



RULE

Australian Energy Market Commission

RULE PROPOSAL

**NATIONAL ELECTRICITY AMENDMENT
(MINOR CHANGES) RULE 2019**

**NATIONAL GAS AMENDMENT (MINOR
CHANGES) RULE 2019**

**NATIONAL ENERGY RETAIL
AMENDMENT (MINOR CHANGES)
RULE 2019**

PROPONENT

AEMC

10 OCTOBER 2019

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

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 (NGR) 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 (together the "energy rules").

This consultation paper has been prepared to facilitate public consultation on the rule change proposal and to seek stakeholder submissions.

This paper:

- provides a summary of, and background to, the rule change proposal
- outlines the process for making submissions.

1.1 Background

The Commission undertakes AEMC initiated rule change proposals to correct minor errors in the energy rules or make clarifications that are minor or non-material in nature. This rule change proposal includes proposed amendments identified by the Commission since the last minor changes rule in 2018.

1.2 Proposed rules

The *National Electricity Amendment (Minor Changes) Rule 2019* (electricity Rule), the *National Gas Amendment (Minor Changes) Rule 2019* (gas Rule) and the *National Energy Retail Amendment (Minor Changes) Rule 2019* (retail Rule) (together, the "Proposed Rules") are proposed by the AEMC to correct minor errors and make other non-material changes that currently exist in the NER, NERR and NGR, including to clarify the drafting of an existing provision of the NERR to make it consistent with changes made by the Estimated meter reads rule.¹The Proposed Rules are published with this rule proposal.

In particular, the Proposed Rules seek to:

1. correct minor errors and make non-material changes in the NER, including for example to correct cross-references in clauses 5A.D.1(a)(7) and 5A.D.1A(e) of the NER, and to insert an explanatory note at the end of clause 6A.7.3(a1)(6) to indicate that paragraph (6) of that provision does not apply in Victoria.²

1 AEMC, Estimated Meter Reads Final Rule Determination, 25 October 2018 found at: <https://www.aemc.gov.au/rule-changes/estimated-meter-reads>

2 This paragraph includes inertia shortfall events in a list of possible cost pass through events for the making of a transmission determination. An inertia shortfall event occurs where a Transmission Network Service Provider (TNSP) is required, as the Inertia Service Provider, to provide, or cease providing, inertia network services and meeting this requirement materially increases or decreases the TNSP's costs of providing prescribed transmission services. Clause 5.20B.4(a) of the NER provides that the Inertia Service Provider is the jurisdictional planning body for the relevant jurisdiction if there is more than one TNSP for the inertia sub-network. The Inertia Service Provider is AEMO in Victoria.

2. correct minor errors and make non-material changes in the NGR including for example to correct clause numbering in the definition of "capacity trading and auction costs" in rule 135C of the NGR.
3. 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 2019, National Energy Retail (Civil Penalties) Variation Regulations 2019 and the National Gas (South Australia) (Capacity Trading and Auctions) Variation Regulations 2018.
4. insert notes indicating new conduct provisions in the NGR as made by the National Gas (South Australia) (Capacity Trading and Auctions) Variation Regulations 2018.
5. correct minor errors and make non-material clarifications in the NERR, including for example as set out below.

Reviewing bills

Among other amendments the retail Rule, as proposed, amends clause 12.3 of the model terms and conditions for standard retail contracts in Schedule 1 of the NERR to make that provision consistent with subrule 29(5)(b) of the NERR. The proposed amendment to this clause aligns the standard retail contract terms and the retailer obligation as set-out in subrule 29(5) of the NERR, which requires retailers to review an energy bill upon a small customer request in accordance with that provision.

