



Australian Energy Market Commission

Rule Determination

National Electricity Amendment (Minor Changes) Rule 2007

Rule Proponent
Australian Energy Market Commission

11 October 2007

Signed:

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Chairman
For and on behalf of
Australian Energy Market Commission

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About the AEMC

The Council of Australian Governments, through its Ministerial Council on energy, established the Australian Energy Market Commission (AEMC) in July 2005 to be the Rule maker for national energy markets. The AEMC is currently responsible for Rules and policy advice covering the National Electricity Market. It is a statutory authority. Our key responsibilities are to consider Rule change proposals, conduct energy market reviews and provide policy advice to the Ministerial Council as requested, or on AEMC initiative.

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1 Summary

This Rule proposal was initiated by the Australian Energy Market Commission (Commission) to make various minor and non-material changes to the National Electricity Rules (Rules) to promote clarity of meaning and the use of consistent language throughout, and to remove identified errors in, the Rules. In accordance with section 102 of the National Electricity Law (NEL), the Commission has decided to make the proposed Rule. The Rule to be made, the *National Electricity Amendment (Minor Changes) Rule 2007* (the 2007 Minor Changes Rule), will be made and commence operation under section 103 of the NEL as soon as practicable and no later than the date the next Rule is made by the Commission. The Commission considers that the Rule to be made is likely to promote the National Electricity Market (NEM) objective and therefore satisfies the Rule making test under section 88 of the NEL. This Rule Determination sets out the Commission's reasons for its decision.

On 30 August 2007 the Commission gave notice under sections 95 and 96 of the NEL of the commencement of first round consultation on the Commission's "Minor Changes" Rule change proposal and also of the Commission's intention to expedite the making of the Rule on the grounds that it is a non-controversial Rule.

The Rule proposal has been initiated by the Commission. Section 91(2) of the NEL provides that the Commission must not make a Rule on its own initiative unless it considers the Rule:

- Corrects a minor error in the Rules;
- Involves a non-material change in the Rules; or
- Is in respect of any matter that is prescribed by the Regulations as a matter on which it may make a Rule on its own initiative.

The proposed Rule only contains amendments to the Rules which are to correct minor errors or make changes which are editorial and non-material in nature. The proposed Rule aims to:

- Update terminology that relates to referencing within the Rules;
- Correct spelling mistakes; and
- Correct typographical errors, and cross referencing errors.

Interested parties were invited to make written objections to the expedited process by 13 September 2007 and submissions on the proposal by 2 October 2007. No written objections were received. One submission was received from NEMMCO.

The Commission is satisfied that the proposed Rule falls within the scope of the Commission's Rule making powers under section 34 of the NEL. In particular, the proposed Rule relates to the operation of the NEM as it relates to the Rules as a whole, a key legal instrument in the regulation of the NEM.

The Rule to be made will enhance the clarity and consistency of language, referencing and terminology (including the correction of minor errors) in the Rules. Such improvements improve the efficiency of the Rules which in turn fosters an environment of efficient investment and efficient use of electricity services. For these reasons the Commission considers the Rule to be made is likely to promote the achievement of the NEM objective and therefore satisfies the Rule making test under section 88 of the NEL.

2 AEMC Initiated Rule proposal

On 30 August 2007 the Commission gave notice under section 95 of the NEL of the commencement of first round consultation on the Commission's 2007 Minor Changes Rule proposal.

The proposed Rule seeks to make minor editorial amendments to the National Electricity Rules (Rules) and the Commission considers it falls within the category of proposed Rules which the Commission is not prohibited by section 91(2) of the NEL from making on its own initiative. The key amendments of the proposal are:

- Updating terminology that relates to referencing within the Rules;
- Correcting spelling mistakes; and
- Correcting typographical errors, and cross referencing errors.

Given the proposed Rule does not relate to matters of substance or policy, the Commission considered the Rule to be non-controversial and published a notice under section 96 of the NEL advising of its intention to expedite the making of the proposed Rule.

As stated in the Rule change proposal, the proposal was the product of a review by the Commission of Chapters 1-5 and 6A-8 of the Rules. The Commission deliberately chose not to review Chapters 6, 8A, 9, 10 and 11. The Commission's review of the Rules identified a range of minor editorial mistakes and inconsistencies which the Commission considered should be addressed in the interests of achieving the highest quality regulation for the National Electricity Market (NEM).

2.1 Contribution to the National Electricity Market (NEM) Objective

In its Rule proposal, the Commission took the view that incremental improvements over time to the clarity and consistency of language, referencing and terminology in the Rules (including the correction of minor errors) is part of good regulatory practice for the Commission as the Rule making body with responsibilities that relate to market development. Ongoing enhancements to the quality of the Rules promotes greater certainty and thus, an environment where efficient investment is facilitated.

The AEMC considered that the proposed Rule would, if made, improve the clarity and consistency of the Rules, and therefore would be likely to promote the NEM objective.

