of exemption (and early closure) in its forecasts.

Clause 2.10.1(a)(2) of the Rules requires a *generator* to notify AEMO of its intention to close, however other rules provisions also require *generators* to update AEMO regarding expected availability. For example:

- Under clause 2.2.1(e)(2A) of the Rules, a *generator* must notify AEMO of the year in which it expects to close its *generating unit(s)*. A *generator* must immediately notify AEMO of any changes to the *expected closure year*.
- Under clause 3.7.2(d)(1) of the Rules, a *generator* must submit the *PASA availability* of each *scheduled generating unit* within the *medium term PASA* forecast horizon.
- Under clause 3.7B(b)(1) of the Rules, a *generator* must submit the *plant availability* of each *semi-scheduled generating unit* as part of the *unconstrained intermittent generation forecast*.
- As part of the development of the statement of opportunities, under clause 3.13.3(t) of the Rules, a *generator* must provide AEMO with information regarding planned *plant retirements* (under 3.13.3(q)(3) of the Rules) as soon as practicable after it becomes aware of this information.

### Our approach

Given the importance of *generators* providing AEMO with accurate and timely information regarding their availability, we consider that any *generator* applying to us

for exemption, should also notify AEMO that it has submitted an application for exemption.

This notification should be submitted concurrently with an application for exemption, or immediately after a *generator* has submitted its application for exemption to us. It should identify:

- That the *generator* has applied to the AER for exemption from the obligation to provide three years' notice of closure
- The *generating unit(s)* the *generator* has applied for exemption for, and the megawatt (MW) capacity of the unit(s)
- The *closure date* the *generator* has applied for, for the relevant *generating unit(s)*.

This notification would not count as a notice of intention as required by clause 2.10.1(a)(2), as the *generator* has not yet been granted exemption.

In addition, any *generator* applying to us for exemption must also provide an update to AEMO communicating its likely future availability should the application be successful and the *generator* close on the applied-for *closure date*. This ensures that AEMO can maintain the integrity of its forecasts while we assess a *generator's* application for exemption, by being able to plan for contingencies, including the "worst-case" availability scenario.

A *generator* should carry out any necessary information updates as soon as possible after it has notified AEMO that it has submitted an application for exemption.

### 3 Applications should include the information relied on in deciding to apply for exemption

Under the Rules, the exemption guideline must set out the information a *generator* is required to provide when requesting an exemption. Broadly, *generators* should provide the key information relied on in deciding to apply for exemption.

#### Our approach

We have categorised the types of information required as:

- Identifying information
- Underlying evidence
- Other related information

The decision to close a *generator* is a significant decision that is not made lightly. We believe it reasonable and not an undue burden to request this information, as a *generator* should already have it to hand in arriving at the decision to apply for exemption.

The following is a non-exhaustive list of the information we expect a *generator* to provide in submitting an application for exemption. If a particular piece of information is not mentioned below, but may be valuable in our considerations, that information should be submitted.

Any information provided should be in an electronic format and submitted to [noticeofclosure@aer.gov.au](mailto:noticeofclosure@aer.gov.au), either as an attachment to the exemption application, or otherwise clearly identified as related to the exemption application.

#### 3.1 Identifying information

Identifying information is the minimum that must be provided in the initial application for exemption. We require a *generator* to provide the following identifying information:

- The *Registered Participant* that is seeking exemption and a primary point of contact
- The *scheduled* or *semi-scheduled generating unit(s)* the *generator* is seeking exemption for, and the MW capacity of the unit(s)
- The intended *closure date* for the *scheduled* or *semi-scheduled generating unit(s)* the *generator* is seeking exemption for
- The previous *closure date* that applied to the relevant *scheduled* or *semi-scheduled generating unit(s)*. Or, if there is no previous *closure date*, the *expected closure year* for the relevant *generating unit(s)* that applied prior to the *generator* submitting the exemption application

- The reasons why the *generator* is seeking exemption from the three year notice of closure obligation for the nominated *generating unit(s)*
- If the reasons above contain confidential information, then the *generator* must also provide non-confidential reasons why the *generator* is seeking exemption from the three year notice of closure obligation for the nominated *generating unit(s)*

If a *generator* is unsure of an exact *closure date*, but has an intention to close in less than three years' time, it should submit the earliest credible *closure date*. Should that date prove incorrect, clause 2.10.1(c3) of the Rules allows a *generator* to amend its *closure date*.

In that case, a *generator* may need to submit a new application for exemption if the amended *closure date* is earlier than the previous *closure date*. If this happens, to the extent it is relevant, we will have regard to our consideration of the previous exemption application in making our decision.

