
Australian Energy Market Commission

RULE DETERMINATION

NATIONAL ENERGY RETAIL AMENDMENT (ELECTRICITY CONSUMPTION BENCHMARKS) RULE 2023

Australian Energy Regulator

17 AUGUST 2023

DETERMINATION

INQUIRIES

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ABOUT THE AEMC

The AEMC reports to the energy ministers. We have two functions. We make and amend the national electricity, gas and energy retail rules and conduct independent reviews for the energy ministers.

ACKNOWLEDGEMENT OF COUNTRY

The AEMC acknowledges and shows respect for the traditional custodians of the many different lands across Australia on which we all live and work. We pay respect to all Elders past and present and the continuing connection of Aboriginal and Torres Strait Islander peoples to Country. The AEMC office is located on the land traditionally owned by the Gadigal people of the Eora nation.

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SUMMARY

- 1 The Commission has decided to make a final rule to remove the Australian Energy Regulator's (AER) obligation to develop and update electricity consumption benchmarks, in response to the rule change request submitted by the AER.¹ The final rule will give the AER more flexibility to focus its resources on activities with more value for consumers. The rule will commence on 17 August 2023.
- 2 The AER proposed removing the obligation following its decision to no longer require retailers to include benchmarks on electricity bills as at 30 September 2023, putting forward that the benchmarks will no longer benefit consumers at this point.² They outlined that the benchmarks as currently developed are no longer relevant to energy efficiency choices, other sources of information could better support consumers, uses of the benchmark data by other parties is limited by privacy considerations, and the resources used to develop benchmarks could be better deployed elsewhere.
- 3 The Commission considered that the rule change request was a request for a non-controversial rule and initiated an expedited rule change process. We did not receive any objections to using this process.³

The Commission considered the benefits of these benchmarks

- 4 In consultations, stakeholders raised that data is important for both consumers and policymakers. We agree that consumers should have access to good information to support their choices, particularly as they are facing an increasingly complex market and rising prices. Data also helps support policy planning and decisions during the transition. However, it is important to assess each piece of data on its merit, and ultimately we did not find that these particular benchmarks and methodology were adding sufficient value to balance the prescriptive nature of a rule.
- 5 The Commission considered all uses of the benchmarks raised by stakeholders during consultation and further sought evidence of use of the benchmarks outside of publication on bills. We did not find any evidence that consumers directly access or use the benchmark data to support energy efficiency decisions. We examined other uses that were raised by stakeholders - for example, the development of the Default Market Offer (DMO) - and found that most examples did not in fact use the benchmarks from this rule.
- 6 We only found three areas where these benchmarks are used when not on bills, which we assessed individually.
 - **Energy Made Easy (EME):**⁴ Benchmarks are used on EME to create price estimates for consumers who do not provide usage information through a bill or by providing their National Metering Identifier (NMI). Based on analysis done for the 2023-2024 DMO,

1 AER, [Rule change proposal: Removing the requirement for the AER to administer electricity consumption benchmarks](#), May 2023

2 For further information on the AER's Better Bills Guideline, see [its website](#).

3 For further information on this rule change process, see appendix B.

4 The AER's energy price comparison [website](#) for households and small businesses.

which showed that 2019 usage data remained ‘largely representative,’ the AER is comfortable that the 2020 benchmarks will remain relevant for EME in the near term. In the long term, the rule change provides the AER the flexibility to develop data that will be most effective for EME users.

- **Pricing advocacy:** During consultations, consumer advocates raised that they use the benchmarks to calculate what the total electricity cost for consumers of different household sizes will be in different states. They then use this information to advocate in various pricing and other policy discussions. Consistent with the previous dot point, the 2020 benchmarks will remain available and relevant in the near term for consumer advocates to use. In the longer term, more useful consumer data metrics will be assessed in other processes, discussed below.
- **Retail bills in Victoria:** Victorian retailers have an obligation to either include some form of benchmarks (not necessarily AER benchmarks) or greenhouse gas emissions on bills.⁵ As the National Energy Retail Rules (NERR) do not apply in Victoria, the rule did not oblige the AER to develop benchmarks that included Victorian consumers.⁶ We have spoken with staff at the Department of Energy, Environment and Climate Action (DEECA) and the Essential Services Commission (ESC), who did not object to the rule change and said they will consider the outcomes.

7

Current and future jurisdictional and market bodies’ processes will assess more useful consumer data metrics for consumers and policy-making, following on from the data strategy work undertaken by the Energy Security Board. This includes the AEMC’s current consultation process on Bill Transparency⁷ and the AER’s ongoing monitoring of the Better Bills Guideline, work developing and maintaining Energy Made Easy, review of future consumer protections (that includes looking at consumer information requirements), and its broader collaboration with market bodies.⁸ Jurisdictions may also commence further work on consumer data requirements, but no specific programs are currently in place.

