



Australian Energy Market Commission

RULE DETERMINATION

NATIONAL ELECTRICITY AMENDMENT (MINOR CHANGES 4) RULE 2020

NATIONAL GAS AMENDMENT (MINOR CHANGES 4) RULE 2020

PROPONENT

AEMC

17 DECEMBER 2020

RULE

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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SUMMARY

- 1 The Commission has determined:
 - under sections 102 and 103 of the National Electricity Law (NEL), to make the National Electricity Amendment (Minor Rule Change 4) Rule 2020 No. 20 (“electricity Rule”)
 - under sections 311 and 313 of the National Gas Law (NGL), to make the National Gas Amendment (Minor Rule Changes 4) Rule 2020 No. 5 (“gas Rule”).
- 2 The electricity Rule and the gas Rule (together, the “final rules”) correct minor errors and make non-material changes in the NEL and NGL (together, the “Rules”). The final rules were proposed by the Commission and aim to promote clarity of meaning and remove identified errors in the Rules.
- 3 The Commission considered that:
 - the electricity Rule will or is likely to contribute to the achievement of the National Electricity Objective (NEO) and therefore satisfies the rule making test under s. 88 of the NEL
 - gas Rule will or is likely to contribute to the achievement of the National Gas Objective (NGO) and therefore satisfies the rule making test under s. 291 of the NGO
- 4 The electricity Rule and gas Rule will commence on 17 December 2020.

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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.

On 29 October 2020, the Commission initiated the draft:

- electricity Rule under sections 95 and 96(1)(a) of the NEL
- gas Rule under sections 303 and 304(1)(a) of the NGL.

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

The Commission 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 26 November 2020. The Commission received no submissions on the Rule change proposal.

1.2 Rationale for the rule change request

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

The Rule change proposal was 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.

1.3 Solution proposed in the rule change request

The proposed rules (as now made as final) sought to:

- correct certain cross-referencing errors in the network planning and expansion framework in Part D of Chapter 5 of the NER- namely, address cross-referencing errors in clauses 5.16.2 and 5.16.4 of the NER;
- correct minor drafting errors in the NER and NGR, - for example, change the reference to 'clause' in clause 11.128.4(a) and (b) of the NER to refer to 'rule' and change an incorrect reference to 'and' rather than 'or' in subrule 666(2)(b)(i) of the NGR;
- correct a minor drafting error in the Minister made National Electricity Amendment(Retailer Reliability Obligation) Rule 2019 - namely, clause 4A.D.13(c) refers to minor amendments to the AER Opt-In Guidelines being able to be made without following the Rules consultation procedures, but paragraph (a) of that same provision

does not refer to substantive amendments having to be made in accordance with that consultation process; and

- correct punctuation and formatting errors, including colons and bolding.

In addition, in July 2020 the AEMC made the National Electricity Amendment (Delayed Implementation of Five Minute and Global Settlement) Rule 2020 (the Five minute final rule), which delayed the commencement of the implementation of the five minute settlement and global settlement and market reconciliation frameworks.

The Five minute final rule inadvertently did not include a transitional rule to provide that AEMO does not need to follow the rules consultation procedures when they review and amend relevant procedures to take into account the delayed commencement date under the Five minute final rule. The electricity Rule, as proposed, addresses this drafting error by inserting new clauses 11.103.2(a1) and 11.112.2(a1) in the NER, which clarifies that AEMO can update the relevant procedures to the extent required to take into account the Five minute final rule without following the rules consultation procedures.

This amendment gives effect to the Commission's policy intent when making the Five minute final rule.

1.4 Final rule determination - summary

The Commission has determined:

- under sections 102 and 103 of the NEL, to make the National Electricity Amendment (Minor Changes 4) Rule 2020 No. 20
- under sections 311 and 313 of the NGL, to make the National Gas Amendment (Minor Changes 4) Rule 2020 No. 5

The final rules correct minor errors and make non-material changes in the NER and NGR.

2 FINAL RULE DETERMINATION - ELECTRICITY

2.1 The Commission's final rule 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 4) Rule 2020 No. 20 ("final electricity Rule") is published with this final rule determination. The final electricity Rule does not differ from the rule originally proposed by the Commission.

A summary of the Commission's reasons for making this final rule determination are set out in section 2.3.

In relation to the final electricity Rule's application in the Northern Territory, the Commission has determined not to make a differential rule. See section 2.2 for the definition of a differential rule and the Commission's ability to make a differential rule.

This chapter outlines:

- the rule making test for changes to the NER
- the Commission's consideration of the final electricity Rule against the NEO
- the Commission's consideration in deciding whether to make a uniform or differential rule in accordance with the Northern Territory legislation adopting the NEL
- a summary of the Commission's reasons in deciding to make the final electricity Rule.

Further information on the legal requirements for making this final rule determination is set out in Appendix A.

2.2 Rule making test

2.2.1 Achieving the NEO

Under 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).¹ This is the decision making framework that the Commission must apply.

The NEO is:²

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 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").³

1 Section 88 of the NEL.

2 Section 7 of the NEL.

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

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.⁴ 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.

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 rule:⁵

1. the national electricity system
2. one or more, or all, of the local electricity systems⁶
3. all of the electricity systems referred to above.

For the purposes of the final electricity Rule, the Commission regards the reference to the “national electricity system” in the NEO to be a reference to item (1) above

2.3 Summary of reasons

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

As with previous similar rule changes initiated by the Commission, these minor corrections and non-material changes make the NER clearer to stakeholders. This is important as the NER informs stakeholders of their rights and obligations for participating in the NEM.

Under s. 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 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.

