



Australian Energy Market Commission

## **DRAFT RULE DETERMINATION**

# HARMONISING THE NATIONAL ENERGY RULES WITH THE UPDATED NATIONAL ENERGY OBJECTIVES (ELECTRICITY, GAS AND RETAIL) RULE CHANGE

Energy senior officials, on behalf of the Ministerial Council on Energy (as constituted by the Energy Ministers Sub-Group)

26 OCTOBER 2023

**DETERMINATION**

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Reference: ERC0362

## ABOUT THE AEMC

The AEMC reports to the energy ministers. We have two functions. We make and amend the national electricity, gas and energy retail rules and conduct independent reviews for the energy ministers.

## ACKNOWLEDGEMENT OF COUNTRY

The AEMC acknowledges and shows respect for the traditional custodians of the many different lands across Australia on which we all live and work. We pay respect to all Elders past and present and the continuing connection of Aboriginal and Torres Strait Islander peoples to Country. The AEMC office is located on the land traditionally owned by the Gadigal people of the Eora nation.

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## SUMMARY

- 1 The Commission has made more preferable draft rules that harmonise the national energy rules with the updated national energy objectives. This is in response to two rule change requests submitted by energy senior officials on behalf of the Ministerial Council on Energy (as constituted by the Energy Ministers Sub-group).
- 2 Our draft rules amend a number of provisions in the national electricity rules (NER) and national gas rules (NGR) to align with the updated national electricity objective (NEO) and national gas objective (NGO), which now include consideration of greenhouse gas emissions. The draft rules would ensure these changes to the NEO and NGO apply through the NER and NGR in a clear and consistent way. The draft electricity rule adds 'changes in Australia's greenhouse gas emissions' as a class of market benefits to be considered as part of the Integrated System Plan (ISP) and the Regulatory Investment Test for Transmission and Distribution (RIT-T and RIT-D). The draft electricity and gas rules also enable network and pipeline operators to include expenditure that contributes to achieving emissions reduction targets in their revenue proposals and access arrangement proposals.
- 3 The draft rules also provide for streamlined consultation processes for the AER guidelines that require updating as a result of the change to the energy objectives:
  - The AER would be able to undertake a single, consolidated consultation process using the distribution consultation procedures for minor updates required to NER and NGR guidelines, and all updates to guidelines under the national energy retail rules (NERR), as a result of the change to the energy objectives.
  - The AER would also be able to undertake a consolidated consultation process on five network planning guidelines and instruments using the standard rules consultation procedures, with two rounds of consultation, in time for the 2026 ISP.
  - For NER and NGR guideline updates that are not minor, other than the network planning instruments noted above, the AER would consult using the consultation processes specified in the rules for the relevant guidelines, either individually or in groups.
- 4 Our draft determination proposes the final rules (if made) would commence on 1 February 2024.
- 5 We are seeking feedback on our draft determination and rules by **7 December 2023**.

### The draft rules would support the incorporation of emissions reduction in the energy regulatory framework

- 6 The national energy laws have been amended to incorporate emissions reduction into the national energy objectives. This change brings the achievement of emissions reduction targets set by jurisdictions for reducing Australia's greenhouse gas emissions (or other jurisdictional targets that would contribute to reducing emissions) within scope of the national energy framework. It means emissions reduction is now a relevant consideration in market bodies' decision-making, as well as certain activities of market participants regulated under the national energy rules.

- 7 The draft rules seek to ensure consistent application of the updated objectives throughout the national energy rules. In a number of instances the existing rules do not refer to the national energy objectives but instead refer to particular components of the objectives. As a result, a change to the objectives will not automatically flow through to these provisions in the rules. The draft rules aim to remove these inconsistencies between the current rules and updated energy objectives to ensure the changes to the objectives take full effect.
- 8 The draft rules would promote predictability, stability and transparency in the application of the updated energy objectives throughout the national energy rules. The draft rules would ensure the treatment of emissions reduction in processes such as the RIT and expenditure proposals is transparent and replicable. Without these changes, the market participants and the AER would be required to factor emissions reduction into decision-making on a case by case basis. Such an approach may result in an unpredictable regulatory framework and would increase administrative burden for market participants and market bodies.
- 9 The draft rules would also support emissions reduction to a greater extent than no change because they clarify how emissions reduction is expected to be factored into decision-making processes established under the national energy rules.
- 10 The draft rules make changes to the majority of clauses identified for consideration in the rule change requests. In addition to the clauses identified in the rule change requests, the draft rules also include:
- changes to the NGR to clarify operating expenditure can include expenditure that contributes to emissions reduction and that existing exemptions to the prohibition against increasing charges to subsidise development also include consideration of emissions reduction
  - amendments to additional clauses in the NER that refer to net economic benefit, which the draft rule amends consistent with changes to the RIT-T and RIT-D general principles
  - transitional arrangements for RIT projects underway, to align application of the updated NEO with the new NER to certain projects
  - an additional process for the AER to update its network planning guidelines under one consolidated process using the standard rules consultation procedures.
- The additional changes to those proposed in the rule change requests make these more preferable draft rules and are discussed further in section 2.3.5.

## The Commission has considered stakeholder feedback in making its decision

- 11 Stakeholder input and feedback helped to shape our draft determination. There was strong and consistent support across stakeholder groups for the intent of the harmonising rule change and to amend the areas identified in the consultation paper as potentially requiring change. In particular, there was broad stakeholder support to:

- harmonise identified sections of the network planning and investment framework with the updated energy objectives, such as including emissions reduction as a class of market benefit in the ISP and RITs
- harmonise identified sections of the network and pipeline expenditure provisions with the updated energy objectives, so that network and pipeline operators could include expenditure to reduce emissions in their revenue proposals and access arrangement proposals
- enable the AER to run a single, consolidated consultation process on minor changes to its guidelines required as a result of the updated energy objectives.

12 The Commission’s decision-making was aided by this consistent support across diverse stakeholder groups. Engagement by stakeholders on detailed issues was also important in informing our draft determination.

13 Energy ministers’ public communication around the intent of the updated energy objectives, particularly the second reading speech of the Emissions Act, provided context as to the intent of the changes to the energy objectives. The intent of the draft determination is to make changes that are in the long term interests of consumers, while remaining aligned with the strategic direction set by energy ministers.

14 The draft rule and determination also builds on the recommendations made in our *Transmission planning and investment review (TPIR) — Stage 3 final report*. Following broad stakeholder consultation, this review recommended a rule change process to harmonise the network planning and investment framework with the updated energy objectives.

## We assessed our draft rules against four assessment criteria using regulatory impact analysis and stakeholder feedback

15 The Commission has considered the NEO, NGO and National Energy Retail Objective (NERO) and the issues raised in the rule change request and has assessed the draft rules against four assessment criteria outlined below. We gathered stakeholder feedback and undertook regulatory impact analysis in relation to these criteria.

16 The more preferable draft rules would contribute to achieving the NEO, NGO and NERO by:

- **Contributing to achieving government targets for reducing Australia’s greenhouse gas emissions:** The draft rules would support emissions reduction to a greater extent than no change because they clarify how emissions reduction is expected to be factored into decision-making processes established under the national energy rules such as the RIT and the revenue determination and access arrangement decision processes for network service providers and for gas pipeline operators.
- **Promoting principles of market efficiency:** The draft rules would improve transparency and clarity in how the updated energy objectives apply to decision-making processes established under the national energy rules. Improved clarity would have a number of efficiency benefits, including:
  - improving allocative efficiency for emissions reduction activities over a planning/investment timeframe

- sharpening incentives for market participants to contribute to the achievement of emissions reduction targets
- improving information transparency and removing information asymmetries.
- **Achieving successful and balanced implementation:** The draft rules would balance the need for timely reform driven by the broader regulatory context with the impact of the change on processes underway. Timely reform is required to resolve potential inconsistencies between the national energy rules and the updated national energy objectives.
- **Promoting good regulatory practice:** The draft rules would promote predictability, stability and transparency in the application of the updated energy objectives throughout the national energy rules. The draft rules would ensure the treatment of emissions reduction in processes such as the RIT and expenditure proposals is transparent and replicable.

## The draft rules would harmonise the energy rules with the updated energy objectives

17 The draft rules amend sections of the rules that explicitly reflected the previous national energy objectives to also include consideration of emissions reduction, in accordance with the updated energy objectives. Specifically, the more preferable draft rules do this by:

- Amending the NER to align the network planning and investment framework with the updated NEO, including adding emissions reduction as a class of market benefit to be considered in the ISP and RITs (see chapter 3 for more detail).
- Amending the NER and NGR to enable network and pipeline operators to include expenditure that relates to emissions reduction in revenue proposals and access arrangement proposals (see chapter 4 for more detail).
- Amending the NER, NGR and NERR to allow for consolidated consultation processes on changes to AER guidelines to reflect the updated energy objectives (see chapter 5 for more detail).

## The final rules would come into effect immediately

18 The final rules (if made) would come into effect immediately after they are made, expected to be 1 February 2024. Immediate implementation is important to ensure inconsistencies between the updated energy objectives and the current rules, identified through this rule change process, are resolved as quickly as possible.

19 Transitional provisions are included for RIT projects underway to align the application of the updated energy objectives with the application of the new rules for specific projects.

## HOW TO MAKE A SUBMISSION

### We encourage you to make a submission

Stakeholders can help shape the solution by participating in the rule change process. Engaging with stakeholders helps us understand the potential impacts of our decisions and contributes to well-informed, high quality rule changes.

### How to make a written submission

**Format:** You may use your own format (for example a letter).

**Due date:** Written submissions responding to this draft determination and rules must be lodged with the Commission by 7 December 2023.

**How to make a submission:** Go to the Commission's website, [www.aemc.gov.au](http://www.aemc.gov.au), find the "lodge a submission" function under the "Contact Us" tab, and select the project reference code **ERC0362**.<sup>1</sup>

Tips for making submissions on rule change requests are available on our website.<sup>2</sup>

**Publication:** The Commission publishes submissions on its website. However, we will not publish parts of a submission that we agree are confidential, or that we consider inappropriate (for example offensive or defamatory content, or content that is likely to infringe intellectual property rights).<sup>3</sup>

### Next steps and opportunities for engagement

There are other opportunities for you to engage with us, such as one-on-one discussions or industry briefing sessions.

You can also request the Commission to hold a public hearing in relation to this draft rule determination.<sup>4</sup>

**Due date:** Requests for a hearing must be lodged with the Commission by 2 November 2023.

**How to request a hearing:** Go to the Commission's website, [www.aemc.gov.au](http://www.aemc.gov.au), find the "lodge a submission" function under the "Contact Us" tab, and select the project reference code **ERC0362**. Specify in the comment field that you are requesting a hearing rather than making a submission.<sup>5</sup>

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1 If you are not able to lodge a submission online, please contact us and we will provide instructions for alternative methods to lodge the submission

2 See: <https://www.aemc.gov.au/our-work/changing-energy-rules-unique-process/making-rule-change-request/our-work-3>.

3 Further information about publication of submissions and our privacy policy can be found here: <https://www.aemc.gov.au/contact-us/lodge-submission>.

4 NEL s 101(1a)/ NGL s 310(2)/ NERL s 258(2).

5 If you are not able to lodge a request online, please contact us and we will provide instructions for alternative methods to lodge the request.

**For more information, you can contact us**

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# 1 THE COMMISSION HAS MADE A DRAFT DETERMINATION

This draft determination is to make more preferable draft electricity, gas and retail rules in response to the rule change requests submitted by energy senior officials, on behalf of the Ministerial Council on Energy (as constituted by the Energy Ministers Sub-Group).<sup>6</sup> The draft determination relates to priority rule changes to harmonise the network and pipeline expenditure rules and network planning investment rules with the incorporation of emissions reduction in the national energy objectives. The draft determination also relates to updating the Australian Energy Regulator's (AER's) guidance to incorporate the emissions reduction component of the energy objectives. We are seeking feedback on these more preferable draft rules (also referred to as 'draft rules' throughout this determination).

## 1.1 Our draft rules would harmonise the energy rules with the updated national energy objectives

Our draft rules harmonise the national energy rules with the updated national energy objectives which now include consideration of targets to reduce Australia's greenhouse gas emissions. The more preferable draft rules amend sections of the rules that explicitly reflected the previous national energy objectives to also include consideration of emissions reduction, in accordance with the updated energy objectives. Specifically, the draft rules do this by:

- Amending the national electricity rules (NER) to align the network planning and investment framework with the updated national electricity objective (NEO), including adding emissions reduction as a class of market benefit to be considered in the integrated system plan (ISP) and regulatory investment tests (RITs) (see chapter 3 for more detail).
- Amending the NER and national gas rules (NGR) to enable network and pipeline operators to include expenditure that relates to emissions reduction in revenue proposals and access arrangement proposals (see chapter 4 for more detail).
- Amending the NER, NGR and national energy retail rules (NERR) to enable the AER to make minor updates to its guidelines to reflect the updated energy objectives through one consolidated omnibus process, as well as enabling a consolidated update process to five network planning guidelines and instruments requiring more substantive changes (see chapter 5 for more detail).

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<sup>6</sup> Energy senior officials on behalf of the Ministerial Council on Energy, Priority rule changes to support the incorporation of an emissions reduction component into the National Energy Objectives — harmonising the rules for network/pipeline expenditure proposals and assessment (**rule change request one (network/pipeline expenditure)**) and Energy senior officials on behalf of the Ministerial Council on Energy, Priority rule changes to support the incorporation of an emissions reduction component into the National Energy Objectives — Network Investment Planning Frameworks and the Australian Energy Regulator Regulatory Instrument Revisions (**rule change request two (planning and AER guidelines)**). Available on the AEMC project page.

## 1.2 Stakeholder feedback shaped our determination

Stakeholder input and feedback helped to shape our draft determination. We obtained and considered stakeholder views via written submissions to a consultation paper.<sup>7</sup> The consultation paper was complemented by a public forum where we explained issues and answered stakeholder questions.<sup>8</sup> We also engaged with a diverse range of stakeholders directly in bilateral and multilateral discussions.

There was strong and consistent support across stakeholder groups for the intent of the harmonising rule change and to amend the areas identified in the consultation paper as potentially requiring change. In particular, there was broad stakeholder support to:

- harmonise identified sections of the network planning and investment framework with the updated energy objectives, such as including emissions reduction as a class of market benefit in the ISP and RITs
- harmonise identified sections of the network and pipeline expenditure provisions with the updated energy objectives, so that network and pipeline operators could include expenditure to reduce emissions in their revenue proposals and access arrangement proposals
- enable the AER to run a single, consolidated consultation process on minor changes to its guidelines required as a result of the updated energy objectives.

The Commission's decision-making was aided by this consistent support across diverse stakeholder groups, including network and pipeline operators, generation and retail businesses, peak bodies, market bodies and consumer groups.

Engagement by stakeholders on detailed issues was also important in informing our draft determination. For example, Energy Networks Australia's (ENA) engagement on the network and pipeline expenditure topics helped inform our thinking on how emissions reduction targets might link to relevant expenditure objectives as well as the interaction between the expenditure objectives and expenditure criteria in the NER. The ENA also proposed rules drafting for a number of sections which assisted us in considering the merits of different drafting options.<sup>9</sup> Input from the AER also informed our policy development regarding network and pipeline expenditure, particularly with regard to linking expenditure to regulated services, as well as transitional arrangements for regulated processes underway.<sup>10</sup> Input from AEMO shaped our thinking on a range of matters, with particular focus on the implications of changes for the ISP.<sup>11</sup>

Energy ministers' public communication around the intent of the updated energy objectives, particularly the second reading speech of the Emissions Act, provided context as to the intent of the changes to the energy objectives. The intent of our draft rules and draft determination

7 AEMC, Updated national energy objectives harmonising rule changes, Consultation paper, 20 July 2023.

8 The public forum was held online on 7 August 2023. The presentation slides are available at: [https://www.aemc.gov.au/sites/default/files/2023-08/Presentation%20slides%20-%20Emissions%20in%20energy%20objectives%20-%207%20August%202023\\_1.pdf](https://www.aemc.gov.au/sites/default/files/2023-08/Presentation%20slides%20-%20Emissions%20in%20energy%20objectives%20-%207%20August%202023_1.pdf).

