



Australian Energy Market Commission

RULE DETERMINATION

National Electricity Amendment (Minor Changes) Rule 2018

National Gas Amendment (Minor Changes) Rule 2018

National Energy Retail Amendment (Minor Changes) Rule 2018

Rule Proponent
AEMC

3 April 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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Summary

The Commission has determined:

- under sections 102 and 103 of the National Electricity Law (NEL), to make the *National Electricity Amendment (Minor Changes) Rule 2018 No. 4* (electricity Rule)
- under sections 311 and 313 of the National Gas Law (NGL), to make the *National Gas Amendment (Minor Changes) Rule 2018 No. 1* (gas Rule); and
- under sections 259 and 261 of the National Energy Retail Law (NERL), to make the *National Energy Retail Amendment (Minor Changes) Rule 2018 No. 1* (retail Rule).

The electricity Rule, the gas Rule and the retail Rule (the Rules):

- 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 electricity Rule 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).

The Rules were proposed by the Commission and aim to promote clarity of meaning and remove identified errors in the NER, NGR and NERR. The final Rules made by the Commission differ from the Rules proposed by the Commission with a few additional minor errors identified for correction since the Rule change processes were commenced.

The Commission considers that:

- the electricity Rule is likely to contribute to the achievement of the National Electricity Objective (NEO) and therefore satisfies the Rule making test under section 88 of the NEL
- the gas Rule is likely to contribute to the achievement of the National Gas Objective (NGO) and therefore satisfies the Rule making test under section 291 of the NGL; and
- the retail Rule is likely to contribute to the achievement of the National Energy Retail Objective (NERO) and therefore satisfies the Rule making test under section 236 of the NERL.

Schedule 1 of the electricity Rule, gas Rule and the retail Rule will commence on 10 April 2018, to align the consolidation of these changes with other amendments to the rules.

Schedule 2 of the electricity Rule will commence on 1 July 2018, the commencement date for the rule it is correcting (Schedule 1 of the *National Electricity Amendment (Generating System Model Guidelines) Rule 2017*).

Schedule 2 of the gas Rule will commence on 30 September 2018, the date from which the relevant provisions are classified as civil penalty provisions under the National Gas (South Australia)(Civil Penalties) Variation Regulations 2017.

Schedule 2 of the retail Rule commences on 1 February 2019, the commencement date for the rule it is correcting (Schedule 2 of the *National Energy Retail Amendment (Strengthening protections for customers requiring life support equipment) Rule 2017*).

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1 The AEMC's Rule Change Proposal

1.1 The proposed Rules and commencement of Rule making process

The Commission has power to make a Rule without a request if it considers that the Rule corrects a minor error in the Rules or makes a non-material change to the Rules.¹

On 20 February 2018, the Commission initiated:

- the proposed *National Electricity Amendment (Minor Changes) Rule 2018* under sections 95 and 96(1)(a) of the NEL
- the proposed *National Gas Amendment (Minor Changes) Rule 2018* under sections 303 and 304(1)(a) of the NGL; and
- the proposed *National Energy Retail Amendment (Minor Changes) Rule 2018* under sections 251 and 252(1)(a) of the NERL,

subject to any requests not to expedite the Rule making process.

The Commission initiated the proposed Rules under the expedited process in section 96(1)(a) of the NEL, section 304(1)(a) of the NGL and section 252(1)(a) of the NERL respectively as it considered the Rules (relevantly) were unlikely to have a significant effect on the National Electricity Market (NEM), or a natural gas market or the regulation of pipeline services, or on the market for energy or the regulation of customer connection services. The Commission therefore considered that the Rules fell within the definition of a non-controversial rule under section 87 of the NEL, section 290 of the NGL and 235 of the NERL.

The AEMC did not receive any requests not to expedite the Rule making process. Accordingly, the Rule change proposal was considered under an expedited process.

The Commission invited submissions on the Rule change proposal by 20 March 2018. The Commission received no submissions on the Rule change proposal.

1.2 Rationale for proposed Rules

As part of the AEMC's rule making functions conferred on it under legislation, the Commission reviews, amends and maintains the Rules in accordance with the NEL, NGL and the NERL. The purpose of this function, among other things, is to improve and enhance the quality of the Rules.

The Rule change proposal has been prompted by the identification of various minor errors and non-material changes that should be corrected or made to improve the quality and clarity of the Rules.

¹ Section 91(2) of the NEL, section 295(2) of the NGL and section 243(2) of the NERL

1.3 Solution in proposed Rules

The Commission proposed Rules that 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 proposed Rules sought to correct 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 investment² (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).³

The proposed Rule addressed this drafting error (and, in turn, gave 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).

