



RULE

Australian Energy Market Commission

RULE PROPOSAL

NATIONAL ELECTRICITY AMENDMENT (MINOR CHANGES 2) RULE 2018

NATIONAL ENERGY RETAIL AMENDMENT (MINOR CHANGES 2) RULE 2018

PROPONENT

AEMC

4 OCTOBER 2018

INQUIRIES

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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 (NER) in accordance with the National Electricity Law (NEL), the National Energy Retail Rules (NERR) in accordance with the National Energy Retail Law (NERL) and the National Gas Rules in accordance with the National Gas Law (NGL).

The purpose of this function, among other things, is to improve and enhance the quality of the NER, the NERR and the NGR.

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 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 PROPOSED RULES

The *National Electricity Amendment (Minor Changes 2) Rule 2018* (electricity Rule) and the *National Energy Retail Amendment (Minor Changes 2) Rule 2018* (retail Rule) (together, the Proposed Rules) were proposed by the AEMC to correct minor errors that currently exist in the NER and to clarify an existing provision of the NERR. The Proposed Rules are attached.

In particular, the Proposed Rules:

1. Seek to correct a minor error in clause 8.12(a) of the NER:

An error was made in the definition of **jurisdictional regulator** in clause 8.12(a) of the NER. It was intended that this definition capture all applicable regulators in national energy market jurisdictions and the Northern Territory. The relevant Tasmanian regulator was unintentionally omitted from this definition. The electricity Rule addresses this drafting error by including an additional paragraph in this definition.

It is proposed that this drafting error be addressed by way of the minor rule change process on the basis that the amendment to correct the error is consistent with the policy intent of the Commission (as outlined in the Final Determination of the “Establishing values of customer reliability” rule change)¹ and will not impact upon the application of rule 8.12. Accordingly, the change is “non-material” in nature.

2. Seek to make a non-material change to the NERR for the purposes of clarification:

The retail Rule amends subrule 117(1) of the NERR. The proposed amendment to subrule 117(1) is intended to clarify the intent of that rule, namely that the de-energisation restrictions in rule 117 are only to apply if a retailer has the right to de-energise both the electricity and gas supply of a customer, and the customer has a dual fuel contract.² It is proposed that this be addressed by way of a minor rule change process on the basis that it is consistent with the policy intent of the rule (as agreed with the AER), and accordingly, the change is “non-material” in nature.

3. Correct other minor errors in the NER.

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 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 2) Rule 2018* and *Proposed National Energy Retail Amendment (Minor Changes 2) Rule 2018* (together, the Proposed Rules).

1 The final Rule Determination (dated 5 July 2018) and the National Electricity Amendment (Establishing Values of Customer Reliability) Rule 2018 No. 8 can be found at: <https://www.aemc.gov.au/rule-changes/establishing-values-of-customer-reliability>

2 The need for this clarification became apparent following an amendment to the definition of “dual fuel market contract” under the National Energy Retail Amendment (Preventing discounts on inflated energy rates) Rule 2018 No. 2.

4 EXPEDITED RULE MAKING PROCESS FOR PROPOSED RULES CTION TITLE

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 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 and NERR are minor or non-material in nature, the Commission considers that the Proposed Rules are unlikely to have a significant effect on the national electricity market, or otherwise on a market for energy. The Proposed Rules therefore fall within the definition of a non-controversial rule under section 87 of the NEL and section 235 of the NERL (as relevant).

On this basis, under section 96(1)(a) of the NEL and 252(1)(a) of the NERL (respectively), the Commission proposes that these Proposed Rules be consulted on and determined under an expedited process with a four week consultation period. The final determination on the Proposed Rules must be made within eight weeks of the date of initiation of the rule change process for these Proposed Rules (29 November 2018).³

³ 96(1) of the NEL; s 252(1) of the NERL.

5 THE ELECTRICITY AND ENERGY RETAIL OBJECTIVES 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 Energy Retail Objective

Under section 236 of the NERL, 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 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 Rules, if made, will improve the quality of the Rules in terms of accuracy, consistency and clarity. The Commission considers that the Proposed Rules are likely to contribute to the achievement of the NEO 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 wholesale and retail energy 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. Under those regulations, only certain parts of the NER have been adopted in the Northern Territory. As aspects of the electricity Rule relates to parts of the NER that apply in the Northern Territory, the Commission will assess the electricity Rule against

additional elements required by the Northern Territory legislation (referred to here as the NT Act). 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:

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

For the purposes of the electricity Rule, 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. 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.

The Commission has determined not to make a differential rule for the electricity Rule.

6 ANY RELEVANT MCE STATEMENTS OF POLICY PRINCIPLES

Under section 33 of the NEL 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.

7 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 Rules only seek to make minor or non-material changes to the NER, the Commission is satisfied the Proposed Rules are compatible with the proper performance of AEMO's declared network functions.

8 CONSULTATION UNDER THE EXPEDITED PROCESS

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

Written submissions are to be lodged online or by mail by 1 November 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 section 96 of the NEL and section 252 of the NERL.

The request must include reasons for the request, and must be lodged with the Commission by 18 October 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 proposals.⁴ The Commission publishes all submissions on its website subject to a claim of confidentiality.

All enquiries on this project should be addressed to Andre Dauwalder on (02) 8296 7800.

8.1 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 ERC0245. 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.

8.2 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: ERC0245.

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

⁴ This guideline is available on the Commission's website.

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.