



Australian Energy Market Commission

RULE DETERMINATION

NATIONAL ENERGY RETAIL AMENDMENT (DELAYING IMPLEMENTATION OF THE AER BILLING GUIDELINE) RULE 2022

PROPONENT

Australian Energy Council

13 OCTOBER 2022

RULE

INQUIRIES

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ABOUT THE AEMC

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

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SUMMARY

- 1 The Australian Energy Market Commission (the Commission) has decided to make a final rule to give retailers a longer time period to comply with the new provisions in the Australian Energy Regulator (AER)'s Billing guideline, in response to the rule change request submitted by the Australian Energy Council (AEC). The final rule will change the implementation date for those new provisions from 31 March 2023 to 30 September 2023, although retailers may choose to use the new provisions before this time. The final rule will commence on 20 October 2022.
- 2 The Commission has considered stakeholder feedback in making its decision and encourages retailers to adopt the new provisions of the Billing guideline early where possible.

CONTENTS

| | | |
|----------|--|----------|
| 1 | The Commission has made a final determination | 1 |
| 1.1 | What change was requested and why? | 1 |
| 1.2 | What does the final rule do? | 1 |
| 1.3 | How did stakeholder feedback shape this decision? | 2 |
| 2 | The Determination will contribute to the energy retail objective | 3 |
| 2.1 | The Commission's rule-making test | 3 |
| 2.2 | Outcomes for consumers | 4 |
| 2.3 | Implementation considerations | 4 |
| | Abbreviations | 6 |
| | APPENDICES | |
| A | Rule making process | 7 |
| A.1 | The proponent proposed a rule to delay the implementation of the Billing guideline | 7 |
| A.2 | We used an expedited process for this rule change | 7 |
| B | Legal requirements under the NERL | 9 |
| B.1 | Final rule determination and final rule | 9 |
| B.2 | Power to make the rule | 9 |
| B.3 | Commission's considerations | 9 |
| B.4 | Civil penalty provisions and conduct provisions | 9 |

1 THE COMMISSION HAS MADE A FINAL DETERMINATION

This final determination is to make a final rule in response to a rule change request submitted by the AEC about the AER Billing guideline.

1.1 What change was requested and why?

The rule change proposed by the AEC was to delay the implementation of the new provisions of the Billing guideline by six months from 31 March 2023 to 30 September 2023. The delay was sought to reduce implementation costs, which were benchmarked to be approximately \$2.7 million per retailer by consultants engaged by the AEC.¹

The AEC considered a six-month delay would allow retailers to optimise their implementation schedule and should reduce implementation costs. In turn, the AER considered this would reduce costs being passed through to consumers, at a time when there are cost of living pressures.

The AER has provided a letter that states its support for the AEC's extension.²

1.2 What does the final rule do?

The final determination is to make the final rule as proposed by the AEC, extending the final date for retailers to comply with the new provisions of the AER's Billing guideline by six months, from 31 March 2023 to **30 September 2023**. Retailers may adopt the Billing guideline earlier if they wish. Prior to complying with these new provisions, retailers must comply with existing bill content requirements, so all consumers retain billing protections.

The Commission has made this rule using the expedited rule change process, on the basis that the changes are non-controversial as defined in the NERL. More detailed information on the rule making process is in appendix A, and more information on the legal requirements for making this rule is in appendix B.

The Commission's reasons for making this final determination are set out in chapter 2.

The AER is consulting on a new version of the guideline to provide clarity on the better offer and self-read information requirements and provide flexibility to pass on the benefits of the Commission's rule change to retailers.³

¹ Australian Energy Council, *Rule change request*, p.3.

² AER Letter, 4 August 2022, available at: <https://www.aemc.gov.au/rule-changes/delayingimplementation-aer-billing-guideline>

³ AER, *Better bills guideline - version 2*, 21 September 2022, available at: <https://www.aer.gov.au/retail-markets/guidelines-reviews/better-bills-guideline-version-2>. See pages 3 and 5 for the proposed changes to accommodate this rule change.

1.3 How did stakeholder feedback shape this decision?

The Commission received twelve submissions on this rule change request.⁴ The submissions were largely supportive of delaying the implementation date. The Public Interest Advocacy Centre (PIAC) expressed concern that the delayed implementation date could delay benefits to consumers. It instead suggested extending the implementation deadline for specific parts of the guideline, or on a case by case basis.⁵ Some retailers, such as Ergon Retail, noted that they had “invested significant cost and diverted resources” to comply with the initial implementation date of 31 March 2023.⁶ Ergon believes a delay in the implementation date would add cost to the project, but it supports a deferral if early adoption is still permitted in the Billing guideline.⁷ Other retailers stated they were on track to implement the new Billing guideline as early as December 2022 but that the delayed implementation will give greater flexibility for changes resulting from user testing.⁸

Some retailers noted that as well as a period of market volatility, there are numerous reforms being managed that will be coming into effect over the next 24 months.⁹

