



Australian Energy Market Commission

RULE PROPOSAL

NATIONAL ELECTRICITY AMENDMENT (MINOR CHANGES) RULE 2020

NATIONAL ENERGY RETAIL AMENDMENT (MINOR CHANGES) RULE 2020

PROPONENT

AEMC

16 JANUARY 2020

RULE

INQUIRIES

Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

E aemc@aemc.gov.au
T (02) 8296 7800
F (02) 8296 7899

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ABOUT THE AEMC

The AEMC reports to the Council of Australian Governments (COAG) through the COAG Energy Council. We have two functions. We make and amend the national electricity, gas and energy retail rules and conduct independent reviews for the COAG Energy Council.

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1 INTRODUCTION

As part of its rule making function, the Australian Energy Market Commission (Commission or AEMC) reviews, amends and maintains the National Electricity Rules (NER) in accordance with the National Electricity Law (NEL) and the National Energy Retail Rules (NERR) in accordance with the National Energy Retail Law (NERL).

The purpose of this function, among other things, is to improve and enhance the quality of the NER and the NERR (together the "energy rules").

This consultation paper has been prepared to facilitate public consultation on the rule change proposal and to seek stakeholder submissions.

This paper:

- provides a summary of, and background to, the rule change proposal
- outlines the process for making submissions.

1.1 Background

The Commission undertakes AEMC initiated rule change proposals to correct minor errors in the energy rules or make clarifications that are minor or non-material in nature. This rule change proposal includes proposed amendments identified by the Commission since the last minor changes rules, which were completed in November 2019.

1.2 Proposed rules

The National Electricity Amendment (Minor Changes) Rule 2020 (electricity Rule) and the National Energy Retail Amendment (Minor Changes) Rule 2020 (retail Rule) (together, the "Proposed Rules") are proposed by the AEMC to correct minor errors and make non-material changes in the NER and NERR, including to clarify drafting in amendments to the NER made by the National Electricity Amendment (Register of distributed energy resources) Rule 2018 No. 9.¹

The Proposed Rules are published with this rule proposal.

In particular, the Proposed Rules seek to:

1. correct minor errors and make non-material changes in the NER, including as set out in section 1.2.1 and 1.2.2 below
2. correct minor errors and make non-material changes in the NERR, including for example to correct spacing errors in clause numbering in rules 16(2) and 33(4), which have existed since version one of the NERR was introduced in June 2012 by the South Australian Minister under section 238 of the National Energy Retail Law (South Australia) Act 2011.

¹ AEMC, National Electricity Amendment (Register of distributed energy resources) Rule 2018 No. 9, available at: <https://www.aemc.gov.au/rule-changes/register-of-distributed-energy-resources>.

1.2.1 **Network Service Providers' obligations to provide DER generation information to AEMO**

In September 2018, the AEMC made the National Electricity Amendment (Register of distributed energy resources) Rule 2018 No. 9² (the DER final rule), which established a process by which the Australian Energy Market Operator (AEMO), Network Service Providers (NSPs) and other interested parties can obtain static data (including DER generation information) on distributed energy resources across the national electricity market (NEM).

The DER final rule inadvertently did not include:

- a new clause 5.3A.5(c)(1a), which was intended to provide that enquiry forms to connect to the NEM under clause 5.3A.5(b) must require connection applicants to provide the DER generation information that NSPs require
- cross-references in clause 3.7E(d) to clauses 5.3A.5(c)(1a) and 5A.B.4, which were intended to require NSPs to provide any DER generation information collected under these clauses to AEMO.

The electricity Rule, as proposed, addresses these drafting errors by inserting clause 5.3A.5(c)(1a) and inserting cross-references to clauses 5.3A.5(c)(1a) and 5A.B.4 in rule 3.7E(d).

These amendments give effect to the Commission's policy intent³ when making the DER final rule, which was to require NSPs to request from their customers DER generation information and provide this information to AEMO. The amendments are consistent with clauses 5.3.3(c)(4a), 5A.B.2, 5A.C.3 and 5A.B.4 under the DER final rule.

1.2.2 **Unaccounted for energy adjustment**

In August 2019, the AEMC made the National Electricity Amendment (Five minute settlement and global settlement implementation amendments) Rule 2019 No.7⁴ ("five minute and global settlement rule"), which amended the provisions of the NER, as amended under the Five minute settlement rule⁵ and the Global settlement and market reconciliation rule.⁶

The proposed electricity Rule amends clause 3.15.5(b) of the NER, as amended by the Global settlement and market reconciliation rule, to clarify that unaccounted for energy (UFE) will not be allocated by AEMO to distribution-connected generators, but will be allocated to all retailers in a local area, in respect of their market loads, based on their accounted for energy.

2 AEMC, National Electricity Amendment (Register of distributed energy resources) Rule 2018 No. 9, available at: <https://www.aemc.gov.au/rule-changes/register-of-distributed-energy-resources>.

