



Generator notice of closure exemption guideline

Issues paper and notice of consultation

March 2019

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Notice of consultation on generator notice of closure exemption guideline

From 1 September 2019, generators will be required to provide at least three years' advance notice of their intention to close, unless granted exemption by the Australian Energy Regulator (AER). We are required to develop and publish guidelines for how we intend to handle applications for exemption, and what information applicants will be required to submit. We must publish this **exemption guideline** by 31 August 2019.

In developing this guideline, clause 2.10.1 (c5) of the National Electricity Rules (the Rules) requires us to follow the rules consultation procedures. The rules consultation procedures, set out in clause 8.9 of the Rules, require us to publish a notice on our website, advising of the matters under consultation. In accordance with these procedures, we give notice of consultation in relation to the development of a generator notice of closure exemption guideline.

How to get involved

We will post information and updates on our website at www.aer.gov.au/wholesale-markets/market-guidelines-reviews.

Invitation for submissions

We invite interested stakeholders to make written submissions in response to the specific questions or issues raised in this paper, or any other matter relevant to the development of the exemption guideline, by the close of business **5 April 2019**.

Submissions should be sent electronically to: noticeofclosure@ aer.gov.au

Alternatively, submissions can be mailed to:

Mr Peter Adams
General Manager, Market Performance
Australian Energy Regulator
GPO Box 520
Melbourne Vic 3001

We prefer that all submissions be publicly available to facilitate an informed and transparent consultative process. Submissions will be treated as public documents unless otherwise requested. We request parties wishing to submit confidential information:

- clearly identify the information that is the subject of the confidentiality claim
- provide a non-confidential version of the submission in a form suitable for publication.

We will place all non-confidential submissions on our website at www.aer.gov.au. For further information regarding our use and disclosure of information provided to us, see the *ACCC/AER Information Policy*, June 2014 available on our website.

Enquiries about this paper, or about lodging submissions, should be directed to the Market Performance branch of the AER via [AERInquiry@aer.gov.au](mailto:AERInquiry@ aer.gov.au).

Consultation process

Our proposed engagement with stakeholders to develop our exemption guidelines is set out in Table 1.1.

Table 0.1 Indicative timetable for development of exemption guideline

Milestone	Indicative Date
Issues paper and notice of consultation published	1 March 2019
Written submissions on the issues paper close	5 April 2019
Draft guideline published	May 2019
Written submissions on the draft guideline close	June 2019
Final guideline published	30 August 2019

Summary of questions

Question 1: What information should we require a generator to provide in submitting an application for exemption?

Question 2: What procedure would be appropriate for considering applications for exemption?

Question 3: To what extent should we make applications for exemption, any supporting information, and our considerations public?

Question 4: Would a defined timeframe for considering an application for exemption be beneficial?

Question 5: What criteria could be helpful in considering applications for exemption?

Question 6: How should we treat the interaction of the National Electricity Rules and other legislation, regulations or obligations in considering applications for exemption?

1 Introduction

A new rule requires generators to provide three years' notice of their intention to close unless granted exemption by the AER. To facilitate the new rule we must develop and publish guidelines that include the information a generator must provide to us when applying for an exemption, and our procedures for handling these applications. These guidelines must be published by 31 August 2019, and generators must comply with the new rules from 1 September 2019.

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).¹ 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.² Engie, Hazelwood's owner, gave five months advance 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 these generators may provide crucial reliability and security services to the market. Recognising this, the Finkel Review identified that the most desirable transition from old to new generation assets involves 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.³

Granting an exemption to a generator from this obligation to provide three years notice of closure, could have significant implications for the market. We are very conscious that significant care must be taken in developing the exemption guidelines to ensure they are robust, and provide the necessary scope to thoroughly consider any potential applications for exemption. Stakeholder feedback through this consultation process will be highly valued.

1.1 Relevant Rules

The requirement for us to develop an exemption guideline is contained within clause 2.10.1 of the Rules. In summary:⁴

¹ Dr Alan Finkel AO et al, *Independent review into the future security of the national electricity market: blueprint for the future*. June 2017.

² AER, *Electricity wholesale performance monitoring – Hazelwood advice*, March 2018.

³ AEMC, *Generator three year notice of closure*, Rule determination, 8 November 2018.

⁴ National Electricity Rules, clause 2.10.1 (c4), (c5) and (c6).

- 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.

2 Issues to consider

We are seeking stakeholder comment on these key issues:

- The information to be provided by a generator when applying for exemption
- The procedure for handling applications for exemption
- The factors and criteria that may influence our consideration of exemption applications

2.1 What information should a generator provide in submitting an application for exemption?

Under the Rules, the exemption guideline must set out the information a generator is required to provide when requesting an exemption. There is a variety of information likely to be relevant to our consideration of applications for exemption. This could include, for example:

- Reasons why the generator requires exemption from the three year notice of closure
- When the generator first became aware of the need to close
- Analysis and evidence supporting the decision
- Consideration of the reliability implications of the generator's closure
- Replacement plans (if any)

We expect that a generator would hold a range of this relevant material. Given this information could provide insight into the reasons behind the decision, it could be highly valuable in our consideration, and it would be imperative a generator provides all information relating to a decision to apply for exemption.

Question 1: What information should we require a generator to provide in submitting an application for exemption?

2.2 What procedure would be appropriate for considering applications for exemption?

The Rules require the exemption guideline to include procedures for how we handle requests for exemption received from generators. This could take a number of forms. At a high level, in our exemption frameworks for retail sellers or network service providers we consider applications over a two-step process:⁵

1. Receive application and consult relevant parties as necessary
2. Make final decision

⁵ AER, *Electricity network service provider - registration exemption guideline*, March 2018; AER, *(Retail) exempt selling guideline*, March 2018.

