



Australian Energy Market Commission

RULE PROPOSAL

Proposed National Electricity Amendment
(Minor Changes) Rule 2018

Proposed National Gas Amendment (Minor
Changes) Rule 2018

Proposed National Energy Retail Amendment
(Minor Changes) Rule 2018

Rule Initiated by
AEMC

20 February 2018

**RULE
CHANGE**

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About the AEMC

The AEMC reports to the Council of Australian Governments (COAG) through the COAG Energy Council. We have two functions. We make and amend the national electricity, gas and energy retail rules and conduct independent reviews for the COAG Energy Council.

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1 Introduction

The Australian Energy Market Commission (AEMC or Commission) is responsible for the rule-making functions conferred on it under legislation.

As part of its Rule-making function, the Commission reviews, amends and maintains:

- the National Electricity Rules in accordance with the National Electricity Law (NEL)
- the National Gas Rules in accordance with the National Gas Law (NGL);
- the National Energy Retail Rules in accordance with the National Energy Retail Law (NERL).

The purpose of this function, among other things, is to improve and enhance the quality of the National Electricity Rules, the National Gas Rules and the National Energy Retail Rules (collectively, the Rules).

2 AEMC's power to initiate the making of a Rule

Under section 91(2) of the NEL:

“The AEMC must not make a Rule without a request under subsection (1) unless-

- (a) it considers the Rule corrects a minor error in the Rules; or
- (b) it considers the Rule involves a non-material change to the Rules; or
- (c) the Rule is in respect of any matter that is prescribed by the Regulations as a matter on which it may make a Rule on its own initiative.”

Under section 295(2) of the NGL:

"The AEMC must not make a Rule without a request under subsection (1) unless-

- (a) it considers the Rule corrects a minor error in the Rules; or
- (b) it considers the Rule involves a non-material change to the Rules; or
- (c) the Rule is in respect of any matter that is prescribed by the Regulations as a matter on which it may make a Rule on its own initiative."

Under section 243(2) of the NERL:

“The AEMC must not make a Rule without a request under subsection (1) unless –

- (a) it considers the Rule corrects a minor error in the Rules; or
- (b) it considers the Rule involves a non-material change to the Rules; or
- (c) the Rule is in respect of any matter that is prescribed by the National Regulations as a matter on which it may make a Rule on its own initiative.”

3 Rule proposal

These rule proposals (together, the Rule Proposal), initiated by the Commission, seek to:

- correct minor errors, including: formatting; typographical and cross referencing anomalies; a misplaced note for a civil penalty provision; and the deletion of redundant definitions in the Rules
- insert notes indicating new civil penalty provisions in the NER, NGR and NERR as made by the National Electricity (South Australia) (Civil Penalties) Variation Regulations 2017, National Energy Retail (Civil Penalties) Variation Regulations 2017 and the National Gas (South Australia)(Civil Penalties) Variation Regulations 2017.

In addition, the Rule Proposal corrects an inadvertent change made to clause 5.16.3(a)(8) of the NER under the National Electricity Amendment (Replacement expenditure planning arrangements) Rule 2017 (the Repex Rule).

Clause 5.16.3(a)(8) was introduced under the National Electricity Amendment (Emergency frequency control schemes) Rule 2017 (EFCS Rule) as part of a suite of changes to the NER that were intended to enhance the framework for emergency frequency control in the national energy market.

It was the Commission’s intention that the RIT-T and RIT-D arrangements introduced under the EFCS Rule be maintained under the Repex Rule. More specifically, it was the Commission’s intention that network service providers continue to be exempt from having to undertake a RIT-T in circumstances where proposed expenditure relates to a protected event EFCS investment¹ (including where such investment involves the replacement of network assets) and that expenditure is not intended to augment the transmission network. However, a drafting error in the Repex Rule resulted in the words “or replace *network* assets” being inserted at the end of clause 5.16.3(a)(8).²

The Rule Proposal addresses this drafting error (and, in turn, gives effect to the policy intent of the Commission when making the Repex Rule) by removing the words “or replace *network* assets” from clause 5.16.3(a)(8).

Given that the above changes are minor and non-material in nature, the Commission considers that the proposed Rules satisfy the requirements of section 91(2) of the NEL, section 295(2) of the NGL and section 243(2) of the NERL (as relevant).