The rule change will give the AER additional flexibility to support consumers

8

The current requirement in the NERR is prescriptive, stating which data the AER must use in developing the benchmarks, and requiring the benchmarks to be based on climate zone and household size, while also requiring a specific release timeframe. Removing this specific obligation allows the AER to determine the best use of the resources that would otherwise be used to develop these benchmarks. With the AER’s commitment to embedding consumer insights and impacts in their work and decisions, the Commission considers it is appropriate to give the AER flexibility to more agilely identify and respond to data needs, better

⁵ See sections 63 and 64 of the Victorian Energy Retail Code of Practice (Code).

⁶ See Division 5B of the *Electricity Industry Act 2000 (VIC)*. The NERL and NERR do not currently apply in Victoria and as such the National Energy Consumer Framework (NECF) has limited application (Victoria has adopted Chapter 5A of the NER relating to electricity connection for retail customers). Instead, the Code applies as the legal framework for retail contracts and billing provisions.

⁷ For further information, see the ESB’s [website](#), noting that submissions should be provided to the AEMC.

⁸ For further information on the Review of consumer protections, please see the [AER’s website](#).

supporting consumers.

- 9 The AER has stated it will continue considering what data is useful to help consumers navigate the energy market through its regulatory functions, including the consultations and programs mentioned in the previous section. These activities are part of the AER's responsibility for regulating retail energy markets in the states and territories that have adopted the NECF.

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1 THE COMMISSION HAS MADE A FINAL DETERMINATION

This final determination is to make a final rule in response to a rule change request submitted by the Australian Energy Regulator (AER) about Electricity Consumption Benchmarks.⁹ For information on this rule change process, see appendix B.

1.1 Our final rule will repeal the AER's requirement to develop electricity consumption benchmarks

The final rule omits rules 168, 169 and 171 in Part 11 of the National Energy Retail Rules (NERR). This amendment will remove the AER's obligation to develop and update electricity consumption benchmarks every three years and its related sub-obligations.

Additionally, it will remove the requirement for distributors to provide information to the AER for the purpose of these benchmarks.

The final rule includes a consequential amendment that omits Note 1 in rule 13 of the NERR. This note refers to the electricity consumption benchmarks provisions in Part 11 as an example of provisions applying to standard retail contracts. Given Part 11 will be removed with the making of the final rule, there is no reason to retain the note.

The rule will take effect on 17 August 2023, the date of publication of this final determination.

1.2 Analysis of how the benchmarks are used shaped our determination

The rule was originally established in conjunction with the requirement for retailers to include electricity consumption benchmarks on bills. When the AER's Better Bills Guideline comes into full effect on 30 September 2023, retailers will no longer be obliged to include benchmarks on bills.¹⁰ In light of this change, the AER proposed that the benchmarks will have limited utility going forward.

In order to assess the value of benchmarks going forward we considered how the data is used outside of its presence on bills, taking into account a range of examples and suggestions provided by stakeholders. While access to data is important for both consumers and policymakers, particularly during the transition, each piece of data must be assessed on its merits.

The key findings and observations that shaped the Commission's determination included that:

- We did not find any evidence that consumers directly access or use the benchmarks to support energy efficiency or other decisions.

⁹ AER, [Rule change proposal: Removing the requirement for the AER to administer electricity consumption benchmarks](#), May 2023

¹⁰ For further information on the Guideline, see the [AER's website](#).

- In the short to medium term, based on analysis done for the 2023-2024 Default Market Offer (DMO), the AER considers the 2020 benchmarks will remain largely representative of residential usage and relevant for the limited uses identified.¹¹
- We are satisfied that removing the AER's requirement to update the benchmarks will not undermine the utility of Energy Made Easy (EME).
- No policy-making or jurisdictional body uses or intends to use the benchmarks for decision-making or analysis.

Further details on these and other issues are set out in chapter 2 and appendix A.

1.3

Our determination will allow the AER to better support consumers

The AER is committed to embedding consumer insights and impacts in their work and decisions. Implementing this rule change will give the AER the flexibility to direct resources towards programs and data collection with greater benefits for consumers.

¹¹ [AER submission to the consultation paper](#), p 4.

2 THE RULE WILL CONTRIBUTE TO THE ENERGY OBJECTIVES

The rule repealing the AER's obligation to develop specific electricity consumption benchmarks will support the long-term interests of end-users by supporting the AER to act more flexibly and responsively to specific data needs.

2.1 How we have applied the legal framework to our decision

The Commission can only make a rule if it is satisfied it will or is likely to contribute to the achievement of the relevant energy objectives.¹² For this rule change, the relevant energy objective is the national energy retail objective (NERO):

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.