9 ENA, submission to the consultation paper, Appendix A & B, pp. 18-40.

10 AER, submission to the consultation paper, p. 2.

11 AEMO, submission to the consultation paper, p. 2.

is to propose changes that are in the long term interests of consumers while remaining aligned with the strategic direction set by energy ministers.

The draft rule and determination also builds on the recommendations made in our *Transmission planning and investment review (TPIR) — Stage 3 final report*. Following broad stakeholder consultation, this review recommended a rule change process to harmonise the network planning and investment framework with the updated energy objectives.<sup>12</sup> Chapter 3 covers the areas identified for harmonisation in the *TPIR — Stage 3 final report*. The approach on these topics in the draft rules is strongly aligned with the relevant recommendations made in the *TPIR — Stage 3 final report*.

### 1.3 Our determination would support the incorporation of emissions reduction in the energy regulatory framework

The national energy laws have been amended to incorporate emissions reduction into the national energy objectives under the *Statutes Amendment (National Energy Laws) (Emissions Reduction Objectives) Act 2023* (the Emissions Act). This change brings the achievement of emissions reduction targets set by jurisdictions for reducing Australia’s greenhouse gas emissions (or other jurisdictional targets that would contribute to reducing emissions) within scope of the national energy framework. It means emissions reduction is now an explicit and relevant consideration in market bodies’ decision-making, as well as certain activities of market participants regulated under the national energy rules.

Our draft rules seek to ensure consistent application of the updated objectives throughout the national energy rules. In a number of instances the existing rules do not refer to the national energy objectives but instead refer to particular components of the objectives. As a result, a change to the objectives will not automatically flow through to these provisions in the rules. The draft rules aim to remove these inconsistencies between the current rules and updated energy objectives to ensure the changes to the objectives take full effect.

The draft rules establish a link between the energy rules and jurisdictions’ emissions reduction targets covered by the updated energy objectives. Under the draft electricity and gas rules, these emissions reduction targets determine where network and pipeline operators can seek to achieve emissions reduction through their expenditure on regulated services. The relevant emissions reduction targets must also be considered by AEMO when developing the ISP.

The draft rules do not explicitly reference a value of emissions reduction (VER). Our consultation paper noted the Commonwealth Government is leading work to develop a VER for use in regulatory processes required under the rules, such as the ISP and RITs.<sup>13</sup> The VER will be an important tool in determining the appropriate trade-off between emissions reduction and other consumer interests covered by the other limbs of the energy objectives, which was also noted by EnergyAustralia in response to our consultation paper.<sup>14</sup> The

<sup>12</sup> AEMC, *Transmission planning and investment review, Stage 3 final report*, 4 May 2023.

<sup>13</sup> AEMC, *Updated national energy objectives harmonising rule changes, Consultation paper*, 20 July 2023, p. 3.

<sup>14</sup> EnergyAustralia, *submission to the consultation paper*, p. 6.

Commission considers the VER will be used in analytical matters that will be regulated by the AER, with guidance on these matters provided predominantly through AER guidelines. As such, the Commission does not consider it necessary to refer directly to the VER in the rules at this time. Limiting references to the VER to subordinate instruments such as guidelines also maintains flexibility for market bodies if methodological considerations develop over time.

The Australian Gas Infrastructure Group (AGIG) raised concerns about the potential for the new emissions reduction component to have primacy over the other existing components in the national energy objectives.<sup>15</sup> The AEMC and AER intend to continue to balance the various components of the national energy objectives in our decision-making processes in a way that promotes the long term interests of consumers overall, as we have done previously.<sup>16</sup>

In developing these draft rules, the Commission sought to strike a balance between providing regulatory certainty for stakeholders in how emissions reduction should be taken into account in multiple decision-making processes, while also providing flexibility for detailed guidance on implementation matters to be developed over time.

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<sup>15</sup> AGIG, submission to the consultation paper, p. 1.

<sup>16</sup> AER guidance on amended National Energy Objectives, Guidance Note, September 2023, p. 5; AEMC, [How the national energy objectives shape our decisions](#), September 2023, section A.4.

## 2 THE DRAFT RULES WOULD CONTRIBUTE TO THE ENERGY OBJECTIVES

The draft rules would promote the national energy objectives because they would clarify how the updated national energy objectives apply to processes prescribed under the national energy rules, where this application is currently unclear. The draft rules would reduce regulatory uncertainty and complexity for stakeholders in applying the updated energy objectives to processes established under the rules. They would also ensure emissions reduction outcomes are achieved and balanced with the other long-term interests of consumers.

### 2.1 The Commission must act in the long term interests of energy consumers

The Commission can only make a rule if it is satisfied that the rule will or is likely to contribute to the achievement of the relevant energy objectives.<sup>17</sup>

For this rule change, the relevant energy objectives are the NEO, NGO and NERO.

The NEO is:<sup>18</sup>

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; and
- (c) the achievement of targets set by a participating jurisdiction—
  - (i) for reducing Australia’s greenhouse gas emissions; or
  - (ii) that are likely to contribute to reducing Australia’s greenhouse gas emissions.

The NGO is:<sup>19</sup>

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—

- (a) price, safety, reliability and security of supply of natural gas; and
- (b) the achievement of targets set by a participating jurisdiction—
  - (i) for reducing Australia’s greenhouse gas emissions; or
  - (ii) that are likely to contribute to reducing Australia’s greenhouse gas

<sup>17</sup> Section 88(1) of the NEL, section 291(1) of the NGL and section 236(1) of the NERL.

<sup>18</sup> Section 7 of the NEL.

<sup>19</sup> Section 23 of the NGL.

emissions.

The NERO is:<sup>20</sup>

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—

- (a) price, safety, reliability and security of supply of energy; and
- (b) the achievement of targets set by a participating jurisdiction—
  - (i) for reducing Australia’s greenhouse gas emissions; or
  - (ii) that are likely to contribute to reducing Australia’s greenhouse gas emissions.

The targets statement, available on the AEMC website, lists the emissions reduction targets that must be considered, at a minimum, in having regard to the NEO, NGO and NERO.<sup>21</sup>

## 2.2 We must also take some additional factors into account

### 2.2.1 We have considered whether to make more preferable rules

The Commission may make a rule that is different, including materially different, to a proposed rule (a more preferable rule) if it is satisfied that, having regard to the issue or issues raised in the rule change request, the more preferable rule is likely to better contribute to the achievement of the NEO, NGO and NERO.<sup>22</sup>

For this rule change, the Commission has made more preferable draft electricity, gas and retail rules. The reasons are set out in section 2.3 below and discussed further in chapter 3, chapter 4 and chapter 5.

### 2.2.2 We have considered the revenue and pricing principles for the draft electricity and gas rules

We have to take into account the revenue and pricing principles when making rules with respect to:

- electricity distribution and transmission system revenue and pricing, and regulatory economic methodologies<sup>23</sup>
- gas regulatory economic methodologies.<sup>24</sup>

We consider the draft electricity and gas rules relate to these issues because they amend provisions in the NER and NGR relating to revenue proposals and investment decisions.

<sup>20</sup> Section 13 of the NERL.

<sup>21</sup> AEMC, [Emissions targets statement under the national energy laws](#), September 2023. Section 32A(5) of the NEL, section 224A(5) of the NERL and section 72A(5) of the NGL.

<sup>22</sup> Section 91A of the NEL, section 296 of the NGL and section 244 of the NERL.

<sup>23</sup> Section 88B of the NEL, referring to Schedule 1 items 15-24 and 25-26J of the NEL. The electricity revenue and pricing principles are set out in section 7A of the NEL.

<sup>24</sup> Section 293 of the NGL, referring to Schedule 1 items 45-53 of the NGL. The gas revenue and pricing principles are set out in section 24 of the NGL.

Therefore, we have taken the revenue and pricing principles into account in making the draft electricity and gas rules.

Relevant to this draft rule, the revenue and pricing principles state that:

- the AEMC should have regard to the economic costs and risks associated with investment and utilisation by network service providers and gas pipeline operators
- regulated network service providers and gas pipeline operators should have effective incentives in order to promote economic efficiency.<sup>25</sup>

Our draft rules are consistent with the revenue and pricing principles within both the NEL and NGL. Our draft rules clarify how network businesses, pipeline operators and the AER should assess economic efficiency and economic costs in determining efficient costs following the updated NEO and NGO. This will reduce uncertainty for all parties and drive a consistent approach for proposing and approving investment that contributes to meeting emissions reduction targets. Our draft rules do this in a way that is consistent with the preceding approach to applying the NEO and NGO before they were updated.

Our draft rules retain the existing incentives to promote economic efficiency through the determination process and incentive mechanisms available to network service providers and pipeline operators. The draft rules should make it easier for network businesses, pipeline operators and the AER to adopt consistent approaches for incorporating emissions reductions in how they assess and achieve economic efficiency. Under our draft rule, the AER maintains discretion on its methodologies, including how it considers a VER in its decision-making and for small scale incentive mechanisms.

### 2.2.3

#### **We have considered how the consumer protections test applies for the draft retail rule**

In making rules relating to the NERR, in addition to the NERO the Commission must, 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’).<sup>26</sup>

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.<sup>27</sup> 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 the draft retail rule meets the consumer protections test because the draft changes to the NERR provide for appropriate consultation on changes to AER guidelines under the NERR, giving consumers the protection of the opportunity to comment on changes to guidelines that affect their retail services, while allowing for a consolidated consultation process to reduce costs and administrative burden.

<sup>25</sup> Section 7A of the NEL and Section 24 of the NGL.

<sup>26</sup> Section 236(2)(b) of the NERL.

<sup>27</sup> That is, the legal tests set out in sections 236(1) and (2)(b) of the NERL.

#### 2.2.4 **We have considered how the draft electricity rule would apply in the Northern Territory**

In developing the draft electricity rule, the Commission has considered how it should apply to the Northern Territory according to the following questions:

- Should the NEO test include the Northern Territory electricity systems?
- Should the rule be different in the Northern Territory?

The Commission's draft determination is that the reference to the "national electricity system" in the NEO includes the local electricity systems in the Northern Territory. Additionally, the Commission's draft determination is that a uniform rule, rather than a differential rule, should apply to the Northern Territory.

See appendix C for more detail on the legal requirements for our decision.

#### 2.2.5 **We have considered how the draft gas rule would apply in Western Australia**

In developing the draft gas rule, the Commission has considered how it should apply to Western Australia according to the following questions:

- Does the AEMC have a relevant rule-making power?
- Is the AEMC amending parts of the NGR that apply in Western Australia?

The subject matter of the draft rule falls within the AEMC's relevant rule-making powers. See appendix C for more detail on the legal requirements for a decision.

The draft rule amends provisions in Part 7 and Part 9 of the NGR. Part 9 applies in Western Australia, however, the current version of Part 7 does not apply.

The South Australian Minister for Energy and Mining made the *National Gas Amendment (Gas Pipelines) Rule 2023* (Gas Pipelines Rule) under section 294FB(1) of the NGL. The rule commenced operation on 16 March 2023 and was consolidated into version 66 of the NGR.<sup>28</sup> As part of the rule amendments, existing Part 7 of the NGR was deleted and replaced, introducing new Rules 39A and 39B. The Western Australian Minister for Energy is yet to adopt the Gas Pipelines Rule into the *National Gas Access (WA) Act 2009* through an Adoption of Amendments Order meaning that the current version of Part 7 of the NGR does not currently apply to WA.

### 2.3 **How we have applied the legal framework to our decision**

The Commission has considered the issues raised in the rule change requests, in light of the overall legal framework and the specific considerations outlined above.

We identified the following criteria to assess whether the proposed rule changes, no changes to the rules (business-as-usual), or other viable, rule-based options are likely to better contribute to achieving the NEO, NGO and NERO and are consistent with the revenue and pricing principles:

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<sup>28</sup> To access the final rule, visit our website [here](#).

- **Emissions reductions:** do the proposals efficiently contribute to the achievement of government targets for reducing Australia’s greenhouse gas emissions?
- **Principles of market efficiency:** do the proposals deliver productive, dynamic and allocative efficiency across investment/planning, commitment and dispatch timeframes? Are the proposals consistent with the revenue and pricing principles, where relevant?
- **Implementation considerations:**
  - do the proposals balance the cost and complexity of implementation and ongoing regulation and administrative costs to all market participants, consumers and market bodies, across all potential solutions? Does this encourage successful implementation, including through clear roles for market participants and market bodies?
  - do the proposals manage the timing of benefits versus costs, direction of reform and interaction with other reforms and processes? Is now the right time to introduce this taking into account interactions with other reforms?
- **Principles of good regulatory practice:** do the proposals promote principles of good regulatory practice including predictability and stability in the regulatory framework and simplicity and transparency for all stakeholders? Do the proposals align with broader reform?

These assessment criteria reflect the key potential impacts — costs and benefits — of the rule change requests, for impacts within the scope of the NEO, NGO and NERO. There are no changes from the assessment criteria proposed in the consultation paper.<sup>29</sup>

The Commission has undertaken regulatory impact analysis to evaluate the impacts of the various policy options against the assessment criteria. Appendix B outlines the methodology of the regulatory impact analysis.

The rest of this section explains why the draft rules best promote the long-term interest of consumers when compared to other options and assessed against the criteria, including why our more preferable draft rules better promote the NEO, NGO and NERO when compared to the proposed rules.

### 2.3.1

#### **Contributing to achieving government targets for reducing Australia’s greenhouse gas emissions**

The draft rules would support the achievement of greenhouse gas emissions reduction targets set by governments. They do this by clarifying how emissions reduction is expected to be factored into decision-making processes established under the national energy rules such as the RIT (see chapter 3) and the revenue determination and access arrangement decision processes for network service providers and for gas pipeline operators, respectively (see chapter 4). The introduction of an emissions reduction limb to the national energy objectives brings emissions reduction within scope of these processes. However, without the changes proposed in the draft rules, it would be unclear how emissions reduction should be factored into many decision-making processes. Energy market entities may fail to adequately incorporate emissions reduction into their decision-making. This lack of clarity would risk

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<sup>29</sup> Stakeholders did not raise concerns with the assessment criteria selected in response to the consultation paper.

emissions reduction not being efficiently accounted for in these decisions, which would be inconsistent with the revised objectives.

The draft rules would also clarify the link between the greenhouse gas emissions reduction targets set by governments, as well as any guidance issued by governments on a VER, and the actions of market participants and market bodies as required under the rules (see section 1.3). This would improve alignment of the actions of market participants (and market bodies) with emissions reduction targets set by governments.

### 2.3.2 Promoting principles of market efficiency

The draft rules would improve transparency and clarity in how the updated energy objectives apply to decision-making processes established under the national energy rules. The Commission considers improved clarity would have a number of efficiency benefits, including:

- Improving allocative efficiency for emissions reduction activities over a planning/investment timeframe.
  - The draft rule would incentivise market participants to assess the value the marginal benefit of emissions reduction against the marginal cost of the effort. This would help ensure network and pipeline operators reduce emissions at an efficient cost. This would ensure emissions reduction is appropriately and consistently factored into planning and investment decisions, in line with the emissions reduction targets and a VER set by governments.
- Sharpening incentives for market participants to contribute to the achievement of emissions reduction targets.
  - Clarity in how emissions reduction is to be included in relevant decision-making processes would ensure market participants are incentivised to consider and propose activities or approaches that would contribute to emissions reduction.
- Improving information transparency and removing information asymmetries.
  - Clarity in how market participants are expected to factor emissions reduction into their decision-making would improve transparency for processes such as the RIT, ISP and expenditure proposals.

### 2.3.3 Achieving successful and balanced implementation

The draft rules would balance the need for timely reform driven by the broader regulatory context with the impact of the change on processes underway. Timely reform is required to resolve potential inconsistencies between the national energy rules and the updated national energy objectives which passed South Australian parliament on 12 September 2023 and received royal assent by the South Australian governor on 21 September 2023.<sup>30</sup>

Under the draft rules, the changes to the NER, NGR and NERR would come into effect on the day the final rule is to be made, which is currently scheduled for 1 February 2024.