Subrule 29(5)(b) of the NERR as amended by the "Estimated meter reads" final rule which commenced operation on 1 February 2019 (Estimated meter reads rule)³ clarified that if a small customer requests, in reviewing an energy bill, that the meter be tested or meter reading checked, the test or check (as relevant) must be undertaken and the retailer may only recover the cost from the customer if the check or test shows that the meter or metering data was not faulty or incorrect. It is proposed this change be addressed by way of a minor rule change process on the basis that it simply aligns the model terms and conditions for standard retail contracts with the existing regulatory obligation in subrule 29(5)(b) of the NERR consistent with the policy intent of the Commission in making the Estimated meter reads rule. If the retail Rule is made as proposed, retailers will be required to vary their standard retail contracts accordingly by 19 March 2020. The Commission is proposing this delay to the implementation of this part of the retail Rule (if made) to allow retailers sufficient time to update their standard retail contracts and to align the proposed timing of other required changes to the model terms and conditions for standard retail contracts under the Reducing customers' switching times rule change, if a final rule is made consistent with the draft rule in that rule change project.⁴

Contents of bills

Under rule 25 of the NERR, retailers must include minimum specified contents in energy bills so that small customers can easily verify their bill.

3 National Energy Retail Amendment (Estimated meter reads) Rule 2018

4 AEMC, Reducing customers' switching times rule change, <https://www.aemc.gov.au/rule-changes/reducing-customers-switching-times>

Among the different requirements, subrule 25(1)(j) of the NERR states:

(1) A retailer must prepare a bill so that a small customer can easily verify that the bill conforms to their customer retail contract and must include the following particulars in a bill for a small customer:

(...)

(j) the values of meter readings (or, if applicable, estimations) at the start and end of the billing period;

The application of this subrule to different types of meters is subject to enduring transitional arrangements under rule 8 of Schedule 3, Part 4 of the NERR.⁵

The retail Rule, as proposed, amends subrule 25(1)(j) to include an explanatory note to indicate that it must be read in conjunction with these transitional arrangements.

1.3

Assessment framework

1.3.1

Achieving the NEO, NGO and NERO

National Electricity Objective

The Commission may only make a rule under the NEL if it is satisfied that the rule will, or is likely to, contribute to the achievement of the national electricity objective (NEO).⁶ This is the decision-making framework that the Commission must apply.

The NEO is:⁷

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.

Under the Northern Territory legislation adopting the NEL, the Commission must regard the reference in the NEO 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:⁸

- (a) the national electricity system
- (b) one or more, or all, of the local electricity systems⁹
- (c) all of the electricity systems referred to above.

⁵ Subrule 8(3) of that Part for example provides that where an interval meter is used to measure and record a small customer's consumption of electricity the retailer is not required to display the values of meter readings at the start and end of the billing period on that small customer's electricity bill where the metering data is not reasonably available.

⁶ Section 88 of the NEL.

⁷ Section 7 of the NEL.

⁸ Section 14A of Schedule 1 to the National Electricity (Northern Territory) (National Uniform Legislation) Act 2015 (referred to here as the NT Act), inserting section 88(2a) into the NEL as it applies in the Northern Territory.

⁹ These are specified Northern Territory systems, defined in schedule 2 of the NT Act.

For the purposes of the proposed electricity rule, the Commission proposes to regard the reference to the “national electricity system” in the NEO to be a reference to item (c) above.

National Gas Objective

The Commission may only make a rule under the NGL if it is satisfied that the rule will, or is likely to, contribute to the achievement of the national gas objective (NGO).¹⁰ This is the decision-making framework that the Commission must apply.

The NGO is:¹¹

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

The Commission may only make a rule under the NERL if it is satisfied that the rule will, or is likely to, contribute to the achievement of the national energy retail objective (NERO).¹² This is the decision-making framework that the Commission must apply.

The NERO is:¹³

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 is “compatible with the development and application of consumer protections for small customers, including (but not limited to) protections relating to hardship customers” (the “consumer protections test”).¹⁴

Where the consumer protections test is relevant in the making of a rule, the Commission must be satisfied that both the NERO test and the consumer protections test have been met.¹⁵ If the Commission is satisfied that one test, but not the other, has been met, the rule cannot be made.

There may be some overlap in the application of the two tests. For example, a rule that provides a new protection for small customers may also, but will not necessarily, promote the NERO.