The Commission notes that the Billing guideline allows for early adoption of the new provisions (see Part 1, paragraph 5). The availability of early adoption should mitigate the concerns raised by PIAC and allow retailers who have already invested to implement the guideline to do so as soon as practicable. However, the delayed implementation date will assist retailers who have faced challenges with contractors and other unforeseen market impacts.¹⁰ The Commission agrees that early adoption is a valuable option for retailers and their customers, and encourages early adoption where possible, in line with paragraph 5 of the Billing guideline.¹¹

4 Submissions to the consultation paper were provided by: Alinta Energy, Aurora Energy, Australian Energy Council, AGL Energy, Energy Australia, Ergon Energy Retail, Momentum Energy, Origin, Powershop, Public Interest Advocacy Centre, Red Energy and Lumo Energy, and Simply Energy. All submissions are available on the AEMC website.

5 PIAC, submission to the consultation paper, pp. 1-2.

6 Ergon Energy Retail, submission to the consultation paper, p. 1.

7 Ibid.

8 Energy Australia, submission to the consultation paper, p. 2.

9 Alinta Energy, submission to the consultation paper p. 1; Momentum Energy, submission to the consultation paper, p. 2.

10 Energy Australia, p. 1.

11 AER, *Better bills guideline*, March 2022, available at: <https://www.aer.gov.au/system/files/AER%20-%20Better%20Bills%20Guideline%20-%20March%202022.pdf>. The draft of version 2 of the guideline retains this flexibility.

2 THE DETERMINATION WILL CONTRIBUTE TO THE ENERGY RETAIL OBJECTIVE

2.1 The Commission's rule-making test

The Commission may only make a rule amending the NERR 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.

We used two criteria to help us apply the legal framework to our decision

The Commission must assess the problem raised in the rule change request, and the proposed rule, against the legal framework. We identified the following criteria to help assess whether the proposed approach or alternative options (for example, not extending the implementation time frame) are more likely to promote the NERO:

- **Outcomes for consumers:** The Commission considered the extent to which this rule change could impact outcomes for small customers due to delays to certain new protections relating to billing.
- **Implementation considerations:** The Commission considered whether delaying implementation of the new provisions in the Billing guideline would allow retailers to reduce costs and contribute to cost savings being passed on to consumers.

Our reasons for choosing these criteria are set out in section 1.3.2 of the consultation paper. No stakeholders raised objections to these criteria in their submissions to the consultation paper.

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.

Having regard to the issues raised in the rule change request and during consultation, the Commission is satisfied that the final rule will, or is likely to, contribute to the achievement of the NERO for the reasons outlined below.

2.2 Outcomes for consumers

The Commission considered whether delaying the implementation date for the new provisions in the Billing guideline could lead to adverse outcomes for consumers, resulting from delays to the roll-out of those new protections. We note the considerable work that the AER has done on the Billing guideline to date and its letter of support relating to delaying the implementation date.¹⁶ Additionally, the Commission considers that early adoption of the new provisions of the Billing guideline remains preferable where retailers are in a position to do so, and that changing the back-stop implementation date does not prevent this as per Part 1 of the Billing guideline.¹⁷

Until a retailer applies the new provisions of the Billing guideline,¹⁸ the existing billing requirements apply,¹⁹ giving consumers continued billing protections through the transition period. Part 2 of the guideline applies standard bill content protections based on the provisions that were in the NERR prior to the Commission's rule change requiring the AER to develop the Billing guideline.²⁰ Therefore, consumers remain protected by provisions on bill contents before the final date for implementation of the new requirements in the Billing guideline.

Given the existing billing protections remain until the new guidelines are implemented, the potential for early adoption of the new guideline provisions, and taking into account the AER's letter of support for the extended implementation time period, the Commission considers that the rule change will not lead to adverse outcomes for consumers.

2.3 Implementation considerations

The Commission considered implementation matters in making the Final Determination. The rule change request was submitted due in large part to the cost to retailers of implementing the Billing guideline, which would flow through to consumers.²¹

Consultants engaged by the AEC benchmarked the cost to implement the guideline to be approximately \$2.7 million per retailer.²² The AEC considered that these costs could be reduced, hence reducing costs for consumers, if retailers had longer to implement the new provisions of the guideline.²³

16 AER Letter, 4 August 2022, available at: <https://www.aemc.gov.au/rule-changes/delayingimplementation-aer-billing-guideline>

17 AER, *Better bills guideline*.

18 *Ibid*, Part 3-4.

19 *Ibid*, Part 2.

20 RRC0036, 18 March 2021. Available at: <https://www.aemc.gov.au/rule-changes/bill-contents-and-billing-requirements>

21 Australian Energy Council, *Rule change request*, p. 1.

22 *Ibid*, p.3.

23 *Ibid*, p. 4.

