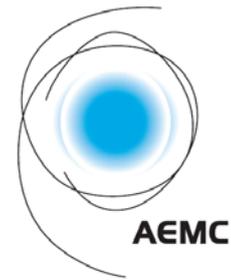


Australian Energy Market Commission

Guidelines for proponents:

Preparing a Rule change request – National Gas Rules

December 2013



1 Objective of the Guidelines

The Australian Energy Market Commission (AEMC) has prepared these guidelines to assist persons who wish to request the AEMC to make National Gas Rules (**Rules**). The National Gas Law (NGL)¹ and the Regulations² under the NGL set out the legal requirements for Rule change requests. A guidance note on the Rule change process is available from the AEMC's website – www.aemc.gov.au.

2 Initiating a Rule change request

Under the NGL, the AEMC has power to make Rules in accordance with the Rule making process set out in the Part 3 of Chapter 9 of the NGL. The “standard” Rule change process generally includes two stages of public consultation³, the application of applicable Rule making tests and a final decision on whether or not to make a Rule.

The AEMC's Rule making process begins when any person (such as an individual, company or Government) (the **proponent**) requests the AEMC in writing to make a Rule (**Rule change request**). The full name and address of the proponent must be included in the Rule change request and the request must be authorised by the proponent⁴.

Generally, any proponent can request the AEMC to make a Rule. However, only certain specified persons⁵ can request a Rule change that relates to the regulation of either:

- The Declared Wholesale Gas Market in Victoria; or

¹ The NGL is contained in the schedule to the *National Gas (South Australia) Act 2008* and sets out the detailed requirements for the Rule making process.

² See clause 13 of the *National Gas Regulations (South Australia)*.

³ Rules which the AEMC considers to be urgent Rules or non-controversial Rules (within the meaning in section 290 of the NGL) can be made by the AEMC after one round of public consultation only. Rules proposed by a gas market regulatory body (such as Australian Energy Market Operator Limited) can be made by the AEMC after one round of public consultation only where the AEMC is satisfied that adequate public consultation was conducted by the gas market regulatory body on the nature and content of the change before making the Rule change request.

⁴ For example:

- if the proponent is an individual the Rule change request must be signed by the individual;
- if the proponent is a company, it should be signed by an authorised representative of the company.

⁵ Rule change requests relating to the Declared Wholesale Gas Market can only be made by AEMO or the Minister of an adoptive jurisdiction (section 295(3)(a) of the NGL). Rule change requests related in some other way to AEMO's declared system functions may only be made by AEMO, the Minister of an adoptive jurisdiction or a service provider for a declared transmission system that is party to a service envelope agreement with AEMO (section 295(3)(b) of the NGL).

- The declared system functions of AEMO⁶.

Under the NGL, a Rule change request must include specific information – see section 4 of these Guidelines.

Instructions for lodging a Rule change request are set out in section 12 of these guidelines.

3 Subject matter for Rule change requests

The AEMC has power to make Rules in respect of certain specified subject matters set out in:

- section 74 and Schedule 1 of the NGL, in respect of all jurisdictions other than Western Australia - [http://www.legislation.sa.gov.au/LZ/C/A/NATIONAL%20GAS%20\(SOUTH%20AUSTRALIA\)%20ACT%202008.aspx](http://www.legislation.sa.gov.au/LZ/C/A/NATIONAL%20GAS%20(SOUTH%20AUSTRALIA)%20ACT%202008.aspx)
- section 20A, section 74 and Schedule 1 of the National Gas Access (Western Australia) Law⁷, in respect of Western Australia - http://www.legislation.wa.gov.au/legislation/statutes.nsf/main_mrtitle_11219_homepage.html

Proponents of Rule change requests should ensure that the subject matter of their request relates to at least one of the matters on which the AEMC is permitted to make Rules.

4 Contents of a Rule change request

A Rule change request must be in writing and must contain the following minimum information⁸:

- a description of the proposed Rule;
- a statement of the nature and scope of the issue(s) concerning the existing Rules and an explanation of how the proposed Rule will address this issue or issues (**Statement of Issue**);
- an explanation of how the proposed Rule would or would be likely to contribute to the achievement of the national gas objective;
- an explanation of the expected benefits and costs of the proposed change and the potential impacts of the change on those likely to be affected; and

⁶ AEMO's declared system functions are set out in section 91BA(1) of the NGL.

