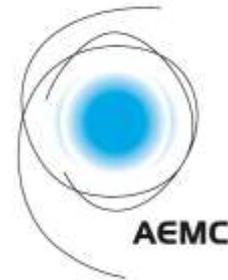


Australian Energy Market Commission

Guidelines for proponents: Preparing a rule change request – Retail

May 2012



1 Objective of the Guidelines

The Australian Energy Market Commission (AEMC) has prepared these guidelines to assist any person or body who wishes to request the AEMC to make a rule that changes the National Energy Retail Rules (NERR).

2 Overview of the rule amendment procedure

The National Energy Retail Law (NERL)¹ and the Regulations² under the NERL set out the rule amendment procedure under which the AEMC may make a rule that changes the NERR.

Generally speaking, there are four stages to the rule amendment procedure:

- initial consideration of a rule change request;
- consultation on a proposed rule;
- draft rule determination; and
- final rule determination.

Further information on each of the stages is available to stakeholders under the 'Retail' menu of the AEMC's website – www.aemc.gov.au.

The 'standard' rule amendment procedure generally includes:

- two rounds of public consultation (one at the time that the AEMC decides to take action on a rule change request prepared by a proponent, and the other at the time of making a draft determination)³;
- the consideration of the rule making test being the National Energy Retail Objective (NERO) by the AEMC, including, where relevant, any Statement of Policy Principles and compatibility with the development and application of consumer protections for small customers (including protections to hardship customers)⁴; and
- a final determination, which may include a rule depending on whether or not the AEMC decides to make a rule that changes the NERR.

If a rule change request under the NERL requires any necessary, consequential, or corresponding changes to the National Electricity Rules (NER) or the National Gas

¹ The NERL is contained in the schedule to the *National Energy Retail Act 2011* (South Australia).

² Clause 11 of the *National Energy Retail Regulations (South Australia) 2012* (South Australia) (Regulations).

³ Rules proposed by an energy regulatory body can be made by the AEMC after one round of public consultation only under section 253 of the NERL where the AEMC is satisfied that adequate public consultation was conducted by the energy regulatory body on the nature and content of the change before the making of the rule change request. Refer to the AEMC web site for the 'Guidelines for energy regulatory bodies: Preparing a "fast track" rule change request – Retail' which provides further information on 'fast-track' rule amendment procedures.

⁴ Section 236 of the NERL.

Rules (NGR), the AEMC may deem that request as a rule change request made under the other laws⁵.

3 Submitting a rule change request to the AEMC

Any person or body (proponent) can submit a rule change request to the AEMC. Among other requirements, the request must be in writing and the proponent must provide their full name, address and signature/authorisation⁶.

The specific information requirements that a proponent must address in their rule change request to the AEMC are described in Parts 5 to 10 of these guidelines.

Instructions for lodging a rule change request with the AEMC are described in Part 11 of these guidelines.

4 Subject matters for rule change requests

The AEMC has the power under the NERL to make rules relating to changes to the following subject matters⁷:

- the provision of energy services to customers, including customer retail services and customer connection services; and
- the activities of persons involved in the sale and supply of energy to customers.

Customer retail services are defined in the NERL to mean the sale of energy (electricity or gas) by a retailer to a customer at premises⁸. Likewise, a customer connection service is defined to mean any or all of the following:

- a service relating to a new connection for the premises;
- a service relating to a connection alteration for the premises;
- a supply service for the premises, including (but not limited to) the energisation, de-energisation or re-energisation of the premises; and
- a service prescribed by the NERR as a customer connection service⁹.

In addition, the AEMC has the power to make rules relating to specific subject matters¹⁰. For example, the NERR may make provision for or respect to payment plans for small customers¹¹.

Proponents of a rule change request should ensure that the subject matter of their request relates to at least one of the matters on which the AEMC may make a rule to change the NERR.

5 Contents of a rule change request

As noted above, a rule change request must be submitted to the AEMC in writing and be appropriately signed/authorised. It must contain the following information¹²:

⁵ Section 245 of the NERL.

⁶ For example: if the proponent is an individual, the rule change request must be signed by the individual; if the proponent is a company, it should be signed by an authorised representative of the company.

⁷ Section 237 of the NERL.

⁸ Section 2 of the NERL.

⁹ As above.

¹⁰ Sections 7, 22(2), 25(2), 32, 34, 42, 49, 52, 53(1), 55(3), 55(3), 60, 69(2), 87, 113, 118(2), 203 and 287 of the NERL.

¹¹ Section 52 of the NERL.