There is a risk with making the procedure too simple or brief that we may not be able to undertake adequate consultation, which may reduce the robustness of our final determination. An alternate approach would be to insert additional consultation into our procedure. At a high level, this could involve:

1. Receive application and consult relevant parties as necessary
2. Determine a draft position, and consult relevant parties further
3. Make final decision

This approach would have the benefits of ensuring we have considered all relevant stakeholder positions, and potential impacts in arriving at our final decision. It also broadly mirrors the steps of the rules consultation procedures, which encourages extra consultation.

Separately, other processes such as the rules consultation procedures, prescribe specific timeframes to complete certain steps of consultation. Accordingly, it may be prudent to specify timeframes for our consideration of applications for exemption. However, it is also important to not limit our ability to arrive at a robust decision by rushing our analysis. Additionally, defining a timeframe for consideration of applications may also have the effect of creating an informal minimum notice period, secondary to the three year period required by the rules. This means that any timeframe must consider the length of time that will have minimal impact on the market, and the likely lead time a generator seeking exemption will need.

In addition, there may also be situations when circumstances may dictate an accelerated process for considering an application for exemption. Our final approach must allow for such situations and strike a flexible balance.

No matter the final approach we take, it will raise questions of what information should be made public as part of an application for exemption. The AEMC touched on this briefly in its rule determination, also suggesting that the guideline should provide clarity on this issue. In its discussion on the rule, the AEMC noted that the underlying principle of the notice of closure is transparency and that exemption applications at least should be made public.⁶

Given that generators seeking to close might have other obligations to disclose their intentions (for example, ASX disclosure requirements), making the application public may be reasonable. Similarly, it could also be reasonable to make the final decision public. Noting the underlying principle of transparency raised by the AEMC, making the application and decision public also provides vital information to the wider NEM, which will allow participants to respond appropriately.

Determining which information we should make public will also influence our ability to consult as part of our consideration. Making the information supporting an application for exemption public may allow wider consultation on the analysis and underlying arguments. However, such information is likely to be commercially sensitive and confidential in nature, and should

⁶ AEMC, *Generator three year notice of closure*, Rule determination, 8 November 2018. p. 36.

be treated with care. But over-cautious treatment of information could narrow our ability to consult in arriving at our final decision.

Importantly, we would treat any confidential information we receive in accordance with the *ACCC/AER Information Policy, June 2014*.

Question 2: What procedure would be appropriate for considering applications for exemption?

Question 3: To what extent should we make applications for exemption, any supporting information, and our considerations public?

Question 4: Would a defined timeframe for considering an application for exemption be beneficial?

2.3 What criteria could be helpful in considering applications for exemption?

The decision to close a generator is not made casually, and we will not grant a generator exemption from its obligations to provide notice of closure lightly. There could be various factors that would influence our consideration of an application for exemption.

However, the Rules do not require the exemption guideline to describe the criteria we may use in considering applications for exemption. Rather, the purpose of the guideline is to provide certainty to generators as to how an application for exemption will be considered. The AEMC suggested that the exemption guideline should not seek to define every case in which we would grant exemption. By not prescribing our criteria, we are able to remain flexible, and consider each application on a case by case basis.

Nevertheless, in developing the guideline it is beneficial to contemplate what criteria could be helpful in considering an application for exemption, and we would value stakeholder input on this issue. As part of this, it may be helpful to consider the purpose of the overarching three years' notice of closure rule.

The original proposed rule suggested that exemption would be granted where an event beyond the reasonable control of a generator has occurred, and where the generator could not have reasonably foreseen it. This would allow generators to avoid incurring unnecessary costs in unexpected circumstances. However, in submissions to the AEMC's considerations, stakeholders primarily held concern that these terms were too ambiguous, for different reasons.⁷ For example, some stakeholders suggested tighter definitions to avoid manipulation of the provisions. However, in its draft determination, the AEMC considered it unlikely a list of exceptions could be so complete as to eliminate potential manipulation.⁸ So, considering how to clearly treat these issues may be valuable.

⁷ AEMC, *Generator three year notice of closure*, Rule determination, 8 November 2018. pp. 32-33.

⁸ AEMC, *Generator three year notice of closure*, Rule determination, 8 November 2018. pp. 34.

Alternatively, stakeholders raised concerns about how the new rule would interact with existing obligations on directors or generators to act pursuant to other legislation or regulations. For example, the Australian Energy Council (AEC) submitted that the duties of directors under the *Corporations Act 2001* (Cth), or occupational health and safety regulations may conflict with the rule to provide notice of closure.⁹ In its draft, the AEMC determined that consideration of directors' responsibilities under other Acts should be accommodated.¹⁰ In developing our guideline it will be important to consider how best to handle the potential conflicts that may arise in these situations.

Separately, a concern underlying the rule is that early, unexpected or poorly considered closure of generators could have significant reliability or security implications for the market. By imposing a minimum notice period, it allows the market time to respond to any impending closure as appropriate. Accordingly, in considering an application for exemption, one option to consider could be the impact a generator's potential early exit could cause.

Question 5: What criteria could be helpful in considering applications for exemption?

Question 6: How should we treat the interaction of the National Electricity Rules and other legislation, regulations or obligations in considering applications for exemption?

⁹ AEC, Submission to the Generator three year notice of closure consultation paper, p 1.

¹⁰ AEMC, *Generator three year notice of closure*, Rule determination, 8 November 2018. pp. 34.