We identified the following criteria to assess whether the proposed rule change, no change to the rules (business-as-usual), or other viable, rule-based options are likely to better contribute to achieving the NERO:

- Implementation
- Outcomes for consumers
- Principles of good regulatory practice

These assessment criteria reflect the key potential impacts – costs and benefits – of the rule change request, for impacts within the scope of the NERO. Our reasons for choosing these criteria are set out in Chapter 3 of the consultation paper.

The Commission undertook regulatory impact analysis to evaluate the impacts of the various policy options against the assessment criteria. Appendix C outlines the methodology of the regulatory impact analysis.

The rest of this chapter explains why the final rule best promotes the long-term interest of consumers when compared to other options and assessed against the criteria.

2.2 Implementation of the rule increases flexibility for the AER

The AER put forward the costs to develop the benchmarks as a key reason for the rule change request. In assessing the 'implementation' assessment criteria, the Commission looked more broadly at how retaining, repealing or otherwise changing the rule would impact the AER's work for the long-term interests of consumers.

Stakeholder views:

¹² NERL s 236(1). See appendix D for more detail on the legal requirements for a decision.

In the rule change request, the AER explained that developing the benchmarks takes approximately 12 months of work from an external consultant, including surveying consumers, at a cost of “hundreds of thousands of dollars.”¹³ In its submission to the consultation paper, the AER also set out that if the rules were not repealed, it would likely undertake a more minimal refresh process.¹⁴ In a workshop with consumer advocates, the AER clarified that “it’s not a matter of cutting costs, it’s a matter of figuring out where to put our efforts...we have to decide what we won’t do if we do this.”¹⁵

In consultations, consumer advocates raised that “the relative costs of benchmarking activities are not material relative to the beneficial role they play,” and that in light of the cost of living and energy transition, “energy efficiency and consumer information are a priority, and should not be subject to cost-cutting measures.”¹⁶

Commission analysis:

We agree with consumer advocates that we must consider the benefits of an activity, but we must also consider the costs - which includes opportunity cost. In this case, we analysed the uses of these particular benchmarks and concluded that they are not adding significant value (see the following two sections of this chapter for further detail) while the requirement in the NERR places a prescriptive obligation on the AER to develop a specific type of data that they are not using for their work. The AER set out in its submission and the consumer workshop that it uses other data and benchmarks for activities such as developing the DMO and annual retail market reports.¹⁷

Repealing these rules will allow the AER to focus resources on activities with more value for consumers, and provide more flexibility to respond to data needs as they are identified. This includes through the AER’s ongoing monitoring of the Better Bills Guideline, work developing and maintaining Energy Made Easy, its review of future consumer protections (that includes looking at consumer information requirements), and its broader collaboration with other market bodies.¹⁸

2.3 The rule supports better outcomes for consumers

We acknowledge that consumers need good information to navigate the increasing range of products and services. However, the AER concluded after extensive research that there was not a need for benchmarks on consumer bills.¹⁹ In light of this, allowing the AER to instead develop more relevant information will better support consumers. To reach this decision, we assessed various ways the benchmarks may support consumers and key uses of the benchmarks given the requirement to include benchmarks on bills has been removed. This included:

¹³ *Rule change request*, pp 8, 13.

¹⁴ *AER submission*, p 4.

¹⁵ [Consumer workshop transcript](#), p 11. For further information on the workshop, see appendix B.3.

¹⁶ [Joint PJAC, SACOSS, ACOSS, VCOSS submission to the consultation paper](#), p 8.

¹⁷ *AER submission*, pp 2-3 and *Transcript*, p 11.

¹⁸ For further information on the Review of consumer protections, please see the [AER’s website](#).

¹⁹ For further information, see section 2.1.2 of the consultation paper

- Consumer access to data
- Energy Made Easy (EME)
- Consumer advocate use for advocacy.

We also considered the impact on Victorian consumers.

Other possible uses of the benchmarks raised by stakeholders are addressed in appendix A.

2.3.1

The benchmarks are not supporting consumer data needs

The Commission considered whether these benchmarks had value for direct consumer use once they are no longer published on bills.

Stakeholder views:

The AER raised concerns with “the decreasing relevance of periodically updated average consumption benchmarks in the broader context of the evolving market and changing consumer needs and expectations.”²⁰ It set out that accessing the general benchmarks online will have limited benefit, particularly considering that the benchmarks are not specific enough to account for differences in appliances, devices such as electric vehicles (EVs) or solar panels, and differences in the energy efficiency of a home.²¹ Instead, if consumers wish to access information on usage to support energy efficiency decisions, using in-home devices to see real-time usage data or accessing their historic usage data through their retailer, distributor or the Consumer Data Right (CDR) will be more useful.

