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Australian Energy Market Commission

## RULE DETERMINATION

# National Electricity Amendment (Minor Changes) Rule 2010

### Rule Proponent(s)

AEMC

### Commissioners

Tamblyn  
Henderson  
Spalding

3 June 2010

### JOHN TAMBLYN

Chairman  
For and on behalf of the Australian Energy Market Commission

RULE  
CHANGE

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## **About the AEMC**

The Council of Australian Governments, through its Ministerial Council on Energy (MCE), 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 providing advice to the MCE on matters relevant to the national energy markets. We are an independent, national body. Our key responsibilities are to consider rule change proposals, conduct energy market reviews and provide advice to the MCE as requested, or on AEMC initiative.

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## Summary

This Rule proposal was initiated by the Australian Energy Market Commission (the Commission) to correct minor errors and make non-material changes to the National Electricity Rules (the Rules) to promote clarity of meaning and to remove identified errors in the Rules. The Commission expedited the Rule making process on the basis that it considered the Rule proposal is a non-controversial Rule. The Commission considered 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 National Electricity Law (NEL).

On 22 April 2010, the Commission gave notice under sections 95 and 96(a) of the NEL of its intention to initiate the proposed National Electricity Amendment (Minor Changes) Rule 2010 under the expedited Rule making process, subject to any written objections to the expedited Rule making process, and to initiate public consultation on the Rule proposal. No objections or submissions were received in relation to this Rule proposal.

In accordance with section 102 of the NEL, the Commission has decided to make the Proposed Rule with minor amendments. Schedules 1 and 2 of the National Electricity Amendment (Minor Changes) Rule 2010 No. 6 will commence operation on 10 June 2010, and Schedule 3 of the Rule as made will commence operation on 16 December 2010.

# Contents

<b>1</b>	<b>The AEMC's Rule change Proposal.....</b>	<b>1</b>
1.1	The Rule Proposal.....	1
1.2	Rule Change Request Rationale .....	1
1.3	Solution proposed by the Rule change Proposal.....	1
1.4	Commencement of Rule making process .....	2
<b>2</b>	<b>Final Rule Determination.....</b>	<b>3</b>
2.1	Commission's determination.....	3
2.2	Commission's considerations .....	3
2.3	Commission's power to make the Rule .....	3
2.4	Rule making test.....	4
2.5	Other requirements under the NEL.....	5
<b>3</b>	<b>Commission's reasons.....</b>	<b>6</b>
3.1	Assessment.....	6
3.2	Rule as made.....	6
	<b>Abbreviations.....</b>	<b>9</b>

# **1 The AEMC's Rule change Proposal**

## **1.1 The Rule Proposal**

On 22 April 2010, the Commission gave notice under sections 95 and 96(a) of the NEL of its intention to initiate:

- the proposed National Electricity Amendment (Minor Changes) Rule 2010 (the Rule proposal) under the expedited Rule making process, subject to any written objections to the expedited Rule making process; and
- public consultation on the Rule proposal.

The Commission expedited the Rule making process on the basis that it considered the Rule proposal is a non-controversial Rule as it is unlikely to have a significant effect on the NEM.

The Rule proposal was initiated by the Commission to correct minor errors in the Rules and to make non-material changes to the Rules in accordance with section 91(2) of the NEL.

Interested parties were invited to make written objections to the expedited Rule making process by 6 May 2010 and submissions on the Rule proposal by 20 May 2010.

## **1.2 Rule Change Request Rationale**

The Rule change proposal has been prompted by the identification by the AEMC and stakeholders of various minor errors that exist in the Rules, and non-material changes that are required to be made to the Rules.

## **1.3 Solution proposed by the Rule change Proposal**

To address the issues identified in the Rules, the Commission proposed a Rule which seeks to:

- correct several minor errors, including formatting and numbering anomalies in the Rules;
- make some non-material changes to the National Electricity Amendment (Bid and Offer Validation Data) Rule 2009 No. 21, while ensuring the corrections commence operation when that Amending Rule commences operation;
- remove jurisdictional derogations which have expired under the Rules;
- insert notes indicating which Rules are prescribed as civil penalty provisions and the rebidding civil penalty provision under the National Electricity (South Australia) Regulations; and

- correct errors and ensure consistency in approach throughout Chapter 10, by removing and inserting some Chapter 10 glossary definitions.

#### **1.4 Commencement of Rule making process**

On 22 April 2010, the Commission published a notice under section 95 of the NEL advising of its intention to commence the Rule change process and the first round of consultation in respect of the Rule Change Proposal.

The Commission received no submissions on the Rule Change Proposal as part of the first round of consultation.

The Commission accepted that the Rule Change Proposal was a request for a non-controversial Rule. Accordingly, the Commission intended to expedite the Rule Change Proposal under section 96(a) of the NEL, subject to any written requests not to do so. The closing date for receipt of written requests was 20 May 2010.

None were received. Accordingly, the Rule Change Request was considered under an expedited process under section 96(a) of the NEL.