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<sup>30</sup> *Statutes Amendment (National Energy Laws) (Emissions Reduction Objectives) Act 2023.*

Transitional arrangements are proposed for some processes underway when the final rules would take effect. This manages the impact of the rule changes on those processes and maintains alignment between the treatment of the processes already on foot as set out in the Emissions Act and their treatment under the national energy rules.

Specifically, the draft electricity rule includes transitional provisions to ensure that the updated NER apply to the same network project proposals to which the updated energy objectives apply. The Emissions Act provides that the updated energy objectives apply to any RIT project which has not published a project assessment draft report (for the RIT-T) or a draft project assessment report (for the RIT-D) before the 'start day' of 21 November 2023. The draft rule provides transitional provisions to ensure the updated NER apply to the same projects for which the updated energy objectives apply, thereby removing potential misalignment between the two for RIT projects underway (see section 3.6).

The draft electricity rule enables the AER to update five guidelines that require amendment by October 2024 to implement changes for the 2026 ISP through a consolidated consultation process. Under the draft rule any consultation undertaken by the AER on updates to these particular guidelines, prior to the final rule taking effect, are taken to have satisfied the relevant consultation process requirements under the transitional rule (see section 5.2.3). This is in recognition of timing constraints within the broader regulatory environment and the importance of long term planning documents such as the ISP aligning with the changes elsewhere in the electricity regulatory framework to incorporate emissions reduction.

#### **2.3.4 Promoting good regulatory practice**

The draft rules would promote predictability, stability and transparency in the application of the updated energy objectives throughout the national energy rules. The draft rules would ensure the treatment of emissions reduction in processes such as the RIT and expenditure proposals is transparent and replicable. For example, the draft electricity and gas rules make clear that network and pipeline service providers must propose, and the AER must assess, expenditure on regulated services that would contribute to meeting emissions reduction targets (see section 4.1).

Without these changes, market participants and the AER would be required to factor emissions reduction into decision-making on a case by case basis. Such an approach may result in an unpredictable regulatory framework and would increase administrative burden for market participants and market bodies. The Commission's assessments of the 'no change' option, for each significant change, are discussed further in section 3.1.3 and section 4.1.1.

The draft rules also promote good regulatory practice in that they support the broader direction of reform. The draft rules align with, and were proposed as a result of, the changes to the national energy objectives. The draft rules support the implementation and achievement of the strategic direction set by energy ministers relating to emissions reduction.

### 2.3.5

#### **Our more preferable draft rules better promote the national energy objectives than the rules proposed in the rule change request**

The draft rules better promote the national energy objectives than the rules proposed in the rule change requests, because they would ensure emissions reduction considerations are balanced transparently with other interests of consumers covered by the energy objectives. The draft rules clarify when and how emissions reduction would be factored into decision-making processes established under the energy rules. They link the activities of market participants and market bodies to the emissions reduction targets covered by the updated energy objectives and set by governments.

The draft rules include changes to the provisions identified in the rule change requests for consideration, with the exception of the clause that governs the AER's cost benefit analysis guidelines.<sup>31</sup>

The draft rules are more preferable draft rules because, in addition to the changes proposed in the rule change request, they also include:

- changes to the NGR to clarify operating expenditure can include expenditure that contributes to emissions reduction and that existing exemptions to the prohibition against increasing charges to subsidise development also include consideration of emissions reduction
- amendments to additional clauses in the NER that refer to net economic benefit, which the draft electricity rule amends consistently with changes to the RIT-T and RIT-D general principles
- transitional arrangements for RIT projects underway, to align application of the updated NEO with the new NER to certain projects
- an additional process for the AER to update its network planning guidelines under one consolidated process using the standard rules consultation procedures.

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<sup>31</sup> Clause 5.22.5 of the NER. The rule change request noted changes to this section may not be required if other amendments considered under the rule change process were made.

## 3 HARMONISING THE ELECTRICITY NETWORK PLANNING AND INVESTMENT RULES AND RULES ON ECONOMIC VALUE

### 3.1 Including emissions reduction as a class of market benefits would provide certainty to market bodies and participants

#### **BOX 1: DRAFT POSITION — INCLUDE EMISSIONS REDUCTION AS A CLASS OF MARKET BENEFITS IN THE ISP AND RITS**

Our draft electricity rule includes emissions reduction as a class of market benefits for the ISP, RIT-T and RIT-D.

This change would mean that AEMO would be required to consider emissions reduction as a class of market benefits when preparing development paths for the ISP. RIT-T and RIT-D proponents would also be required to consider emissions reduction as a class of market benefits when identifying credible and preferred options.

The Commission considers that this change would provide clarity and consistency in how the updated NEO is applied in the ISP and in RITs.

#### **3.1.1 The draft rule includes emissions reduction as a class of market benefit**

The Commission's draft electricity rule adds emissions reduction as a new class of market benefits for the ISP, RIT-T and RIT-D. This change would mean that:

- AEMO would be required to consider emissions reduction as a class of market benefits when assessing development paths for the ISP, and
- RIT-T and RIT-D proponents would be required to consider emissions reduction when assessing each credible option.

The draft rule would include 'changes in Australia's greenhouse gas emissions' in the list of market benefits that must be considered by AEMO in preparing the ISP and by NSPs in undertaking RIT-Ts and RIT-Ds.<sup>32</sup> The classes of market benefits that AEMO and RIT proponents are required to consider are set out at Box 2, with the inclusion of emissions reduction benefits as per our draft rule shown in bold.

<sup>32</sup> New clauses 5.15A.2(b)(4)(viii), 5.17.1(c)(4)(viii) and 5.22.10(c)(1)(viii) of the draft electricity rule.

## BOX 2: LIST OF MARKET BENEFITS FOR THE ISP, RIT-T AND RIT-D

When AEMO prepares the ISP and when NSPs prepare a RIT-T or RIT-D, they must have regard to the following classes of market benefits:

- changes in fuel consumption arising through different patterns of generation dispatch
- changes in voluntary load curtailment
- changes in involuntary load shedding, with the market benefit to be considered using a reasonable forecast of the value of electricity to consumers
- changes in costs for parties due to:
  - differences in the timing of new plant
  - differences in capital costs
  - differences in operating and maintenance costs
- differences in the timing of expenditure
- changes in network losses
- changes in ancillary service costs
- **changes in Australia's greenhouse gas emissions**
- competition benefits
- any additional option value gained or foregone from implementing a credible option
- other classes of market benefits that are agreed to by the AER in writing.

Source: Clauses 5.15A.2(b)(4), 5.17.1(c)(4), 5.22.10(c) of the NER; new clauses 5.15A.2(b)(4)(viii), 5.17.1(c)(4)(viii) and 5.22.10(c)(1)(viii) of the draft amending rule.

Note: New class of market benefits in our draft rule shown in bold. Some classes of market benefits are slightly different between the ISP, RIT-T and RIT-D provisions due to the differences in the roles between AEMO, TNSPs and DNSPs.

The existing classes of market benefits considered as part of the ISP and RITs link to the previous NEO. The rule change request asked the Commission to consider including emissions reduction as a class of market benefits to ensure emissions reduction is explicitly balanced against the other limbs of the NEO in the economic assessment process.<sup>33</sup>

This change would ensure that the updated NEO is clearly reflected through the ISP and RIT processes. The Commission considers that the inclusion of emissions as a market benefit will provide certainty and clarity to market bodies, market participants and other stakeholders in how the updated NEO is applied through the ISP, RIT-T and RIT-D.

This approach aligns with our *TPIR — Stage 3 final report*<sup>34</sup> recommendations and is also consistent with the second reading speech for the Emissions Act, which states that:<sup>35</sup>

<sup>33</sup> Energy senior officials, rule change request two (planning and AER guidelines), Table 1, p. 12.

<sup>34</sup> AEMC, Transmission planning and investment review, Final report, 4 May 2023, p. 30.

<sup>35</sup> South Australia, *Parliamentary Debates*, House of Assembly, 14 June 2023 (A. Koutsantonis, Minister for Energy and Mining); see <https://hansardsearch.parliament.sa.gov.au/daily/lh/2023-06-14/38?sid=ec9b15fd38994aa688>.

Introducing an emissions reduction component implies that the reduction of greenhouse gas emissions is a new category of market benefit to be assessed in market body decisions and processes where appropriate.

Stakeholders broadly supported including emissions as a class of market benefit, with some stakeholders noting that this would improve the consistency between the NER and the NEO.<sup>36</sup> Some raised that higher cost options may be selected as a result of factoring in emissions reduction.<sup>37</sup> We consider this would be appropriate to the extent that additional benefits justify any additional costs, in the same way that other market benefits and costs are assessed.

A potential risk of double counting emissions reduction benefits was raised by AGL in its submission, in cases where the ISP has already considered emissions reduction benefits and a RIT-T process considers them again.<sup>38</sup> The Commission does not consider double counting to be a risk in this instance as the ISP and RIT-T processes separately consider total project costs and benefits, and benefits are not cumulative between the two processes. AEMO is also required to ensure market benefits are not double-counted across ISP projects in a development path, under the AER's *Cost Benefit Analysis Guidelines*.<sup>39</sup>

### 3.1.2 The draft rule enables consideration of both decreases and increases in greenhouse gas emissions

The draft rule provides for emissions reduction benefits be assessed on the basis of 'changes in Australia's greenhouse gas emissions'. This wording would ensure that both positive and negative changes to greenhouse gas emissions could be considered throughout the ISP and RIT processes. This allows the quantification of benefits to include both positive and negative outcomes, depending on the emissions reductions or increases associated with a major network project or ISP development path. This approach is also consistent with the treatment of other market benefits under the ISP and RITs, whereby a change in a specific market benefit can be considered as a positive or negative market benefit.<sup>40</sup>

The Commission considers guidance on how the assessment of emissions reduction benefits is to be made by proponents is best addressed in AER guidelines, given the AER already has a role in providing such guidance for other aspects of the ISP and RITs.<sup>41</sup> The draft rule therefore does not seek to provide guidance on this matter.

36 Submissions to the consultation paper: AEMO, p. 2; AER, p. 2; AGIG, p. 2; AGL, p.2; Ausgrid, p. 1; CEIG, p. 1; Clean Energy Council, p. 1; ENA, p. 5; EnergyAustralia, p. 10; Energy Consumers Australia, p. 1; Energy Queensland, p. 4; Hydro Tasmania, p. 3; PIAC, p. 7; Transgrid, p. 3.

37 Submissions to the consultation paper: CS Energy, p. 2; AEC, p. 2.

38 AGL, submission to the consultation paper, p. 3.

39 AER, Cost benefit analysis guidelines: Guidelines to make the Integrated System Plan actionable, August 2020, p. 23.

40 See for example, AER Cost Benefit Analysis Guideline, p.62 and Application guidelines: Regulatory investment test for transmission, p. 30.

41 The AER has provided initial guidance on how it will consider emissions reduction benefits in cost benefit analysis: AER, AER guidance on amended National Energy Objectives, Guidance Note, September 2023. The AER also intends to provide further guidance around end-2023.

**QUESTION 1: IS EMISSIONS REDUCTION INCLUDED AS A CLASS OF MARKET BENEFITS APPROPRIATELY?**

Do stakeholders consider the drafting in the draft electricity rule appropriately includes emissions reduction as a class of market benefit for the purposes of the ISP and RITs?

**3.1.3**

**The Commission does not recommend considering emissions reduction benefits on a case-by-case basis**

The AER could allow NSPs and AEMO to consider additional classes of market benefits, such as emissions reduction, under existing provisions as an alternative to the change proposed in our draft rule — but only on a case-by-case basis.

The AER's guidelines set out the methodology by which NSPs or AEMO should consider and value each class of market benefits for the RIT-T, RIT-D and the ISP.<sup>42</sup> If AEMO or a RIT proponent wish to include a different class of market benefits than those listed in Box 2, it must obtain the AER's approval in writing to agree to include it as a class of market benefit.<sup>43</sup> This provides a potential pathway for emissions reduction benefits to be considered in the ISP and RITs, but would need to be applied on a case-by-case basis.

AEMO noted in its submission that it would increase administrative burden on market bodies if AEMO were required to seek AER approval to include emissions reduction every two years when preparing the ISP.<sup>44</sup> Moreover, there would be significantly less stakeholder certainty as to whether or how the ISP would consider emissions reduction. This could impact the consistency of the ISP and therefore its value as a planning document. The Commission agrees with this position and considers this alternative approach would increase administrative complexity and reduce transparency in relation to both the ISP and RITs, relative to the approach proposed in the draft rule. Such an approach is not consistent with the assessment criteria for this rule change, for example, implementation considerations and principles of good regulatory practice.

<sup>42</sup> AER, Application guidelines — [regulatory investment test for transmission](#) and the [regulatory test for distribution; Cost benefit analysis guidelines — guidelines to make the integrated system plan actionable](#).

<sup>43</sup> Clauses 5.15A.2(b)(4)(x), 5.17.1(c)(4)(viii) and 5.22.10(c)(x) of the NER.

<sup>44</sup> Submission to the consultation paper: AEMO, p. 5.

## 3.2 Amending the ISP public policy clause to include emissions reduction targets aligns with the updated NEO

### **BOX 3: DRAFT POSITION — UPDATE THE ISP PUBLIC POLICY CLAUSE TO INCLUDE EMISSIONS REDUCTION**

Our draft rule amends NER clauses 5.22.2 and 5.22.3 to require AEMO to consider targets that are included in the targets statement when determining power system needs for the ISP and determining how the ISP contributes to the NEO.

The Commission considers that this change would improve transparency and align the ISP with the updated NEO, in line with the other proposed changes in our draft rule.

### 3.2.1 AEMO would consider policies on the targets statement in developing the ISP

The draft rule would ensure consistency between the updated NEO and how emissions reduction is considered in the ISP. The draft rule amends clause 5.22.3 of the NER to make clear that, in making determinations for the ISP, AEMO must at a minimum consider the greenhouse gas emissions reduction targets included in the targets statement.<sup>45</sup>

AEMO would have discretion to consider other emissions reduction targets not stated in the targets statement, as well as other relevant public policies that are not emissions reduction targets, subject to the criteria listed under existing clause 5.22.3(b) when determining power system needs.<sup>46</sup> This could include other energy or environmental policies that are not emissions reduction targets but still meet the threshold for being sufficiently developed to enable AEMO to identify the impacts of that policy on the power system (as well as meeting one of the other criteria).

As part of the changes to the NEL resulting from the Emissions Act, the AEMC is required to publish and maintain a targets statement that states the greenhouse gas emissions reduction targets, or targets likely to reduce emissions, set by participating jurisdictions that are covered by the updated NEO.<sup>47</sup> Section 32A(5) of the NEL makes clear that:

**In having regard to the national electricity objective under this Law, the Regulations or the Rules with respect to the matters mentioned in section 7(c) [the emissions component of the NEO], a person or body must consider, as a minimum, the targets stated in the targets statement.**

<sup>45</sup> New clause 5.22.3(b)(1) of the draft electricity rule. The targets statement is available here: <https://www.aemc.gov.au/regulation/targets-statement-emissions>

<sup>46</sup> These criteria are that policy has been sufficiently developed to enable AEMO to identify the impacts of it on the power system, and at least one of the following: a commitment has been made in an international agreement to implement that policy, that policy has been enacted in legislation, there is a regulatory obligation in relation to that policy, there is material funding allocated to that policy in a budget of the relevant jurisdiction, or the MCE has advised AEMO to incorporate the policy.

<sup>47</sup> Section 32A(1)-(4) of the NEL.