The proposed amendments to the Rules are specified in the attached:

- Proposed National Electricity Amendment (Minor Changes) Rule 2018
- Proposed National Gas Amendment (Minor Changes) Rule 2018
- Proposed National Energy Retail Amendment (Minor Changes) Rule 2018

¹ A protected event EFCS investment is an investment by a network service provider (NSP) for the purposes of installing or modifying an emergency frequency control scheme applicable in respect of the NSP’s transmission or distribution system in accordance with a protected event EFC standard. For further details of the EFCS Rule and Repex Rule, please see the AEMC’s website: <http://www.aemc.gov.au/Rule-Changes/Emergency-frequency-control-schemes-for-excess-gen> and <http://www.aemc.gov.au/Rule-Changes/Replacement-Expenditure-Planning-Arrangements>

² The drafting error made in the Repex Rule does not extend to the RIT-D exemption introduced under the EFCS Rule. Accordingly, the Rule Proposal does not include any changes to the RIT-D arrangements in clause 5.17.3 of the NER.

(together, the Proposed Rule).

4 Expedited Rule making process for Minor Changes Rule proposal

Under section 87 of the NEL, a "non-controversial Rule" is defined as "a Rule that is unlikely to have a significant effect on the national electricity market".

Under section 290 of the NGL, a "non-controversial Rule" is defined as "a Rule that is unlikely to have a significant effect on a market for gas or the regulation of pipeline services".

Under section 235 of the NERL, a "non-controversial Rule" is defined as "a Rule that is unlikely to have a significant effect on a market for energy or the regulation of customer connection services".

As the proposed changes to the NER, NGR and NERR are minor or non-material in nature, the Commission considers that the Proposed Rule is unlikely to have a significant effect on the national electricity market (NEM), a market for gas or the regulation of pipeline services, or a market for energy or regulation of customer connection services. The Proposed Rule therefore falls within the definition of a non-controversial rule under section 87 of the NEL, section 290 of the NGL and section 235 of the NERL (as relevant).

On this basis, under section 96(1)(a) of the NEL, section 304(1)(a) of the NGL and 252(1)(a) of the NERL (respectively) the Commission proposes that this Rule Proposal be consulted on and determined under an expedited process with a four week consultation period.

5 The National Electricity Objective, National Gas Objective, National Energy Retail Objective and NT Requirements

National Electricity Objective

Under section 88 of the NEL, the Commission may only make a Rule if it is satisfied that the Rule will or is likely to contribute to the achievement of the national electricity objective (NEO).

The NEO is set out in section 7 of the NEL as follows:

"The objective of this Law is to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to-

- (a) price, quality, safety, reliability and security of supply of electricity; and
- (b) the reliability, safety and security of the national electricity system."

National Gas Objective

Under section 291 of the NGL, the Commission may only make a Rule if is satisfied that the Rule will or is likely to contribute to the achievement of the national gas objective (NGO).

The NGO is set out in section 23 of the NGL as follows:

"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."

National Energy Retail Objective

Under section 236 of the NERL, the Commission may only make a Rule if it is satisfied that the Rule will or is likely to contribute to the achievement of the national energy retail objective (NERO).

The NERO is set out in section 13 of the NERL as follows:

"The objective of this Law 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".

The Commission considers that the Proposed Rule, if made, will improve the quality of the Rules in terms of accuracy and consistency. The Commission considers that the Proposed Rule is likely to contribute to the achievement of the NEO, NGO and NERO (as relevant).

As with previous similar AEMC initiated rule changes, these minor corrections and non-material changes will make the Rules clearer to stakeholders. This is important as the Rules inform stakeholders of their rights and obligations in relation to participating in the NEM, gas markets and energy retail markets, and stakeholders rely on these Rules in their commercial transactions.

Northern Territory Requirements

From 1 July 2016, the NER, as amended from time to time, apply in the Northern Territory, subject to derogations set out in regulations made under the Northern Territory legislation adopting the Law.³ Under those regulations, only certain parts of the NER have been adopted in the Northern Territory.⁴ As aspects of the Rule Proposal relates to parts of the NER that apply in the Northern Territory, the Commission will assess the Proposed Rule against additional elements required by the Northern Territory legislation (referred to here as the NT Act).⁵ The additional tests are set out below.

National electricity system and local electricity systems

Under the NT Act, the Commission must regard the reference in the national electricity objective to the "national electricity system" as a reference to whichever of the following the Commission considers appropriate in the circumstances, having regard to the nature, scope or operation of the proposed rule change:

³ National Electricity (Northern Territory) (National Uniform Legislation) (Modifications) Regulations

⁴ For the version of the NER that applies in the Northern Territory, refer to: [http://www.aemc.gov.au/Energy-Rules/National-electricity-rules/National-Electricity-Rules-\(Northern-Territory\)](http://www.aemc.gov.au/Energy-Rules/National-electricity-rules/National-Electricity-Rules-(Northern-Territory)).

