



Generator notice of closure exemption guideline

Final decision

August 2019

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Inquiries about this publication should be addressed to:

Australian Energy Regulator
GPO Box 520
Melbourne Vic 3001

Tel: 1300 585165

Email: AERInquiry@aer.gov.au

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Contents

1	Introduction.....	6
1.1.	Previous consultation	6
1.2.	Process for development	6
1.3.	Relevant Rules	7
1.3.1	Retailer Reliability Obligation rule revisions.....	7
2	Consideration of issues raised in submissions to the issues paper ...	9
2.1.	Questions from issues paper	9
2.1.1	What information should we require a generator to provide in submitting an application for exemption?	9
2.1.2	What procedure would be appropriate for considering applications for exemption?.....	11
2.1.3	To what extent should we make applications for exemption, any supporting information, and our considerations public?	14
2.1.4	Would a defined timeframe for considering an application for exemption be beneficial?	15
2.1.5	What criteria could be helpful in considering applications for exemption?.....	16
2.1.6	How should we treat the interaction of the National Electricity Rules and other legislation, regulations or obligations in considering applications for exemption?	17
2.2.	Other issues raised.....	18
2.2.1	Need for transitional allowance	18
2.2.2	Exemption for generating units of small capacity.....	19
2.2.3	Future review of the exemption guideline	20
2.2.4	Closure notice deemed to commence from day of notice for a rejected notice.	20
3	Consideration of issues raised in submissions to the draft guideline	22
3.1.	Ergon Energy and Energex.....	22

3.2. AGL Energy23
3.3. The Victorian Government23

1 Introduction

The National Electricity Rules (the Rules) require the Australian Energy Regulator (AER) to develop and publish a notice of closure exemption guideline.¹ In developing the exemption guideline, we must follow the rules consultation procedures, set out in clause 8.9 of the Rules.

This document should be read alongside our *Generator notice of closure exemption guideline*. For the purposes of the rules consultation procedures, the exemption guideline contains our conclusions and determinations. This final decision document also details some of these determinations, as well as the procedure we followed in considering the issues, our underlying reasons, summaries of issues raised by stakeholders and our responses.

1.1 Previous consultation

On 1 March 2019, we published an issues paper and a notice of consultation in relation to the development of a generator notice of closure exemption guideline. The issues paper contained discussion of key issues and asked six specific questions that covered the information to be provided, our procedure and what criteria may be useful. Submissions closed on 5 April 2019, and we received seven submissions.

On 7 June 2019, we published a draft exemption guideline and draft decision that sought stakeholder comment on our proposed approach for the generator notice of closure exemption process. Submissions closed on 24 June 2019 and we received three submissions.

1.2 Process for development

In developing the generator notice of closure exemption draft guideline, we have had regard to National Electricity Objective (NEO), which promotes the long term interests of consumers of electricity.² We have also considered the assessment framework used by the Australian Energy Market Commission (AEMC) in its consideration of the Generator three year notice of closure rule change.³ This includes the following principles:

- Improve the provision of information
- Enhance transparency and predictability

¹ National Electricity Rules, clause 2.10.1(c5).

² National Electricity Law, section 7.

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

- Efficiency of investment in and operation of generation capacity and demand response
- Administrative costs

We have also considered the views and issues put forward by stakeholders in response to our issues paper, draft guideline and draft decision. Chapter 2 contains discussion of the issues raised in submissions to the issues paper. Chapter 3 contains a summary of the issues raised in submissions to the draft guideline and our responses to these.

In general, where we received no submissions on an issue in the draft guideline, we have maintained the approach we proposed in the final guideline.

1.3 Relevant Rules

The requirement for us to develop an exemption guideline is contained within clause 2.10.1 of the Rules.⁴ In summary:⁵

- 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 42 months' 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.

1.3.1 Retailer Reliability Obligation rule revisions

On 9 May 2019, the Energy Security Board released its proposed rule revisions to give effect to the Retailer Reliability Obligation (RRO).⁶ As part of these proposed rules, the minimum notice of closure period would change from three years to 42 months to better align with the RRO forecasting horizons.