⁷ Under the National Gas Access (WA) Act 2009, Western Australia adopted a modified version of the National Gas Law, known as the National Gas Access (Western Australia) Law and version 1 of the National Gas Rules. Section 74 and Schedule 1 of the National Gas Access (Western Australia) Law set out the AEMC's Rule making powers.

⁸ Section 298, NGL; Regulation 13 of the National Gas (South Australia) Regulations.

- in the case of a Rule change request from a gas market regulatory body that could be a “fast tracked” Rule under section 305 of the NGL, a summary of the consultation conducted by the gas market regulatory body including information about:
 - the extent of the consultation;
 - the issues raised during the consultation; and
 - the gas market regulatory body’s response to those issues raised during consultation.

A Rule change request should adequately address all of the above matters. For the proponent to best support its views, the AEMC requests that statements of fact be supported with evidence where possible and include quantitative and/or qualitative analysis to support statements regarding the effect of a proposed Rule.

5 Initiation of Rule change process

The AEMC is only required to ‘initiate’ a Rule change request (i.e. proceed with the next steps in the Rule making process in respect of the request) if the AEMC considers that:

- the minimum content requirements described above have been met;
- the request appears not to be misconceived or lacking in substance; and
- the subject matter of the request appears to be for or with respect to a matter in respect of which the AEMC may make a rule – see section 3 of these Guidelines for details.

Further guidance to proponents on each of the key components of a Rule change request is set out below.

6 What is a description of the proposed Rule?

A proponent must describe (in narrative form as distinct from the drafted rules), the changes that they are proposing be made to the Rules. This may involve describing amendments to existing Rules, the addition of new Rules, or the removal of existing Rules. The description of the proposed Rule should be closely linked to the Statement of Issues, describing the way in which the proposed Rule is intended to address the identified issues.

Some Rule change requests may require consequential changes to other parts of the Rules as a result of the proposed Rule, and where possible, the consequential changes, and the reasons they are required, should be identified and described.

The AEMC requests that proponents provide a draft of the proposed Rule, although this is not mandatory. If a Rule change request does not include draft wording for the proposed Rule, then the proponent should provide sufficient detail in the description of the proposed Rule to enable the AEMC to prepare a proposed Rule for the purposes of consultation.

7 What should a Statement of Issue include?

A Rule change request must include a Statement of Issue. The Statement of Issue should:

1. identify the nature and scope of each problem or issue with the existing Rules; and
2. describe how the proponent's request addresses each of the identified problems or issues.

The proponent's Statement of Issue is key to the Commission and stakeholders understanding and assessment of a Rule change request. A proponent should therefore ensure that its Rule change request clearly and comprehensively describes the nature and scope of each of the issues to be addressed by the request.

8 Explaining how a proposed Rule contributes to the National Gas Objective

The AEMC may only make a Rule if it is satisfied that the Rule will or is likely to contribute to the achievement of the National Gas Objective (NGO)⁹.

The NGO is stated in section 23 of the NGL:

“The objective of this Law is to promote efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas.”

As part of a Rule change request, a proponent is required to explain how the proposed Rule satisfies the Rule making test.

9 Additional rule making tests – AEMO's declared system functions

The AEMC may only make a Rule that:

- has effect with respect to an adoptive jurisdiction¹⁰ if it is satisfied that the proposed Rule is compatible with the proper performance of AEMO's declared system functions¹¹ (section 295(4) of the NGL).

⁹ Section 291(1), NGL.

- affects the allocation of powers, functions and duties between AEMO and a service provider for a declared transmission system if AEMO consents to the making of the Rule or the Rule is requested by the Victorian Minister (section 295(5) of the NGL).

If a Rule has effect with respect to an adoptive jurisdiction, a proponent should demonstrate why and how they consider that the Rule they are requesting is compatible with the proper performance of AEMO's declared system functions.

10 What should an explanation of the expected costs and benefits and potential impacts include?

A Rule change request should comprehensively explain:

1. the expected benefits and costs of the proposed change; and
2. the potential impacts of the change on those likely to be affected.