The Commission considers that the Proposed Rules, if made, will improve the quality of the NER, NGR and NERR in terms of accuracy and consistency. The Commission considers that the Proposed Rules are likely to contribute to the achievement of the NEO, NGO, NERO (as relevant). As with previous minor rule changes initiated by the Commission, these minor

10 Section 291(1) of the NGL.

11 Section 23 of the NGL.

12 Section 236(1) of the NERL.

13 Section 13 of the NERL.

14 Section 236(2)(b) of the NERL.

15 That is, the legal tests set out in s. 236(1) and (2)(b) of the NERL.

corrections and non-material changes will make the NER, NGR and NERR clearer to stakeholders. This is important as the NER, NGR and NERR inform stakeholders of their rights and obligations in relation to participating in the NEM, gas markets and energy retail energy markets (respectively), and stakeholders rely on these rules in their commercial transactions.

1.3.2 Northern Territory rule-making requirements

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 NEL.¹⁶ Under those regulations, only certain parts of the NER have been adopted in the Northern Territory.¹⁷

As the proposed electricity rule, in part, relates to the parts of the NER that apply in the Northern Territory, the Commission is required to assess whether to make a uniform or differential rule (defined below) under Northern Territory legislation.

Under the NT Act, the Commission may make a differential rule if, having regard to any relevant MCE statement of policy principles, a different rule will, or is likely to, better contribute to the achievement of the NEO than a uniform rule.¹⁸

A differential rule is a rule that:

- varies in its term as between:
 - the national electricity system, and
 - one or more, or all, of the local electricity systems, or
- 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 s. 91(8) of the NEL.

A uniform rule is a rule that does not vary in its terms between the national electricity system and the local electricity systems, and has effect with respect to all of those systems.¹⁹

The Commission proposes to make a uniform rule.

1.3.3 Rule making in Western Australia

The versions of the NGL and NGR that apply in Western Australia differ from the NGL and NGR as they apply in other participating jurisdictions.²⁰

16 The regulations under the NT Act are the National Electricity (Northern Territory) (National Uniform Legislation) (Modifications) Regulations.

17 For the version of the NER that applies in the Northern Territory, refer to: www.aemc.gov.au/regulation/energy-rules/northern-territory-electricity-market-rules/current.

18 Section 14B of Schedule 1 to the NT Act, inserting section 88AA into the NEL as it applies in the Northern Territory.

19 Section 14 of Schedule 1 to the NT Act, inserting the definitions of "differential Rule" and "uniform Rule" into section 87 of the NEL as it applies in the Northern Territory.

20 Under the National Gas Access (WA) Act 2009 (WA Gas Act), a modified version of the NGL, known as the National Gas Access (Western Australia) Law (WA Gas Law), was adopted. Under the WA Gas Law, the National Gas Rules applying in Western Australia are version 1 of the uniform NGR as amended by the SA Minister under an adoption of amendments order made by the WA Minister for Energy and by the AEMC in accordance with its rule making power under section 74 of the WA Gas Law. See the AEMC website for further information, <https://www.aemc.gov.au/regulation/energy-rules/national-gas-rules/western-australia>

Accordingly, only limited parts of the gas Rule (if made as a final rule) will apply in Western Australia.²¹

1.3.4 Additional assessment requirements

Under s. 33 of the NEL, s. 73 of the NGL and s. 225 of the NERL, as applicable, the Commission must have regard to any relevant MCE statements of policy principles in making an energy rule. There are currently no MCE statements of policy principles.

Under s. 91(8) of the NEL and s. 295(4) of the NGL, as applicable, 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's) declared electricity network or gas system functions, respectively. Given the proposed electricity and gas rules only seek to make minor or non-material changes to the NER and the NGR, the Commission is satisfied that the proposed rules are compatible with the proper performance of AEMO's declared network/system functions.

²¹ These are as set out in Schedule 1 to the gas Rule and relate to minor changes to rules that apply in Western Australia pursuant to the WA Gas Act being Part 9, Division 5A of the NGR and rule 133 of the NGR.

2 PROCESS FOR THIS RULE CHANGE

2.1 The Commission's power to initiate the making of a rule

Under s. 91(2) of the NEL, s. 295(2) of the NGL and s. 243(2) of the NERL respectively:

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.

As the Proposed Rules outlined in chapter 1 makes changes that are minor and non-material in nature, the Commission considers that the Proposed Rules satisfy the requirements of s. 91(2) of the NEL, s. 295(2) of the NGL and s. 243(2) of the NERL, as applicable.