⁴ Clause 11.110.2 of the Rules also requires the exemption guideline to be published no later than 31 August 2019.

⁵ National Electricity Rules, clause 2.10.1(c4), (c5) and (c6).

⁶ Energy Security Board, [Retailer Reliability Obligation rules](#), accessed 6 June 2019.

On 4 June 2019 the Council of Australian Governments Energy Council agreed to these proposed rules, which were made by the South Australian Minister and took effect on 1 July 2019.

Separately, as this rule change occurred after we published our draft guideline, submissions on the issues paper referred to the original three years' notice of closure obligation. In chapter 2 of this decision, we have maintained reference to the original three years' obligation to reflect the discussion and consideration at the time.

2 Consideration of issues raised in submissions to the issues paper

In response to the issues paper, we received seven submissions. Of these submissions, six were from generators or generator representatives, including:

- Pacific Hydro
- Stanwell
- Australian Energy Council (the Energy Council)
- AGL Energy
- Origin Energy
- EnergyAustralia

We received one additional joint submission from Ergon Energy and Energex. We published all submissions on our website.

Submissions were in response to questions raised in the issues paper and other matters the stakeholders considered relevant. Each subsection below outlines each issue, the comments we received from stakeholders, and our draft decision and reasoning.

2.1 Questions from issues paper

In the issues paper, we asked six questions of stakeholders relating to the development of the exemption guideline. Broadly, these questions covered three 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

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

Under the Rules, our exemption guideline must set out what information we require generators to provide in submitting applications for exemption. We asked stakeholders what information would be appropriate for us to require. Most submissions responded to this issue.

Generally submissions, such as Origin Energy's and Pacific Hydro's, supported generators being required to provide information pertaining to the reason for seeking exemption and the evidence relied on in making that decision. The Energy Council submitted that in some cases it would be reasonable for us to receive information that would indicate the immediate history prior to the condition that necessitated early closure.

EnergyAustralia submitted that the obligation should be on participants to provide all supporting information they believe relevant. It argued against specifying particular information, but supported the guidelines suggesting the types of information we would find useful, and that we may ask for further information if necessary. Ergon Energy and Energex's submission affirmed that any consideration must be evidence based and as comprehensive as possible, including analytics on the impact of early closure on network security, generation cost, personnel and community.

Separately, Stanwell suggested that the level of analysis required to support the application for exemption should depend on how imminent the applied-for closure date is, with a closer date requiring greater justification. It also suggested an alternative where the information requirements could be based on the capacity being withdrawn.

We agreed with submissions in that generators should provide the key information relied on in deciding to apply for exemption. We did not define the specific source or content of the information we require as this may change from application to application. Rather, we referred to the nature of the information. Broadly, in the draft guideline we defined the information we require as:

- Identifying information — the minimum that must be provided for us to consider an application for exemption
- Underlying evidence — the information that will provide insight into the reasons underlying the decision to close early and seek exemption
- Other related information — any additional information that doesn't directly relate to the decision to close early but may be valuable for our consideration.

We expect a generator to provide this information as part of its application for exemption. However, should we identify other potential information that we believe would be valuable for our assessment, we will request it. Should we request additional information, we will endeavour to allow a generator a reasonable amount of time to respond to our request.

We opted to keep the requirement the same for all applications rather than requiring different categories of information for different circumstances surrounding a generator's exit. This keeps the requirements clear in every case. By tying the requirement to information relating to the decision, it ensures we capture all relevant information and that we are able to make a robust decision. Even though, for example, the early exit of

a small generating unit may have a limited impact on the market, the type of information necessary to assess the application remains the same.

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

Under the Rules, our exemption guideline must set out our procedures for handling applications for exemption. We asked stakeholders what procedure would be appropriate for considering applications for exemption. Most submissions responded to this question.

In our issues paper, we gave examples of various processes we could use for our considerations. Pacific Hydro's submission supported a process that included a draft decision, but suggested additional steps for analysis of specific issues underlying the closure. Origin Energy also submitted a process that included public consultation on a draft decision.