- the name and address of the person making the request;
- a description of the rule that the person proposes be made (see Part 7 of these guidelines – How to describe a proposed rule?);
- a statement of the nature and scope of the issue that is proposed to be addressed and an explanation of how the proposed rule would address the issue (see Part 8 of these guidelines – How to provide a Statement of Issues?);
- an explanation of how the proposed rule will, or is likely to, contribute to the achievement of the National Energy Retail Objective (NERO) (see Part 9 of these guidelines – How to explain the proposed rule’s contribution or likely contribution to the NERO?); and
- an explanation of the expected benefits and costs of the proposed change and the potential impacts of the change on those likely to be affected (see Part 10 of these guidelines – How to explain the proposed rule’s expected benefits, costs and implications?).

In preparing their rule change request, proponents should take care to ensure that their request adequately address all of the above. For a proponent to best support its views, the AEMC asks that each rule change request be supported with evidence, where possible, and include quantitative and/or qualitative analysis to support any explanation regarding the effect of the proposed changes to the NERR.

A rule change request may be accompanied by a draft of the rule proposed to be made, but this is not required. A rule change request may also be accompanied by a draft of the rule proposed to be made that identifies any necessary, consequential or corresponding amendments to the NER or the NGR, but again this is not required.

6 Initiation of the rule amendment procedure by the AEMC

The AEMC must consider, as soon as practicable after receiving a submission from a proponent for a rule change request, on the following:

- whether the subject matter of the rule change request appears to be for, or with respect to, a matter on which the AEMC may make a rule under the NERL;
- whether the content requirements for a rule change request have been met;
- whether the rule change request appears not to be misconceived or lacking in substance¹³.

Further in deciding whether or not to take action under the rule amendment procedure, the AEMC must also consider whether the rule change request relates to:

- a subject matter on which the AEMC has made a rule or a request that the AEMC decided not to take action under the rule amendment procedure in the last 12 months; or
- a subject matter on which the AEMC is already taking action under the rule amendment procedure¹⁴.

¹² Section 246 of the NERL, and clause 11 of the National Energy Retail Regulations.

¹³ Section 249(1)(a) and (b) of the NERL.

¹⁴ Section 249(1)(c) of the NERL.

The AEMC may request further information from the proponent on its rule change request where the AEMC considers that it needs to better understand the purpose or content of the request¹⁵.

7 How to describe the proposed rule?

A proponent must describe in narrative form the changes that are proposed to be made to the NERR. This may involve describing the proposed amendments to existing NERR clauses, the addition of new clauses to the NERR, or the deletion of existing NERR clauses. The description of the proposed rule should be linked to the issues that are proposed to be addressed in the Statement of Issues; that is, describing in a narrative way how the proposed rule is intended to address the identified issues.

Some rule change requests may require changes to other rules. Where possible, a proponent should identify, and also describe in narrative form the reasons why changes are required, for any necessary, consequential, or corresponding changes to the NER or the NGR.

The AEMC requests that proponents provide a draft of the proposed rule, although this is not mandatory. If a rule change request does not include draft wording for the proposed rule, then the proponent should describe the proposed rule in sufficient detail to enable the AEMC to consider the preparation of a proposed rule for the purpose of public consultation.

8 How to provide a Statement of Issues?

The Statement of Issues should:

- a. identify the nature and scope of each problem or issue with the existing NERR; and
- b. describe how the proponent's rule change request addresses each of the identified problems or issues.

The proponent's Statement of Issue(s) is key to the Commission's and any potential stakeholders' understanding and assessment of a rule change request. A proponent should ensure that their rule change request clearly and comprehensively describes the nature and scope of each issue addressed by the request.

9 How to explain the proposed rule's contribution or likely contribution to the NERO?

In deciding whether or not to make a rule, the AEMC must apply the rule making test¹⁶. This means that the AEMC may only make a rule if it is satisfied that the change will, or is likely to, contribute to the achievement of the NERO¹⁷.

The NERO states the objective of the NERL is:

¹⁵ Section 250 of the NERL.

¹⁶ The rule making test is set out in section 236 of the NERL.

¹⁷ The National Energy Retail Objective is set out in section 13 of the NERL.

“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.”

In applying the rule making test¹⁸:

- the AEMC may give such weight to any aspect of the NERO as it considers appropriate in all the circumstances;
- where relevant, the AEMC must 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; and
- the AEMC must have regard to any relevant Ministerial Council on Energy statement of policy principles.

Small customers¹⁹ are defined as residential customers and business customers who consume energy at business premises below an ‘upper consumption threshold’²⁰.

The definition of hardship customers is narrower than that of residential customers and refers to a residential customer of a retailer who is identified as a customer experiencing financial payment difficulties due to hardship in accordance with the retailer’s customer hardship policy²¹. Retailers are required to develop and submit their respective customer hardship policies to the Australian Energy Regulator for approval²².

Further, when the AEMC is making a rule relating to hardship customers and customer hardship policies²³, in addition to the rule making test, the AEMC must have regard to the purpose of the retailer’s hardship policy²⁴.

A proponent in submitting a rule change request to the AEMC must explain how the proposed rule will, or is likely to, contribute to the NERO.

