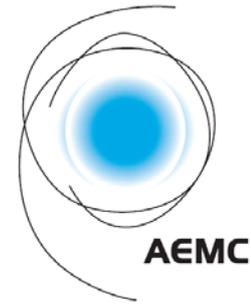


Australian Energy Market Commission

Guidelines for making a written submission on a rule change request – Retail

December 2013



1 Objective of the Guidelines

The Australian Energy Market Commission (AEMC) has prepared these guidelines to assist any person who wishes to make a written submission to the AEMC as part of its public consultation on a rule change request to the National Energy Retail Rules (NERR).

2 Overview of the rule amendment procedure

The National Energy Retail Law (NERL)¹ and the Regulations² under the NERL set out the rule amendment procedure under which the AEMC may make a rule that changes the NERR.

Generally speaking, there are four stages to the rule amendment procedure:

- initial consideration of a rule change request;
- consultation on a proposed rule;
- draft rule determination; and
- final rule determination.

Further information on each of the stages is available to stakeholders under the “Retail” menu of the AEMC’s website – www.aemc.gov.au.

3 Submissions as part of public consultation stages under the rule amendment procedure

Where a person (proponent) requests the AEMC to make a rule that changes the NERR, the AEMC conducts a rule amendment procedure which generally includes two stages of public consultation³.

At the first stage, for the initial consideration of a rule change request, the AEMC publishes a notice of the rule change request put forward by the proponent, and invites written submissions or comments from any interested persons or bodies in relation to the proposed rule. The notice is published:

- in The Australian newspaper;

¹ The NERL is contained in the schedule to the *National Energy Retail (South Australia) Act 2011* (South Australia).
² Clause 11 of the *National Energy Retail Regulations (South Australia) 2012* (SA) (Regulations).

³ The public consultation procedure for the making of a rule by the AEMC under the ‘fast-track’ and expedited processes is shortened. Refer to the AEMC web site for the ‘*Guidelines for energy regulatory bodies: Preparing a “fast track” rule change request – Retail*’ which provides further information on ‘fast-track’ rule amendment procedures.

- in the South Australian Government Gazette; and
- on the AEMC's website - www.aemc.gov.au.

This part of the procedure is known as the 'first round consultation'. Interested persons are allocated a minimum period of four (4) weeks to make written submissions in relation to a rule change request. The notice sets a closing date for lodging submissions with the AEMC.

After the close of first round consultation, the AEMC considers all written submissions and other relevant considerations. The AEMC then makes a draft rule determination and, if relevant, a draft rule.

To inform stakeholders, the AEMC publishes a notice of the draft rule determination, using the same communications channels as for the initial notice. Once again, the AEMC invites any interested persons to make written submissions on the draft rule determination. Interested persons have a minimum period of six (6) weeks to make written submissions on the draft rule determination. This is known as the 'second round consultation' and enables the AEMC to hear the views of stakeholders on the draft rule determination.

After the close of second round consultation:

- the AEMC considers any matters relevant in applying the rule making test to decide whether or not to change the NERR (see Part 4 - The rule making test - the National Energy Retail Objective); and
- considers all written submissions received by it (see Part 5 - Consideration of written submissions by the AEMC to Part 7 - Checklist for preparing a written submission to the AEMC).

The AEMC then makes a final rule determination, and may make a rule that changes the NERR.

4 The rule making test – the National Energy Retail Objective

In deciding whether or not to make a rule that changes the NERR, the AEMC must apply the rule making test⁴. This means that the AEMC may only make a rule if it is satisfied that the change will, or is likely to, contribute to the achievement of the National Energy Retail Objective (NERO)⁵.

The NERO states the objective of the NERL is:

“to promote efficient investment in, and efficient operation and use of, energy services for the long term interests of consumers of energy with respect to price, quality, safety, reliability and security of supply of energy.”

In applying the rule making test⁶:

⁴ The rule making test is set out in section 236 of the NERL.

⁵ The National Energy Retail Objective is set out in section 13 of the NERL.

⁶ Section 236 of the NERL.