Also, a number of other stakeholder submissions addressed the benefits of consultation as part of our considerations. Stanwell suggested that the level of consultation should be based on the nature of the request, and that we only need to consult with the generator and its affiliated auditors, the Australian Energy Market Operator (AEMO), and potentially the AEMC if relevant.

Ergon Energy and Energex submitted that we should prepare an impact report to put to the market for broader consultation by all interested parties. Whereas the Energy Council submitted that we should not consult with other parties due to the confidential nature of the information that will be included in submissions, and that the market could be highly sensitive to a possible closure.

In our draft guideline, we adopted a three step standard process:

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

We preferred our proposed process because it was administratively simple, and would not complicate the work required to arrive at a decision by requiring potentially unnecessary steps or processes. We believed this process to be flexible enough to allow for the different levels of consideration necessary to deliver robust decisions.

We did not include specific scenarios or analysis steps as suggested by Pacific Hydro as these may not always be relevant. For example, analysis of the generator's safety condition may be unnecessary if a generator is seeking exemption for economic reasons. Our broader assessment and consultation steps allow us to undertake the necessary analysis as relevant.

In addition, we proposed not publishing a draft decision as part of our standard process. Our default approach in the draft guideline was to only conduct targeted consultation as part of our decision making procedure. While a draft decision is beneficial for seeking stakeholder feedback, in most cases the number of stakeholders that could provide a relevant perspective for our considerations is small, and we can target these stakeholders for input directly. Also, as Stanwell identified, any broader consultation would likely be complicated by the commercial interests of each particular stakeholder.

However, in unique circumstances where an application is particularly complex or contentious we may consider it appropriate or necessary to publish a draft decision to uphold procedural fairness. Should we consider it appropriate to publish a draft decision, we will communicate our intention as soon as possible. Additionally, in our draft decision, we will articulate the non-confidential reasons we considered it appropriate or necessary to publish a draft decision. But, we expect the cases where this may apply to be limited and our proposed approach was to apply the standard process as default.

We will likely consider the impact of the generator's exit as part of our considerations, but we did not propose publishing a separate impact report for consultation as Ergon Energy and Energex suggested. Our final decision will detail the non-confidential reasons for our decision, including where relevant, our consideration of impact of the generator's exit. Additionally, as stated above, we proposed only conducting targeted consultation as part of our decision making process.

In our draft guideline we proposed contacting stakeholders directly for comment when they could provide insight into the decision to apply for exemption, or the potential impact of the generator's early closure. These stakeholders include AEMO, but also could include, for example: other regulatory authorities, the generator's external auditors, or network service providers. By seeking external perspectives we ensure that we arrive at a robust decision, and by keeping it targeted we can maximise the benefit of our consultation.

EnergyAustralia submitted that there are a range of reasons for early closure and a single process may not be appropriate for all circumstances. It suggested that simple reasons necessitating early closure, such as material plant issues, should not require consultation, and that consultation should be saved for more complex issues. We believed our proposed process flexible enough to apply to all potential application situations. Relevant to EnergyAustralia's concerns, our draft guideline did not require consultation in every case, but allowed for it as necessary. This allows us to forego consultation on applications where it would not add value.

Additionally, in its submission EnergyAustralia suggested that the application process should allow for fast-track consideration and consultation in circumstances where a closure will have minimal impact, or where early closure is necessitated by material plant issues. In general, we agree with this principle. While our draft guideline

proposed we handle applications within 60 business days, we anticipate that in some cases we may be able to deliver our decision much earlier than this nominal timeframe.

However, we did not include a separate process for accelerated consideration in our draft guideline. This is because under an accelerated process our ability to conduct deeper analysis, consult stakeholders and request additional information, would have to be limited in order to guarantee a faster result. Granting a generator exemption from its obligation to provide three years' notice of closure could have significant implications for the market. So, it was important that we did not unnecessarily limit our decision making process.

Separately, Pacific Hydro's submission detailed a scenario where a sudden and unexpected event makes early closure a credible outcome for the generator, but it needs to undergo a detailed investigation before making that decision. In these situations, it suggested that generators in this position should be obligated to keep us informed through the investigation process before finally committing to closure and submitting an application for exemption.