3 AEMC, Register of distributed energy resources Rule Determination dated 13 September 2018, page 7, available at: <https://www.aemc.gov.au/rule-changes/register-of-distributed-energy-resources>.

4 AEMC, National Electricity Amendment (Five minute settlement and global settlement implementation amendments) Rule 2019 No. 7, available at: <https://www.aemc.gov.au/rule-changes/five-minute-settlement-and-global-settlement-implementation-amendments>.

5 AEMC, National Electricity Amendment (Five minute settlement) Rule 2017 No. 15, available at: <https://www.aemc.gov.au/rule-changes/five-minute-settlement>.

6 AEMC, National Electricity Amendment (Global settlement and market reconciliation) Rule 2018 No. 14, available at: <https://www.aemc.gov.au/rule-changes/global-settlement-and-market-reconciliation>.

This amendment, which was intended to be included in the five minute and global settlement rule, is consistent with the Commission's policy intent⁷ for the five minute and global settlement rule, which was not to allocate UFE to distribution-connected generators when they consume energy.

1.3

1.3.1

Assessment framework

Achieving the NEO and NERO

National Electricity Objective

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 national electricity objective (NEO).⁸ This is the decision making framework that the Commission must apply.

The NEO is:⁹

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.

Under the Northern Territory legislation adopting the NEL, 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:¹⁰

- (a) the national electricity system
- (b) one or more, or all, of the local electricity systems¹¹
- (c) all of the electricity systems referred to above.

For the purposes of the proposed electricity Rule, the Commission proposes to regard the reference to the "national electricity system" in the NEO to be a reference to item (c) above.

National Energy Retail Objective

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 national energy retail objective (NERO).¹² This is the decision making framework that the Commission must apply.

⁷ AEMC, Five minute settlement and global settlement implementation amendments Rule Determination dated 8 August 2019, page 6, available at: <https://www.aemc.gov.au/rule-changes/five-minute-settlement-and-global-settlement-implementation-amendments>.

⁸ Section 88 of the NEL.

⁹ Section 7 of the NEL.

¹⁰ Section 14A of Schedule 1 to the National Electricity (Northern Territory) (National Uniform Legislation) Act 2015 (referred to here as the NT Act), inserting section 88(2a) into the NEL as it applies in the Northern Territory.

¹¹ These are specified Northern Territory systems, defined in schedule 2 of the NT Act.

¹² Section 236(1) of the NERL.

The NERO is:¹³

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 price, quality, safety, reliability and security of supply of energy.

The Commission must also, 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").¹⁴

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.¹⁵ 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.

Conclusion

The Commission considers that the Proposed Rules, if made, will improve the quality of the NER and NERR in terms of accuracy and consistency.

The Commission considers that the Proposed Rules are likely to contribute to the achievement of the NEO and NERO (as relevant). As with previous minor rule changes initiated by the Commission, these minor corrections and non-material changes will make the NER and NERR clearer to stakeholders. This is important as the NER and NERR inform stakeholders of their rights and obligations in relation to participating in the NEM and energy retail energy markets (respectively), and stakeholders rely on these rules in their commercial transactions.

1.3.2

Northern Territory rule-making requirements

The NER, as amended from time to time, apply in the Northern Territory, subject to derogations set out in regulations made under the Northern Territory legislation adopting the NEL.¹⁶ Under those regulations, only certain parts of the NER have been adopted in the Northern Territory.¹⁷

As the proposed electricity Rule, in part, relates to the parts of the NER that apply in the Northern Territory, the Commission is required to assess whether to make a uniform or differential rule (defined below) under Northern Territory legislation.

¹³ Section 13 of the NERL.

¹⁴ Section 236(2)(b) of the NERL.

¹⁵ That is, the legal tests set out in s. 236(1) and (2)(b) of the NERL.

¹⁶ The regulations under the NT Act are the National Electricity (Northern Territory) (National Uniform Legislation) (Modifications) Regulations.

¹⁷ For the version of the NER that applies in the Northern Territory, refer to: www.aemc.gov.au/regulation/energy-rules/northernterritory-electricity-market-rules/current.

Under the NT Act, the Commission may make a differential rule if, having regard to any relevant MCE statement of policy principles, a different rule will, or is likely to, better contribute to the achievement of the NEO than a uniform rule.¹⁸

A differential rule is a rule that:

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

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 the local electricity systems, and has effect with respect to all of those systems.¹⁹

The Commission proposes to make a uniform rule.

1.3.3

Additional assessment requirements

Under s. 33 of the NEL and s. 225 of the NERL, as applicable, the Commission must have regard to any relevant MCE statements of policy principles in making an energy rule. There are currently no MCE statements of policy principles.

Under s. 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 the Australian Energy Market Operator's (AEMO's) declared electricity network. Given the Proposed Rules only seek to make minor or non-material changes to the energy rules, the Commission is satisfied that the Proposed Rules are compatible with the proper performance of AEMO's declared network/system functions.