## **2 Final Rule Determination**

### **2.1 Commission's determination**

In accordance with section 102 of the NEL the Commission has made this final Rule determination in relation to the Rule initiated by the Commission. In accordance with section 103 of the NEL the Commission has determined to make the Rule proposed by the Commission with minor amendments.

The National Electricity Amendment (Minor Changes) Rule 2010 No. 6 is published with this final Rule determination. Schedules 1 and 2 of the Rule as made will commence operation on 10 June 2010, and Schedule 3 of the Rule as made will commence operation on 16 December 2010.

### **2.2 Commission's considerations**

In assessing the Rule Change Proposal the following were taken into account:

- the Commission's powers under the NEL to make the Rule;
- the Rule Change Proposal;
- the Commission's analysis as to the ways in which the proposed Rule will or is likely to, contribute to the achievement of the National Electricity Objective (NEO);
- any relevant Ministerial Council on Energy (MCE) statement of policy principles; and
- the compatibility with the Australian Energy Market Operator's (AEMO) declared network functions.

### **2.3 Commission's power to make the Rule**

The Commission is satisfied that the Rule as made falls within the subject matter about which the Commission may make Rules. The Rule as made falls within the matters set out in section 34 of the NEL as under section 34(1)(b) of the NEL the Commission may make Rules for or with respect to any matter or thing contemplated by the NEL, or is necessary or expedient for the purposes of the NEL.

Under section 91(2) of the NEL, the Commission may make Rules if:

- it considers the Rule corrects a minor error in the Rules; or
- it considers the Rule involves a non-material change to the Rules.

Given that the categories of amendments in the Rule as made are minor in nature, or are non material changes, the Commission consider that the proposed rule satisfies the requirements of section 91(2).

## **2.4 Rule making test**

Under section 88(1) of the NEL the Commission may only make a Rule if it is satisfied that the Rule will, or is likely to, contribute to the achievement of the NEO. This is the decision making framework that the Commission must apply.

The NEO is set out in section 7 of the NEL as follows:

“The objective of this Law is to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to:

- (a) price, quality, safety, reliability and security of supply of electricity;  
and
- (b) the reliability, safety and security of the national electricity system.”

The Commission is satisfied that the proposed Rule will or is likely to contribute to the NEO by providing incremental efficiency benefits. The Commission has concluded that the proposed Rule has an incremental efficiency benefit, because the changes, by reducing ambiguities and correcting errors, will lead to greater regulatory certainty and predictability for market participants which in turn places a downward pressure on costs associated with managing risk and regulatory compliance and promotes productive efficiency benefits.

The Rule as made supports effective and transparent regulation and operation of the NEM, by clarifying the operation of the Rules in the following ways:

- it corrects several minor errors, including formatting and numbering anomalies in the Rules;
- it makes some non-material changes to the National Electricity Amendment (Bid and Offer Validation Data) Rule 2009 No. 21, while ensuring the corrections commence operation when that Amendment Rule commences operation;
- it removes jurisdictional derogations which have expired under the Rules;
- it inserts notes indicating which Rules are prescribed as civil penalty provisions and the rebidding civil penalty provision under the National Electricity (South Australia) Regulations; and
- it amends and inserts Chapter 10 glossary definitions to correct errors and ensure consistency in approach throughout Chapter 10.

The Commission considers that the final Rule is warranted and does not anticipate any undue compliance costs resulting from the final Rule.

These proposed minor and non controversial reforms will improve the clarity and accessibility of the Rules for stakeholders. This is important as the Rules inform stakeholders of their rights and obligations for participating in the NEM and stakeholders rely on these Rules in their commercial transactions and documentation. This will improve the regulatory certainty of the Rules' operation, thereby contributing to the effective regulation and efficient operation of the NEM. Ongoing enhancements to the quality of the Rules promotes greater certainty, and thus, an environment where efficient investment is facilitated.

The Commission seeks to apply principles of good regulatory design and practice as it considers that the NEO has implications for the means by which the regulatory arrangements operate (in addition to their ends). In applying these principles, the Commission seeks to have regard to the need, where practicable to:

- promote stability and predictability - market Rules should be stable, or changes to them predictable, so that participants and investors can plan and make informed short and long-term decisions; and
- promote transparency - to the extent that intervention in the market is required, it should be based on, and applied according to, transparent criteria.

Under section 91(8) of the NEL the Commission may only make a Rule that has effect with respect to an adoptive jurisdiction if satisfied that the proposed Rule is compatible with the proper performance of AEMO's declared network functions. The Rule as made is compatible with AEMO's declared network functions because the Rule as made seeks to make minor and non-material changes to the Rules that will not have a significant effect on the NEM, therefore the Commission is satisfied this Rule as made is compatible with the proper performance of AEMO's declared network functions.

## **2.5 Other requirements under the NEL**

In applying the Rule making test in section 88 of the NEL, the Commission must also have regard to any relevant MCE Statements of Policy Principles as required under section 33 of the NEL. There is no relevant MCE statement of policy principles to which it must have regard to in relation to this Rule as made.