We agreed with Pacific Hydro's suggestion. Our draft guideline identified that in some cases it may be appropriate for a generator to inform us that there is a credible possibility it may submit an exemption application in the future, but this is contingent on particular unforeseeable outcomes. This should be done as soon as possible, with updates provided as necessary. This addressed the scenario Pacific Hydro referenced, but was a broader description to allow for similar circumstances.

In these cases, we acknowledge that the information provided will relate to ongoing internal decision-making processes. Accordingly, we will do this engagement on a confidential basis. Importantly, in these cases we will not give any formal or informal indication of the likelihood we will grant exemption. Once we receive the formal application for exemption, we will handle it under the procedure laid out in the final guideline.

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

It is imperative AEMO has accurate and timely information regarding generator availability, particularly while we consider an application for exemption. While this was not an issue raised in submissions, in section 2.1 of our draft guideline we included an additional step in our procedure for applying for exemption.

We proposed that any generator applying to us for exemption should also notify AEMO that it has submitted an application for exemption. This would be submitted concurrently, or immediately after a generator has submitted its application to us. Importantly, 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, we proposed requiring any generator applying for exemption to 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 provide these updates as soon as possible after notifying AEMO it has submitted an application for exemption.

As this was not raised in the issues paper or submissions, we were interested in responses from stakeholders on our proposed approach to this issue. However, no stakeholders addressed this issue in submissions on the draft guideline. So, we have maintained our proposed approach for the final guideline.

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

In our issues paper we asked stakeholders what information we should make public as part of our procedure for handling applications for exemption. All stakeholders addressed this issue in submissions.

Some stakeholders, such as Pacific Hydro, submitted that all information provided should remain confidential, reflecting the sensitive nature of applications. Stanwell and the Energy Council advocated for applications remaining confidential until a decision has been made. Similarly, EnergyAustralia submitted that successful applications should be made public, and denied applications should only be made public knowledge with agreement from the generator. However, it suggested that applications considered under an expedited process should be made public as early as possible. In the scenarios where we would make an application public, it also submitted that only the date of application and high level reasons should be published, with other information only under agreement with the generator.

Ergon Energy and Energex submitted that we publish an exemption impact report, but allow for generators to ask for commercially sensitive information to be withheld. Similarly, Origin Energy's proposed process suggested informing the market when an application is received, but keeping commercially sensitive material confidential.

AGL Energy submitted that if exemption requests are to be made public, only minimal information should be included as the bulk of the application is sensitive and should remain confidential. It also suggested we consider the risks of publishing or not publishing exemption applications in determining our approach.

In our draft guideline, we proposed publishing a notice when we receive an application for exemption, and publishing our final decisions. We proposed these public notices including important, non-confidential information such as the relevant generating

unit(s), the applied for closure date, and non-confidential reasons for the application and our decisions. We anticipate that generators will provide us with confidential information as part of the application process. Accordingly, we will not ordinarily publicly disclose any supporting information we receive as part of an exemption application. However, generators should still clearly identify and mark confidential information that is provided to us.

We believe it necessary to publish an initiation notice and our final decision in order to support the underlying principle of the obligation, which is to improve transparency and the provision of information in the market. The shock to the market could be severe if the first notice given is our final decision, particularly if we have granted approval and the new closure date is imminent. We also disagreed with keeping denied applications confidential; as our proposed approach was to publish an initiation notice, we must therefore communicate our decision to the market, be it successful or unsuccessful. Additionally, an applicant will likely have other obligations to disclose their intention to close, which may contradict fully confidential consideration.

2.1.4 Would a defined timeframe for considering an application for exemption be beneficial?

In defining the procedure we asked stakeholders whether it would be beneficial for us to define a timeframe in which we will consider the applications for exemption we receive. Almost all stakeholders responded to this issue.

All submissions that addressed this question believed it beneficial for us to make our decisions within a clearly specified timeframe. The Energy Council suggested we make our decision within six weeks. Origin Energy suggested specific timeframes for each stage of our procedure, with a total consideration time of 12 weeks. EnergyAustralia submitted that two months is sufficient time to consider any application for exemption. Stanwell went further to suggest that we could set out a number of different timeframes for different categories of applications.