Further, in their submissions, some retailers noted they are implementing a number of reforms, in addition to the changes to bills required by the Billing guideline.²⁴ Given these existing pressures coupled with the market suspension that occurred in June 2022 and continued market volatility, and the letter of support from the AER that the cost of delay is limited, the Commission considers that delaying the implementation date of the new provisions of the Billing guideline could reduce the implementation costs to retailers and any flow-on impacts to consumers.

²⁴ Alinta Energy, p. 1; Momentum Energy, p. 2.

ABBREVIATIONS

| | |
|------------|-------------------------------------|
| AEMC | Australian Energy Market Commission |
| AEC | Australian Energy Council |
| AER | Australian Energy Regulator |
| Commission | See AEMC |
| NERL | National Energy Retail Law |
| NERO | National energy retail objective |
| NERR | National energy retail rules |

A RULE MAKING PROCESS

An expedited rule change request includes the following stages:

- a proponent submits a rule change request
- the Commission considers whether the rule change request is as non-controversial or urgent²⁵ in accordance with the NERL such that it could be processed on an expedited basis
- the Commission commences the rule change process by publishing a consultation paper and seeking stakeholder feedback
- stakeholders may object to the use of the expedited process, and the Commission considers any such objections
- stakeholders lodge submissions on the consultation paper and engage through other channels to make their views known to the Commission's project team
- the Commission considers submissions and publishes a final determination and final rule (if relevant).

A.1 The proponent proposed a rule to delay the implementation of the Billing guideline

On 30 June 2022, the Australian Energy Council made a request to the Commission to make a rule to delay the implementation date of the new provisions in the Billing guidelines.

AEC also requested that the rule change request be considered a request for a non-controversial rule²⁶ and, as a result, be assessed under an expedited rule change process.

A.2 We used an expedited process for this rule change

On 18 August 2022, the Commission published a notice advising of its commencement of the rule making process and consultation in respect of the rule change request.²⁷ A consultation paper identifying specific issues for consultation was also published. Submissions closed on 15 September 2022.

The Commission considered that the rule change request was a request for a non-controversial rule as defined in s. 235 of the NERL.²⁸ Accordingly, the Commission commenced an expedited rule change process, subject to any written requests not to do so. The closing date for receipt of written requests was 1 September 2022.

25 s. 252 of the NERL

26 Section 252 of the NERL

27 This notice was published under s. 251 of the NERL.

28 This section defines a non-controversial rule" as "a Rule that is unlikely to have a significant effect on a market for energy or the regulation of customer connection services".

We did not receive any written requests to not carry out an expedited rule change process. Accordingly, the Commission considered the rule change request under an expedited process.²⁹

The Commission received eleven submissions on the rule change request.³⁰ The Commission considered all issues relating to this request that stakeholders raised in their submissions, and responded to those issues in this final rule determination.

²⁹ Section 252 of the NERL.

³⁰ These are published on the [project page](#) for this rule change on the Commission's website.

B LEGAL REQUIREMENTS UNDER THE NERL

This appendix sets out the relevant legal requirements under the NERL for the Commission to make this final rule determination.

B.1 Final rule determination and final rule

In accordance with sections 252 and 259 of the NERL, the Commission has made this final rule determination in relation to the rule proposed by the AEC.

The Commission's reasons for making this final rule determination are set out in chapter 2.

In accordance with section 261 of the NERL, the Commission has made a final rule. A copy of the final rule is attached to and published with this final rule determination. Its key features are described in section 1.2.

B.2 Power to make the rule

The Commission is satisfied that the final rule falls within the subject matter about which the Commission may make rules. The final rule falls within s. 237 of the NERL as it relates to regulating the provision of energy services to customers, and to the activities of persons involved in the sale and supply of energy to customers (s. 237(1)(a) of the NERL).

B.3 Commission's considerations

In assessing the rule change request the Commission considered:

- its powers under the NERL to make the rule
- the rule change request
- submissions received during consultation
- the ways in which the proposed rule will or is likely to, contribute to the NERO; and
- the extent to which the rule is compatible with the development and application of consumer protections for small customers.

There is no relevant Ministerial Council on Energy (MCE) statement of policy principles for this rule change request.³¹

B.4 Civil penalty provisions and conduct provisions

The Commission cannot create new civil penalty provisions or conduct provisions. However, it may (jointly with the AER) recommend to the Energy Ministers' Meeting that new or existing provisions of the NERL be classified as civil penalty provisions or conduct provisions.

The final rule does not amend any clauses that are currently classified as civil penalty provisions or conduct provisions under the National Energy Retail Regulations.

³¹ Under s. 225 of the NERL the Commission must have regard to any relevant MCE statement of policy principles in making a rule. The MCE is referenced in the Commission's governing legislation and is a legally enduring body comprising the Federal, State and Territory Ministers responsible for energy. It is now referred to as the Energy Ministers' Meeting.

The Commission does not propose to recommend to the Energy Ministers' Meeting that any of the amendments made by the rule be classified as civil penalty provisions or conduct provisions.