

South Australia jurisdictional derogation – Interim reliability reserve eligibility

16 December 2024

Justice and Equity Centre
ABN 77 002 773 524
www.jec.org.au

Gadigal Country
Level 5, 175 Liverpool St
Sydney NSW 2000
Phone + 61 2 8898 6500
Email contact@jec.org.au



About the Justice and Equity Centre

The Justice and Equity Centre is a leading, independent law and policy centre. Established in 1982 as the Public Interest Advocacy Centre (PIAC), we work with people and communities who are marginalised and facing disadvantage.

The Centre tackles injustice and inequality through:

- legal advice and representation, specialising in test cases and strategic casework.
- research, analysis and policy development; and
- advocacy for systems change to deliver social justice.

Energy and Water Justice

Our Energy and Water Justice work improves regulation and policy so all people can access the sustainable, dependable and affordable energy and water they need. We ensure consumer protections improve equity and limit disadvantage and support communities to play a meaningful role in decision-making. We help to accelerate a transition away from fossil fuels that also improves outcomes for people. We work collaboratively with community and consumer groups across the country, and our work receives input from a community-based reference group whose members include:

- Affiliated Residential Park Residents Association NSW;
- Anglicare;
- Combined Pensioners and Superannuants Association of NSW;
- Energy and Water Ombudsman NSW;
- Ethnic Communities Council NSW;
- Financial Counsellors Association of NSW;
- NSW Council of Social Service;
- Physical Disability Council of NSW;
- St Vincent de Paul Society of NSW;
- Salvation Army;
- Tenants Union NSW; and
- The Sydney Alliance.

Contact

Douglas McCloskey
The Justice and Equity Centre
Level 5, 175 Liverpool St
Sydney NSW 2000

T: +61 2 8898 6500

E: dmcloskey@jec.org.au

Website: www.jec.org.au

The Justice and Equity Centre office is located on the land of the Gadigal of the Eora Nation.

Contents

- 1. Introduction.....2**
- 2. Any permitted derogation should be narrow in its application.....2**
- 3. The JEC oppose the rule change proposal.....2**
 - 3.1 The proposed derogation will frustrate the purpose of clauses 3.20.3(g) and (h). 2
 - 3.2 The forecast reliability risk does not necessitate the derogation 4
 - 3.3 The derogation will frustrate the achievement of greenhouse gas emissions targets . 4
- 4. Continued Engagement5**

1. Introduction

The Justice and Equity Centre (JEC – formerly PIAC) welcome this opportunity to respond to the Consultation paper on the National Electricity Amendment (South Australia jurisdictional derogation – Interim reliability reserve eligibility) Rule (the Consultation paper).

The JEC opposes the rule change proposal on the basis that it risks distorting the National Electricity Market (NEM) to the detriment of consumers. No derogation should be granted.¹

2. Any permitted derogation should be narrow in its application

If any derogation is to be permitted, any rule change allowing the derogation should be narrow to minimize distortion of the market and avoid unnecessarily prolonging fossil fuel generation.

The rule change:

- Should be strictly time limited to six months from January 2025 to June 2025 inclusive.
- Only apply to the Snuggery and Port Lincoln facilities.

A derogation of 24 months is not necessary. The rule change would likely only come into effect in January 2025, and we understand the Snuggery and Port Lincoln facilities were mothballed from June 2024. Hence, only a six-month derogation from January to June 2025 is required if AEMO were to contract the facilities for 6 months initially. A second contract could be entered into in July 2025, without restriction.

While we contest the South Australian government's reasoning on the need for the derogation, the reasoning provided only addresses the reopening of the two specific facilities. No general derogation should be provided and any rule change granted should be limited to the Snuggery and Port Lincoln facilities.

3. The JEC oppose the rule change proposal

3.1 The proposed derogation will frustrate the purpose of clauses 3.20.3(g) and (h).

The purpose of the backward looking 12-month restriction on contracting scheduled reserves from facilities previously bid into the market, as set out in clauses 3.20.3(g) and (h) of the NER, is to ensure the market is not distorted.

¹ The JEC confirms it does not oppose the rule change proposal being considered under the expedited rule making process.

A detailed discussion of the purpose of clause 3.20.3(h) is provided in the AEMC's Rule Change Final Determination - Enhancement to the Reliability and Emergency Reserve Trader, May 2019 (Final Determination). See Final Determination section 7.2.²

The AEMC stated in the Final Determination,

[...] the market is the primary means by which reliability is met in the NEM, including through market reserves. It is important that market investment and reserves are incentivised first and foremost.³

The South Australian Government made submissions against the inclusion of a 12-month limitation in March 2019, which were considered by the AEMC at the time of the Final Determination. The AEMC determined, notwithstanding these submissions, it was appropriate to impose the limitation.⁴

The AEMC also considered a suggestion that schedule generators from the market whose exit was known in advance, should be excluded from the 12 months requirement. The AEMC suggested that a preferable alternative to them being part of the RERT was their continued participation in the market consistent with the reliability framework.⁵

The objections of the Victorian Government submission referenced the potential exclusion of mothballed generators.⁶ In discussing mothballed generators the AEMC said no exemption from the 12-months limitation was appropriate.⁷

Allowing the derogation, and removing the limitation, will frustrate the purpose of the rules. The impact will be an interference in the wholesale market, and the possibility that more expensive off market options, with higher emissions, are used.