In our draft guideline, we proposed considering applications within 60 business days. We expect the time required to consider each applications will vary based on the complexity of the issues involved. In some cases, we anticipate delivering our decision much earlier than this nominal timeframe. However, we decided against setting a shorter timeframe as that may unnecessarily limit our ability to appropriately consider the most complex applications. We will publish indicative timelines where possible.

For simplicity, we decided against setting multiple different timeframes for different categories of applications. This way there is no ambiguity about what timeframe will apply, and generators and the market can be certain of the maximum length of time our considerations will take.

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

In our issues paper we asked stakeholders if there were criteria that could be helpful in our considerations. Most stakeholders touched on this issue in submissions.

Stanwell emphasised that criteria should not be too prescriptive, and that we should consider exemptions individually and on a case by case basis. Pacific Hydro's submission suggested a range of scenarios that the guideline needed to account for. These differed in the cause necessitating early closure, but suggested we rely on the sorts of underlying evidence used by the generator in deciding to close early, including technical reports, economic analysis and repowering plans.

AGL Energy submitted that we should consider the impacts of early closure on the market, as well as the generator's reasons for requesting exemption. Ergon Energy and Energex suggested that we consider the potential effect of early closure on the broader network and network security, and that exemption should only be granted for force majeure events. Instead, Origin Energy proposed a sliding scale that would provide automatic exemption for unforeseen events, and in other cases consider first the economic hardship of the generator continuing operation and then the reliability impacts of its exit.

In its submission, EnergyAustralia suggested we consider the size of the unit and the extent of its impact, should it close early. For unanticipated events, it proposed we assess the application on the evidence that the unit is no longer operable, other obligations, and whether AEMO forecasts unserved energy should the generator close.

We proposed remaining flexible in the criteria that we will use, and the draft guideline indicated our intention to consider each application on a case by case basis. The Rules do not require the guideline to include our criteria. However, in the draft guideline we included a brief, non-binding list of factors that we may have regard to. These include:

- 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 NSPs.
- 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.

We disagreed with allowing for automatic exemption in certain cases, as that may encourage manipulation or gaming. Also, the circumstances necessitating each application for exemption will vary, making a case by case consideration more appropriate.

Separately, Ergon Energy and Energex also responded that our consideration of applications for exemption should be primarily based around the NEO, which promotes the long term interests of consumers of electricity. We agreed, and in the draft guideline we stated that when considering applications for exemption we will be guided by the NEO.

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

An issue raised by stakeholders across the rule change was how the requirements of the new rule would interact with obligations on generators to act pursuant to other obligations, legislation or regulations. In its draft, the AEMC determined that consideration of directors' responsibilities under other Acts should be accommodated.⁷

We asked stakeholders how we should treat the interaction of the Rules and other obligations in considering applications for exemption. Three submissions touched on this issue.

EnergyAustralia considered it imperative that we allow for conflicting obligations, and AGL Energy suggested that the criteria we apply should consider early closure necessitated by conflicting obligations as a valid reason for exemption. The Energy Council went further and suggested that the guidelines allow for conditional exemptions in cases where progressive changes in circumstances may require a generator to comply with other obligations to close early.

In the draft guideline, where the decision to apply for exemption is necessitated by competing or changing obligations for the generator, or when circumstances are urgent and unforeseen, we proposed having regard to this in our consideration. We recognise that generators have a range of obligations and responsibilities that already influence how they act in the market, and that the decision to close early may be the result of a progressive change in circumstances. There may also be sudden changes in obligations that affect the operational viability of a generator. Where this is the underlying cause for applying for exemption, we will consider the impact of these changes in our deliberations.