### 3 Commission's reasons

The Commission has analysed the Rule Change Proposal and assessed the issues arising out of this Rule Change Proposal. For the reasons set out below, the Commission has determined that a Rule be made. Its analysis of the Rule initiated by the AEMC is also set out below.

#### 3.1 Assessment

The Rule as made seeks to correct minor errors and make non-material changes to the Rule. The Rule as made supports effective and transparent regulation and operation of the NEM, by clarifying the operation of the Rules in the following ways:

- it corrects several minor errors, including formatting and numbering anomalies in the Rules;
- it makes some non-material changes to the National Electricity Amendment (Bid and Offer Validation Data) Rule 2009 No. 21, while ensuring the corrections commence operation when that Amendment Rule commences operation;
- it removes jurisdictional derogations which have expired under the Rules;
- it inserts notes indicating which Rules are prescribed as civil penalty provisions and the rebidding civil penalty provision under the National Electricity (South Australia) Regulations; and
- it amends and inserts Chapter 10 glossary definitions to correct errors and ensure consistency in approach throughout Chapter 10.

#### 3.2 Rule as made

The Rule as made includes all the proposed amendments identified in the Proposed Rule, with some minor changes. The amendments in the Rule as made can be categorised as follows.

##### 3.2.1 Changes to the National Electricity Amendment (Bid and Offer Validation Data) Rule 2009 No. 21

In clauses 3.8.1(b)(7) and 3.8.1(b)(10), the National Electricity Amendment (Bid and Offer Validation Data) Rule 2009 No. 21 omitted the term "*registered bid and offer data*" and substituted "*dispatch bid and offer data*". The term "*dispatch bid and offer data*" is not defined in the Chapter 10 glossary. Accordingly, the Commission intends to replace the original term "*registered bid and offer data*" with "*dispatch bid* and *dispatch offer data*" to clarify that this phrase intended to rely on the two existing Chapter 10 glossary definitions for "*Dispatch bid*" and "*dispatch offer*".

On the commencement of the National Electricity Amendment (Bid and Offer Validation Data) Rule 2009 No. 21, the reference to "emergency *generation*" in clause S5.2.5.11(a)(2) and (4) will be removed. This consequential amendment is as a result of the fact that this information will no longer be collected once the amendments in the above Rule commence operation.

These two amendments are outlined in Schedule 3 of the Rule as made, and will commence operation on 16 December 2010, at the same time as the commencement of the National Electricity Amendment (Bid and Offer Validation Data) Rule 2009 No. 21.

### **3.2.2 Removal of expired jurisdictional derogations**

The Rule as made removes jurisdictional derogations which have expired under the Rules. The Rule as made removes clauses 9.45.3, 9.46.1, 9.46.2, 9.46.3, 9.46.4, 9.47.3, 9.49.2 - which expired on 29 May 2007, clause 9.47.4 - which expired on 29 May 2006, and clauses 9.15.2 and 9.16.3(a) - which expired on 1 July 2009.

The Commission considers the removal of these expired jurisdictional derogations to be warranted as it will assist in clarifying for stakeholders which Rules are currently operative parts of the Rules. In addition it will minimise the unnecessary length of the Rules. The amendments will not effect the subsequent numbering in the Rules.

### **3.2.3 Insertion of notes indicating which Rules are civil penalty provisions and the rebidding civil penalty provision**

The Commission considers that inserting notes which signal which provisions in the Rules are prescribed by the National Electricity (South Australia) Regulations as civil penalties and the rebidding civil penalty provision creates a consistent approach to the existing inclusion of such notes in the National Gas Rules. By ensuring there is a consistent approach between the National Electricity Rules and National Gas Rules these amendments clarify the operation of the Rules to stakeholders.

### **3.2.4 Insertion and removal of Chapter 10 glossary definitions**

The Rule as made introduces several new Chapter 10 glossary definitions. In addition, it amends some existing Chapter 10 glossary definitions to clarify their use in the Rules. In particular, the Rule as made introduces definitions indicating that the intention for certain terms is to rely on the definition given for that term in the National Electricity Law.

The Commission considers the amendments to Chapter 10 to be necessary in order to correct incorrect references to Chapter 10 glossary terms. The amendments will increase the accuracy of the Rules thereby promoting a clearer understanding of the provisions of the Rules.

### **3.2.5 Miscellaneous changes to the Rules**

A number of other errors such as typographical errors, numbering errors, clarity issues, and inconsistencies in approaches have been identified by the AEMC and stakeholders. The Rule as made rectifies these errors by amending, deleting and substituting where necessary.

The Commission considers the correction of these minor errors and non-material changes made in the Rule as made as important in improving the accuracy and clarity of the Rules.

## Abbreviations

AEMO	Australian Energy Market Operator
MCE	Ministerial Council on Energy
NEL	National Electricity Law
NEM	National Electricity Market
NEO	National Electricity Objective
the Commission	Australian Energy Market Commission