- the AEMC may give such weight to any aspect of the NERO as it considers appropriate in all the circumstances;
- where relevant, the AEMC must satisfy itself that the rule is compatible with the development and application of consumer protections for small customers, including (but not limited to) protections relating to hardship customers; and
- the AEMC must have regard to any relevant ministerial statement of policy principles.

Small customers are defined as residential customers and business customers who consume energy at business premises below an 'upper consumption threshold'⁷.

The definition of hardship customers, however, is narrower and refers to a residential customer of a retailer who is identified as a customer experiencing financial payment difficulties due to hardship in accordance with the retailer's customer hardship policy⁸. Retailers are required to develop and submit their respective customer hardship policies to the Australian Energy Regulator for approval⁹.

A submission on a rule change request should set out the reasons why the rule change request does, or does not, satisfy the rule making test.

5 Consideration of written submissions by the AEMC

The rule amendment procedure AEMC follows is broadly consistent with the principles of procedural fairness, and gives all stakeholders a reasonable opportunity to be heard. Stakeholders are invited to present their views and comments as an important input to the AEMC's decision making in relation to changes to the NERR.

However, the following matters may be relevant to the weight the AEMC gives to submissions:

- **Timeliness:**

The AEMC will take into account submissions lodged within the statutory timeframe as part of its decision making. Where submissions are received by the AEMC after the closing date, the AEMC endeavours to have regard to these late submissions. However, as the AEMC is itself subject to statutory time constraints for its decision making, it may not be possible for the AEMC to give late submissions the same level of consideration, and the AEMC would therefore urge persons making submissions to lodge within the specified time period.

⁷ As the date of these guidelines, subject to some jurisdictional specific variations, this generally refers to annual gas consumption below 1 tera joule, and annual electricity consumption below 100 mega watts (although this may be as high as 160 mega watts for some jurisdictions).

⁸ Section 43 of the NERL.

⁹ As above.

- **Relevance to the particular rule change request:**

In considering a rule change request, the AEMC may only have regard to matters that are relevant to the particular request that is under consideration. Interested persons or bodies making a submission should ensure that the submission is relevant and that it raises issues about, or makes comments upon, the particular rule change request that is the subject of the AEMC's decision making.

Attachments should only be included where they are directly relevant to the issues raised or comments made in the submission. If the submission includes attachments, the person(s) making the submission should explain how the attachments are relevant and accurately reference, within the submission, the relevant sections of those attachments (for example, by page or section number).

- **Role of the AEMC's discretion:**

The rule making test in the NERL allows the AEMC to give weight to any aspect of the NERL "as it considers appropriate in all the circumstances"¹⁰. When information, opinions and views are presented to the AEMC in written submissions, the relative weight to be given to the content of those submissions is at the discretion of the AEMC. This discretion must be properly and reasonably exercised, and be consistent with any relevant statutory requirements under the NERL.

As part of its decision making, the AEMC may make judgments about the relative weight to be given to submissions, having regard to the AEMC's own analysis in applying the rule making test to a rule change request. While the AEMC is not obliged to adopt suggestions, comments or recommended alternative solutions to the issue identified in the rule change request, such comments form an important part of the decision making and, in many instances, may result in changes being incorporated in the decision to make a rule that changes the NERL, or in a decision not to make a rule.

6 How the AEMC deals with confidential, personal or defamatory material contained in a written submission

6.1 Claim for confidentiality of information included in written submissions

The AEMC's practice is to publish all written submissions on its website. However, in certain circumstances, a stakeholder who makes a submission may make a claim that their submission contains confidential information. Where such a claim is made, the stakeholder should clearly identify the part(s) of the submission that the claim for confidentiality relates to, and give reasons why the AEMC should accept the claim that the material be treated as confidential.

Where the AEMC forms the view that the stakeholder's claim to confidentiality is justified, the AEMC may decide¹¹ to publish the submission, but omit the confidential information from the version published on its website. In such a case,

¹⁰ Section 236(2) of the NERL.