However, we did not include an allowance for conditional exemptions. We believed that granting exemptions on the condition of certain events occurring or otherwise would not add clarity to the market as uncertainty will still exist about whether the conditions will be fulfilled. Also, should the criteria be fulfilled, a generator with conditional exemption may then be entitled to close with minimal market notice, contrary to the purpose of the obligation. If a generator believes a "tipping point" may be approaching

⁷ AEMC, *Generator three year notice of closure*, Rule determination, 8 November 2018. p34.

and early closure is a credible outcome, it should engage with us early. If the decision to close is made, in this way we can be prepared and already aware of the relevant issues before the formal application for exemption is received.

In addition, the Energy Council also submitted that we should co-ordinate with the generator on the timing of any announcement regarding the result of an application. As stated above, we understand that a generator may have other obligations on how or when it must provide information to the market. However, AGL Energy identified potential risks with providing the generator with our decision without notifying the broader market.

We identified previously that our proposed process was to publish a notice on our website advising our decision. We also proposed that just prior to our public announcement, we would advise the generator of our decision. We proposed doing this on the same day, outside the trading hours of the Australian Securities Exchange (ASX). Our preference is to do this in the morning, prior to ASX trading opening. We also proposed making the generator aware of the date and time we expect to provide our advice and publish our notice in advance, so it can make any necessary preparations.

We believed this approach would help mitigate the potential impact our decision will have on the market, and allow the generator to fulfil any additional disclosure obligations it may have. We were interested in stakeholder's views on our proposed approach and how to proceed for the final guideline. However, no stakeholders responded to this issue in submissions. So, we have maintained our proposed approach for the final guideline.

2.2 Other issues raised

In addition to the questions asked in the issues paper, we invited stakeholders to also make submissions in response to any other matter relevant to the development of the exemption guideline. We address these issues below.

2.2.1 Need for transitional allowance

In its submission, Pacific Hydro raised concerns around the rule change timing affecting a generator's ability to provide notification in accordance with the rule. It suggested that generators planning to close between September 2019 and September 2022 should be able to provide less than three years' closure as a transitional period for the introduction of the rule.

In implementing the final rule change, the AEMC included transitional provisions that:⁸

⁸ The transitional provisions are contained within Part ZZZL of the Rules.

- Do not require generators to comply with the three years' notice of closure obligation until 1 September 2019.
- Allow AEMO until 1 March 2019 to modify its systems to accept and publish standing data for expected closure years and closure dates.
- Requires generators registered on or before 2 March 2019 to provide their expected closure year to AEMO as soon as practicable after 1 March 2019.⁹

Given these transitional provisions existed in the rules, we did not include any transitional allowance in our draft guideline. All generators must be compliant with the three years' notice of closure obligation from 1 September 2019. If a generator intends to close before 1 September 2022, we expect it would act in the spirit of transparency underpinning this obligation and provide notice of its expected closure date to AEMO before 1 September 2019. This would also ensure compliance from that day.

If, on or after 1 September 2019, a generator submits an application for exemption, we will handle its application in accordance with the Rules and our exemption guideline.

2.2.2 Exemption for generating units of small capacity

In its submission, Pacific Hydro noted that the impact of the unexpected exit of small capacity generators is less than that of larger ones. Given this, and that less planning is required for the replacement of small amounts of capacity, it suggested that generators of up to 30MW in capacity should be exempt from the process.

Similarly, in its submission EnergyAustralia referred to the Generator registration thresholds rule change, which is a proposed rule change to reduce the threshold for scheduled and semi-scheduled generators from 30MW to 5MW.¹⁰ It suggested that should the threshold change, it may be unnecessarily cumbersome for smaller generators to have to comply with the notice of closure obligations, particularly those in large regions whose early exit will likely have a minimal impact.

The issue of size threshold was considered by the AEMC in the course of the generator notice of closure rule change. Ultimately the AEMC preferred linking the size threshold to registration categories in order to allow for flexibility should the market transition result in the size of "typical" generators changing. It also preferred this approach for administrative simplicity.

Given that this issue was already considered by the AEMC and in its rule change no stakeholders submitted against the AEMC's approach, we did not make any exemption category for generating units of small capacity in our draft guideline. Further, the proposal of the Generator registration thresholds rule change appears to be the type of

⁹ AEMO already lists the expected closure year for those scheduled and semi-scheduled generators that have already provided this information on its [Generation information page](#).