Consumer advocates objected to the AER’s position, and raised several concerns:

- Once the Better Bills Guideline comes into full effect in September 2023 and benchmarks are no longer required to be included on retail bills in the NEM, consumers may object to this change. In this case, the AER may choose to reinstate the obligation, in which case they would need to provide updated benchmarks for retailers to use.²²
- The alternatives set out by the AER are not practical for most consumers:²³
 - The smart meter roll out is still in progress, and real-time data access will often require additional products and services.
 - Historic data isn’t always easy to access and will become less relevant as people change their usage. For example, once a consumer purchases an EV or home battery, their previous years’ usage will not offer insights for comparison.
 - Advocates have concerns about whether consumers are accessing their information through the CDR.
- On-the-ground staff use the benchmarks on consumers’ bills to help explain usage: “they refer to it all the time, and their comment was that it’s the only thing on the bill that’s not expressed in terms of kilowatt hours. So it is a point of entry for understanding for

²⁰ AER submission, p 5

²¹ Rule change request, p 9.

²² Joint submission, p 4.

²³ Joint submission, pp 6-7.

someone with zero energy literacy - does our house use more or less than a normal 1, 2, 3 person household.”²⁴

Consumer advocates recommended instead developing more detailed benchmarks to address the changes in energy usage and housing. They also raised that this would be particularly useful for vulnerable consumers considering that groups such as renters won’t have as much access to historic data and vulnerable cohorts who “often do not have ready access to energy efficient appliances” would benefit from data to understand their consumption.²⁵

Commission analysis:

The Commission supports the importance of consumers having access to appropriate information to navigate their energy usage and choices at this time, but it is important to consider whether this specific data provides value to consumers. The AER found that the cost-benefit analysis of having benchmarks on bills did not support their inclusion, and during this consultation no evidence was presented or found that individual consumers are accessing the AER’s website to use this data to inform energy efficiency or other decisions.

On the specific issues raised by stakeholders:

- If at any point the AER chooses to reinstate the obligation to include benchmarks on bills, it may still choose at its discretion to update the previous benchmarks, develop new or other benchmarks, or establish other data sources it considers to be more relevant and effective. This could include requesting data from relevant parties through their general information-gathering powers under section 206 and 220 of the NERL, if needed.
- No evidence was presented or found that individual consumers use the benchmark data from the AER’s website for energy efficiency decisions, so while we note that access to real-time data is developing and historic data may be less relevant after certain consumer purchases, not updating the benchmarks does not create a significant gap for consumers.
- While advocates have used benchmarks when working with clients when they were included on bills, this circumstance will change come September when they are removed. We also note that the 2020 benchmarks, which will continue to be published on the AER’s website, will remain relevant for this use - see section 2.3.2 and section 2.3.3 for further information on the ongoing relevance of the 2020 data.
- The proposal to develop more detailed benchmarks is considered in section 2.4.

As noted in section 2.2, removing this specific requirement will give the AER more flexibility to identify and develop relevant data sets. Determining the most useful data for consumers is consistent with the AER’s existing and developing expertise on consumer interests, including the Better Bills Guideline, EME and energy equity strategy.²⁶ We also note that the AER has been building its research and testing capacity, for example when conducting research for the development of the Better Bills Guideline. Allowing the AER to make these decisions outside of a prescriptive regulatory framework will allow faster changes and adaptation during the transition.

²⁴ *Transcript*, p 7.

²⁵ *Joint submission*, pp 6-7

²⁶ [AER starts a journey towards energy equity](#), 20 October 2022.

2.3.2

Updated benchmarks won't improve Energy Made Easy

Without the inclusion of benchmarks on retail bills, the main interaction consumers will have will be through the AER's comparison site EME.

Stakeholder views:

In its submission the AER explained how the benchmarks are used for EME, the percentage of consumers who access the related data, and the relevance of these benchmarks for EME moving forward.²⁷

- Benchmarks are used on EME to create price estimates for consumers who do not provide usage information, either through a bill or by providing their National Metering Identifier (NMI). This is particularly true for consumers who have moved within the last 12 months, as they do not have a year's usage data at a particular premises.
- On the current EME site, 45 percent of users take the comparison route that uses price estimates, whereas on the beta site (launched in June) which encourages consumers to input their NMI, 24 percent of users use the comparison tool. 2022 research also "found that moving house accounted for a minority of visits to [EME], with high prices being the main driver."
- The AER views that average benchmarks as currently set out in Part 11 of the NERR will become less relevant and useful for EME, noting that "as more complex energy services and tariff structures (such as demand tariffs and time of use) become more common, we need a comparison engine that can respond more flexibly to both the changing market and evolving consumer needs and expectations." It states that "a more tailored and responsive approach" will benefit consumers more, and notes that it is in discussions with CSIRO and the Department of Climate Change, Energy, the Environment and Water (DCCEEW) on relevant data sources.
- When developing the latest DMO for 2023-24, analysis found that 2019 annual usage amounts for residential consumers "remain 'broadly representative', including in jurisdictions with high uptake of household solar." In light of this, the AER has stated that they are comfortable that the 2020 benchmarks will remain relevant for EME in the near term.