¹¹ Section 268 of the NERL.

the AEMC is required to include a note to the effect that confidential information has been omitted at each place in the submission where this has occurred¹².

Where the AEMC decides that it does not accept the stakeholder's claim that their submission (or parts of their submission) be treated as confidential, the AEMC's standard procedure is to notify the person who has made the submission of this decision, and that the AEMC intends to publish the submission on its website. This provides the person with the opportunity to withdraw the submission (in whole or in part) if they choose to do so.

It should also be noted that the AEMC considers that where submissions (or parts of submissions) are treated as confidential, they cannot be tested and subjected to the full scrutiny that the public consultation process allows. The AEMC therefore takes this lack of full public scrutiny into account in the appropriate weight to be attributed to confidential information contained in a submission.

6.2 Personal information disclosed in a written submission

Except where a submission is made by an individual and contains that person's personal information, the AEMC has adopted a policy of not disclosing certain personal information of individuals (such as personal (home) addresses, telephone numbers) in written submissions that are published on the AEMC's website.

In preparing your submission(s), stakeholders are requested to review their submission(s) prior to lodgement with the AEMC to ensure that no such material has been inadvertently incorporated into the finalised submission(s).

6.3 Defamatory or otherwise inappropriate material

The AEMC will not publish defamatory or otherwise inappropriate comments or statements as part of a submission, and requests that persons making submissions refrain from the use of personally directed criticisms or comments about named individuals or the use of unacceptable language.

7 Checklist for preparing a written submission to the AEMC

- Does the written submission demonstrate a correct understanding about the nature, scope and context of the particular rule change request under consideration?
- Does the submission link comments and discussion to the issues raised by the rule change request?
- Does the submission appropriately respond given the *particular stage* of the rule amendment procedure? For example, if the submission is for first round consultation, the submission is providing comment and views on the proponent's rule change request. If the submission is in the context of second round consultation, submissions are commenting on, and presenting views about, the draft Rule determination of the AEMC.

¹² Sections 234 and 268 of the NERL.

- Does the submission clearly identify the issue or issues for comment and discussion, including where the person agrees or disagrees with the proponent or the AEMC?
- Does the submission succinctly outline the comments that the person wishes to make on some or all of the issues and, where appropriate, put forward any suggestions or recommendations for addressing the issues that the person wishes to make?
- Does the submission contain confidential material that is clearly identified to the AEMC and, if yes, include reasons as to why it should be treated as confidential by the AEMC?
- Has the submission been reviewed to ensure no personal information relating to an individual has been inappropriately disclosed or comments made that are not suitable to be published on the AEMC's website?

8 Lodging a submission with the AEMC

The AEMC's published notices for first and second round consultations specify the closing date by which stakeholders' submissions must be lodged with the AEMC. Stakeholders should lodge their submissions by no later than the close of business on that date.

A submission may be lodged with the AEMC in electronic format via our website or, alternatively, in hard copy format via ordinary mail (post), as explained below.

Lodging a submission via the AEMC's website:

- Submissions that are in electronic format must be lodged via the AEMC's website;
- the submission must be on letterhead (if an organisation), signed and dated by the proponent;
- the submission must be in PDF format;
- upon receipt of the submission, the AEMC will issue a confirmation email. If this confirmation email is not received within three (3) business days, it is the proponent's responsibility to ensure successful delivery of the submission has occurred; and
- the submission should also be forwarded to the AEMC via ordinary mail.

Lodging a submission via ordinary mail (post):

- mailed submissions must be on letterhead (if an organisation), signed and dated by the proponent;
- the submission should be sent to:

Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

- upon receipt of the submission, the AEMC will issue a confirmation letter. If this confirmation letter is not received within three (3) business days, it is the proponent's responsibility to ensure successful delivery of the submission has occurred.

Privacy

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

Important note: These guidelines have been provided by the AEMC to assist persons or bodies to make submissions under the NERL. It is not possible to cover every issue or circumstance that may arise. These guidelines should not be used as a substitute for legal advice. The AEMC recommends that proponents also refer to the NERL and any Regulations made under that Act.