18 Section 14B of Schedule 1 to the NT Act, inserting section 88AA into the NEL as it applies in the Northern Territory.

19 Section 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.

2 PROCESS FOR THIS RULE CHANGE

2.1 The Commission's power to initiate the making of a rule

Under s. 91(2) of the NEL and s. 243(2) of the NERL respectively:

- The AEMC must not make a Rule without a request under subsection (1) unless-
- (a) it considers the Rule corrects a minor error in the Rules; or
 - (b) it considers the Rule involves a non-material change to the Rules; or
 - (c) the Rule 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 Rules outlined in chapter 1 make changes that are minor and non-material in nature, the Commission considers that the Proposed Rules satisfy the requirements of s.91(2) of the NEL and s. 243(2) of the NERL, as applicable.

2.2 Treatment as a non-controversial rule change

Under s. 87 of the NEL, a "non-controversial Rule" is defined as "a Rule that is unlikely to have a significant effect on the national electricity market". As the proposed changes to the NER are minor or non-material in nature, the Commission considers that the proposed electricity Rule is unlikely to have a significant effect on the NEM. The proposed electricity Rule therefore falls within the definition of a non-controversial rule under s. 87 of the NEL.

Under s. 235 of the NERL, a "non-controversial Rule" is defined as "a Rule that is unlikely to have a significant effect on a market for energy or the regulation of customer connection services". As the proposed changes to the NERL are minor or non-material in nature, the Commission considers that the proposed retail Rule is unlikely to have a significant effect on a market for energy or the regulation of customer connection services. The proposed retail Rule therefore falls within the definition of a non-controversial rule under s. 235 of the NERL.

Rule changes that are considered to be non-controversial may be processed under an expedited (faster) process under which there is only one round of consultation and the Commission is required to publish its final rule determination within eight weeks of commencing the rule change process under the uniform energy laws.

The Commission has decided to use an expedited process to consider this rule change proposal provided that it does not receive any valid requests not to use the expedited process by 30 January 2020.²⁰ To be valid, an objection should set out the reasons why the rule change proposal is likely to have a significant impact on:

- for the proposed electricity Rule, the National Energy Market
- for the proposed retail Rule, a market for energy or the regulation of customer connection services.

²⁰ The Commission has published a notice under sections: 95 and 96 of the National Electricity Law; 251 and 252 of the National Energy Retail Law, to commence and assess this rule change proposal as a non-controversial rule.

2.3 Key dates

Given the tightly defined nature of the issues, this rule change proposal is brief. Nevertheless, submissions are invited in relation to the matters identified above, and any other relevant issue. The key dates for stakeholders in this process are as follows:

- Commencement of this rule change process: 16 January 2020
- Objections to an expedited process to be received by: 30 January 2020
- Submissions to the proposal to be received by: 13 February 2020
- Final decision to be published under an expedited process by: 12 March 2020.

The above timeline is to make a final decision within eight weeks following commencement of this rule change process, consistent with the rule making process under the uniform energy laws.²¹

²¹ Section 96(1) of the NEL; section 252(1) of the NERL.

3 LODGING A SUBMISSION

The Commission invites requests not to make a rule under the expedited process and written submissions on this rule change proposal.

All enquiries on this project should be addressed to Ben Bronneberg on (02) 8296 0613.

3.1 Lodging a request not to make a rule under an expedited process

Written requests not to make a rule under the expedited process in s. 96 of the NEL or s. 252 of the NERL respectively, must include reasons for the request, and must be lodged with the Commission by 30 January 2020 in accordance with the process specified below.

3.2 Lodging a submission to this rule change proposal

Written submissions on the rule change proposal must be lodged with the Commission by 13 February 2020 in accordance with the process specified below. Where practicable, submissions should be prepared in accordance with the Commission's guidelines for making written submissions on rule change requests.²² The Commission publishes all submissions on its website, subject to accepted claims of confidentiality.

3.3 Process for lodging a request or submission

Please lodge submissions, or requests not to make a rule under the expedited process, online via the Commission's website, www.aemc.gov.au, using the "lodge a submission" function and selecting the project reference code ERC0288.

The request or submission must be on letterhead (if submitted on behalf of an organisation), signed and dated.

If you are not able to lodge submissions or requests online, please contact us, and we will provide instructions for alternative methods to lodge the submission or request.

²² This guideline is available on the Commission's website, www.aemc.gov.au.

ABBREVIATIONS

| | |
|------------|-------------------------------------|
| AEMC | Australian Energy Market Commission |
| AEMO | Australian Energy Market Operator |
| AER | Australian Energy Regulator |
| Commission | See AEMC |
| MCE | Ministerial Council on Energy |
| NEL | National Electricity Law |
| NEM | National Energy Market |
| NEO | National electricity objective |
| NER | National Energy Rules |
| NERL | National Energy Retail Law |
| NERO | National energy retail objective |
| NERR | National Energy Retail Rules |