Consumer advocates underlined the importance of EME as a tool for consumers, and both they and AGL raised concerns that the 2020 benchmarks would become outdated, negatively impacting the utility of EME for consumers.²⁸

Advocates also raised that vulnerable groups of consumers, including renters, may be more likely to move within 12 months, which means they would be dependent on the comparison tool on EME.²⁹

Commission analysis:

²⁷ AER submission, p 4.

²⁸ [AGL submission to the consultation paper](#), p 2 and Joint submission, p 5.

²⁹ Joint submission, p 5.

The Commission agrees that EME is an important tool for consumers to navigate energy retail choices, and notes that there will continue to be consumers who must use the comparison tool as they do not have access to 12 months historic usage data.

However, we do not view that the rule change will undermine the utility of EME. In the short to medium term, AER has stated that the 2020 benchmarks will remain relevant due to the lack of change in consumer consumption patterns. In the long-term, the rule change will allow the AER to redeploy resources to meet their requirements under the NERL in ways they deem to be most effective for consumers.³⁰ Additionally, the AER retains the ability and information-gathering powers to develop updated or new benchmarks if it finds that it is required to effectively support consumers via EME.

2.3.3

2020 benchmarks remain relevant for pricing discussions

Stakeholder views:

During the workshop with consumer advocates, advocates raised that they use the benchmarks in pricing discussions with jurisdictions. Specifically, the benchmarks allow them to calculate and discuss the impact of price changes based on what the overall bill will look like for a certain-sized household in a given state. A representative from the Council on the Ageing (COTA) explained that “benchmarks provide the critical link between the unit price and the budgetary impact on consumers, particularly low income consumers.”³¹

Advocates similarly raised that benchmarks may be used by jurisdictions or other parties in making price-setting decisions - this is addressed in appendix A.

Commission analysis:

The Commission acknowledges and appreciates the important role advocates play in pricing discussions and more generally advocating for consumer interests. However, in light of the information provided by the AER that the 2020 benchmarks remain relevant despite the changes in living and working styles in recent years, we do not see that updated benchmarks would be of significant benefit in the short term. In the medium term, this application of consumption information can be considered as part of broader considerations about the industry’s data needs and strategy.

2.3.4

The ESC and DEECA will consider impacts on Victorian consumers

Victoria has a different set of rules for energy billing than other jurisdictions in the National Electricity Market (NEM).³² Retailers in Victoria are required to include either greenhouse gas emission or benchmarking information on bills, and in its rule change request, the AER noted

30 The AER is required to develop a price comparator site under section 62(2) of the NERL and in performing or exercising their functions or powers, do so in a way that “will or is likely to contribute to the achievement of the [NERO]” under section 205 of the NERL.

31 *Transcript*, p 4.

32 See Division 5B of the *Electricity Industry Act 2000 (VIC)*. The NERL and NERR do not currently apply in Victoria and as such the National Energy Consumer Framework (NECF) has limited application (Victoria has adopted Chapter 5A of the NER relating to electricity connection for retail customers). Instead, the Victorian Energy Retail Code of Practice (Code) applies as the legal framework for retail contracts and billing provisions.

that some retailers in the Victorian market have used the AER's benchmark data to fulfill this obligation.³³

Stakeholder views:

The AER's rule change request set out that it does not have an obligation to develop benchmarks for Victorian consumers, and if the rule were repealed or the AER stopped including Victoria in the development of benchmarks, Victorian "retailers may still adhere to the requirements of the Code by either continuing to use the 2020 electricity consumption benchmarks or presenting information on greenhouse gas emissions."³⁴

Consumer advocates raised concerns about the impact of repealing the rule on Victorian consumers, specifically noting that if retailers stop including benchmarks on bills in Victoria because the data is no longer available "Victorian consumers will be provided with less information."³⁵

Submissions also raised concerns that continuing to use 2020 data will over time provide outdated information to Victorian consumers.³⁶

Retailers supported the rule change request, and noted that specifically for Victoria, they would either prefer for Victoria to harmonise their billing rules with the NEM, or for the Victorian Government to develop benchmarks if they choose to retain this particular obligation.³⁷

Commission analysis:

As noted by the AER, Part 11 of the NERR does not oblige the AER to develop benchmarks for Victorian consumers, and Victorian retailers have a range of options to comply with the Code beyond the AER's benchmarks. Victorian legislation and guidelines do not specifically refer to the AER's benchmarks as the benchmarking information that must be included on customer bills, and retailers have the option to include benchmarking information or greenhouse gas emission information.³⁸

Additionally, as discussed in the consultation paper, the nearly 100 percent uptake of smart meters in Victoria provides Victorian consumers with more options to access data on their energy usage.