2.2 Treatment as a non-controversial rule change

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".

As the proposed changes to the NER are minor or non-material in nature, the Commission considers that the proposed electricity rule is unlikely to have a significant effect on the NEM. The proposed electricity rule therefore falls within the definition of a non-controversial rule under section 87 of the NEL.

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 NERR are minor or non-material in nature, the Commission considers that the proposed retail rule is unlikely to have a significant effect on a market for energy or the regulation of customer connection services. The proposed retail rule therefore falls within the definition of a non-controversial rule under section 235 of the NERL.

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".

As the proposed changes to the NGR are minor or non-material in nature, the Commission considers that the proposed gas rule is unlikely to have a significant effect on a market for gas or the regulation of pipeline services. The proposed gas rule therefore falls within the definition of a non-controversial rule under section 290 of the NGL.

Rule changes that are considered to be non-controversial may be processed under an expedited (faster) process under which there is only one round of consultation and the Commission is required to publish its final rule determination within eight weeks of commencing the rule change process under the uniform energy rules, and for changes to the NGR that apply to Western Australia within six weeks of the start of the rule change process.

The Commission has decided to use an expedited process to consider this rule change proposal provided that it does not receive any valid requests not to use the expedited process by 24 October 2019.²² To be valid, an objection should set out the reasons why the rule change proposal is likely to have a significant impact on:

- for the proposed electricity rule, the NEM
- for the proposed gas rule, a market for gas or the regulation of pipeline services
- for the retail rule, a market for energy or the regulation of customer connection services.

2.3 Key dates

Given the tightly defined nature of the issues, this rule change proposal is brief. Nevertheless, submissions are invited in relation to the matters identified above, and any other relevant issue.

The key dates for stakeholders in this process are as follows:

- Commencement of this rule change process: 10 October 2019
- Objections to an expedited process to be received by: 24 October 2019
- Submissions to the proposal to be received by: 7 November 2019
- Final decision to be published under an expedited process by: 21 November 2019.

The above timeline is to make a final decision within six weeks following commencement of this rule change process, consistent with the rule making process under the WA Gas Law,²³ rather than the statutory timetable of eight weeks under the uniform energy rules.

²² The Commission has published a notice under sections: 95 and 96 of the National Electricity Law; 303 and 304 of the National Gas Law; 251 and 252 of the National Energy Retail Law, to commence and assess this rule change proposal as a non-controversial rule.

²³ Section 304(1) of the WA Gas Law.

3 LODGING A SUBMISSION

The Commission invites requests not to make a rule under the expedited process and written submissions on this rule change proposal.

All enquiries on this project should be addressed to Ben Aitken on (02) 8296 7800.

3.1 Lodging a request not to make a rule under an expedited process

Written requests not to make a rule under the expedited process in s. 96 of the NEL s. 304 of the NGL or s. 252 of the NERL respectively, must include reasons for the request, and must be lodged with the Commission by 24 October 2019 in accordance with the process specified below.

3.2 Lodging a submission to this rule change proposal

Written submissions on the rule change request must be lodged with the Commission by 7 November 2019 in accordance with the process specified below.

Where practicable, submissions should be prepared in accordance with the Commission's guidelines for making written submissions on rule change requests.²⁴ The Commission publishes all submissions on its website, subject to accepted claims of confidentiality.

3.3 Process for lodging a request or submission

Please lodge submissions, or requests not to make a rule under the expedited process, online via the Commission's website, www.aemc.gov.au, using the "lodge a submission" function and selecting the project reference code ERC0269.

The request or submission must be on letterhead (if submitted on behalf of an organisation), signed and dated.

If you are not able to lodge submissions or requests online, please contact us, and we will provide instructions for alternative methods to lodge the submission or request.

²⁴ This guideline is available on the Commission's website, www.aemc.gov.au.

ABBREVIATIONS

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
Commission	See AEMC
MCE	Ministerial Council on Energy
NEL	National Electricity Law
NEM	National Electricity Market
NEO	National electricity objective
NER	National Electricity Rules
NERL	National Energy Retail Law
NERO	National energy retail objective
NERR	National Energy Retail Rules
NGL	National Gas Law
NGO	National gas objective
NGR	National Gas Rules