¹⁰ AEMC, [Generator registration thresholds pending rule change](#), accessed May 2019.

change anticipated by the AEMC in preferring a more flexible definition. To the extent a small generator is seeking exemption and the impact of its exit is likely to be minimal, we will allow for this in our considerations.

2.2.3 Future review of the exemption guideline

In its submission EnergyAustralia submitted that "the AER should ensure there is a clear process for reviewing the efficacy of the guidelines, particularly in light of changes to related rules."¹¹ It suggested that we commit to undertaking a review of the guidelines within the next five years.

We agreed that there is benefit in undertaking a clear and transparent review of the exemption guideline, particularly in light of potential changes to the Rules. The market is in transition, and there are a number of reforms and rule changes underway or anticipated. Clause 2.10.1(c5) allows us to amend the exemption guideline from time to time in accordance with the rules consultation procedures, which is a clear and transparent process.

We proposed reviewing the operation of the guidelines and initiating changes as necessary, should we receive any applications for exemption. This allows us to consider the need for changes to the guideline based on how it performed in the preceding process, which was our preferred approach over basing the need for a review on the passage of a period of time.

2.2.4 Closure notice deemed to commence from day of notice for a rejected notice.

In its submission EnergyAustralia submitted that should a generator be unsuccessful in applying for exemption, it would then need to submit a closure date three years out from the date of our decision in order to close as soon as possible. This would effectively extend the possible closure date by the length of the consideration period, potentially requiring a generator to incur additional costs as a consequence. It suggested that should a generator be unsuccessful in its application its notified closure date (for closure three years hence) could be taken as the date its application was made public. The *alternate closure date* would be three years from then.

For example, if we took three months in consideration before denying an application, the generator could be taken as having provided three years notice from the date its application was made public, rather than having to provide notice from the date the application was denied. This could save the generator three months of additional costs.

We understood EnergyAustralia's concerns in this regard, however we disagreed with the approach it proposed. This is because this still results in market uncertainty

¹¹ EnergyAustralia submission to the Issues paper, p2.

regarding the notice of closure, as the generator may not commit to the alternate closure date until we deliver our decision.

There is no guarantee that we will grant any particular generator exemption. If a generator wishes to close as soon as possible it must plan for the risk of its application being denied. As such, should a generator seek to apply for exemption, we consider it appropriate for it to first provide AEMO a closure date that does not require exemption (the "application unsuccessful" scenario). Then, it should submit its application for exemption for its preferred, earlier closure date. This ensures the market is aware of the potential dates of closure for both possible scenarios, and removes any uncertainty about whether the generator will commit to the alternate closure date. We believe this approach addressed EnergyAustralia's concerns.

For example, on 1 January 2020, a generator decides it needs to close by 1 January 2022 and that it has to apply for exemption to do so. Before applying for exemption, it provides notice of intention to close to AEMO by specifying 2 January 2023 as its closure date. This addresses the "application unsuccessful" scenario. Then, it submits an application for exemption to close on 1 January 2022, in accordance with the exemption guideline. This way if its application is unsuccessful, it is still able to close as soon as possible, and the market is notified of the two potential outcomes as early as possible.

3 Consideration of issues raised in submissions to the draft guideline

In response to the draft guideline and draft decision, we received submissions from:

- Ergon Energy and Energex
- AGL Energy
- The Victorian Government

3.1 Ergon Energy and Energex

Ergon Energy and Energex's submission reiterated the need for enhanced transparency in the decision making process to mitigate the risks of early generator closure for all market participants. In particular, Ergon Energy and Energex emphasised the potentially significant technical and financial impacts the closure of a generator may have for a Network Service Provider (NSP).

Ergon Energy and Energex suggested the following amendments to the draft guideline that would compel the AER to:

1. immediately advise all NSPs in the impacted and adjacent region of relevant details when an application is received
2. provide NSPs with sufficient opportunity to investigate and model the impacts of the potential generator's closure
3. consider all feedback from NSPs when determining whether to grant exemption, including additional work the NSP may need to undertake to facilitate the generator's closure.

