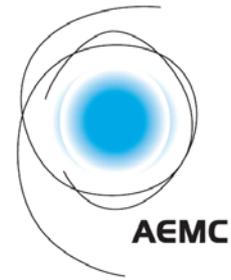


Australian Energy Market Commission

Guidelines for energy regulatory bodies: Preparing a 'fast track' rule change request – Retail



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1 Objective of the Guidelines

The Australian Energy Market Commission (AEMC) has prepared these guidelines to assist an energy regulatory body to submit a 'fast track' rule request to the AEMC to change the National Energy Retail Rules (NERR).

The National Energy Retail Law (NERL)¹ and the National Energy Retail Regulations² set out the requirements for Rule change requests. These guidelines – which sets out the additional rule amendment procedure requirements and considerations for a 'standard' rule change request – should be read together with the *Guidelines for proponents: Preparing a rule change request – Retail* as well as other details on the rule amendment procedure which can be found on the AEMC's website www.aemc.gov.au

2 'Fast track' rule amendment procedure

The AEMC has discretion to 'fast track' the rule amendment procedure for certain rule change requests³. For a 'fast track' rule change, the first public consultation stage of the rule amendment procedure is the publication of the draft Rule determination⁴.

The effect of the 'fast track' rule amendment procedure is that the AEMC may make a rule relating to the rule change request without complying with the 'first round' public consultation on notification of the rule change request⁵ and without needing to exercise its discretion to hold a public hearing⁶. Under the 'fast track' process, the AEMC is required to publish a draft rule determination within five weeks of publishing a notice advising of the rule change request⁷.

There are two kinds of Rule change requests that could be 'fast tracked' by the AEMC:

- (a) requests from energy regulatory bodies who have consulted with the public on the nature and content of the Rule change request before submitting the same request to the AEMC, and that AEMC is able to come to an opinion that the consultation conducted by the relevant energy regulatory body was adequate; and

¹ The NERL is contained in a Schedule to the *National Energy Retail (South Australia) Act 2011* (South Australia).

² *National Energy Retail Regulations 2012* (SA) (Regulations).

³ Section 253 of the NERL.

⁴ Section 256 of the NERL.

⁵ Section 251 of the NERL

⁶ Section 255 of the NERL

⁷ Section 256(3) of the NERL.

- (b) requests from a person or the Ministerial Council on Energy⁸ who have consulted with the public regarding the rule change request where the request reflects or is consistent with the relevant recommendation contained in the review, and that the AEMC is able to come to the opinion that the consultation conducted by the person or that body was adequate.

3 Additional requirements for submitting a ‘fast track’ rule change request

For a ‘fast track’ rule change request submitted by an energy regulatory body to the AEMC, the additional information that must be contained in that submission is:

“... a summary of the consultation conducted by the energy regulatory body (including information about the extent of the consultation and about the issues raised during the consultation and the energy regulatory body’s response to those issues)...”⁹

3.1 The Commission’s opinion as to the adequacy of the consultation

In preparing a summary of the consultation, the energy regulatory body should provide the AEMC with all relevant information in relation to the consultation conducted by that body for that rule change request. Information that will be relevant to the AEMC will be any information that will assist the Commission in coming to an opinion whether the consultation was sufficiently adequate so as to ‘fast track’ the rule change request.

The decision to ‘fast track’ the rule change request is at the discretion of the AEMC. The AEMC needs to be of the opinion that the consultation conducted by the energy regulatory body was adequate having regard to the nature and content of the request, and the kind of consultation conducted by that body.

If the Commission does not come to an opinion that the consultation was adequate, the rule change request will not be ‘fast tracked’, and will be the subject of first round public consultation, and may be subject to a public hearing. The purpose of such consultation is to give interested parties, at an early stage of the rule amendment procedure, the opportunity to provide written submissions.

3.2 Information relevant to the Commission’s assessment

The summary of consultation provided by the energy regulatory body as part of its Rule change request will assist the Commission in forming an opinion as to whether the consultation conducted by that body is adequate. It will assist the Commission in deciding whether conducting first round consultation (and possibly a public hearing) has the potential

⁸ On 10 June 2011, at a joint meeting of the Ministerial Council on Energy (MCE) and the Ministerial Council on Mineral and Petroleum Resources, and following a decision by the Council of Australian Governments, a decision was made to amalgamate the two councils to become the Standing Council on Energy and Resources (SCER). It is anticipated that consequential amendments will be made to energy legislation to replace MCE with SCER.

⁹ Clause 13(1)(f) of the Regulations. It is noted that a person who submits a Rule change request that could be ‘fast tracked’ on the basis of a recommendation for the making of a Rule contained in a MCE directed review or a conclusion for the making of a Rule contained in an AEMC Rule review, is not required to submit a summary of consultation as part of its Rule change request.

to duplicate the consultation already conducted by the body.¹⁰ The energy regulatory body should consider what information is relevant to the Commission's assessment of the adequacy of the consultation such as:

- Have the issues raised during the energy regulatory body's consultation been adequately identified and responded to?
- How was the consultation conducted?
- How were interested parties given the opportunity to raise issues and provide comments?
- What matters was the subject of the consultation compared to the matters which were the subject of the Rule change request?
- How open was the consultation? For example, was the consultation targeted at a particular group of stakeholders? Who had the opportunity to provide comments?
- Did all stakeholders who could be affected by the Rule change request have the opportunity to provide comments as part of the consultation process?

The information provided by the energy regulatory body in relation to the consultation will be read by the AEMC in conjunction with the other information that must be contained in the Rule change request.

Important note: These guidelines have been provided by the AEMC to assist energy regulatory bodies to submit to the AEMC a 'fast track' rule change request. 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.

¹⁰ Section 224 of the NERL provides that in performing or exercising any function or power under the NERL including the Regulations and the NERR, the AEMC must have regard to the national energy retail objective.