This means that market bodies are expected to consider the targets on the targets statement when applying the NEO through their work. In the case of the ISP, this means that AEMO must have regard to all relevant targets on the targets statement when preparing ISP scenarios. This is because the draft rule clarifies that the purpose of the ISP involves contributing to achieving the NEO (which now includes an emissions component).<sup>48</sup>

This approach would align the policies that AEMO takes into account in preparing the ISP with the updated NEO and is consistent with our recommendation in the *TPIR — Stage 3 final report*.<sup>49</sup>

In submissions to the consultation paper, most stakeholders, including AEMO, agreed that the public policy clause should be amended to include a reference to the targets statement.<sup>50</sup>

However, the AEC and EnergyAustralia considered amending the public policy clause to be unnecessary, expressing support for the current threshold for policies to be considered in the ISP.<sup>51</sup> EnergyAustralia raised the potential for the targets statement to include policy commitments for which there is no associated legal or financial incentive on market participants and the impact of this on the ISP as a potential concern.<sup>52</sup>

The Commission considers that amending the public policy clause to directly reference the targets statement would align the development of the ISP with requirements under the NEL for market bodies to consider, at a minimum, targets on the targets statement.<sup>53</sup> Establishing an explicit link to the targets statement provides consistency and transparency for market bodies, participants and stakeholders in how AEMO prepares its scenarios for the ISP and meets its statutory obligations. This consistency and transparency of application is consistent with principles of good regulatory practice.

### 3.2.2 **We do not propose changes to the ISP power system needs**

The draft rule does not include changes to the provision in the NER on ISP power system needs.<sup>54</sup>

The rule change request noted the ISP power system needs listed at clause 5.22.3(a) of the NER reflect the components of the previous NEO and asked us to consider whether emissions should be included.<sup>55</sup> The Commission's view is no change to the power system needs is required because changes to clause 5.22.2 (Purpose of the ISP) as part of this draft rule, discussed at section 3.3, provide a sufficient basis for incorporating emissions reduction targets into the ISP.<sup>56</sup> The change proposed below links the purpose of the ISP with contributing to achieving the NEO, which includes emissions reduction targets.

<sup>48</sup> This change is discussed in section 3.4 of this determination.

<sup>49</sup> AEMC, Transmission planning and investment review, Final report, 4 May 2023, p. 33.

<sup>50</sup> Submissions to the consultation paper: AEMO, p. 2 & 4; CEIG, p. 2; Energy Consumers Australia, p. 1; Energy Queensland, p. 4; PIAC, p. 9; Shell Energy, p. 2; Transgrid, p. 3.

<sup>51</sup> Submissions to the consultation paper: AEC, p. 2; EnergyAustralia, p. 7.

<sup>52</sup> EnergyAustralia, submission to the consultation paper, p. 7.

<sup>53</sup> Section 32A(5) of the NEL.

<sup>54</sup> Clause 5.22.3(a) of the NER.

<sup>55</sup> Energy senior officials, rule change request two (planning and AER guidelines), Table 1 p. 7.

<sup>56</sup> New clause 5.22.2 of the draft electricity rule.

AEMO's view in response to our consultation paper was that clause 5.22.2 sufficiently covers emissions reduction and therefore changes to clause 5.22.3(a) (power system needs) are not required.<sup>57</sup> ENA also supported no change to power system needs.<sup>58</sup> The Commission agrees with this reasoning, as outlined above.

**QUESTION 2: ARE THE PROPOSED CHANGES TO ISP PROVISIONS APPROPRIATE?**

Do stakeholders consider the proposed changes to ISP provisions appropriate? Are there other changes the Commission should consider?

### 3.3 References to the 'long term interests of consumers' are updated

**BOX 4: DRAFT POSITION — CHANGE REFERENCES TO THE 'LONG TERM INTERESTS OF THE CONSUMERS OF ELECTRICITY' TO REFERENCES TO THE NEO**

Our draft rules replace the phrase 'long term interests of the consumers of electricity' with a reference to the full NEO in two places. These are both in relation to the ISP:

- clause 5.22.2, which outlines the purpose of the ISP
- clause 5.22.7, which outlines what the ISP consumer panel must have regard to when preparing the consumer panel report.

This change would clarify that all limbs of the NEO, including emissions reduction, are relevant considerations.

The draft rules replace references to the 'long term interest of the consumers of electricity' with references to the NEO. The phrase appears in two places in the NER with regard to the ISP.<sup>59</sup> For example, clause 5.22.2 currently provides that the purpose of the ISP is to (emphasis added):

**establish a whole of system plan for the efficient development of the power system that achieves power system needs for a planning horizon of at least 20 years for the long term interests of the consumers of electricity.**

The phrase 'the long term interests of the consumers of electricity' appears in the NEO itself, before referencing the three limbs of the energy objective. As used in the rules, it appears intended to be a shorthand reference to the NEO.

<sup>57</sup> Submission to the consultation paper: AEMO, p. 2.

<sup>58</sup> Submission to the consultation paper: ENA, p. 12

<sup>59</sup> New clauses 5.22.2 and 5.22.7 of the draft electricity rule.

However, as these clauses do not refer to the NEO as such, the inclusion of the emissions reduction component in the NEO would not automatically flow through to these two clauses. The Commission considers that, for the avoidance of doubt, the phrase should be replaced with a direct reference to the NEO.<sup>60</sup> This would ensure that the ISP and the ISP consumer panel report should have regard to all components of the NEO, including emissions. This approach is consistent with our recommendation in the *TPIR — Stage 3 final report*.<sup>61</sup>

The draft rule also strengthens the basis for considering emissions reduction targets as part of the ISP. As noted in section 3.2.2 above, the Commission's view is the proposed change to clause 5.22.2 of the NER (Purpose of the ISP) alleviates the need to make other changes (eg to the power system needs clause) to strengthen the basis for considering emissions reduction targets as part of the ISP.

In submissions to the consultation paper, stakeholders broadly agreed with this proposed change. AEMO and ENA suggested replacing the phrase 'the long term interest of consumers' with direct references to the NEO, which aligns with the draft rule.<sup>62</sup> PIAC considered change was not needed if emissions reduction were added to the definition of power system needs in NER clause 5.22.3(a).<sup>63</sup>

The Commission considers that replacing references to 'the long term interests of the consumers of electricity' with direct references to the NEO is warranted on the basis it will provide clarity as to how these clauses should be interpreted. Referencing the NEO directly in these clauses is in line with good regulatory practice, an assessment criteria for this rule change, as it clarifies the interpretation of the purpose of the ISP and the ISP consumer panel report.

### 3.4 Clarifying that 'net economic benefit' and 'overall economic value' include emissions changes would align with the NEO and NGO

#### **BOX 5: DRAFT POSITION — CLARIFY THAT 'NET ECONOMIC BENEFIT' INCLUDES EMISSIONS REDUCTION BENEFITS**

Our draft rule amends the NER and NGR to clarify that:

- emissions reduction benefits (and the costs of increased emissions) are relevant considerations when assessing net economic benefits and overall economic value
- emissions reduction benefits (and the costs of increased emissions) can be considered even if they do not accrue to those who produce, consume or transport electricity in the market or to service providers, producers, users or end users of gas.

60 New clause 5.22.2 and 5.22.7 of the draft electricity rule.

61 AEMC, Transmission planning and investment review, Final report, 4 May 2023, p. 33.

62 Submissions to the consultation paper: AEMO, p. 2; ENA, pp. 12-13.

63 PIAC, submission to the consultation paper, p. 9.

These amendments would improve the alignment of the NER and NGR with the updated NEO and NGO and provide clarity and certainty for stakeholders.

### 3.4.1

#### The draft rules amend provisions on economic value throughout the NER and NGR

The Commission's draft electricity rule seeks to clarify that changes to emissions (positive or negative) are a relevant consideration when an assessment of net economic benefits is required by the rules. The draft rule includes amendments to all instances in the NER that require market participants to consider net economic benefits.<sup>64</sup>

The draft rule also clarifies in these instances that the benefits of emissions reduction (and the costs of increased emissions) can be considered beyond those who produce, consume or transport electricity. This change would ensure that the benefits of emissions reduction, and costs of emissions, which accrue to a broad range of parties beyond the electricity sector, can be adequately considered when an assessment of net economic benefits is undertaken as required by the NER.

The rule change request asked us to specifically consider whether the formulation of net economic benefits under the general principles for the RIT-T and RIT-D was appropriate.<sup>65</sup> The Commission's draft rule makes changes to these provisions.

The draft electricity rule makes 'net economic benefit' a defined term in the NER, meaning:<sup>66</sup>

The net economic benefit to all those who produce, consume or transport electricity in the NEM, however also including the net benefit of changes to Australia's greenhouse gas emissions regardless of whether or not that net benefit is to those who produce, consume or transport electricity in the NEM.

The Commission considers other clauses that similarly use the term 'net economic benefit' should take a consistent approach that aligns with the updated NEO. The Commission, with input from stakeholders,<sup>67</sup> has identified several other clauses that use this phrase.

In addition to the RIT-T and RIT-D principles, the draft rule applies the new defined term *net economic benefit* in these provisions:

- clause 3.11.6(a)(2), relating to dispatch of network support and control ancillary services (NSCAS) by AEMO
- clause 5.12.1(b), relating to transmission annual planning reviews
- schedule 5.8, relating to the Distribution Annual Planning Report (DAPR)
- clause 6.6.3(c), relating to the Demand Management Incentive Scheme (DMIS)

<sup>64</sup> New clause 3.11.6(a)(2), 5.12.1(b)(4), 5.12.1(b)(6), 5.15A.1(c), 5.15A.2(b)(12), 5.17.1(b), 5.17.1(c)(9)(v), Schedule 5.8(e)(4)(i), 6.6.6(c)(3), Chapter 10 glossary *NSCAS need* of the draft electricity rule.

<sup>65</sup> Energy senior officials, rule change request two (planning and AER guidelines), Table 1, p. 1, p. 5.

<sup>66</sup> New Chapter 10 glossary definition '*net economic benefit*' of the draft electricity rule

<sup>67</sup> ENA, submission to the consultation paper, p. 14 & Appendix A.

- the definition of 'NSCAS need' in Chapter 10.

The draft gas rule uses a similar approach in the NGR where an assessment is required of 'overall economic value'.<sup>68</sup>

#### **The Commission considered the potential operational impact of updating the NSCAS provisions in the NER**

The draft electricity rule amends 'net market benefit' in relation to NSCAS.<sup>69</sup> The Commission does not consider the draft changes would adversely impact the procurement and dispatch of NSCAS for system security purposes.

The NSCAS provisions relate to AEMO's procurement of network support and control ancillary services to maintain power system security, but also to change power transfer capability for the purposes of maximising economic benefits. The draft rule does not change the circumstances in which AEMO may dispatch NSCAS to maintain power system security. The draft rule does clarify that emissions reduction is a relevant consideration when assessing the net economic benefits associated with using NSCAS to change power transfer capability.

The Commission made this change in the draft rule as it provides a consistent approach to the assessment of net economic benefits throughout the NER. The Commission considers emissions reduction should be a relevant consideration in the case of NSCAS in relation to power transfer capability, as using emissions-intensive generators to relieve constraints may not contribute to the updated NEO. Such an assessment would be consistent with current practice where AEMO is required to carry out a cost benefit assessment to identify and declare when NSCAS should be used for the purposes of maximising net economic benefits.<sup>70</sup>

### **3.4.2**

#### **Emissions reduction benefits should be a relevant consideration when assessing economic benefits under the NER and NGR**

The Commission considers that, without changes to the NER and NGR, it is unclear whether the terms 'net economic benefit' and 'overall economic value' include emissions reduction considerations. If emissions reduction were added as a new class of market benefit without amending the general principles and purpose of the RIT-T and RIT-D, then there is a risk that 'net economic benefit' may not be taken to include emissions reduction considerations, creating uncertainty in how the NER should be applied. A similar risk would arise in relation to capital expenditure under the NGR.

Stakeholders largely supported amending the RIT-T and RIT-D general principles and clarifying the term 'net economic benefit'.<sup>71</sup> ENA proposed additional clauses as candidates for the same change, which the Commission supports and has incorporated in the draft rule on the basis a consistent approach to these clauses is in line with good regulatory practice.<sup>72</sup>

68 New rules 39A(5) and 79(4) of the draft gas rule.

69 New clause 3.11.6(a)(1) and Chapter 10 glossary definition *NSCAS need* of the draft electricity rule.

70 AEMO, [Network Support and Control Ancillary Services \(NSCAS\) Description and Quantity Procedure](#).

71 Submissions to the consultation paper: AEMO, p. 3; CEIG, p. 4; ENA, p. 5 & 13; Energy Consumers Australia, p. 1; Transgrid, p. 4.

72 ENA, submission to the consultation paper, p. 14 & Appendix A.

The Clean Energy Council considered that the concept of 'net economic benefit' should be reassessed in light of the effects of climate change — specifically, it should include considerations of resilience to severe climate change effects such as extreme weather events and bushfires.<sup>73</sup> The Commission considers that incorporating climate change resilience benefits within the RIT process is outside of the scope of this rule change, but notes that such considerations may be included in existing concepts that are considered throughout the rules, such as reliability and security of supply.

### 3.4.3 **The benefits of emissions reduction apply beyond the electricity and gas sectors**

Under the current NER, consideration of market benefits is constrained to benefits which accrue to those who produce, consume or transport electricity in the NEM. Similarly, consideration of overall economic value under the NGR is constrained to benefits to the service provider, gas producers, users and end users. This was appropriate under the previous energy objectives, under which the interests of consumers were only with regard to the national electricity or gas system. Following that approach, under the NER, benefits which extended beyond the electricity system or the supply of electricity were not able to be considered as part of the 'net economic benefit'.<sup>74</sup>

The updated NEO makes clear by referring to broad emissions targets not limited to the electricity sector that emissions considerations, which include benefits of emissions reductions and costs of emissions increases, apply at the national level and are not constrained to a single market. Clauses in the NER that limit consideration of net economic benefits to within the electricity system need to be amended, in the case of emissions reduction benefits, to align with the updated NEO.

Our draft definition of net economic benefit clarifies that emissions reduction benefits (and the costs of emissions increases) can be considered regardless of whether they accrue to those who produce, consume or transport electricity in the NEM.<sup>75</sup> Consideration of other classes of benefits remains consistent with the approach under the previous NEO — they can only be considered to the extent they accrue to those who produce, consume or transport electricity in the NEM.

The draft gas rule takes a consistent approach for consideration of overall economic value under the NGR.<sup>76</sup>

Most stakeholders who commented on this particular issue supported expanding the beneficiaries of emissions reduction.<sup>77</sup> CS Energy raised concerns that broadening the range of beneficiaries could increase the complexity of applying the RIT-T, leading to an increase in errors or disputes.<sup>78</sup>

<sup>73</sup> Clean Energy Council, submission to the consultation paper, p. 4.

<sup>74</sup> This is specified in most of the clauses of the NER that use the term 'net economic benefits', by adding the words "to all those who produce, consume and transport electricity in the market". See e.g. clause 5.12.1(b)(4) of the NER.

<sup>75</sup> New Chapter 10 glossary definition *net economic benefit* of the draft electricity rule.

<sup>76</sup> New subrules 39A(5) and 79(4) of the draft gas rule.

<sup>77</sup> Submissions to the consultation paper: AEMO, p. 3; ENA, p. 13; Transgrid, p. 4.

<sup>78</sup> CS Energy, submission to the consultation paper, p. 2.

The Commission considers the risk of increased errors or disputes is low, given that government guidance on the VER will be published, and the AER will also provide guidance on this issue. Under the draft electricity rule, supported by this guidance, proponents and the AER would have greater certainty in how to apply the updated NEO through the RIT and other processes, thereby decreasing the risk of challenge.

Achieving consistency and clarity throughout the NER and NGR aligns with principles of good regulatory practice, providing predictability and stability for market bodies and participants.

**QUESTION 3: IS THE DRAFT APPROACH FOR 'NET ECONOMIC BENEFITS' AND 'OVERALL ECONOMIC VALUE' APPROPRIATE?**

Do stakeholders consider the draft definition of net economic benefit in the NER and the draft changes to the provisions on overall economic value in the NGR to be appropriate?

### 3.5 The draft electricity rule does not amend clauses on the AER's cost benefit analysis guidelines

**BOX 6: DRAFT POSITION — THE DRAFT RULE DOES NOT CHANGE THE RULES GOVERNING THE AER'S COST BENEFIT ANALYSIS GUIDELINES (OTHER THAN TRANSITIONAL PROVISIONS)**

The Commission considers that no change is required to NER clause 5.22.5, which governs the AER's cost benefit analysis guidelines. The existing rules will require the AER to provide guidance on quantifying emissions reduction as a class of market benefit in the ISP and through RIT-Ts and RIT-Ds.