Victoria's Essential Services Commission (ESC) and the Department of Energy, Environment and Climate Action (DEECA) did not submit objections to the expedited rule change process or provide submissions to the consultation paper. Commission staff met with staff at the ESC and DEECA, who did not object to the rule change and noted that they would consider the outcomes of the rule change process. Ultimately, this is the most appropriate path forward to consider outcomes for Victorian consumers.

³³ *Rule change request*, pp 10-11.

³⁴ *Rule change request*, p 2.

³⁵ *Joint submission*, p 6.

³⁶ *Joint submission*, p 6 and *AGL submission*, p 2.

³⁷ *AGL, [Simply Energy](#) and [Australian Energy Council](#) submissions to the consultation paper.*

³⁸ See sections 63 and 64 of the Code and sections 40P and 40R of the *Electricity Industry Act 2000 (VIC)*.

2.4 The rule aligns with principles of good regulatory practice

The Commission considered the impact of the proposed rule change on policymaker access to data, particularly in the context of the transition and the broader direction of reform.

Stakeholder views:

As noted in section 2.2, the AER's submission set out different sources and types of data they use for work such as the DMO and retail market reports, and noted that they do not use this benchmarking data for any of these activities.

However, consumer advocates raised concerns that benchmarks would or should have "wide-ranging application for jurisdictions doing [...] energy planning," that information on consumption behaviours is important for policy design, and that broadly more data is needed to navigate the transition.³⁹

We had informal staff-level conversations with the ACCC, Queensland Competition Authority (QCA), DEECA, and DCCEEW on the benchmark data, and none were able to identify any specific organisational uses of the benchmarks.⁴⁰ Staff at DCCEEW supported the rule change, considering the constraints on data access and that the methodology used did not address the diversity and complexity of households.⁴¹ This support was provided on the expectation that the ESB's Data Strategy project ultimately results in better data being available.⁴²

In conversation, CSIRO energy systems staff did note that they find the information useful, in particular for tracking residential consumer consumption in the context of energy efficiency programs, but that removal of the benchmarks would not have significant adverse impacts on any particular project - assuming that further data sources would be developed in the coming years.

Noting that the benchmarks as currently designed are not sufficiently detailed or complex, consumer advocates put forward a proposal for the AEMC to make a more preferable rule for the creation of more comprehensive benchmarks with more data points, to "generat[e] more valuable consumer information to help facilitate the energy system transition."⁴³ SACOSS also proposed that the AER collect more detailed data including solar vs non-solar that would "contribut[e] to a more equitable transition," as currently available data is neither detailed nor accessible enough.⁴⁴

Commission analysis:

³⁹ *Transcript*, pp 6-7.

⁴⁰ We also note that all relevant jurisdictions were notified of the consultation paper when it was published, and none have objected to the rule change request.

⁴¹ The constraints on using benchmarking data is discussed in the AER's rule change request, pp 11-12.

⁴² An end-of-program report from the ESB on the Integrating consumer energy resources and Data strategy programs is expected soon, and it is anticipated that further work on data requirements will be progressed by jurisdictions and market bodies.

⁴³ *Joint submission*, pp 6-7.

⁴⁴ [SACOSS submission to the consultation paper](#), pp 5-7.

The Commission agrees that access to data is important for policy decisions. However, as with consumer access to data, each piece of data needs to be assessed on its own merit and in the current context.

Consumer advocates raised a range of ways that benchmarking data may have been previously used by policymakers and regulators. For example, during the consumer workshop, SACOSS raised the AER's analysis on hardship customers.⁴⁵ We have discussed each example raised with the relevant parties and confirmed that in all cases, these benchmarks were not used. The AEMC has previously used benchmark data for the Residential electricity price trends report, but is not intending to use the data for future reports (regardless of the outcome of the rule change), as an average consumer number is not as relevant anymore considering the increasing number and impact of variables on different households' consumption.⁴⁶

As to the consumer proposal for more detailed and comprehensive benchmarks, these issues should not be considered in isolation through this rule change, but as part of the broader Billing Transparency work.⁴⁷

We also note the AER's commitment to embedding consumer insights and impacts in their work and decisions, and by repealing this rule, they will have additional flexibility to identify, develop, use and provide the most relevant data.