² 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>

³ The drafting error made in the Repex Rule does not extend to the RIT-D exemption introduced under the EFCS Rule. Accordingly, the proposed rule does not include any changes to the RIT-D arrangements in clause 5.17.3 of the NER.

2 Final Rule Determination - electricity

2.1 Commission's determination

In accordance with sections 102 and 103 of the NEL the Commission has made this final Rule determination and the final Rule in relation to the electricity Rule proposed by the Commission.

The *National Electricity Amendment (Minor Changes) Rule 2018 No. 4* is published with this final Rule determination. The final electricity Rule differs from the Rule proposed by the Commission with a few additional minor errors identified for correction since the Rule change process was commenced. The key differences between the proposed Rule and the final Rule are described in section 2.5 below.

Schedule 1 of the *National Electricity Amendment (Minor Changes) Rule 2018 No.4* will commence operation on 10 April 2018. Schedule 2 of the electricity Rule will commence on 1 July 2018, the commencement date for the rule it is correcting (Schedule 1 of the *National Electricity Amendment (Generating System Model Guidelines) Rule 2017*).

From 1 July 2016, the National Electricity Rules (NER), as amended from time to time, apply in the Northern Territory, subject to derogations set out in Regulations made under the NT legislation adopting the NEL.⁴ Under those Regulations, only certain parts of the NER have been adopted in the NT⁵. The final rule amends Chapters 3, 4, 5, 6B, 7 and 11 (which do not currently apply in the NT), and include amendments to Chapters 6 and 10, which are parts of the NER that currently apply in the Northern Territory. For this reason, the Commission has:

- for the purposes of applying the rule making test under section 88 of the National Electricity (NT) Law, regarded the reference in the NEO to the national electricity system, as a reference to all the local electricity systems as defined in the National Electricity Law; and
- for the purposes of section 88A of the National Electricity (NT) Law made a uniform rule.

2.2 Commission's considerations

In assessing the Rule Change Request the Commission considered:

- the Commission's powers under the NEL to make the Rule;

⁴ National Electricity (Northern Territory) (National Uniform Legislation) (Modifications) Regulations.

⁵ 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)).

- the Rule Change Proposal;
- the Commission’s analysis as to the ways in which the proposed Rule will or is likely to, contribute to the achievement of the National Electricity Objective (NEO); and
- the compatibility with the Australian Energy Market Operator's (AEMO) declared network functions.

2.3 Commission’s power to make the Rule

The Commission is satisfied that the final electricity Rule falls within the subject matter about which the Commission may make Rules.

The final electricity Rule falls within the matters set out in section 34 of the NEL as it relates to 34(1)(b) of the NEL under which the Commission may make Rules for or with respect to any matter or thing contemplated by the NEL, or which are necessary or expedient for the purposes of the NEL. The Commission considers the electricity Rule necessary and expedient for the purposes of the NEL.

2.4 Rule making test

Under section 88(1) 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 NEO. This is the decision making framework that the Commission must apply.

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.”

The Commission considers that the final electricity Rule will improve the quality of the NER in terms of accuracy and consistency. The Commission considers that the proposed electricity Rule is likely to contribute to the achievement of the NEO.

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

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 electricity Rule is compatible with the proper performance of AEMO's declared network functions. At present Victoria is the only relevant "adoptive jurisdiction". The Commission is satisfied that the final electricity Rule is compatible with AEMO's declared network functions because it makes only minor and non-material changes to the NER and does not change AEMO's functions in any material respect.

2.5 Differences between the proposed Rule and the final electricity Rule

The final electricity Rule differs from the proposed electricity Rule by way of the following minor amendments including:

- to clause 5.3.6(a1), where the reference "(a1)" has been substituted with "(a)(1)";
- to clause 5.3.6(a2), where the reference "(a2)" has been substituted with "(a)(2)";
and
- to clause 5.3.7(a), where the reference "S5.4.A(d)" has been substituted with "S5.4A(d)".

3 Final Rule Determination - gas

3.1 Commission's determination

In accordance with sections 311 and 313 of the NGL, the Commission makes this final Rule determination and the final Rule in relation to the gas Rule proposed by the Commission.

The *National Gas Amendment (Minor Changes) Rule 2018 No. 1* is published with this final Rule determination. The final gas Rule does not differ from the Rule proposed by the Commission. The key features of the gas Rule are described in section 5 below.