The draft rule does not include changes to further specify how the AER's cost benefit analysis guidelines should provide guidance on quantifying emissions reduction as a class of market benefits.

In the rule change request, energy senior officials asked the Commission to consider whether the rules for the cost benefit analysis guidelines need to be changed. Specifically, they stated:<sup>79</sup>

Consideration should be given to whether the rules for the Cost Benefit Analysis Guidelines may need to be changed to the extent required to incorporate consideration of the emissions component of the objective, including allowing a Value of Emissions Reduction to be applied, when appropriate.

The AEMC should consider whether any additional changes are required as part of the

<sup>79</sup> Energy senior officials, rule change request two (planning and AER guidelines), Table 1, p. 8.

rule change process and if other amendments [...] are made, it may be that this provision does not need to be amended.

The Commission considers that no additional changes are required to clause 5.22.5 on the cost benefit analysis guidelines if the other changes in the draft rules are implemented, because:

- the existing rules and the NEL are sufficient for the AER to provide guidance to AEMO and RIT proponents on how to value emissions reduction benefits, including how to apply a Commonwealth-developed VER
- the draft rule contains transitional provisions requiring the AER to update the cost benefit analysis guidelines (among others) to reflect the Emissions Act and the amending rule<sup>80</sup>
- the AER noted in its submission that it intends to update the cost benefit analysis guidelines to reflect the updated energy objectives,<sup>81</sup> and the AER's guidance is required to align with any administrative guidance provided by energy ministers that relates to a VER<sup>82</sup>
- prescribing in the NER that a guideline must include reference to a particular value or methodology would be inconsistent with how other classes of market benefits are treated within the NER.

ENA and Transgrid also considered that no change is necessary, if the other proposed changes are implemented.<sup>83</sup> PIAC was of the view that the rules for the guidelines should explicitly require a reference to emissions reduction.<sup>84</sup>

The Commission does not recommend a change to clause 5.22.5 governing the cost benefit analysis guidelines on the basis that change is not necessary for the AER to incorporate the VER into its guidance, and such change could lead to inconsistencies in approach and would reduce the AER's flexibility to adapt its guidance if required in the future.

### 3.6 The draft electricity rule includes transitional arrangements for RIT projects underway

The draft electricity rule includes transitional arrangements to align the application of the NER with the application of the updated NEO to RIT-T and RIT-D projects underway.

The Emissions Act includes transitional provisions that make clear the updated NEO applies to any RIT-T project that has not published a project assessment draft report (PADR) or any RIT-D project that has not published a draft project assessment report (DPAR) before 21 November 2023.<sup>85</sup>

80 The guideline update transitional rules are discussed in chapter 5.

81 AER, submission to the consultation paper, p. 2.

82 Schedule 3, clause 42 of the NEL.

83 Submissions to the consultation paper: ENA, p. 14; Transgrid, p. 4.

84 PIAC, submission to the consultation paper, p. 9.

85 Schedule 3, clause 40(4)(b)-(c) of the NEL.

The draft rule includes a transitional arrangement to ensure the updated rules apply to the same RIT-T and RIT-D projects to which the updated NEO applies. Conversely, the draft rule makes clear that the previous rules apply to the assessment of PADRs and DPARs published before 21 November 2023.

This approach would give greater assurance that the outcomes of the assessment of the PADR/DPAR are consistent with the stakeholder consultation undertaken in preparing them. This draft approach was informed by ENA's suggested approach.<sup>86</sup>

The Commission considers aligning the application of the updated RIT rules with the updated NEO would also improve regulatory certainty and reduce administrative burden for market bodies and NSPs.

**QUESTION 4: ARE THE PROPOSED TRANSITIONAL ARRANGEMENTS FOR RITS APPROPRIATE?**

Are the draft RIT transitional arrangements appropriate and are there other implementation issues the Commission should consider?

### 3.7 We propose a minor change to the RIT-D rules to correct an administrative error

The draft electricity rule also includes a change to clause 5.17.1(d) to amend the requirement that RIT-D proponents 'may' quantify each material class of market benefit to 'must' quantify each material class of market benefit.<sup>87</sup> The Commission has made this change as we consider the inclusion of the term 'may' within this clause to be an administrative error. This is because:

- The relevant change to this section was proposed and consulted on as part of the AEMC's *Updating the regulatory frameworks for distributor-led stand-alone power systems review*,<sup>88</sup> which recommended the use of the term 'must' in this clause. While the package of rule changes on stand-alone power systems was made as a South Australian Minister-made rule change in 2022, this particular change appears to have been omitted.<sup>89</sup>
- The equivalent provision for the RIT-T has a similar requirement as the proposed change ('must quantify').<sup>90</sup>
- It would be in accordance with good regulatory practice for RIT-D proponents to have the same requirements as RIT-T proponents in this respect.

<sup>86</sup> ENA, submission to the consultation paper, p. 40.

<sup>87</sup> Clause 5.17.1(d) of the draft electricity rule.

<sup>88</sup> [Updating the regulatory frameworks for distributor-led stand-alone power systems: package of proposed rules, p. 51](#)

<sup>89</sup> The rule is available here: <https://www.aemc.gov.au/sites/default/files/2022-02/SAPS%20NER%20amending%20rule%20final%202022.pdf>

<sup>90</sup> NER clause 5.15A.2(5).

## 4 HARMONISING THE NETWORK AND PIPELINE EXPENDITURE RULES

### **BOX 7: DRAFT POSITION — NETWORK SERVICE PROVIDERS AND PIPELINE OPERATORS TO INCLUDE EXPENDITURE TO REDUCE EMISSIONS IN THEIR REVENUE AND ACCESS ARRANGEMENT PROPOSALS**

The draft rules amend the NER and NGR to enable network and gas pipeline operators to include capital and operating expenditure in their revenue proposals and access arrangement proposals that would contribute to achieving greenhouse gas emissions reduction targets. Network and pipeline operators would only be able to propose expenditure that relates to regulated services.

The draft electricity rule also makes minor amendments to the expenditure criteria for network service providers to ensure assumptions relevant to emissions reduction are treated consistently with other input assumptions for expenditure proposals.

### 4.1 Clarifying that network and pipeline operators can propose expenditure to reduce emissions would improve regulatory certainty

#### 4.1.1 **Our draft rules clarify that network and pipeline operators can propose expenditure to reduce emissions**

The draft rules amend the NER and NGR to enable TNSPs, DNSPs and gas pipeline operators to include capital and operating expenditure that would contribute to meeting emissions reduction targets in their revenue proposals and access arrangement proposals. This is achieved by amending the operating expenditure objectives and capital expenditure objectives for TNSPs<sup>91</sup> and DNSPs,<sup>92</sup> and the equivalent operating and capital expenditure provisions for gas.<sup>93</sup>

The draft rules clarify that expenditure for the purposes of reducing emissions can be included in revenue and access arrangement proposals, but leaves detailed guidance on how this expenditure would be justified and assessed as a matter for the AER. This is consistent with the level of detail and approach for other components of these provisions, for example components that relate to expenditure required to meet peak demand or to comply with regulatory obligations. The change would provide clarity and consistency for the AER and stakeholders that emissions reduction should be included in expenditure forecasts for revenue proposals and access arrangement proposals.

91 Clauses 6A.6.6 and 6A.6.7 of the NER.

92 Clauses 6.5.6 and 6.5.7 of the NER.

93 Rules 69, 79 and 91(1) of the NGR.

The Commission considers the proposed amendments would align these expenditure provisions with the updated energy objectives.

Change is required because the provisions of the NER that relate to the capital and operating expenditure, which is included in revenue proposals for TNSPs<sup>94</sup> and DNSPs<sup>95</sup> currently refer to the components of the previous NEO.<sup>96</sup> The relevant provisions make clear that NSPs' revenue proposals must include expenditure required to meet these minimum requirements.<sup>97</sup> These provisions do not currently mention emissions reduction, nor do they refer to the NEO as a whole.

The provisions for gas pipeline operators are less prescriptive in terms of the categories of expenditure that must be included in access arrangement proposals, but are similar in that emissions reduction activities are not explicitly included as part of operating or capital expenditure, nor are there general references to the NEO in these provisions.<sup>98</sup>

If no change was made to the rules, the AER<sup>99</sup> could potentially still consider proposed expenditure that relates to emission reduction as it is required to perform its economic regulatory functions and powers in a way that will or is likely to contribute to the achievement of the NEO and NGO.<sup>100</sup> However, without changes to the identified provisions, it would be unclear how network and pipeline operators could include emissions reduction-related expenditure in their proposals, and how the AER should assess this information.

There was broad stakeholder support in response to our consultation paper to enable network and pipeline operators to include operating and capital expenditure that contributes to emissions reduction targets in their revenue and access arrangement proposals.<sup>101</sup> All who commented on this matter were in favour of making such a change. The Clean Energy Council noted the cost of the change would likely be relatively minor, relating to small adjustments in the regulatory and economic decision-making process, while the benefits would be much more substantial given the proposed changes would reduce uncertainty and administrative burden for stakeholders.<sup>102</sup>

The Commission considers these changes support good regulatory practice and are needed to allow network and pipeline operators to prepare expenditure proposals that are consistent with the revised objectives. In the Commission's view, these changes in the amending gas and electricity rules would harmonise with the new objectives and improve the predictability and stability of the NER and NGR.

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94 Clause 6A.6.6 and 6A.6.7 of the NER.

95 Clause 6.5.6 and 6.5.7 of the NER.

96 For example, they relate to meeting demand, complying with regulatory obligations and maintaining safety, quality, reliability and security of supply.

97 Clauses 6.5.6, 6.5.7, 6A.6.6 and 6A.6.7 of the NER.

98 Rule 69, 79 and rule 91(1) of the NGR.

99 And the WA Economic Regulatory Authority in the case of WA gas access arrangements.

100 Section 16(1)(a) of the NEL and section 28(1)(a) of the NGL.

101 Submissions to the consultation paper: AER, p. 1; AGIG, p. 1; APA, p. 5; APGA, p. 2; ATCO, p.1; Ausgrid, p.1; Clean Energy Council, p. 1; ENA, pp. 5-6; EnergyAustralia, p. 10; Energy Consumers Australia, p.1; Energy Queensland, p. 1; Hydro Tasmania, p. 3; PIAC, p. 6; Transgrid, p. 2.

102 Submission to the consultation paper: Clean Energy Council, p. 2.

#### **QUESTION 5: IS THE LEVEL OF DETAIL IN THE OPERATING AND CAPITAL EXPENDITURE PROVISIONS APPROPRIATE?**

We are interested in stakeholders' views on the level of detail proposed in the draft rules for the operating and capital expenditure provisions for DNSPs, TNSPs and gas pipeline operators. Are the links to emissions reduction targets and regulated services appropriate? Are there additional factors the Commission should consider?

#### **Some stakeholders raised the interaction between electricity and gas planning as requiring further consideration**

Some stakeholders suggested we consider whether and how emissions reduction expenditure might be coordinated across electricity and gas.<sup>103</sup> They raised the risk of electricity and gas decarbonisation pathways being planned and implemented in parallel, without consideration of the interactions between the two sectors.

The Commission recognises this risk. However, given the NEO and NGO remain independent from one another, as do the expenditure frameworks for electricity networks and gas pipelines, the Commission does not consider joint consideration of electricity and gas pathways to be within the scope of this rule change process.

We note that the interaction and co-optimisation of electricity and gas planning, including in the context of emissions reduction, is being considered by the Commonwealth Government as part of its review of the Integrated System Plan, in close consultation with jurisdictions and market bodies.<sup>104</sup>

#### **4.1.2**

#### **Our draft rules make minor changes to the NER expenditure criteria**

The rule change request also asked us to consider whether other changes to the operating and capital expenditure provisions may be required.<sup>105</sup> This included the operating and capital expenditure criteria in the NER.<sup>106</sup>

The Commission recognises that, in preparing expenditure proposals that include emissions reduction elements, networks may need to make assumptions that relate to emissions reduction, which might not involve cost inputs or demand forecasts (the existing categories covered by the operating and capital expenditure criteria). Therefore, the draft rules require any relevant inputs required to achieve the operating and capital expenditure objectives, not just inputs relating to cost and demand, to meet realistic expectations.<sup>107</sup> The draft rules ensure the current requirement that applies to demand and cost assumptions also applies to

<sup>103</sup> Submissions to the consultation paper: Clean Energy Council, p.2; Energy Consumers Australia, p. 1.

<sup>104</sup> Department of Climate Change, Energy, the Environment and Water, Terms of reference for the ISP review, August 2023. See: <https://www.energy.gov.au/terms-reference-review-integrated-system-plan>

<sup>105</sup> Rule change request: Priority rule changes to support the incorporation of an emissions reduction component into the National Energy Objectives — harmonising the rules for network/pipeline expenditure proposals and assessments, Table 1.

<sup>106</sup> Clauses 6.5.6(c), 6.5.7(c), 6A.6.6(c) and 6A.6.7(c) of the NER.

<sup>107</sup> New clauses 6.5.6(c), 6.5.7(c), 6A.6.6(c) and 6A.6.7 of the draft electricity rule.

emissions reduction assumptions that network and pipeline operators may need to make when proposing and justifying expenditure to the AER.

ENA and Transgrid noted in their submissions that emissions-specific changes to the expenditure criteria were not necessary on the basis that proposed changes to the expenditure objectives would flow through to the AER's consideration of expenditure proposals under paragraph (c) of the relevant expenditure clauses.<sup>108</sup> ENA also noted that the AER must be satisfied that all components of the expenditure criteria are satisfied to accept an NSP's expenditure forecast.<sup>109</sup> If emissions reduction were to be specifically included in the criteria under paragraph (c), cases could emerge where the AER may be required to reject a broader range of expenditure if it did not accept the emissions reduction expenditure.

We agree that substantive changes to separately include emissions reduction in the expenditure criteria are not required, given the draft changes to the expenditure objectives in the NER.<sup>110</sup> The changes in our draft rules are focused on ensuring any additional input assumptions required as a result of including greenhouse gas emissions reductions in the expenditure provisions are subject to the same accuracy requirements as other assumptions.

The Commission is of the view that this change would provide for consistent treatment of assumptions by network service providers and the AER. Without this change, there is a risk of networks using less rigorous assumptions relating to emissions, or disputes between NSPs and the AER over emissions reduction assumptions. This would increase regulatory complexity and uncertainty, and potentially increase costs to consumers.

#### 4.1.3

#### **Our draft gas rule changes the gas pipeline expenditure framework**

The draft gas rule enables pipeline operators to include capital and operating expenditure in their access arrangement proposals where that expenditure would contribute to meeting emissions reduction targets through the supply of pipeline services.<sup>111</sup> The draft gas rule also amends the definition of operating expenditure and the criteria for conforming capital expenditure to make clear that contributing to meeting emissions reduction targets is a relevant objective of capital and operating expenditure.<sup>112</sup>

Rule 39A of the NGR includes exemption criteria related to the prohibition against increasing charges to subsidise the development of pipeline assets. Service providers may apply to the AER for an exemption by providing a description of the extension or expansion of capacity and demonstrating that one or more of the criteria is satisfied. Examples of the criteria include if the extension or expansion is necessary to maintain or improve the safety or integrity of pipeline services. The draft gas rule amends the exemption criteria to provide an exemption to this prohibition if the expansion is necessary to contribute to meeting emissions

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108 Specifically, clauses 6.5.6(c), 6.5.7(c), 6A.6.6(c) and 6A.6.7(c) of the NER. Submissions to the consultation paper: ENA, p. 7; Transgrid, p. 2.

109 ENA submissions to the consultation paper, p. 7.

110 New paragraph (5) in clauses 6.5.6(a), 6.5.7(a), 6A.6.6(a) and 6A.6.7(a) of the NER.

111 New rule 79(2)(c)(v) and rule 91(1) of the draft gas rule.

112 New rule 69(b) and rule 79(1)(a) of the draft gas rule.

reduction targets.<sup>113</sup> This approach is consistent with how other limbs of the NGO are treated under this provision.<sup>114</sup>

The Commission considers the approach to enabling emissions reduction-related expenditure to be included in gas access arrangements aligns with the approach proposed for electricity revenue proposals, while accounting for the differences in the operation and regulation of the two markets.