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3 Rule Determination

In accordance with section 102 of the NEL, the Commission has decided to make the proposed Rule. The Rule to be made is attached to this Rule Determination. The Commission intends that the *National Electricity Amendment (Minor Changes) Rule 2007* be made under section 103 of the NEL and will be made and commence operation as soon as practicable and no later than the date of commencement of the next Rule made by the Commission. The Commission is satisfied that, under section 88 of the NEL, the proposed Rule is likely to contribute to the achievement of the NEM objective and therefore satisfies the Rule making test. In making this Rule determination, the Commission has taken into account:

- Its powers under the NEL to make the proposed Rule; and
- The NEM objective and statutory Rule making test.

The Commission's reasons for its decision and the matters noted above are discussed below.

3.1 The Commission's power to make the proposed Rule

Under section 91(2) of the NEL, the Commission must not make a Rule on its own initiative unless it considers the Rule:

- “(a) Corrects a minor error in the Rules; or
- (b) Involves a non-material change to the Rules; or
- (c) Is in respect of any matter that is prescribed by the Regulations as a matter on which it may make a Rule on its own initiative.”

As the proposed Rule corrects various minor errors across the Rules and these changes are not material in nature, the Commission is satisfied that it has the power to make the proposed Rule.

The Commission is also satisfied that the subject matter of the proposed Rule falls within the Commission's Rule making powers as set out in section 34 of the NEL. In particular, section 34(1)(a) of the NEL states that the Commission may make Rules for or with respect to regulating:

“the operation of the national electricity market.”

The proposed Rule relates to the National Electricity Rules as a whole which is a key legal instrument in the governance of the NEM and therefore is intrinsically linked to the operation of the NEM.

3.2 Expediting the Rule making process

The Rule making process for this Rule change proposal has been undertaken in accordance with the expedited process under section 96. Section 96(1)(a) of the NEL allows the Commission to make a Rule if the Commission considers a Rule initiated by the Commission is a non-controversial Rule.

A non-controversial Rule is defined in section 87 of the NEL as:

“a Rule that is unlikely to have a significant effect on the national electricity market.”

The Commission considers that the proposed Rule corrects minor errors in the Rules and does not propose amendments to the Rules that are substantive or policy in nature. For this reason, the Commission considers the proposed Rule will not significantly affect the NEM and has treated the 2007 Minor Changes Rule proposal as a non-controversial Rule.

On 30 August 2007, the Commission published a notice under section 96 (in conjunction with a section 95 notice) advising of the Commission’s intention to expedite the making of the proposed Rule. Interested parties were invited to submit written objections to the expedited process by 13 September 2007. No objections were received.

3.3 Consultation Process

On 30 August 2007, the Commission published a notice under section 95 of the NEL seeking submissions on the 2007 Minor Changes proposal which included a copy of the proposed National Electricity Amendment (Minor Changes) Rule 2007. Interested parties were invited to provide submissions by 2 October 2007.

One submission was received from NEMMCO. NEMMCO’s submission identifies instances where a term should be italicised to reflect a definition in Chapter 10 of the Rules. NEMMCO also suggests a series of typographical amendments which largely relate to cross referencing errors.

3.4 The Rule making test and the National Electricity Market Objective

Under the Rule making test contained in section 88 of the NEL, the Commission must be satisfied that the proposed Rule will or is likely to contribute to the NEM objective. The NEM objective is:

“to promote efficient investment in, and efficient use of, electricity services for the long term interests of consumers of electricity with respect to price, quality, reliability and security of supply of electricity and the reliability, safety and security of the national electricity system.”¹

¹ *National Electricity (South Australia) Act 1996, Schedule-National Electricity Law, s. 7.*

In the Rule proposal, the Commission stated that the rectification of editorial mistakes would improve the clarity and consistency of the National Electricity Rules; In doing so, such enhancements would lead to greater regulatory certainty. In turn, facilitating the certainty of the market is directly related to promoting its efficiency.

The Commission supports the above reasoning of as to why the NEM objective is satisfied. The Commission considers that the Rule to be made will improve the accuracy of the Rules and the reliance that persons in the NEM may place on the Rules. This will lead to overall improvements in the operation of the Rules and reduces the likelihood of misinterpretation of the Rules. This improvement in the Rules which is in the interests of achieving the highest quality of regulation of the NEM, will promote efficient use of electricity services and thereby is likely to promote the NEM objective. The Commission considers that the Rule making test is satisfied.

3.5 The Rule to be made

The Rule to be made includes all the proposed amendments identified in the proposed Rule with some minor enhancements to the drafting instructions. It also incorporates the amendments proposed by NEMMCO that the Commission has accepted. NEMMCO's proposed amendments are discussed in the relevant categories of proposed amendments below.