When we receive an exemption application we will publish an initiation notice to communicate to the market that we are considering a generator's application. These notices will be publically available and provide details of the application, including the relevant generating units, the closure date and non-confidential reasons. Should we decide to contact any stakeholders directly to inform them of the initiation of an exemption process, we will include relevant NSPs in this notification.

Our exemption guideline identifies a number of specific stakeholders we expect we may contact for advice, when we believe their input will be valuable to our consideration, including NSPs. As with all stakeholders, if we contact a NSP for input, we will endeavour to allow it a reasonable amount of time to provide a response, including allowing time to undertake any investigative or modelling activities.

Should we seek feedback, from any party, we will consider all feedback we receive in our determinations. However, we cannot guarantee preference for any particular

stakeholder's input. If additional work is required to facilitate a generator's closure, we would expect this to be included in a NSP's response and we would consider it accordingly.

We agree that a transparent decision making process will help mitigate any negative impact of early generator closure. However, we have not included wording in our exemption guideline to compel our response as suggested by Ergon Energy and Energex. This is so we can maintain the flexibility to engage to the degree necessary depending on the circumstances of each individual application.

3.2 AGL Energy

AGL Energy indicated its support for the approach proposed in the draft guideline. In addition, it noted that it may be useful for us to clarify what happens should we deny an application, including what recourse may be available for a generator.

The Rules empower us to grant or deny exemption to a generator in accordance with our exemption guideline. Our draft guideline contained explanation of what happens when we issue our final decision, including if we deny an application, which we have kept in section 4.3 of the final guideline. But in general, the AER's decisions are subject to review in accordance with Part 6, Division 3 of the NEL.

3.3 The Victorian Government

The Victorian Government's submission highlighted the critical importance of a safe, reliable and affordable electricity supply, and noted that the decision to grant exemption should not be taken lightly. It suggested we seek advice from AEMO to understand potential reliability impacts of a generator's early closure, and indicate in the guideline that we will heavily weigh this advice in our decisions.

The Victorian Government also made reference to the penalty regime that was implemented as part of compensation packages granted to generators under the Commonwealth carbon price. It proposed we consider the implementation of this regime and whether it is suitable for adoption for the notice of closure exemption process.

In addition, it provided a number of other suggestions, including:

- We provide a statement of principles that will guide our decision making framework
- Seeking evidence of the timing of decisions by generators to close and consider whether an application was unnecessarily delayed
- State how the exemption process operates alongside the RRO
- We provide a statement outlining our information handling and confidentiality protocol

- We ensure that we share information effectively between us and jurisdictional regulators.

We agree that as the system operator, AEMO is in a unique position to provide valuable advice regarding the potential reliability impacts of a generator's early closure. Our draft guideline identified that we would seek this advice from AEMO, and we have included this in our final guideline.

We appreciate the Victorian Government's suggestion to consider the implementation of the Commonwealth carbon price compensation package penalty regime as a model for the exemption process. However, we consider the regime as a model extends beyond the scope of the notice of closure exemption guideline. Our role is as regulator of the national energy laws and rules. Should a generator have obligations under other laws or agreements, related penalties are best administered by the relevant jurisdictional bodies or governments.

Separately, we also agree with many of the additional suggestions made by the Victorian Government, and a number of these were included in our draft approach, which we have carried over to the final guideline. We have included an additional section in the exemption guideline to outline how the exemption process interacts with the RRO. We are also committed to fostering effective information sharing with jurisdictional regulators as part of the exemption process. These bodies will provide valuable input in a number of exemption application scenarios.

While we will seek timing of decisions and events, we have not stated that an unnecessarily delayed application will prejudice a decision as suggested by the Victorian Government. Trying to determine if a generator unnecessarily delayed reaching a decision and submitting an application would be challenging. As noted by Stanwell in its submission on the issues paper, precisely defining the moment a generator became aware of the need to close would vary depending on the circumstances, as well as the investigative actions that were necessary prior to reaching a formal decision. However, should it become apparent that a generator has deliberately withheld an application to negatively impact the market, we will consider this in our deliberations.