⁴⁵ *Transcript*, p 7.

⁴⁶ For further information on the price trends report, see our [website](#).

⁴⁷ See [ESB website](#) and consultation paper.

A SUMMARY OF OTHER ISSUES RAISED IN SUBMISSIONS

Table A.1: Summary of other issues raised in submissions

STAKEHOLDER	ISSUE	RESPONSE
SACOSS	Repealing the rule could decrease the ability of the AER to request information from distributors.	The AER has broad information-gathering powers under section 206 of the NERL, and we do not consider repealing this rule will prevent the AER from requesting such data should they so choose.
SACOSS	The inclusion of and reference to the benchmarks in the Rules and Law show that they meet the NERO.	While this was the case at the time the Rule and Law were written, we must consider whether the proposed rule change request meets the NERO in today's circumstances.
Joint consumer submission - from PIAC, ACOSS, SACOSS and VCOSS	Benchmarks are used by jurisdictions and the AER for price setting.	The AER confirmed in its submission that it does not use these benchmarks for the DMO or any other exercises. Staff at the Queensland Competition Authority (QCA) and the ESC (Victoria) confirmed they do not use these benchmarks for pricing.
Joint consumer submission	The ACCC uses EME for the Inquiry into the NEM report, so older benchmarking data in EME will impact the efficacy and accuracy of that report.	ACCC staff have confirmed that, while the ACCC analyses offer information from EME, the analysis does not rely on the consumption benchmarks.
Joint consumer submission	Network businesses use these when calculating the impact of proposed tariff changes.	Energy Networks Australia inquired with its members and received feedback that distributors generally calculate the impact of proposed tariff changes using data from their own customer profiles and usage.
Joint consumer submission	Benchmarks should never have been removed from bills	We note the proposal and will provide this input to the

STAKEHOLDER	ISSUE	RESPONSE
	and there should be a review of the Better Billing Guidelines at least four billing cycles following its full commencement in September.	AER for its consideration.
AGL	Instead of presenting pricing based on consumption, EME should instead show comparison to reference price.	We note AGL's view and will provide this input to the AER for its consideration.
Australian Energy Council	Victoria should harmonise their billing requirements.	Noted.

B RULE MAKING PROCESS

An expedited rule change request includes the following stages:

- a proponent submits a rule change request
- the Commission initiates the rule change process by publishing a consultation paper and seeking stakeholder feedback
- stakeholders have the option to lodge objections to the expedited process
- stakeholders lodge submissions on the consultation paper and engage through other channels to make their views known to the AEMC project team
- the Commission publishes a final determination and final rule (if relevant).

You can find more information on the rule change process in *The Rule change process – a guide for stakeholders*.⁴⁸

B.1 The AER proposed that Part 11 of the NERR be repealed

The AER submitted a rule change request to repeal Part 11 of the NERR, to remove their obligation to develop and update electricity consumption benchmarks every three years. They also suggested repealing Note 1 under rule 13 of the NERR as a consequential amendment to the repeal of Part 11.

B.2 The proposal addressed why the AER considered the benchmarks were no longer useful

The AER put forward that with benchmarks no longer included on retail bills as of September, their utility to consumers will have significantly decreased. Therefore the benchmarks as currently developed are not useful for most consumers and there is limited utility for third parties to use the benchmarks for other purposes. In light of this, the prescriptive nature of the rule was preventing the AER from using the required resources for more effective programs.

B.3 The process to date

On 22 June 2023, the Commission published a notice advising of the initiation of the rule making process and consultation in respect of the rule change request.⁴⁹ A consultation paper identifying specific issues for consultation was also published. Submissions closed on 20 July 2023.

The Commission considered that the rule change request was a request for a non-controversial rule as defined in s. 235 of the NERL. Accordingly, the Commission initiated an expedited rule change process, subject to any written requests not to do so. The closing date for receipt of written requests was 6 July 2023.

⁴⁸ AEMC, *The rule change process: a guide for stakeholders*, June 2017, available here: <https://www.aemc.gov.au/sites/default/files/2018-09/A-guide-to-the-rule-change-process-200617.PDF>

⁴⁹ This notice was published under section 251 of the NERL.

No written requests to not carry out an expedited rule change process were received. Accordingly, the rule change request was considered under an expedited process.⁵⁰

The Commission received six submissions to the consultation paper, available on our website.