As part of the AEMC's decision to make a Rule, the AEMC will assess the effects of the proposed change on the current arrangements concerning relevant natural gas services.

An explanation of the expected benefits and costs of the Proponent's proposed change should:

- support the Proponent's Statement of Issue(s);
- support the proponent's statement of how the proposed Rule meets the NGO; and
- identify who is likely to be affected by the proposed change and explain how and why that person or groups of persons is likely to be affected by the change.

11 What should a summary of consultation include?

Section 305 of the NGL allows the AEMC to "fast track" certain Rule change requests made by gas market regulatory bodies. This fast track procedure allows the AEMC to shorten the Rule making process¹² where the AEMC considers that there has been prior adequate consultation on the request by a gas market regulatory body. The AEMC has prepared guidelines to assist a gas market regulatory body in meeting the consultation requirements under the NGL.

If a gas market regulatory body wishes to request the AEMC to "fast-track" a Rule change request under section 305 of the NGR it must include in its Rule change request

¹⁰ The following are "adoptive jurisdictions" as at the date of this Guideline: Victoria (in respect of AEMO's declared system functions) and South Australia and NSW (in respect of AEMO's STTM functions).

¹¹ AEMO's declared system functions are set out in section 91BA(1) of the NGL.

¹² Under the "fast-track process" there is no first round consultation on the Rule change request and the period for the making of a draft determination by the AEMC is shortened from 10 weeks to 5 weeks.

a summary of the consultation conducted by that body. This summary must include information about:

1. the extent of the consultation;
2. the issues raised during the consultation; and
3. the gas market regulatory body's response to the issues raised during consultation.

12 Lodging a Rule change request

A Rule change request may be submitted to the AEMC electronically or in hard copy (via ordinary mail).

Lodging a Rule change request online:

- If a Rule change request is submitted electronically, it must be lodged online via the AEMC's website;
- the Rule change request must be on letterhead (if an organisation), signed and dated by the proponent;
- the Rule change request must be in PDF format;
- if the Rule change request contains a draft of the proposed Rule, a WORD version of that draft Rule must also be sent with the PDF version of the request;
- upon receipt of the Rule change request, the AEMC will issue a confirmation email. If this confirmation email is not received within 3 business days, it is the proponent's responsibility to ensure successful delivery of the Rule change request has occurred; and
- the Rule change request should also be forwarded to the AEMC via ordinary mail.

Lodging a Rule change request via ordinary mail:

- the Rule change request must be on letterhead (if an organisation), signed and dated by the proponent;
- the Rule change request should be sent to:

Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

- upon receipt of the Rule change request, the AEMC will issue a confirmation letter. If this confirmation letter is not received within 3 business days, it is the

proponent's responsibility to ensure successful delivery of the Rule change request has occurred.

Privacy

Before submitting a rule change request please read the AEMC's privacy statement on its website - <http://www.aemc.gov.au/privacy-statement.html>

Proponent's checklist for lodging a Rule change request

- Proponent is expressly identified with full name and address.
- Rule change request is signed by an authorised representative of the Proponent.
- Subject matter of the Rule change request falls within the matters on which the AEMC is permitted to make Rules.
- Following information included:
 - Description of the proposed Rule.
 - Statement of Issue identifying the nature and scope of each problem or issue with the existing Rules.
 - Statement of Issue describing the proposed solution for each issue identified.
 - Analysis of how the proposed Rule (if made) will contribute or is likely contribute to the achievement of the NGO.
 - Analysis of how the proposed Rule is compatible with the proper performance of AEMO's declared system functions.
 - Explanation of the expected benefits and costs of the change and the potential impacts on the change on those likely to be affected.
 - In relation to a request by a gas market regulatory body that could be fast tracked under section 305 of the NGL, a summary of the consultation conducted.
- Draft of the proposed Rule included (optional).

Checklist for Online Lodgement

- Rule change request on letterhead (if an organisation), signed and dated in PDF format.
- A WORD version of the draft of the proposed Rule sent with the PDF version of the Rule change request.
- Receipt of confirmation email from AEMC.
- Rule change request forwarded to the AEMC via ordinary mail.