⁵ *National Electricity (Northern Territory) (National Uniform Legislation) Act 2015.*

- (a) the national electricity system
- (b) one or more, or all, of the local electricity systems
- (c) all the electricity systems referred to above.⁶

For the purposes of the Rule Proposal, the Commission has determined the reference to the national electricity system to be “all the electricity systems referred to above”.

Differential rule

Under the NT Act, the Commission may make a differential rule if, having regard to any relevant ministerial statement of policy principles, the differential rule will, or is likely to, better contribute to the achievement of the NEO than a uniform rule.⁷ A differential rule is a rule that:

- (a) varies in its terms as between:
 - (i) the national electricity system; and
 - (ii) one or more, or all, of the local electricity systems; or
- (b) does not have effect with respect to one or more of those systems,

but is not a jurisdictional derogation, participant derogation, or rule that has effect with respect to an adoptive jurisdiction for the purpose of section 91(8) of the NEL.⁸

7 Any relevant MCE statements of policy principles

Under section 33 of the NEL, section 73 of the NGL and section 225 of the NERL, the Commission must have regard to any relevant MCE statement of policy principles in making a Rule. There are currently no MCE statements of policy principles.

8 Compatibility with AEMO’s declared network functions

Under section 91(8) of the NEL, the Commission may only make a Rule that has effect with respect to an adoptive jurisdiction if satisfied that the Proposed Rule is compatible with the proper performance of the Australian Energy Market Operator’s (AEMO) declared network functions. At present Victoria is the only relevant “adoptive jurisdiction”.

Given the Proposed Rule only seeks to make minor or non-material changes to the NER, the Commission is satisfied the Proposed Rule is compatible with the proper performance of AEMO’s declared network functions.

Under section 295(4) of the NGL, the Commission may only make a Rule that has effect with respect to an adoptive jurisdiction if satisfied that the Proposed Rule is compatible with the proper performance of the Australian Energy Market Operator’s (AEMO) declared system functions. At present Victoria is the only relevant “adoptive jurisdiction”.

⁶ Section 14A of Schedule 1 to the NT Act, inserting section 88(2a) into the National Electricity Law as it applies in the Northern Territory.

⁷ Section 14B of Schedule 1 to the NT Act, inserting section 88AA into the National Electricity Law as it applies in the Northern Territory.

⁸ Section 14 of Schedule 1 to the NT Act, inserting additional definitions into section 87 of the National Electricity Law as it applies in the Northern Territory

Given the Proposed Rule only seek to make minor or non-material changes to the NGR, the Commission considers that the Proposed Rule is compatible with the proper performance of AEMO's declared system functions.

9 Consultation under the expedited process

The Commission has published notices under sections 95 and 96 of the NEL, sections 303 and 304 of the NGL and sections 251 and 252 of the NERL regarding the expedited Rule making process, and inviting written submissions on the Proposed Rule.

Written submissions are to be lodged online or by mail by 20 March 2018 in accordance with the requirements set out below.

Any person may make a written request to the Commission requesting it not to make a Rule under the expedited process under sections 96 of the NEL, 304 of the NGL and 252 of the NERL.

The request must include reasons for the request, and must be lodged with the Commission by 6 March 2018. Requests may be lodged either online or by mail, in accordance with the requirements specified below.

Where practicable, submissions should be prepared in accordance with the Commission's Guidelines for making written submissions on rule change proposals⁹. The Commission publishes all submissions on its website subject to a claim of confidentiality.

All enquiries on this project should be addressed to Sarath Chandra on (02) 8296 7800.

9.1 Lodging a submission electronically

Electronic submissions must be lodged online via the Commission's website, www.aemc.gov.au, using the "lodge a submission" function and selecting the project reference code ERC0234, GRC0044 and/or RRC0013. The submission must be on letterhead (if submitted on behalf of an organisation), signed and dated.

Upon receipt of the electronic submission, the Commission will issue a confirmation email. If this confirmation email is not received within 3 business days, it is the submitter's responsibility to ensure the submission has been delivered successfully.

9.2 Lodging a submission by mail

The submission must be on letterhead (if submitted on behalf of an organisation), signed and dated. The submission should be sent by mail to:

Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

Or by Fax to (02) 8296 7899.

The envelope must be clearly marked with the project reference code: ERC0234, GRC0044 and RRC0013.

⁹ This guideline is available on the Commission's website.

Except in circumstances where the submission has been received electronically, upon receipt of the hardcopy submission the Commission will issue a confirmation letter.

If this confirmation letter is not received within 3 business days, it is the submitter's responsibility to ensure successful delivery of the submission has occurred.