We also held a workshop with invited consumer advocates on 17 July 2023, attended by representatives from:

- Australian Council of Social Service (ACOSS)
- Brotherhood of St. Laurence
- Council on the Ageing (COTA)
- Energy Consumers Australia (ECA)
- Public Interest Advocacy Centre (PIAC)
- South Australian Council of Social Service (SACOSS)
- Victorian Council of Social Service (VCOSS)

The transcript from the workshop is available on our website.⁵¹

The Commission considered all issues raised by stakeholders in submissions and at the workshop. Issues raised in submissions are discussed and responded to in this final rule determination. A summary of the issues raised in submissions and the Commission's response to each issue is contained in Chapter 2 and appendix A.

50 Section 252 of the NERL.

51 [Transcript](#)

C REGULATORY IMPACT ANALYSIS

The Commission has undertaken regulatory impact analysis to make its determination.

C.1 Our regulatory impact analysis methodology

We considered a range of policy options

The Commission compared a range of viable policy options that are within our statutory powers. The Commission analysed these options: the rule proposed in the rule change request; a business-as-usual scenario where we do not make a rule; and more preferable rules either requiring the AER to continue updating the benchmarks for a limited period of time or requiring more comprehensive benchmarks based on additional variables.

We identified who will be affected and assessed the benefits and costs of each policy option

The Commission's regulatory impact analysis for this rule change used qualitative methodologies. It involved identifying impacted stakeholders and assessing the benefits and costs of policy options. The depth of analysis was commensurate with the potential impacts. The Commission focused on the types of impacts within the scope of the NERO.

We considered the costs and benefits of each option for:

- individual consumers
- consumer advocates
- research bodies
- jurisdictions and regulators.

The Commission's determination considered the benefits of each option minus the costs, across all impacted parties.

The costs of retaining the rule or making a more preferable rule for more comprehensive benchmarking also took into account the opportunity costs - whether the AER's resources would be more beneficially deployed elsewhere, in a more flexible way to respond to identified needs and based on the expertise of the AER.

When examining the benefits of these options, we considered whether we had been provided examples or evidence of use of the benchmarks.

D LEGAL REQUIREMENTS TO MAKE A RULE

This appendix sets out the relevant legal requirements under the NERL for the Commission to make a final rule determination.

D.1 Final rule determination and final rule

In accordance with section 259 of the NERL, the Commission has made this final rule determination for a final rule in relation to the rule proposed by the AER.

The Commission's reasons for making this final rule determination are set out in chapter 2.

A copy of the final rule is attached to and published with this final determination.

D.2 Power to make the rule

The Commission is satisfied that the final rule falls within the subject matter about which the Commission may make rules.

The final rule falls within section 237 of the NERL as it relates to benchmarks for energy consumption for residential customers.⁵²

D.3 Commission's considerations

In assessing the rule change request the Commission considered:

- its powers under the NERL to make the final rule
- the rule change request
- submissions received during consultation
- stakeholder input received at the workshop held on 17 July
- the Commission's analysis as to the ways in which the final rule will or is likely to contribute to the achievement of the NERO
- the extent to which the rule is compatible with the development and application of consumer protections for small customers
- the application of the final rule to Victoria.

There is no relevant Ministerial Council on Energy (MCE) statement of policy principles for this rule change request.⁵³

⁵² Section 237(2)(i) of the NERL.

⁵³ Under s. 33 of the NEL and s. 73 of the NGL the AEMC must have regard to any relevant MCE statement of policy principles in making a rule. The MCE is referenced in the AEMC's governing legislation and is a legally enduring body comprising the Federal, State and Territory Ministers responsible for energy. On 1 July 2011, the MCE was amalgamated with the Ministerial Council on Mineral and Petroleum Resources. In December 2013, it became known as the Council of Australian Government (COAG) Energy Council. In May 2020, the Energy National Cabinet Reform Committee and the Energy Ministers' Meeting were established to replace the former COAG Energy Council.

D.4 Civil penalty provisions and conduct provisions

The Commission cannot create new civil penalty provisions or conduct provisions. However, it may recommend to the Energy Ministers' Meeting that new or existing provisions of the NERL be classified as civil penalty provisions or conduct provisions.

The final rule does not amend any clauses that are currently classified as civil penalty provisions or conduct provisions under the National Energy Retail Regulations.

The Commission does not propose to recommend to the Energy Ministers' Meeting that any of the proposed amendments made by the final rule be classified as civil penalty provisions or conduct provisions.

E ABBREVIATIONS AND DEFINED TERMS

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
Commission	See AEMC
NEL	National Electricity Law
NEO	National Electricity Objective
NER	National Electricity Rules
NERL	National Energy Retail Law
NERO	National Energy Retail Objective
NERR	National Energy Retail Rules
NGL	National Gas Law
NGO	National Gas Objective
NGR	National Gas Rules
Proponent	The individual / organisation who submitted the rule change request to the Commission