The Rule to be made corrects minor editorial mistakes and inconsistencies in Chapters 1-5 and 6A-8, that the Commission has identified in a review of the Rules. The Rule to be made is structured based on the category of the amendment. The categories are noted below.

3.5.1 Referencing terminology – Schedule 1

Schedule 1 of the 2007 Minor Changes Rule applies the naming conventions introduced in rule 1.3. Use of words such as "rule", "clause", "paragraph" and "subparagraph" are amended by the appropriate and consistent terminology.

The Commission introduced the naming conventions in rule 1.3 of the Rules as part of the *National Electricity Amendment (Economic Regulation of Transmission Services) Rule 2006 No.18*. The naming conventions were designed to support consistency of internal and external cross-referencing in the new provisions introduced by Rule No.18 of 2006. Schedule 1 of the Rule to be made although non-material in nature, aims to apply the naming conventions to the provisions of the Rules that were not amended as part of Rule No.18 of 2006. The Commission considers that the amendments improve the consistency and clarity of the Rules.

3.5.2 Consequential changes to Schedule 1 – Schedule 2

Schedule 2 includes additional amendments which the Commission considers to be necessary for the provision that will be amended as part of Schedule 1 to ensure the provision makes grammatical sense given the changes in naming.

The Commission considers the amendments in Schedule 2 to be non-material in nature but are necessary to ensure the clarity of the Rules and will also improve the overall understanding of the Rules.

3.5.3 Removal of unnecessary content – Schedule 3

The AEMC has, in the proposed 2007 Minor Changes Rule, taken a conservative approach to the removal of content from the Rules. This category of amendments remove all occurrences of the term “deleted”, where they occur at the end of clauses, so as not to interfere with existing consecutive numbering.

The Commission considers the amendments to be desirable in order to minimise the unnecessary length of the Rules as a whole. The amendments are only those which will not affect subsequent numbering. These changes may be found in Schedule 3. The Commission consider the amendments to be non-material in nature and will improve the overall readability of the Rules.

3.5.4 Consistency in the use of italicisation – Schedule 4

Clause 1.1.2 of the Rules provides that italicised words are defined in the glossary in Chapter 10. The AEMC has identified a series of instances in the Rules where defined terms are not italicised. Schedule 4 contains amendments identifying where a term should be italicised.

NEMMCO identified a range of instances where a phrase or term in the Rules should be italicised. The Commission has largely incorporated these amendments into the Rule to be made.

The Commission did not incorporate NEMMCO’s proposal to italicise “generation” in clause 8.8.3(aa)(5) of the Rules as the Commission considers the defined term of “generation” does not reflect the meaning of generation in that clause. The Commission did not italicise “suspension node” in clause 3.14.5(m) as suggested by NEMMCO as the term relates to an internal definition in that clause and not a term defined in Chapter 10.

The Commission has not italicised the word “publish” in rule 8.10 as it is not comprehensively clear whether the lack of italicisation is an error or a matter of substance and given the number of instances of the term, has the potential to have a significant effect on the operation of the rule.

The Commission considers the amendments in Schedule 4 to be necessary in order to correct minor errors in the Rules. The amendments will minimise confusion and increase the accuracy of the Rules thereby promoting a clearer understanding of the provisions of the Rules.

3.5.5 Miscellaneous matters – Schedule 5

A number of other errors such as spelling mistakes, inconsistent use of spelling, and typographical errors have been identified. Schedule 5 rectifies these errors by

amending, deleting and substituting where necessary. Additionally Schedule 5 also contains amendments which amend identified cross referencing errors.

The Commission has largely incorporated NEMMCO's proposed amendments that fall within this category of amendments. An amendment proposed by NEMMCO that the Commission considered to be substantive in nature has not been included. Similarly, where there was ambiguity as to whether the amendment was material, the Commission has taken a conservative approach and not made the amendment.

The Commission has not incorporated NEMMCO's proposed amendment to clause 3.11.4A(a). The Commission considers that this amendment could have the potential to change the meaning of the clause. Since this Rule is being made under an expedited process, stakeholders have not had the opportunity to comment on the amendment and accordingly, the Commission does not consider it appropriate to make the amendment.

In relation to NEMMCO's proposal to amend the reference in rule 4.14(h)(3) to "clause 5.3.3" with "clause 5.3.4A", the Commission considers the current reference is accurate.

As noted in its Rule proposal, the Commission did not propose amendments to Chapter 10 or Chapter 11 as part of this Rule change proposal. As such, the Commission has not included NEMMCO's proposed amendments to Chapter 10 or Chapter 11 in the Rule to be made.

The Commission considers the minor errors that Schedule 5 corrects as important to improving the accuracy and clarity of the Rules. This in turn, will assist in improving the understanding and efficiency of the Rules.

In the light of the above, the Commission has determined that the *National Electricity Amendment (Minor Changes) Rule 2007* should be made. The Rule will be made and commence operation as soon as practicable and no later than the date the next Rule is made by the Commission.

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