## 4.2 Our draft rules require proposed expenditure to relate to regulated services

The draft rules require any proposed expenditure targeted at reducing emissions to relate to regulated services. This means network and pipeline operators would only be able to propose operating and capital expenditure for regulated services to achieve emissions reduction in their building block proposals. In the case of DNSPs, the expenditure would need to be towards *standard control services* and for TNSPs towards *prescribed transmission services*.<sup>115</sup> There is a similar constraint for gas such that expenditure would need to be towards pipeline services.<sup>116</sup>

This is consistent with the current approach in the rules where network service providers can only propose operating and capital expenditure in their revenue proposals that relate to regulated services. For example, all other components of the current operating expenditure objectives and capital expenditure objectives in the electricity rules link to the provision of standard control services or prescribed transmission services, for distribution and transmission, respectively.<sup>117</sup>

The AER supported this approach in its submission, noting:<sup>118</sup>

*We consider that it would be too broad to include an additional objective in the opex and capex criteria referring simply to "activities to support emissions reduction". Such an objective would not tie the permitted expenditure to the supply of regulated services (e.g. prescribed transmission/distribution services).*

This approach differs from the drafting proposed by ENA which provided a broader link to the emissions reduction targets covered by the updated energy objectives and did not explicitly require expenditure to be related to the provision of regulated services.<sup>119</sup>

The Commission had regard to principles of market efficiency and design in forming this position. In particular, the Commission does not consider it appropriate for regulated natural monopoly businesses such as network and pipeline operators to invest in competitive sectors

113 New rule 39A(3)(b)(v) of the draft gas rule.

114 Note that rule 39A does not currently apply in the Western Australian version of the NGR. For more information, see chapter 2.

115 New paragraph (5) in clauses 6.5.6(a), 6.5.7(a), 6A.6.6(a) and 6A.6.7(a) of the draft electricity rule.

116 New rules 79(1)(a) and 91(1) of the draft gas rule. The definition of *capital expenditure* in existing rule 69 of the NGR is limited to expenditure on pipeline services. The draft rules do not change this definition.

117 Clauses 6.5.6, 6.5.7, 6A.6.6 and 6A.6.7 of the NER.

118 AER submission to the consultation paper, p. 2.

119 ENA submission to the consultation paper, pp. 18-22.

of the economy, including for the purposes of reducing emissions, while recovering costs from consumers through regulated revenue. The draft rules maintain the existing approach whereby network and pipeline operators can only propose expenditure that relates to the provision of relevant regulated services.

### **No changes are proposed to alternative control services provisions**

The Commission also considered whether changes to provisions in the NER that relate to alternative control services (ACS) were warranted, in addition to the changes to standard control services under the draft rule. ACS are customer-specific services for which competition is possible, but may not be present, and which are subject to a price control mechanism set by the AER.

Changes to ACS provisions were not considered necessary because there is no equivalent to the expenditure objectives for ACS. Instead, ACS is regulated using the same approach taken for standard control services which is that the building block model can be applied.<sup>120</sup> Therefore, changes to the operating and capital expenditure provisions for standard control services could be applied to ACS, although application would be optional. Further, the AER is required to consider 'any other relevant factor' when determining the control mechanism for ACS, which could include emissions reduction considerations.<sup>121</sup> As such, the Commission has not proposed changes relating specifically to ACS in the draft determination.

## **4.3 Emissions reduction across the Australian economy should be considered**

The draft rules do not require emissions reduction resulting from expenditure on regulated services to only occur within the electricity or gas sectors. Emissions reduction achieved in any sector of the economy<sup>122</sup> as a result of expenditure on regulated services could be used as a basis for inclusion in a revenue proposal or access arrangement proposal, subject to more detailed guidance or constraints being issued on this matter by the AER under its relevant guidelines.<sup>123</sup>

We considered the types of emissions reduction outcomes that network and pipeline operators could potentially consider as justification for expenditure. This was raised by the AER as a matter for consideration in its submission to the consultation paper.<sup>124</sup> For example, consideration of emissions reduction could be limited to a network or pipeline operator's direct operations, such as a gas pipeline operator reducing fugitive emissions. Alternatively, emissions reduction outcomes could be considered across the economy more broadly, such as if a network business' expenditure towards regulated services increased the uptake of

<sup>120</sup> Clause 6.2.6(c) of the NER.

<sup>121</sup> Clause 6.2.5(d)(5) of the NER.

<sup>122</sup> Any sector of the economy to which an emissions reduction target covered by the energy objectives applies, which at present is all sectors of the Australian economy. See AEMC, [Emissions targets statement under the national energy laws](#), September 2023, p. 1.

<sup>123</sup> AER, Expenditure forecast assessment guideline for electricity distribution, August 2022; AER, Expenditure forecast assessment guideline for electricity transmission, November 2013; AER, Access arrangement guideline, March 2009. The AER may make amendments to these guidelines as a result of the Emissions Act and this harmonising rule change.

<sup>124</sup> AER, submission to the consultation paper, p. 2.

electric vehicles, thereby reducing emissions and contributing to the achievement of emissions reduction targets on the targets statement. EnergyAustralia and Transgrid also highlighted the importance of clarifying the link between the emissions reduction targets covered by the updated energy objectives and the intent of the changes proposed under the draft rule.<sup>125</sup>

The Commission's view is that emissions reduction anywhere in the economy should be within scope for consideration, provided it is enabled by a network or pipeline operator's expenditure on regulated services. The updated energy objectives encompass emissions reduction targets that apply to the whole of the Australian economy.<sup>126</sup> The Commission considers emissions reduction that is achieved in any sector of the Australian economy covered by the updated energy objectives (which at present is all sectors of the economy) should be within scope. Expenditure contributing to emissions reduction outside Australia should not be included.

The attribution of emissions reduction elsewhere in the economy to expenditure by a network or pipeline operator on regulated services is potentially complex. The Commission considers this is a matter best addressed through AER guidance, given the AER would be responsible for the assessment and approval of such proposals. The draft rules do not prescribe how this assessment should be done, to retain flexibility for the AER in how it would make this assessment and consistent with the level of detail for other aspects of the capital and operating expenditure provisions.

#### 4.4 We do not propose transitional arrangements for revenue proposals underway

The draft rules do not include any transitional provisions for revenue proposal and access arrangement processes underway when the final rules are made. The Commission considers emissions-related expenditure can already be proposed and approved for revenue proposals and access arrangements underway, and therefore transitional provisions for these processes are not required.

A number of revenue proposal and access arrangement processes will be underway when the final rules are made. These include NSP revenue proposals for the 2024-2029 regulatory control period, which will be nearing completion, as well as for the 2025-2030 regulatory control period, which will have just commenced.<sup>127</sup> Access arrangement proposals for gas pipeline operators in Western Australia would also be underway at this time.<sup>128</sup>

<sup>125</sup> Submissions to the consultation paper: EnergyAustralia, p. 7; Transgrid, p. 2.

<sup>126</sup> For example, net zero emissions by 2050 targets are included in the AEMC's targets statement, which relates to national emissions across all sectors of the economy. AEMC, Emissions targets statement under the national energy laws, p. 1.

<sup>127</sup> Final determinations are due on 31 April 2024 for the 2024-2029 control period including NSW/ACT DNSPs (Ausgrid, Endeavour Energy, Essential Energy, Evoenergy), Tasmania DNSP TasNetworks, NT DNSP Power and Water, Tasmania TNSP TasNetworks. Initial proposals are due 31 January 2024 for the 2025-2030 control period including Queensland and South Australian DNSPs (Energex, Ergon Energy, SA Power Networks) and TNSP Directlink.

<sup>128</sup> A draft decision is expected April-May 2024 for the mid-west and south-west gas distribution system and the initial access arrangement proposal for the goldfields gas transmission access arrangement is due 1 January 2024.

We understand the AER will be able to consider and approve emissions-related expenditure proposed by NSPs on the basis the updated NEO will apply to these revenue proposals, as outlined in its guidance note '*AER guidance on amended National Energy Objectives*'.<sup>129</sup> The guidance note sets out the types of analysis and justification the AER expects to be included in the proposals and how the AER intends to make its assessments. The AER notes that some NSPs have already been proactive in including emissions related expenditure in their proposals.<sup>130</sup> We also note that the access arrangement proposal for the mid-west and south-west gas distribution system has taken a similar proactive approach.<sup>131</sup>

In its submission to the consultation paper, ENA proposed transitional arrangements to enable all network or pipeline operators whose revenue and access arrangement proposals have not reached a final determination or decision at the time the final rules are made to revise their expenditure or provide other information required as a result of the final rule.<sup>132</sup> ENA noted that the updated national energy objectives apply to the revenue proposal and access arrangement processes currently underway and transitional provisions are required to avoid a misalignment between the updated objectives and the rules.<sup>133</sup>

The Commission does not consider transitional arrangements are necessary in this case, on the basis that the AER would still be able to consider expenditure that relates emissions reduction for these proposals. We consider the AER has sufficient ability to consider emissions-related expenditure without transitional rules because the Emissions Act includes transitional arrangements for revenue proposals for the 2024-2029 regulatory control period which make clear the updated energy objectives apply to these processes.<sup>134</sup>

The Commission also considers the transitional arrangements proposed by ENA to be practically challenging for the revenue proposals for the 2024-2029 regulatory control period and the gas access arrangement proposals for the mid-west and south-west distribution system.<sup>135</sup> The AER (and the ERA with respect to gas pipeline operators in WA) would be unlikely to have sufficient time to consider new information submitted by a regulated business before a final determination or decision on these are due, which is April 2024 for NSPs and April-May 2024 for the mid-west and south-west gas distribution system. A delay to these processes could also have flow on implications for determining the default market offer and making determinations relevant to NSW renewable energy zones.

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129 AER guidance on amended National Energy Objectives, Guidance Note, September 2023. More detailed guidance is expected by the AER on these matters by end of 2023.

130 AER guidance on amended National Energy Objectives, Guidance Note, September 2023, p. 9.

131 ATCO, Attachment 03.004A, Renewable Gas Delivery Strategy, ATCO Plan 2025-2029; see <https://www.erawa.com.au/gas/gas-access/mid-west-and-south-west-gas-distribution-systems/access-arrangements/access-arrangement-for-period-commencing-2025>.

132 ENA submission to the consultation paper, Appendix B, p. 36.

133 ENA submission to the consultation paper, p. 9.

134 Clause 39(5) of Schedule 3 of the NEL. The updated NEO will apply to revenue proposals for the 2025-2030 control period as these processes commence after 21 November 2023, which is the day the updated NEO comes into effect. See also clause 40(4)(a) of Schedule 3 of the NEL.

135 ENA proposed network and gas pipeline operators would have 20 business days following the final rules being made to update their expenditure forecasts (ENA, submission to the consultation paper, pp. 36-40).

### **Application of the updated NGO in WA will have a bearing on the final gas rule**

The updated NGO will not apply in Western Australia until the Western Australian government declares the amendments to the *National Gas Law (SA) Act 2008* to be relevant and adopts them in the *National Gas Access (WA) Act 2009*. This declaration had not been made at the time this draft determination was published.

However, certain amendments to the NGR as part of this rule change process will apply in Western Australia once the final rule is made by the Commission. This could result in the updated NGR applying before the updated NGO is in force.

The Commission will consider whether transitional arrangements are required as part of the final determination to address this possible scenario, once there is more clarity around the timing of the application of the updated NGO in Western Australia.

#### **QUESTION 6: DO STAKEHOLDERS AGREE NO TRANSITIONALS ARE REQUIRED FOR REVENUE PROPOSALS AND ACCESS ARRANGEMENTS UNDERWAY?**

We are interested in whether stakeholders agree no transitional arrangements for revenue proposals and access arrangements are required. Are there factors the Commission should consider further?

## 5 INTRODUCING OMNIBUS PROCESSES FOR UPDATING AER GUIDELINES

### 5.1 The AER would be able to carry out an omnibus update for minor changes to its guidelines to address emissions reduction

**BOX 8: DRAFT POSITION — INTRODUCE AN OMNIBUS ONE-ROUND CONSULTATION PROCESS FOR AER GUIDELINES REQUIRING MINOR UPDATES DUE TO CHANGES IN THE ENERGY OBJECTIVES AND THIS RULE**

The draft rules would enable the AER to consult on minor updates to its NER and NGR guidelines, and all changes to NERR guidelines, required due to the change in the energy objectives and this rule change through a single, consolidated process.

The AER has identified 40-50 guidelines it expects require minor changes as a result of the change to the energy objectives, such as updating references to the NEO, NGO or NERO. A number of different consultation requirements apply to these guidelines under the current rules, with different consultation timeframes.

The draft rules enable the AER to use the distribution consultation procedures for consultation on all NER and NGR guidelines requiring these minor updates, and all NERR guidelines. This approach would enable the AER to consult on the changes across the relevant guidelines at the same time, through one consolidated process.

The Commission considers this approach would significantly reduce administrative burden for both market participants and the AER, compared to running several separate sets of consultation under the different consultation processes specified in the rules.

The process for changes to network planning guidelines is discussed in section 5.2 below.

#### 5.1.1 Enabling the AER to use an omnibus update for minor amendments would reduce administrative burden

The draft rules enable the AER to consult on updates to its guidelines required as a result of the change in the energy objectives and this rule change using one, consolidated consultation process.<sup>136</sup> The draft rules would enable the AER to use the distribution consultation procedures to consult on the required updates, which requires one round of consultation and gives stakeholders 30 business days to make a submission.<sup>137</sup>

The AER has identified around 40-50 guidelines established under the NER, NGR and NERR that will require updates due to the changes in the national energy objectives and this rule

<sup>136</sup> New clause 11.XXX.4 and 11.XXX.5 in the draft electricity rule; new rule Schedule 1 Part 18 rules 100-101 in the draft gas rule; new Schedule 3, Part 19 clause 2 in the draft retail rule.

<sup>137</sup> Rule 6.16 of the NER.

change.<sup>138</sup> The majority of changes are anticipated to be minor in that they are not expected to change the regulated parties' obligations or necessitate a change in analysis or process.<sup>139</sup>

Under the current provisions in the NER, NGR and NERR, the guidelines would need to be updated according to different consultation procedures, with different timing requirements. This could mean separate consultation processes would need to be run by the AER for similar types of updates, depending on the consultation requirements that apply. For example, the standard rules consultation procedure under the NER and the standard consultative procedure under the NGR both have two rounds of consultation but the minimum length of consultation and due dates for publications differ. Similarly, the timing of the retail consultation procedures differs from that required under the transmission and distribution consultation procedures. Consultation and publishing requirements for these consultation procedures are outlined in Table 5.1 below.

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<sup>138</sup> See AEMC, Updated national energy objectives harmonising rule changes, Consultation paper, Appendix A for an indicative list of guidelines identified by the AER as requiring updates.

<sup>139</sup> Energy senior officials, Rule change request two (planning and AER guidelines), p. 9.

**Table 5.1: Consultation requirements differ across the NER, NERR and NGR**

<b>CONSULTATION PROCEDURE</b>	<b>CONSULTATION AND PUBLISHING REQUIREMENTS</b>
Standard rules consultation procedure (NER) <sup>1</sup>	<ul style="list-style-type: none"> <li>• Two rounds of consultation</li> <li>• At least 20 business days for stakeholders to make a submission</li> <li>• Draft then final report made within 50 business days after the due date for submissions</li> </ul>
Distribution and transmission consultation procedures (NER) <sup>2</sup>	<ul style="list-style-type: none"> <li>• One round of consultation</li> <li>• At least 30 business days for stakeholders to make a submission</li> <li>• Final decision made within 80 business days after publishing the initial consultation documentation</li> </ul>
Retail consultation procedure (NERR) <sup>3</sup>	<ul style="list-style-type: none"> <li>• One round of consultation</li> <li>• At least 20 business days for stakeholders to make a submission</li> <li>• Final instrument made as soon as reasonably practicable after the due date for submissions</li> </ul>
Standard consultative procedure (NGR) <sup>4</sup>	<ul style="list-style-type: none"> <li>• One round of consultation with a second round if the draft decision differs from the proposal</li> <li>• At least 15 business days for stakeholders to make a submission for both steps</li> <li>• Final decision made within 20 business days after the due date for submissions on the draft decision.</li> </ul>

Source: AEMC

Note: <sup>1</sup> Standard rules consultation procedure: clause 8.9.2 of the NER. <sup>2</sup> Distribution consultation procedure: Rule 6.16 of the NER. <sup>3</sup> Retail consultation procedure: Rule 173 of the NERR. <sup>4</sup> Standard consultative procedure: Rule 8 of the NGR.