Schedule 1 of the *National Gas Amendment (Minor Changes) Rule 2018 No. 1* will commence operation on 10 April 2018, to align the consolidation of these changes with other amendments to the rules. Schedule 2 of the gas Rule will commence on 30 September 2018, the date from which the relevant provisions are classified as civil penalty provisions under the National Gas (South Australia)(Civil Penalties) Variation Regulations 2017.

3.2 Commission's considerations

In assessing the Rule change proposal the Commission considered:

- its powers under the NGL to make the Rule;
- the Rule change proposal;
- the ways in which the proposed Rule will or is likely to, contribute to the achievement of the National Gas Objective (NGO); and
- the compatibility with the Australian Energy Market Operator's (AEMO) declared system functions.

3.3 Commission's power to make the rule

The Commission is satisfied that the final gas Rule falls within the subject matter about which the Commission may make Rules.

The final gas Rule falls within the matters set out in section 74 of the NGL as under section 74(1)(b) of the NGL the Commission may make Rules for or with respect to any matter or thing contemplated by the NGL, or which are necessary or expedient for the purposes of the NGL. The Commission considers the Rule is necessary and expedient for the purposes of the NGL

3.4 Rule making test

Under section 291(1) of the NGL 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 NGO. This is the decision making framework that the Commission must apply.

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.”

The Commission considers that the final gas Rule will improve the quality of the NGR in terms of accuracy and consistency. The Commission considers that the proposed Rule is likely to contribute to the achievement of the NGO.

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

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 AEMO's declared system functions. At present Victoria is the only relevant "adoptive jurisdiction". The Commission is satisfied that the final gas Rule is compatible with AEMO's declared system functions because it makes only minor and non-material changes to the NGR and does not change AEMO's declared system functions in any material respect.

4 Final Rule Determination – retail

4.1 Commission’s determination

In accordance with section 259 of the NERL the Commission makes this final Rule determination and the final Rule in relation to the retail Rule proposed by the Commission.

The *National Energy Retail Amendment (Minor Changes) Rule 2018 No. 1* is published with this final Rule determination. The final retail Rule differs from the Rule proposed by the Commission with one additional minor error identified for correction since the Rule change process was commenced. The key differences between the proposed Rule and the final retail Rule are described in section 4.5 below.

Schedule 1 of the retail Rule will commence on 10 April 2018, to align the consolidation of these changes with other amendments to the rules. Schedule 2 of the retail Rule commences on 1 February 2019, the commencement date for the rule it is correcting (Schedule 2 of the *National Energy Retail Amendment (Strengthening protections for customers requiring life support equipment) Rule 2017*).

4.2 Commission’s considerations

In assessing the Rule change proposal the Commission considered:

- its powers under the NERL to make the Rule;
- the Rule change proposal;
- the Commission’s analysis as to the ways in which the proposed rule will or is likely to, contribute to the NERO; and
- the extent to which the proposed rule is compatible with the development and application of consumer protections.

4.3 Commission’s power to make the rule

The Commission is satisfied that the final retail Rule falls within the subject matter about which the Commission may make Rules.

The final retail Rule falls within the matters set out in section 237 of the NERL as under section 237(1)(b) of the NERL the Commission may make Rules for or with respect to any matter or thing contemplated by the NERL, or which are necessary or expedient for the purposes of the NGL. The Commission considers the Rule is necessary and expedient for the purposes of the NERL.

4.4 Rule making test

Under section 236(1) 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 NERO. This is the decision making framework that the Commission must apply.

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 must also, where relevant, satisfy itself that the rule passes the consumer protections test. This test is whether 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.⁶”

The Commission considers that the final retail Rule will improve the quality of the NERR in terms of accuracy and consistency. The Commission considers that the proposed Rule is likely to contribute to the achievement of the NERO and satisfy the consumer protections test.

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

4.5 Differences between the proposed Rule and the final retail Rule

The final retail Rule differs from the proposed retail Rule by way of one minor amendment with effect from 1 February 2019, in clause 23.2 of Schedule 1 of the NERR, in the definition of "**distributor planned interruption**", ": or" has been substituted with "; or".

⁶ Section 236(2)(b) of the NERL.

Abbreviations

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
NEL	National Electricity Law
NEM	National Electricity Market
NEO	National Electricity Objective
NER	National Electricity Rules
NERO	National energy retail objective
NERR	National Energy Retail Rules
NGL	National Gas Law
NGO	National Gas Objective
NGR	National Gas Rules
the Commission	Australian Energy Market Commission