The proposed time limited nature of the derogation does not militate against any harm done to the market during the time the derogation is in place.

Moreover, the fact that the proposed rule change is not limited to specific named facilities, leaves open the possibility it will be used more widely within the derogated region.

Further, if the rule change were to be passed as a two-year derogation not limited to specific facilities, the proposal includes no criteria or mechanism by which AEMO will be required to consider alternative solutions, including low emissions solutions, prior to contracting or dispatching any additional facilities in the RERT.

² Final Determination - <https://www.aemc.gov.au/sites/default/files/2019-05/Final%20Determination.pdf>; See also Consultation paper, Appendix A.3.

³ Final Determination, p.148.

⁴ Final Determination, pp.152-153; Government of South Australia Submission, 26 March 2019 - <https://www.aemc.gov.au/sites/default/files/2019-05/Final%20Determination.pdf>.

⁵ Final Determination, p.163.

⁶ Final Determination, pp.152-153; Government of South Australia Submission, 26 March 2019 - <https://www.aemc.gov.au/sites/default/files/2019-05/Final%20Determination.pdf>.

⁷ Final Determination, pp.164-165.

3.2 The forecast reliability risk does not necessitate the derogation

The Minister requests a two-year derogation. Working on the basis such a derogation would apply from January 2025, the pertinent period for consideration of any ESOO projected reliability risks therefore becomes January 2025 to December 2026.

AEMO's 2024 ESOO projects that during 2025 and 2026 the interim reliability standard (0.0006% USE) will be breached, but not the reliability standard (0.002% USE).⁸ The reliability gap is forecast to be 200MW in 2024-25, and 230MW in 2026-27.⁹ The Consultation paper sets out that AEMO is already currently considering offers of approximately 120MW of reserves in South Australia.¹⁰ Assuming this is an addition 120MW of reserves, this would suggest the remaining gap is only 80MW.

In meeting a reliability gap, there are options available to AEMO which extend beyond simply reopening the mothballed Snuggery and Port Lincoln facilities, which are 63 MW and 75 MW respectively.

3.3 The derogation will frustrate the achievement of greenhouse gas emissions targets

While the use under RERT of the Snuggery and Port Lincoln facilities may not have a significant emissions impact, the decision is of wider significance.

There is a steady stream of commercial entities electing to halt generation at fossil fuel power plants, and no longer offer the generation from these facilities to the market. This is to be welcomed from an emissions perspective. Every small step is significant when taken collectively and cumulatively.

Governments are increasingly seeking to maintain online fossil fuel generation beyond the life envisaged by commercial operators. This arguably stems from them making a political assessment of reliability risk, rather than one grounded in evidence based assessments. The current proposal goes one step further and looks to bring back online a mothballed fossil fuel generation facility.

The fear of black outs and the political fallout from such an event is no doubt ever present in the minds of politicians. The AEMC, however, is an independent expert commission charged with managing the regulation of the NEM according to consistent laws, and considering the best available evidence. It should base its decisions on its own independent, expert analysis, including its detailed prior analysis (as set out above) which remains valid.

In balancing consumers long term interests in price, security, reliability, safety and achievement of emissions targets, the AEMC should be slow to allow the reopening of any mothballed fossil fuel generation unit so it can be included in the RERT mechanism.

⁸ ESOO 2024, pp.8-11, 61-64.

⁹ ESOO 2024, p.69.

¹⁰ Consultation paper, p.2.

Prior to allowing such a derogation the AEMC should be fully convinced that there will be an actual reliability gap, and this can only be met by the fossil fuel generator and no alternative options are available.

The decision that the AEMC is being asked to make in passing the rule change and allowing the derogation is akin to the decisions Ministers will need to undertake in ordering fossil fuel generators to remain in operation under the Orderly Exit Mechanism Framework.

Before passing the rule change the AEMC should consider the following:

- The likelihood of the reliability gap forecasts materialising, and the nature and materiality of any harm that will occur if they do materialize.
- If the risk analysis of a reliability gap forecast is deemed to require a solution, whether this gap can be met using resources (in or out of market) other than the Snuggery and Port Lincoln facilities. Specifically can low GHG emissions technology meet the reliability gap, prior to allowing mothballed fossil fuel generation to be contracted.

4. Continued Engagement

We welcome the opportunity to meet with the Department and stakeholders to discuss these issues in more depth. Please contact Douglas McCloskey on dmccloskey@piac.asn.au regarding any further follow up.