Note: Under the NER there is also an expedited rules consultation procedure (clause 8.9.3) and a minor rules consultation procedure (clause 8.9.4), not shown here.

In the rule change request, energy senior officials noted that requiring guideline updates to follow different consultation pathways would place significant administrative burden on the AER and stakeholders.<sup>140</sup> It may also impact on stakeholders' ability to meaningfully engage in the processes and provide feedback.

Stakeholder submissions that discussed the AER omnibus process were supportive of the intent to reduce administrative burden on the AER and market participants.<sup>141</sup> Some stakeholders noted that there should be more comprehensive consultation on updates that would be material or complex,<sup>142</sup> with considerations that there should be constraints or restrictions on which guideline updates should be considered 'minor' in nature and included in an omnibus process.<sup>143</sup>

140 Energy senior officials, Rule change request two (planning and AER guidelines), p. 10.

141 Submissions to the consultation paper: AEC, p. 2; AEMO, p. 3; AER, p. 3; Ausgrid, p. 2; CEIG, p. 2; ENA, pp. 5, 16-17; EnergyAustralia, p. 11; Energy Queensland, p. 5; Hydro Tasmania, p. 3; Transgrid, p. 4.

142 Submissions to the consultation paper: APA, p. 11; Transgrid, p. 4;

Under the draft rules, the AER would retain the ability to consult individually on guideline updates, using the distribution consultation procedures (for minor changes to NER and NGR guidelines, and all changes to NERR guidelines) or using the relevant consultation procedures that ordinarily apply to that guideline under the relevant rules (for non-minor changes to NER and NGR guidelines). The rule change request noted the AER's intention to use a separate consultation process for more complex or substantive amendments.<sup>144</sup> The use of an omnibus consultation process would be at the AER's discretion, provided the updates were required as a result of the change in the energy objectives or this rule change. A separate consultation process, following the standard rules consultation procedure, is required for updates to the network planning guidelines (discussed below in section 5.2).

The Commission considers this omnibus consultation process for minor changes that do not materially impact the obligations of participants would streamline the AER's consultation process while providing opportunities for receiving and incorporating comprehensive feedback from stakeholders. The Commission proposes this approach on the basis it will reduce administrative burden and enable stakeholders to better engage in the consultation process.

### 5.1.2

#### **The AER would use the distribution consultation procedures with one round of consultation**

Under the draft rules, the AER would use the distribution consultation procedures to consult on minor changes to NER and NGR guidelines, and all changes to NERR guidelines, required due to the change in the energy objectives and this rule change.<sup>145</sup> The distribution consultation procedures are summarised in Box 9.

#### **BOX 9: THE DISTRIBUTION CONSULTATION PROCEDURES PROVIDE APPROPRIATE TIMEFRAMES**

The distribution consultation procedures are as follows:

- The AER publishes its proposed changes to the guideline, an explanatory statement and an invitation for written submissions.
- Stakeholders have at least 30 business days to make submissions to the proposed changes.
- The AER may publish additional papers and host information sessions or conferences to consult with stakeholders as it sees fit.
- The AER has 80 business days (from publishing the proposed changes) to make its final decision.

143 Submissions to the consultation paper: APA, p. 11; Energy Queensland, pp. 6-7.

144 Energy senior officials, Rule change request two (planning and AER guidelines), p. 10

145 New clause 11.XXX.4 and 11.XXX.5 in the draft electricity rule; new rule Schedule 1 Part 18 rules 100-101 in the draft gas rule; new Schedule 3, Part 19 clause 2 in the draft retail rule. The AER would consult on non-minor changes to NER and NGR guidelines using the process set out in the relevant provisions of the NER and NGR, which may require two rounds of consultation in some cases. As the only NERR consultation process is a one-round consultation, the draft retail rule does not distinguish between minor and non-minor changes to NERR guidelines.

- The AER may choose to extend this timeframe if consultation involves complex or difficult issues, and circumstances beyond the AER's control make an extension necessary.

Source: NER, rule 6.16.

The Commission considers the distribution consultation procedures are appropriate for this process given:<sup>146</sup>

- the changes are not anticipated to be significant, meaning one round of consultation is appropriate
- stakeholders would have 30 days to make a submission and the AER has 80 business days to make a final decision, which is appropriate given the large volume of material that would be consulted on at the same time
- the AER has the ability to extend these timeframes, which provides an appropriate level of flexibility if complex issues arise that require more time to address.

In the second rule change request, energy senior officials suggested that an omnibus process could use the distribution consultation procedures.<sup>147</sup> Similarly, the AER expressed its preference to use the distribution consultation procedures as it is ideal for undertaking updates which are less significant in nature.<sup>148</sup>

In developing the draft rules, the Commission assessed the advantages and disadvantages of using other one-stage consultation procedures that exist within the NER, including the transmission consultation procedures and the expedited and minor rules consultation procedures. The expedited rules consultation procedure gives stakeholders a minimum of 20 business days to comment on the proposed changes, and the minor rules consultation procedure (intended for very small changes) gives only 10 business days.<sup>149</sup> The Commission considers that these timeframes are too short for stakeholders to provide considered feedback to the AER on the substantial number of guidelines proposed to be consulted on under this process (noting however that if the expedited rules consultation procedure was to be used, the AER could choose, or the transitional rules could specify, a longer consultation period). These processes were therefore not preferred. The distribution and transmission consultation procedures are functionally equivalent and the transmission consultation procedures could have been selected as an alternative to the distribution consultation procedures.

The Commission considers the distribution consultation procedures strike an appropriate balance between reducing administrative burden and providing sufficient time for stakeholders to provide their input through submissions.

<sup>146</sup> The transmission consultation procedures, set out in rule 6A.20 of the NER, are similar to the distribution consultation procedures.

<sup>147</sup> Energy Senior Officials, rule change request two (planning and AER guidelines), p. 8.

<sup>148</sup> AER, submission to the consultation paper, p. 3.

<sup>149</sup> Clauses 8.9.3(a)(5) and 8.9.4(a)(3) of the NER.

### 5.1.3 The AER would be required to commence consulting by 1 July 2024

The draft rules require the AER to commence consulting on guideline changes (other than network planning guidelines, discussed below) by 1 July 2024.<sup>150</sup>

A required start date is included to ensure relevant guideline updates occur in a timely manner. Under the draft rules, the AER could commence consultation earlier than this date if it chose. A start date of 1 July 2024 would imply a final decision by late October 2024,<sup>151</sup> which the Commission considers is an appropriate timeframe for the AER to make minor updates to its guidelines resulting from the change in the energy objectives.

A required start date is included instead of a required finish date to provide the AER with the same flexibility to extend the time within which it is required to publish its final decision, in the event the consultation involves particularly complex issues or due to circumstances outside the AER's control, as is provided ordinarily under the distribution rules consultation procedures.<sup>152</sup>

## 5.2 The AER would be able to consult on the network planning guidelines together, using a two-round process

### **BOX 10: DRAFT POSITION — NETWORK PLANNING GUIDELINES, REQUIRING MORE SIGNIFICANT CHANGES, WOULD BE UPDATED TOGETHER USING A SEPARATE TWO-ROUND PROCESS**

The draft electricity rule requires two rounds of consultation on the network planning guidelines and instruments, which will need more significant changes to reflect the new NEO and this rule. It enables the AER to consult on changes to these documents under one consolidated process, using the standard rules consultation procedure. The five relevant guidelines and instruments are the:

- Cost benefit analysis guidelines
- Regulatory investment test for transmission instrument
- Regulatory investment test for transmission application guidelines
- Regulatory investment test for distribution instrument
- Regulatory investment test for distribution application guidelines.

Updates to these guidelines and instruments required as a result of the change in the NEO and this rule and are expected to be substantive and inter-related. These documents also require timely updates as they impact long-term planning processes such as the ISP and

<sup>150</sup> New clause 11.XXX.5 in the draft electricity rule; new rule Schedule 1 Part 18 rules 100-101 in the draft gas rule; new Schedule 3, Part 19 clause 2 in the draft retail rule.

<sup>151</sup> Assuming the minimum consultation time and maximum time to develop the final decision allowed under the distribution consultation procedures (clause 6.16 of the NER), noting that this timeframe could be more or less if the minimums and maximums were not taken.

<sup>152</sup> Rule 6.16(g) of the NER.

RITs. Different consultation procedures would ordinarily apply to changes to these guidelines and instruments. Consulting on these changes separately would increase administrative burden.

The draft electricity rule also includes transitional arrangements that recognise consultation undertaken by the AER prior to the final rule coming into effect (if made) as meeting the relevant consultation requirements. This early start to the AER's consultation would assist with updates to these guidelines and instruments being finalised by October 2024, in time for commencement of work on the 2026 ISP.

### 5.2.1 **Enabling the AER to use one process to update the related network planning guidelines would reduce administrative burden**

The draft electricity rule enables the AER to consult on updates to specific network planning guidelines through one consolidated process, and requires the AER to use the standard rules consultation procedure under clause 8.9.2 of the NER.<sup>153</sup> The AER would use this procedure when making updates to the following guidelines and instruments:

- Cost benefit analysis guideline
- RIT-T instrument
- RIT-T application guidelines
- RIT-D instrument
- RIT- D application guidelines.

Under the current NER, the AER is required to use the rules consultation procedure when updating the Cost benefit analysis guideline, while it must use the transmission consultation procedures for the RIT-T guideline and instrument and the distribution consultation procedures for the RIT-D guideline and instrument. As noted in section 5.1.1, the standard rules consultation procedures have different consultation stages and timing requirements to the distribution and transmission consultation procedures.

In its submission to the consultation paper, the AER noted its preference to update the network planning guidelines together to reduce administrative burden.<sup>154</sup> Although the rule change request did not put forward the idea of conducting a separate process to group the network planning guidelines together, various stakeholders noted that guidelines that have more material or complex changes should have a dedicated or prioritised consultation process.<sup>155</sup>

The Commission considers it preferable for these guidelines and instruments to be consulted on together as they will all need to similarly consider the addition of emissions reduction as a class of market benefit that must be considered under the ISP and RITs, as discussed in

<sup>153</sup> New clause 11.XXX.4 in the draft electricity rule.

<sup>154</sup> AER, submission to the consultation paper, p. 3.

<sup>155</sup> Submissions to the consultation paper: APA, p. 11; PIAC, p. 10; Transgrid, p. 4.

chapter 3. The Commission considers that a dedicated consultation process for these substantive and related updates is more likely to facilitate higher-quality consultation. It would also reduce administrative burden for the AER and stakeholders, compared to separate consultations using different processes.

## 5.2.2

### The AER would use the standard rules consultation procedure with two rounds of consultation

The draft electricity rule requires the AER to use the standard rules consultation procedure when updating the five network planning guidelines and instruments.<sup>156</sup> The standard rules consultation procedure is outlined in Box 11.

#### **BOX 11: THE STANDARD RULES CONSULTATION PROCEDURE REQUIRES TWO ROUNDS OF CONSULTATION**

The standard rules consultation procedure is as follows:

- The AER publishes a consultation paper that sets out the issues involved and any options to address them, along with an invitation for written submissions
- Stakeholders have at least 20 business days to make submissions to the consultation paper, although the AER could choose a longer period
- The AER then has 50 business days after the due date for submissions to publish a draft report, outlining its proposed changes and reasoning, along with an invitation for written submissions
- Stakeholders then have at least 20 business days to make submissions to the draft report
- The AER has 50 business days after the due date for submissions to publish its final decision and changes
- The AER may choose to extend the due date for its final decision if there are complex issues or the circumstances have materially changed.

Source: Clause 8.9.2 of the NER.

Note: Although only the AER is mentioned above, the standard rules consultation procedure is also used by AEMO and the AEMC.

Using the standard rules consultation procedure would be familiar to stakeholders, and would give the AER sufficient time to consider all relevant issues fully when updating its network planning guidelines.

The draft rule applies the highest consultation requirements that apply within the group (the standard rules consultation procedures) and applies them to the entire group. The Commission considers this approach is appropriate as it increases the overall consultation requirements. Applying the distribution or transmission consultation procedures to this process is not recommended as they only have one round of consultation, which would decrease consultation on the Cost benefit analysis guideline and therefore decrease the overall consultation requirements.

<sup>156</sup> New clause 11.XXX.4 in the draft electricity rule.

The Commission considers utilising the standard rules consultation procedures will enable an appropriate level of transparency and stakeholder engagement, given the significance of the changes required to the network planning guidelines and instruments.

The draft electricity rule requires the AER to complete its updates to these instruments by 31 December 2024, in time for changes to be factored into the 2026 ISP.

### 5.2.3

#### **Consultation that has commenced on the network planning guidelines before the rule commences would count towards consultation requirements**

The draft electricity rule enables consultation by the AER on the network planning guidelines and instruments conducted prior to the commencement of the final rule, in anticipation of the rule being made, to satisfy the equivalent consultation or step under the relevant consultation procedure.<sup>157</sup> This transitional arrangement would only apply to the five network planning guidelines and instruments outlined at section 5.2.1 and consultation would only be recognised to the extent it would otherwise meet the consultation requirements that apply under the standard rules consultation requirements.

The AER noted in its submission to the consultation paper that AEMO would require the network planning guidelines to be updated by October 2024 in order for the updated guidelines to apply to the 2026 ISP.<sup>158</sup> To meet this deadline, the AER requested a transitional arrangement that would recognise consultation undertaken by the AER prior to the final rule taking effect as satisfying the equivalent consultation procedure under the rules.<sup>159</sup> The Commission supports this request, given the importance of the ISP aligning with the broader national electricity framework to incorporate emissions reduction.

The proposed transitional provision enables the AER to commence its consultation early, allowing for additional time to complete the guideline updates prior to the commencement of the 2026 ISP if the AER considers it necessary. Enabling the AER's network planning guidelines to be updated in advance of the time required for the 2026 ISP would ensure AEMO has clear guidance on how to implement emissions reduction considerations in the ISP in a way that is consistent with the approach proposed for the RITs and other processes established under the NER. This would improve consistency and certainty for market bodies and market participants.

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<sup>157</sup> New clause 11.XXX.4(c) in the draft electricity rule.

<sup>158</sup> AER, submission to the consultation paper, p. 2.

<sup>159</sup> Ibid.

## A RULE MAKING PROCESS

A standard rule change request includes the following stages:

- a proponent submits a rule change request
- the Commission initiates the rule change process by publishing a consultation paper and seeking stakeholder feedback
- stakeholders lodge submissions on the consultation paper and engage through other channels to make their views known to the AEMC project team
- the Commission publishes a draft determination and draft rule (if relevant)
  - stakeholders lodge submissions on the draft determination and engage through other channels to make their views known to the AEMC project team
- the Commission publishes a final determination and final rule (if relevant).

You can find more information on the rule change process in *The rule change process — a guide for stakeholders*.<sup>160</sup>

### A.1 Energy senior officials proposed rules to harmonise the energy rules with the updated national energy objectives

Energy senior officials on behalf of the Ministerial Council on Energy (as constituted by the Energy Ministers Sub-Group) submitted two rule change requests on 4 July 2023 to harmonise the energy rules with the updated energy objectives.

Both rule change requests related to ensuring changes to the national energy objectives to include emissions reduction are properly reflected in the application of the rules.