10 How to explain the proposed rule’s expected benefits, costs and implications?

A proponent must explain in its rule change request:

- a. the expected benefits and costs of the proposed change; and
- b. the potential impacts of the change on those likely to be affected.

As part of the AEMC’s decision on whether to take action under the rule amendment procedure, the AEMC will assess the affects of the proposed change on the current arrangements concerning relevant energy services to customers and the activities of persons involved in the sale and supply of energy to customers.

¹⁸ Section 236 of the NERL.

¹⁹ Section 5 of the NERL.

²⁰ As the date of these Guidelines, subject to some jurisdiction specific variations, this generally refers to annual gas consumption below 1 tera joule, and annual electricity consumption below 100 mega watts (although this may be as high as 160 mega watts for some jurisdictions).

²¹ Section 43 of the NERL.

²² As above.

²³ Section 49 of the NERL.

²⁴ Section 43(1) of the NERL.

The explanation of the expected benefits and costs should:

- support the proponent's Statement of Issues; and
- support the proponent's explanation on how the proposed rule will, or is likely to, contribute to the NERO.

The explanation of the potential impacts should identify who is likely to be affected by the proposed change, and explain how and why that person or groups of persons is likely to be affected by the proposed change.

11 Lodging a rule change request with the AEMC

A rule change request may be lodged with the AEMC in electronic format via our website or, alternatively, in hard copy format via ordinary mail (post), as explained below.

Lodging a rule change request via the AEMC's website:

- rule change requests that are in electronic format must be lodged via the AEMC's website;
- the rule change request must be on letterhead (if an organisation), signed and dated by the proponent;
- the rule change request must be in PDF format;
- if the rule change request contains a draft of the proposed rule, including any necessary, consequential or corresponding amendments to the NER or the NGR, a WORD version of that proposed rule must also be sent with the PDF version of the request;
- upon receipt of the rule change request, the AEMC will issue a confirmation email. If this confirmation email is not received within three (3) business days, it is the proponent's responsibility to ensure successful delivery of the rule change request has occurred; and
- a hard copy of the rule change request should also be forwarded to the AEMC via ordinary mail.

Lodging a rule change request via ordinary mail (post):

- Mailed rule change requests must be on letterhead (if an organisation), signed and dated by the proponent;
- the rule change request should be sent to:

Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235
- upon receipt of the rule change request, the AEMC will issue a confirmation letter. If this confirmation letter is not received within three (3) business days, it is the proponent's responsibility to ensure successful delivery of the rule change request has occurred.

Your privacy in relation to your rule change request to the AEMC

By lodging a rule change request with the AEMC via the AEMC's website or by ordinary mail (post), you will be providing your personal information to the AEMC (including your name, address and any other information that you have included in the rule change request from which your identity can be ascertained).

Subject to a claim of confidentiality, the AEMC will use and disclose this personal information for the consideration and publication of the rule change request, for consideration of the rule change request within the context of the AEMC's published decisions and the identification of interested parties that have made rule change requests.

The AEMC may exchange your information with its contractors and agents (including our consultants, information technology providers, marketing and communications agencies, conference organisers and printers) where required.

The AEMC's collection and publication of the information contained in rule change requests is authorised under the NERL.

If you would like to access the personal information that the AEMC holds about you (including if you would like to correct or update it), please contact us on (02) 8296 7800.

Important note: These guidelines have been provided by the AEMC to assist proponents who wish to submit a rule change request to the AEMC. It is not possible to cover every issue or circumstance that may arise in the rule amendment procedure under the NERL. These guidelines should not be used as a substitute for legal advice. The AEMC recommends that proponents also refer to the NERL and any Regulations made under that Act.

Attachment 1

Proponent's checklist for lodging a rule change request

- The proponent is expressly identified with full name and address.
- The rule change request is signed by an authorised representative of the proponent.
- The subject matter of the rule change request falls within the matters on which the AEMC has the power to make rules.
- The following information has been included:
 - a description of the proposed rule;
 - a Statement of Issues identifying the nature and scope of each problem or issue with the existing NERR;
 - analysis of how the proposed rule (if made) will, or is likely to, contribute to the achievement of the National Energy Retail Objective (NERO); and
 - an explanation of the expected benefits and costs of the change and the potential impacts of the change on those likely to be affected.
- A draft of the proposed rule, including any necessary, consequential or corresponding amendments to the NER or the NGR (optional); and
- Receipt of the AEMC's confirmation email (if lodged via website) or letter (if lodged via ordinary mail) within three (3) business days of lodging your rule change request.

Website lodgement reminder

- The rule change request must be on letterhead (if an organisation), signed and dated in PDF format.
- A WORD version of the draft of the proposed rule (optional) lodged with the PDF version of the rule change request.
- Receipt of the AEMC's confirmation email within three (3) business days of lodging your rule change request.
- A hard copy of the rule change request forwarded to the AEMC via ordinary mail.