### 3.2 Underlying evidence

In addition, we expect *generators* to provide a range of supporting information that could provide insight into the reasons behind the decision to close their nominated *generating unit(s)* and seek exemption. This must be submitted as attachments to the application for exemption. This includes:

- The date the *generator* made the formal decision to proceed with the nominated *closure date*
- Key analysis, evidence or supporting information relied on in making the decision to proceed with the nominated *closure date*
  - For example, this could include technical condition reports, or papers submitted to decision-making committees
- Relevant records of considerations surrounding the formal decision to proceed with the nominated *closure date*, or other related discussions by the *generator's* decision-maker
  - For example, Board or decision-making committee minutes
- Other important supporting information the *generator* feels relevant. This information would be directly related to, or relied upon in making the decision to proceed with the nominated *closure date* by the *generator's* decision-maker

### 3.3 Other related information

Finally, we anticipate *generators* will also have information that may not relate directly to the decision to proceed with the closure of the nominated *generating unit(s)*, but may be of value in our consideration. A *generator* should also provide this information when applying for exemption.

For example, this information could include (but is not limited to) information pertaining to the *generator's* plans to replace the nominated *generating unit(s)* with new capacity.

If we identify other potential information that we believe would be valuable in our considerations, we will request it. In the event that we request additional information, we will endeavour to allow a *generator* a reasonable amount of time to respond to our request.

## 4 We will assess applications across three phases

Under the Rules, the exemption guideline must set out the procedures for handling requests for exemption. This is to provide additional clarity and transparency.

### Our approach

Applications for exemption should be submitted to [noticeofclosure@aer.gov.au](mailto:noticeofclosure@aer.gov.au), with '*Notice of closure exemption application*' in the subject line.

As soon as possible after receiving an application for exemption, we will *publish* an initiation notice on our website. This notice will state that we are considering an application for exemption and will identify:

- the *registered participant* seeking exemption
- the nominated *generating unit(s)* and its MW capacity
- the intended *closure date*
- non-confidential reasons why the *generator* is seeking exemption.
- an indicative timeline for our assessment

Once we have *published* an initiation notice on our website, we will commence consideration of the application for exemption. At a high level, our standard process for handling applications will comprise three phases:

1. Receive application, *publish* initiation notice and commence assessment
2. Undertake consultation and request additional information if necessary
3. *Publish* final decision

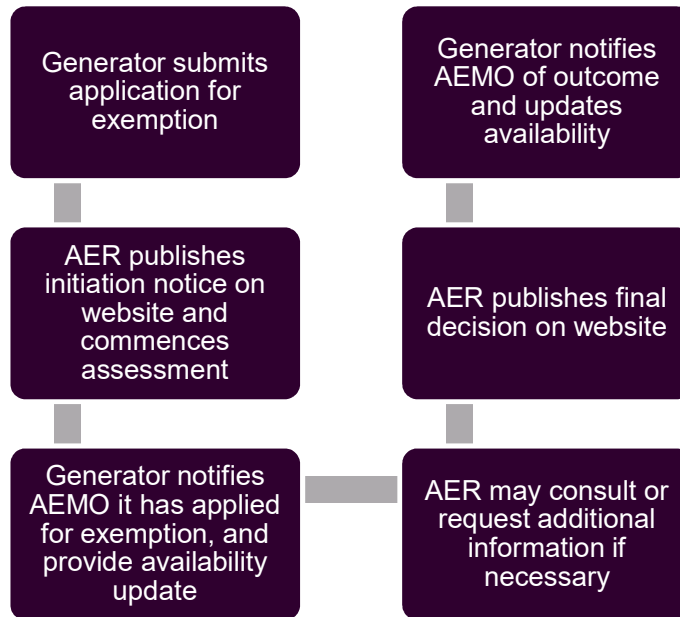
We will endeavour to complete our considerations within **60 business days**.

There are a wide range of potential scenarios that may necessitate an application for exemption. Accordingly, we anticipate that in some cases we may be able to deliver our decision much earlier than the nominal timeframe. For example, in cases where the impact of a *generator's* early exit is expected to be minimal. Where possible we will provide indicative timelines.

Upon reaching our final decision, we will *publish* a notice on our website stating whether exemption has been granted or denied. Where possible, we will *publish* non-confidential reasons and analysis supporting our decision.

Figure 1 below illustrates the steps of our process.

Figure 1 — Exemption application standard process



#### 4.1 In certain cases it may be appropriate to publish a draft decision

In our standard process, we will not *publish* a draft decision. However, in certain cases where an application is particularly complex or contentious we may consider it appropriate or necessary to *publish* a draft decision to uphold procedural fairness.

In the event we consider it appropriate to *publish* a draft decision, we will communicate our intention as soon as possible as part of our indicative timelines. We will still endeavour to complete our considerations within **60 business days**. However, the additional work required may cause delays. Should we be unable to deliver a decision within 60 business days for this reason, we will provide notice of this as soon as possible and provide an indicative timeline for our decision.

If we do *publish* a draft decision, we will follow the procedure outlined in section 4.3 of this guideline for publishing our final decision. We will also articulate the non-confidential reasons we considered it appropriate to *publish* a draft decision.

