



Australian Energy Market Commission

RULE DETERMINATION

National Electricity Amendment (Minor Changes) Rule 2012

Rule Proponent
AEMC

14 June 2012

**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

The Commission has decided to make a rule to correct minor errors and make non-material changes the National Electricity Rules (the Rules). The Rule was proposed by the Commission and aims to promote clarity of meaning and remove identified errors in the Rules. The Commission considers that the Rule as 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 NEL.

On 15 May 2012, the Commission initiated the proposed *National Electricity Amendment (Minor Changes) Rule 2012* under the expedited Rule making process under sections 95 and 96(1)(a) of the National Electricity Law (NEL), subject to any requests not to expedite the Rule making process, and initiated public consultation on the Rule change proposal.

No requests not to expedite the Rule making process were received. One Submission was received in relation to this Rule change proposal. Accordingly, under sections 102 and 103 of the NEL the Commission has determined to make the proposed Rule with 3 minor amendments.

Schedule 1 of the *National Electricity Amendment (Minor Changes) Rule 2012 No. 3* will commence operation on 26 July 2012 and Schedule 2 of the Rule will commence operation on 1 July 2016.

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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 10 May 2012 the Commission published a notice under section 95 of the NEL advising of the commencement the Rule change process and consultation in respect of the Rule change proposal.

As the changes in the proposed Rule, in accordance with the AEMC's power under section 91(2) to make a Rule without a request, are minor or non-material in nature, the Commission considered that the proposed Rule was unlikely to have a significant effect on the NEM and therefore falls within the definition of a non-controversial rule under section 87 of the NEL.

Accordingly, the Commission expedited the Rule change proposal under section 96(1)(a) of the NEL, subject to any written requests not to do so. 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 change proposal by 7 June 2012. The Commission received one submission on the Rule change proposal as part of the consultation process.

1.2 Rationale for the Rule Change Proposal

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. As part of the AEMC's rule making functions conferred on it under legislation, the Commission reviews, amends and maintains the Rules in accordance with the NEL. The purpose of this function, among other things, is to improve and enhance the quality 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;

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.

- correct inconsistencies in the treatment of Chapter 10 glossary terms in the body of the Rules; and
- remove jurisdictional derogations which have expired under the Rules.

2 Final Rule Determination

2.1 Commission's determination

In accordance with sections 102 and 103 of the NEL, the Commission makes this final Rule determination and the Rule as Made in relation to the Rule proposed by the Commission.

The National Electricity Amendment (Minor Changes) Rule 2012 No. 3 is published with this final Rule determination. The Rule as Made makes 4 amendments to the Rule proposed by the Commission. Schedule 1 of the Rule as Made will commence operation on 26 July 2012 and Schedule 2 will commence operation on 1 July 2016 to align with the commencement of the *National Electricity Amendment (Expiry of Reliability and Emergency Reserve Trader) Rule 2012 No. 1*. Its key features are described in section 3.2.

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);
- the fact that there are no 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 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 which are necessary or expedient for the purposes of the NEL. The Commission considers the Rule is necessary and expedient for the purposes of the NEL and therefore the Commission is satisfied that the Rule as Made falls within the subject matter about which the Commission may make Rules.

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 Commission is satisfied that 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.

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 MCE statement of policy principles relevant to this Rule as Made.

3 Commission's reasons

The Commission has analysed the Rule change proposal and 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:

- correcting several minor errors, including formatting, numbering, and cross referencing anomalies in the Rules;
- correcting inconsistencies in the treatment of Chapter 10 glossary terms in the body of the Rules; and;
- removing jurisdictional derogations which have expired under the Rules.

3.2 Assessment of Rule

The Rule as Made is substantially the same as the proposed Rule, with 4 changes. Two amendments were made in relation to item [6] of the proposed Rule. Item [6] proposed to amend references to "settlements residues" to the singular form. In the context of the references to "settlements residues" in clauses 3.15.10A(b) and 3.18.2(d) the Commission considers it is more appropriate to retain the references in their plural form. In relation to item [10] of the proposed Rule, the Commission considers that the drafting in the Rule as Made better reflects the provisions in the *Competition and Consumer Act 2010* (Cth) under which the Courts can make directions for disconnection. Item [22] of the proposed Rule has not been included in the final Rule. This amendment will be reassessed after the commencement of the National Energy Customer Framework in South Australia.

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

3.2.1 Removal of expired derogations

The Rule as Made removes jurisdictional derogations which have expired under the Rules in rules 9.8.5, 9.45.1, 9.48.3, 9.48.4.

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

3.2.2 Amendment of treatment of Chapter 10 glossary terms in the body of the rules

The Rule as Made corrects errors in the way Chapter 10 glossary terms are treated in the body of the Rules to clarify their use and meaning in 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 quality 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

A Summary of issues raised in submissions

Stakeholder	Issue	AEMC response
Michael Green	Raised the issue of whether clause 6A.23.3(c)(1) should be reviewed to more clearly reflect allocations to customer connection points.	Given the subject matter of this proposed change and the difficulty in determining the materiality of this potential change, the Commission is not satisfied the amendment meets the test under section 91(2) of the NEL. This issue may be more appropriately addressed in the Transmission Frameworks Review or Inter-regional Transmission Charging rule change proposal.
Michael Green	Identified a potential cross-referencing error to clause S5.1a.4 in clause S5.3a.8.	The Commission does not agree with this proposed amendment. Clause S5.3a.8 refers to the target network voltage as determined in accordance with clause S5.1a.4 of the system standards. The system standards are contained in Schedule 5.1a of which clause S5.1a.4 is subsection. Clause S5.1.4(c) however relates to the process by which a Transmission Network Service Provider must determine the target voltage.