



Australian Energy Market Commission

RULE DETERMINATION

National Electricity Amendment (Minor Changes) Rule 2011

Rule Proponent(s)

AEMC

16 June 2011

JOHN PIERCE

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. The AEMC has two principal functions. We make and amend the national electricity and gas rules, and we conduct independent reviews of the energy markets for the MCE.

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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 to be a non-controversial Rule. The Commission considers that the Rule to be made is likely to contribute to the achievement of the National Electricity Objective (NEO) and therefore satisfies the Rule making test under section 88 of the National Electricity Law (NEL).

On 5 May 2011, the Commission gave notice under sections 95 and 96(1)(a) of the NEL of its intention to initiate the proposed National Electricity Amendment (Minor Changes) Rule 2011 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 sections 102 and 103 of the NEL, the Commission has decided to make the Proposed Rule with one minor amendment. The National Electricity Amendment (Minor Changes) Rule 2011 No. 4 will commence operation on 1 July 2011.

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1 The AEMC's Rule change Proposal

1.1 The Rule Proposal and commencement of Rule making process

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 NEL¹.

On 5 May 2011 the Commission published a notice under section 95 of the NEL advising of its intention to commence the Rule change process and consultation in respect of the Rule Change Proposal.

The Commission considered that the Rule Change Proposal was a request for a non-controversial Rule as it is unlikely to have a significant effect on the National Electricity Market (NEM). Accordingly, the Commission intended to expedite the Rule Change Proposal under section 96(1)(a) of the NEL, subject to any written requests not to do so. The closing date for receipt of written requests was 19 May 2011.

No such requests were received. Accordingly, the Rule Change Proposal was considered under an expedited process under section 96(1)(a) of the NEL.

The Commission invited submissions on the Rule Proposal by 2 June 2011. The Commission received no submissions on the Rule Change Proposal as part of the consultation process.

1.2 Rule Change Proposal Rationale

The Rule change proposal has been prompted by the identification by the AEMC and stakeholders of various minor errors in the Rules, and non-material changes that should be made to improve the quality and clarity of 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, numbering, and cross referencing anomalies in the Rules;
- amend some Chapter 10 defined terms;
- correct inconsistencies in the treatment of Chapter 10 glossary terms in the body of the Rules; and

¹ Under section 91(2) of the NEL, the Commission must not make a Rule without a request unless it considers the Rule corrects a minor error in the Rules, or it considers the Rule involves a non-material change to the Rules.

- remove participant derogations which have expired under the Rules.

2 Final Rule Determination

2.1 Commission's determination

In accordance with section 102 of the NEL, the Commission makes this final Rule determination in relation to the Rule initiated by the Commission. In accordance with section 103 of the NEL the Commission determines to make the Rule proposed by the Commission with one amendment.

The National Electricity Amendment (Minor Changes) Rule 2011 No. 4 is published with this final Rule determination. The Rule as Made will commence operation on 1 July 2011.

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.

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 considers that the Rule as Made will improve the quality of the Rules in terms of accuracy and consistency. The Commission considers that the proposed Rule is likely to contribute to the achievement of the NEO, albeit the efficiency benefits that will result from the Rule are considered to be very small given the minor or non-material nature of the changes proposed.

As with previous similar AEMC initiated rule changes, these minor corrections and non-controversial changes will make the Rules clearer to 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.

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. At present Victoria is the only relevant "adoptive jurisdiction". The Rule as Made is compatible with AEMO's declared network functions because the Rule as Made seeks to make only minor and non-material changes to the Rules and does not change AEMO's functions in any material respect. Therefore the Commission is satisfied that the 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 Rules. 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, numbering, and cross referencing anomalies in the Rules;
- it amends some Chapter 10 defined terms;;
- it corrects inconsistencies in the treatment of Chapter 10 glossary terms in the body of the Rules; and
- it removes participant derogations which have expired under the Rules.

3.2 Rule as Made

The Rule as Made is the same as the Proposed Rule, with one change. This change relates to item number [3] of the Proposed Rule. Item [3] of the Proposed Rule refers to clause "3.8.3(A)", however the correct clause proposed to be amended is clause "3.8.3A(a)(2)(i)". This amendment has been included in the Rule as Made.

The items in the Rule as Made can be categorised as follows:

3.2.1 Removal of expired derogations

The Rule as Made removes participant derogations which have expired under the Rules in rules 8A.1, 8A.2, 8A.2A and 8A.13. The Rule as Made also removes expired provisions in jurisdictional derogations in rules 9.29, 9.37 and 9.38.

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

3.2.2 Amendment of Chapter 10 glossary definitions and treatment of Chapter 10 glossary terms

The Rule as Made amends several Chapter 10 glossary definitions to clarify their use and meaning in the Rules. The Rule as Made also corrects errors in the way Chapter 10

glossary terms are treated in the body of the Rules. The amendments will increase the accuracy and consistency of the Rules thereby promoting a clearer understanding of the provisions of the Rules.

3.2.3 Miscellaneous changes to the Rules

A number of other errors such as typographical errors, formatting errors, numbering and cross referencing errors, and inconsistencies in style and drafting approach have been identified by the AEMC and stakeholders. The Rule as Made rectifies these errors.

The Commission considers the correction of these minor errors and non-material changes in the Rule as Made will improve the accuracy and clarity of the Rules.

Abbreviations

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|----------------|-------------------------------------|
| 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 |