#### 4.2 We will consult with AEMO and specific stakeholders

We have included the possibility of consultation in our procedure for handling exemption applications to aid in our decision-making. For clarity however, our intention is not a general public consultation. Rather, we will target specific stakeholders directly

when we believe their input will be valuable to our consideration. These stakeholders could include:

- any affiliated auditors or consultants used by the *generator*
- *network service providers*
- the jurisdictional government
- AEMO
- other regulatory authorities as relevant.

For example, if a *generator* was seeking exemption in order to close a *generating unit* early due to a serious safety risk, we may seek to contact the jurisdictional work health and safety regulator to gain an external perspective of the issue. We may also wish to contact the *generator's* own safety auditor directly.

We will engage with AEMO when considering exemption applications to understand the reliability implications of a *generator's* closure. Granting exemption to a *generator* from its obligation to provide three years notice of closure could have significant implications for the market. So, it is important that we fully understand the reliability implications of the closure of any *generators* we may grant exemption to. We may also consult with the Australian Competition and Consumer Commission (ACCC) or AEMC as appropriate.

We recognise that *generators* may have concerns about the information we disclose in consulting with stakeholders. In the event we seek to consult with specific stakeholders, we will do so using information already identified as non-confidential. Following from the previous example, if we contact the jurisdictional work health and safety regulator for comment, we would likely identify the *generator* and intended *closure date*, the *generating unit(s)* in question, and the non-confidential reasons underlying the need for early closure.

However, the *Competition and Consumer Act 2010* does allow for information sharing between us and other authorised parties. Under section 44AAF(3), this includes (amongst others) the ACCC, the AEMC and AEMO. In engaging with these authorised stakeholders, we may disclose confidential information provided to us for the purpose of considering an exemption application.

### **4.3 What happens when we issue our final decision?**

As mentioned above, when we have reached a decision, we will *publish* a notice on our website stating:

- We have decided to grant exemption; or
- We have decided to not grant exemption



Where possible our notice will also summarise the non-confidential reasons for our decision. In addition, just prior to our public announcement we will advise the *generator* directly of our decision.

In notifying both the *generator* and *publishing* the notice on our website, we will endeavour to do this on the same day, outside the trading hours of the Australian Securities Exchange (ASX).<sup>6</sup> Our preference is to do this in the morning, prior to ASX trading opening. Prior to this, we will make the *generator* aware of the date and time we expect to provide our advice and *publish* our notice, so it can make any necessary preparations.

Once we have issued our decision, for either outcome, there are immediate steps a *generator* must take.

#### **4.3.1 Exemption granted**

If we assess an application for exemption and decide to grant exemption, the *generator* must then immediately provide notice to AEMO of its exempted *closure date*, in accordance with clause 2.10.1(a)(2) of the Rules. In doing so, it should note that it has applied for and been granted exemption from the obligation to provide at least three years' notice, referencing our notice.

#### **4.3.2 Exemption denied**

If we assess an application for exemption and decide to deny exemption, the *generator* must immediately provide notice to AEMO that its exemption application was denied. It must also review for accuracy any information sent to AEMO for the purposes of AEMO's planning of likely forecasts, including any updates provided as part of section 2.1 of this exemption guideline.

### **4.4 We will not ordinarily disclose confidential supporting information**

We anticipate that *generators* will provide us with confidential information as part of exemption applications. Importantly, we will treat any confidential information we receive in accordance with the *ACCC/AER Information Policy, June 2014*.

We will not ordinarily publicly disclose any supporting information we receive as part of an exemption application. However, it is still important that confidential information is clearly identified and marked.

In *publishing* our final decision, where possible, we will provide non-confidential reasons and analysis supporting our decision.

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<sup>6</sup> The ASX normal trading hours are 10am to 4pm Sydney time.

## 4.5 We will remain flexible in our criteria

We will maintain flexibility in determining what criteria to apply when considering applications for exemption. We will assess each application on a case by case basis, scrutinising all relevant factors and circumstances. In general, our considerations will be guided by the *National Electricity Objective*.

In the interests of clarity, we have provided a brief, non-binding list of factors that we may have regard to below. This includes, but is not limited to:

- The reliability and security impact of the *generator's* early exit. We will engage with AEMO as we consider applications for exemption to further our understanding of this issue. This may also involve engaging with the relevant *network service providers*.
- Plans for replacing the capacity being retired, if any.
- Whether the application for exemption is necessitated by a requirement to meet a competing or changing legal or regulatory obligation.
- If the application for exemption is necessitated by urgent and unforeseen circumstances.

## 4.6 Transitional arrangements

Given the transitional provisions that exist in the rules, we are not including any additional transitional allowance in this guideline. In its final rule, the AEMC included transitional provisions to aid in the implementation of the new obligations. These are contained within Part ZZZL of the Rules.

Under clause 11.110.4(a) *generators* are not required to comply with clauses 2.10.1(c1) and (c2) until 1 September 2019. This means *generators* are not required to provide at least three years notice of closure until after we have *published* our final exemption guideline.