Rule change request one sought to align the capital and operational expenditure provisions for network and pipeline operators with the updated energy objectives.<sup>161</sup> The proposal recognised that the relevant provisions in the NER and NGR were drafted to reflect the previous objectives.

Rule change request two sought to align the electricity network planning and investment framework with the updated energy objectives.<sup>162</sup> The proposal also proposed a process for the AER to update its guidelines, guidance documents and instruments to reflect the change in the energy objectives.

### A.2 Energy senior officials' proposal identified provisions in the rules that are not aligned with the updated energy objectives

The proposals identified instances in the existing NER and NGR that refer to particular components of the energy objectives rather than the energy objectives overall. As a result, a

<sup>160</sup> AEMC, *The rule change process: a guide for stakeholders*, June 2017, available here: <https://www.aemc.gov.au/sites/default/files/2018-09/A-guide-to-the-rule-change-process-200617.PDF>

<sup>161</sup> Energy senior officials, rule change request one (network/pipeline expenditure)

<sup>162</sup> Energy senior officials, rule change request two (planning and AER guidelines)

change to the objectives will not automatically flow through to all relevant provisions in the rules unless harmonising changes are made. Without rule changes the policy intent of the change to the objectives may not take full effect, impacting the ability of market bodies and participants to fully contribute to the achievement of the updated objectives.

The misalignment between the identified provisions in the rules and the updated energy objectives would lead to regulatory uncertainty in how emissions should be factored in or applied in these cases.

### A.3 The proposal improves certainty for market bodies and market participants

The rule change requests proposed changes that would clarify the application of the updated energy objectives through key provisions in the NER and NGR. Improving alignment between the energy rules and objectives would reduce administrative costs for market bodies and industry in applying the rules, as well as reducing the risk of legal challenge. Energy senior officials noted that legal challenge to regulatory decisions could have flow on implications for energy consumers.

Energy senior officials also considered that the rule changes may support network and pipeline operators considering and undertaking emissions reduction projects that would otherwise not be considered economically efficient, thereby contributing to emissions reduction.

The proposed approach to enable the AER to use an omnibus process to consult on changes to its guidelines required as result of the updated energy objectives would also reduce administrative burden for the AER and stakeholders.

### A.4 The process to date

On 20 July 2023, the Commission published notices advising of its intention to initiate the rule making process in respect of the two rule change requests.<sup>163</sup> A consultation paper identifying specific issues for consultation was also published. Submissions closed on 17 August 2023.

The Commission received 21 submissions as part of the first round of consultation. The Commission considered all issues raised by stakeholders. Issues raised in submissions are discussed and responded to throughout this draft determination.

The Commission made a decision to consolidate the two rule change requests using its powers under s. 93 of the NEL, 300 of the NGL and 248 of the NERL. Consolidation was considered necessary and desirable to reduce administrative burden for stakeholders and because no complexities were identified in response to the consultation paper that the Commission considered were likely to delay a final determination for either rule change request.

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<sup>163</sup> These notices were published under s. 95 of the NEL, s. 303 of the NGL and s. 251 of the NERR.

## B REGULATORY IMPACT ANALYSIS

The Commission has undertaken regulatory impact analysis to make its draft determination.

### B.1 Our regulatory impact analysis methodology

#### **We considered a range of policy options**

The Commission compared a range of viable policy options that are within our statutory powers. The Commission analysed these options: the rules proposed in the rule change requests; and a business-as-usual scenario where we do not make a rule. These options are described in Chapter 2.

#### **We identified who would be affected and assessed the benefits and costs of each policy option**

The Commission's regulatory impact analysis for this rule change used qualitative methodologies. It involved identifying the stakeholders impacted and assessing the benefits and costs of policy options. The depth of analysis was commensurate with the potential impacts. The Commission focused on the types of impacts within the scope of the NEO, NGO and NERO.

Table B.1 summarises the regulatory impact analysis the Commission undertook for this rule change. Based on this regulatory impact analysis, the Commission evaluated the primary potential costs and benefits of policy options against the assessment criteria. The Commission's determination considered the benefits of the options minus the costs.

**Table B.1: Regulatory impact analysis methodology**

<b>ASSESSMENT CRITERIA</b>	<b>PRIMARY COSTS — LOW, MEDIUM OR HIGH</b>	<b>PRIMARY BENEFITS — LOW, MEDIUM OR HIGH</b>	<b>STAKEHOLDERS AFFECTED</b>	<b>METHODOLOGY</b> <b>QT = QUANTITATIVE, QL = QUALITATIVE</b>
1. Emissions reduction	Nil	Clear guidance on how to incorporate the emissions reduction objective will encourage timely investment and planning. (Medium impact)	<ul style="list-style-type: none"> <li>• Network service providers</li> <li>• AER</li> <li>• AEMO</li> <li>• All energy customers</li> <li>• All Australians</li> </ul>	<ul style="list-style-type: none"> <li>• QL: stakeholder feedback to assess all benefits and costs to market participants, AER and AEMO.</li> <li>• QL: Public forums and bilateral discussions with key stakeholders.</li> </ul>
2. Principles of market efficiency	Risk of inefficient costs to consumers if implemented poorly. (Low impact).	Including the emissions reduction objective explicitly into the network cost assessments will increase overall efficiency. (Low impact).	<ul style="list-style-type: none"> <li>• AER</li> <li>• Network service providers</li> </ul>	<ul style="list-style-type: none"> <li>• QL: stakeholder feedback to assess all benefits and costs to market participants, AER and AEMO.</li> <li>• QL: Public forums and bilateral discussions with key stakeholders.</li> </ul>
3. Implementation considerations	Nil	Consistency between the Law and Rules will reduce consultation time and risks of conflicts between the two. (Medium impact)	<ul style="list-style-type: none"> <li>• AER</li> <li>• AEMO</li> <li>• Network service providers</li> </ul>	<ul style="list-style-type: none"> <li>• QL: stakeholder feedback to assess all benefits and costs to market participants, AER and AEMO.</li> <li>• QL: Public forums and bilateral discussions with key stakeholders</li> </ul>
4. Principles of good regulatory practice	Nil	<b>Consistency between the Law and Rules will reduce</b>	<ul style="list-style-type: none"> <li>• AER</li> <li>•</li> </ul>	<ul style="list-style-type: none"> <li>• QL: stakeholder feedback to assess all benefits and costs to market participants,</li> </ul>

<b>ASSESSMENT CRITERIA</b>	<b>PRIMARY COSTS — LOW, MEDI- UM OR HIGH</b>	<b>PRIMARY BENEFITS — LOW, MEDIUM OR HIGH</b>	<b>STAKEHOLDERS AF- FECTED</b>	<b>METHODOLOGY</b> <b>QT = QUANTITATIVE, QL = QUALITATIVE</b>
		<b>uncertainty and regulatory burden. (High impact)</b>	<ul style="list-style-type: none"> <li>Network service providers</li> </ul>	<p>AER and AEMO.</p> <ul style="list-style-type: none"> <li>QL: Public forums and bilateral discussions with key stakeholders</li> </ul>

Note: All primary costs are relative to not updating the NER, NGR and NERR to reflect the updated NEO, NGO and NERO.

## C LEGAL REQUIREMENTS TO MAKE A RULE

This appendix sets out the relevant legal requirements under the NEL, NGL and NERL for the Commission to make a draft rule determination.

### C.1 Draft rule determination and draft rule

In accordance with section 99 of the NEL, section 308 of the NGL and section 256 of the NERL, the Commission has made this draft rule determination for a more preferable draft rule in relation to the rule proposed by energy senior officials on behalf of the Ministerial Council on Energy.

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

A copy of the more preferable draft rules is attached to and published with this draft determination. Its key features are described in chapters 3, 4 and 5.

### C.2 Power to make the rule

The Commission is satisfied that the more preferable draft rule falls within the subject matter about which the Commission may make rules.

The more preferable draft rule falls within s. 34 of the NEL and the matters set out in Schedule 1 as it relates to:

- regulating the operation of the national electricity market
- regulating any matter or thing necessary or expedient for the purposes of the Law
- transmission and distribution system revenue and pricing
- regulatory economic methodologies.

The more preferable draft rule falls within s. 74 of the NGL and the matters set out in Schedule 1 of the *National Gas (South Australia) Act 2008* and *National Gas Access (WA) Act 2009* as it relates to:

- regulating the operation of a regulated retail gas market
- regulating any matter or thing necessary or expedient for the purposes of the Law
- regulatory economic methodologies
- the regulator's economic regulatory function or powers.

The more preferable draft rule falls within s. 237 of the NERL as it relates to:

- regulating any matter or thing necessary or expedient for the purposes of the Law.

### C.3 Commission's considerations

In assessing the rule change requests the Commission considered:

- its powers under the NEL, NGL and NERL to make the more preferable draft rules
- the rule change requests
- submissions received during first round consultation

- stakeholder input received at the public workshop held on 7 August 2023
- the Commission’s analysis as to the ways in which the draft rule will or is likely to contribute to the achievement of the NEO, NGO and NERO
- the application of the draft rule to the Northern Territory and Western Australia
- the revenue and pricing principles under the NEL and NGL.

There is no relevant Ministerial Council on Energy (MCE) statement of policy principles for this rule change request.<sup>164</sup>

The Commission may only make a rule that has effect with respect to an adoptive jurisdiction, such as Victoria, if satisfied that the proposed rule is compatible with the proper performance of AEMO’s declared network and system functions.<sup>165</sup> The more preferable draft electricity and gas rule is compatible with AEMO’s declared network and system functions because it would not affect those functions.

## C.4 Making electricity rules in the Northern Territory

### Test for scope of “national electricity system” in the NEO

Under the NT Act, 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:<sup>166</sup>

1. the national electricity system
2. one or more, or all, of the local electricity systems<sup>167</sup>
3. all of the electricity systems referred to above.

### Test for differential rule

Under the NT Act, the Commission may make a differential rule if it is satisfied that, having regard to any relevant MCE statement of policy principles, a differential rule will, or is likely to, better contribute to the achievement of the NEO than a uniform rule.<sup>168</sup> A differential rule is a rule that:

- varies in its term as between:
  - the national electricity systems, 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

<sup>164</sup> Under s. 33 of the NEL and s. 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. In December 2013, it became known as the Council of Australian Government (COAG) Energy Council. In May 2020, the Energy National Cabinet Reform Committee and the Energy Ministers’ Meeting were established to replace the former COAG Energy Council.

<sup>165</sup> Section 91(8) of the NEL and 295(4) of the NGL.

<sup>166</sup> Clause 14A of Schedule 1 to the NT Act, inserting section 88(2a) into the NEL as it applies in the Northern Territory.

<sup>167</sup> These are specified Northern Territory systems, listed in schedule 2 of the NT Act.

<sup>168</sup> Clause 14B of Schedule 1 to the NT Act, inserting section 88AA into the NEL as it applies in the Northern Territory.

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 one or more, or all, of the local electricity systems, and has effect with respect to all of those systems.<sup>169</sup>

The Commission's draft determinations in relation to the meaning of the "national electricity system" and whether to make a uniform or differential rule are set out in chapter 2.

## C.5 Making gas rules in Western Australia

Under the *National Gas Access (WA) Act 2009* (WA Gas Act), a modified version of the NGL was adopted, known as the National Gas Access (Western Australia) Law (WA Gas Law). Under the WA Gas Law, the NGR applying in Western Australia is version 1 of the NGR, as amended by rules made by the South Australian Minister for Energy<sup>170</sup> and rules made by the AEMC in accordance with its rule making powers under section 74 and 313 of the WA Gas Law.<sup>171</sup>

The draft rule falls within the subject matters about which the Commission may make rules under the WA Gas Act.<sup>172</sup> The draft rule amends parts of the NGR that apply in the Western Australian version of the NGR. Accordingly, some aspects of the draft rule will apply to Western Australia. For more information, see chapter 2 of the determination.

## C.6 Civil penalty provisions and conduct provisions

The Commission cannot create new civil penalty provisions or conduct provisions. However, it may recommend to the Energy Ministers' Meeting and Western Australian Minister for Energy that new or existing provisions of the NER, NGR and NERL be classified as civil penalty provisions or conduct provisions.

The more preferable draft rule does not amend any clauses that are currently classified as civil penalty provisions or conduct provisions under the *National Electricity (South Australia) Regulations*, *National Gas (South Australia) Regulations*, *National Energy Retail Regulations* and *National Gas Access (WA) (Part 3) Regulations 2009*.

The Commission does not propose to recommend to the Energy Ministers' Meeting or Western Australian Minister for Energy that any of the proposed amendments made by the more preferable draft rule be classified as civil penalty provisions or conduct provisions.

<sup>169</sup> Clause 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.

<sup>170</sup> The Statutes Amendment (National Energy Laws) (Binding Rate of Return Instrument) Act 2018 and the National Gas (South Australia) (Pipelines Access—Arbitration) Amendment Act 2017.

<sup>171</sup> See the AEMC website for further information at <https://www.aemc.gov.au/regulation/energy-rules/national-gas-rules/western-australia>.

<sup>172</sup> Section 74 and Schedule 1 of the WA Gas Law specify the subject matter for rules that can be made by the AEMC in Western Australia.

## C.7 Review of operation of the rule

The more preferable draft rule does not require the Commission to conduct a formal review of the operation of the rule. The Commission may however self-initiate a review of the operation of the rule at any time if it considers such a review would be appropriate, pursuant to sections 45 of the NEL, 83 of the NGL and 232 of the NERL.

## D SUMMARY OF OTHER ISSUES RAISED IN SUBMISSIONS

**Table D.1: Summary of other issues raised in submissions**

STAKEHOLDER	ISSUE	RESPONSE
Australian Energy Council	The AEC suggested that to improve outcomes the AEMC could undertake rigorous assessments of each jurisdictional policy that we are required to consider, to identify a \$/tonne/CO <sub>2</sub> e per policy.	The Commission considers this analysis to be outside the scope of this rule change request.
Clean Energy Council	The CEC noted work on defining High Impact Low Probability events has stalled, and recommended this work is restarted as soon as possible.	The Commission notes this recommendation.
Transgrid	Transgrid encouraged the AEMC to consider where else in the rules it may be appropriate to refer to the targets statement. Transgrid considers we should include both base and aspirational targets where possible, to provide certainty on the inputs to include for base and sensitivity analysis.	The Commission considers this analysis to be outside the scope of this rule change request.

## ABBREVIATIONS AND DEFINED TERMS

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
AGIG	Australian Gas Infrastructure Group
Commission	See AEMC
DAPR	Distribution Annual Planning Report
DMIS	Demand Management Incentive Scheme
DNSP	Distribution network service provider
DPAR	Draft project assessment report, prepared under the NER as part of the RIT-D process
Emissions Act	<i>Statutes Amendment (National Energy Laws) (Emissions Reduction Objectives) Act 2023</i>
ENA	Energy Networks Australia
ISP	Integrated System Plan
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
NSCAS	Network support and control ancillary services
NSP	Network service provider under the NER (a DNSP or TNSP)
NT Act	<i>National Electricity (Northern Territory) (National Uniform Legislation) Act 2015</i>
PADR	Project assessment draft report, prepared under the NER as part of the RIT-T process
PIAC	Public Interest Advocacy Centre
Proponent	The entity who submitted the rule change request to the Commission — Energy senior officials on behalf of the Ministerial Council on Energy
RIT	Regulatory investment test
RIT-D	Regulatory investment test for distribution

RIT-T	Regulatory investment test for transmission
Rule change request one (network/pipeline expenditure)	Energy senior officials on behalf of the Ministerial Council on Energy, Rule change request: Priority rule changes to support the incorporation of an emissions reduction component into the National Energy Objectives — harmonising the rules for network/pipeline expenditure proposals and assessment, 4 July 2024
Rule change request two (planning and AER guidelines)	Energy senior officials on behalf of the Ministerial Council on Energy, Rule change request: Priority rule changes to support the incorporation of an emissions reduction component into the National Energy Objectives — Network Investment Planning Frameworks and the Australian Energy Regulator Regulatory Instrument Revisions, 4 July 2024
TNSP	Transmission network service provider
TPIR	Transmission planning and investment review
VER	Value of emissions reduction