Northern Territory rule making requirements

The NER, as amended from time to time, applies in the Northern Territory, subject to derogations set out in regulations made under the Northern Territory legislation adopting the NEL.⁷ Under those regulations, only certain parts of the NER have been adopted in the Northern Territory.⁸

⁴ That is, the legal tests set out in s. 236(1) and (2)(b) of the NERL.

⁵ 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.

⁶ These are specified Northern Territory systems, defined in schedule 2 of the NT Act.

⁷ The regulations under the NT Act are the National Electricity (Northern Territory) (National Uniform Legislation) (Modifications) Regulations.

⁸ For the version of the NER that applies in the Northern Territory, refer to:

As the final 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.⁹ A differential rule is a rule that:

- varies in its terms 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.¹⁰

The Commission has made a uniform rule.

www.aemc.gov.au/regulation/energyrules/northernterritory-electricity-market-rules/current.

⁹ Section 14B of Schedule 1 to the NT Act, inserting section 88AA into the NEL as it applies in the Northern Territory.

¹⁰ 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.

3 FINAL RULE DETERMINATION - GAS

3.1 The Commission's final rule 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 2) Rule 2020 No. 3 ("final gas Rule") is published with this final rule determination. The final gas Rule does not differ from the rule originally proposed by the Commission.

A summary of the Commission's reasons for making this final rule determination are set out in section 3.3.

This chapter outlines:

- the rule making test for changes to the NGR
- a summary of the Commission's reasons in deciding to make the final gas Rule
- the Commission's consideration of the gas Rule's application in Western Australia
- the Commission's consideration of the final gas Rule against the NGO

Further information on the legal requirements for making this final rule determination is set out in Appendix A.

3.2 Rule making test

3.2.1 Achieving the NGO

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 gas objective (NGO).¹¹ This is the decision making framework that the Commission must apply.

The NGO is:¹²

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, safety, reliability and security of supply of natural gas.

3.2.2 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.¹³

The final gas Rule is amending a part of the NGR that does not apply in Western Australia. Accordingly, the gas Rule will not apply in Western Australia.

¹¹ Section 291(1) of the NGL.

¹² Section 23 of the NGL.

¹³ 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>.

3.3 Summary of reasons

The Commission considers that the final gas Rule will improve the quality of the NGR in terms of accuracy and consistency and is likely to contribute to the achievement of the NGO. As with previous similar rule changes initiated by the Commission, these minor corrections and non-material changes make the NGR clearer to stakeholders. This is important as the NGR informs stakeholders of their rights and obligations for participating in the natural gas markets.

Under s. 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 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 gas Rule is compatible with AEMO's declared network functions because it makes only minor and non-material changes to the NGR and does not change AEMO's functions in any material respect.

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
NEO	National electricity objective
NGL	National Gas Law
NGO	National gas objective

A LEGAL REQUIREMENTS UNDER THE NEL AND NGL

This appendix sets out the relevant legal requirements under the NEL and NGL for the AEMC to make this final rule determination.

A.1 Final rule determination

In accordance with s. 102 and 103 of the NEL and 311 and 313 of the NGL the Commission has made this final rule determination in relation to the final rules.

The Commission's reasons for making this final rule determination are set out in sections 2.3 and 3.3.

A copy of the final rules are attached to and published with this final rule determination. Their key features are described in section 1.3.

A.2 Power to make the rule

The Commission is satisfied that the final rules fall within the subject matter about which the Commission may make rules.

The electricity Rule falls within the matters set out in s. 34 of the NEL, as under s. 34(1)(b) of the NEL 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 is necessary and expedient for the purposes of the NEL.

Further, the gas Rule falls within the matters set out in s. 74 of the NGL, as under s. 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 purpose of the NGL. The Commission considers the gas Rule is necessary and expedient for the purposes of the NGL.

A.3 Commission's considerations

In assessing the rule change request the Commission considered:

- it's powers under the NEL and NGL to make the rule
- the Rule change proposal
- the Commission's analysis as to the ways in which the final rules will or is likely to, contribute to the NEO and NGO.

There is no relevant Ministerial Council on Energy (MCE) statement of policy principles for this rule change request.¹⁴

¹⁴ Under s. 33 of the NEL and 73 of the NGL the AEMC must have regard to any relevant MCE statement of policy principles in making a rule. The MCE is referenced in the AEMC's governing legislation and is a legally enduring body comprising the Federal, State and Territory Ministers responsible for energy. On 1 July 2011, the MCE was amalgamated with the Ministerial Council on Mineral and Petroleum Resources. The amalgamated council is now called the COAG Energy Council.

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 Australian Energy Market Operator (AEMO)’s declared network functions.¹⁵ The [final rules are compatible with AEMO’s declared network functions because they make only minor and non material changes to the NER and do not change AEMO’s functions in any material respect.

A.4 Civil penalties

The Commission cannot create new civil penalty provisions. However, it may recommend to the COAG Energy Council that new or existing provisions of the NER and NGR be classified as civil penalty provisions.

The final rules do not amend any clauses that are currently classified as civil penalty provisions under the NEL or National Electricity (South Australia) Regulations or NGL or National Gas (South Australia) Regulations. The Commission does not propose to recommend to the COAG Energy Council that any of the proposed amendments made by the final rule be classified as civil penalty provisions.

A.5 Conduct provisions

The Commission cannot create new conduct provisions. However, it may recommend to the COAG Energy Council that new or existing provisions of the NER and NGR be classified as conduct provisions.

The final rules do not amend any rules that are currently classified as conduct provisions under the NEL or National Electricity (South Australia) Regulations or NGL or National Gas (South Australia) Regulations. The Commission does not propose to recommend to the COAG Energy Council that any of the proposed amendments made by the final rule be classified as conduct provisions.

¹⁵ Section 91(8) of the NEL and 295(4) of the NGL.