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Australian Energy Market Commission

## **RULE DETERMINATION**

# **NATIONAL GAS AMENDMENT (RECOGNITION OF EXEMPT SELLERS IN RETAIL MARKET) RULE 2019**

### **PROPONENT**

Australian Energy Market Operator

18 APRIL 2019

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# **RULE**

## INQUIRIES

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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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## SUMMARY

- 1 The Australian Energy Market Commission (AEMC or Commission) has decided to make a rule enabling exempt sellers under the National Energy Retail Law (NERL) regime to participate in the NSW-ACT, South Australian, Queensland and Victorian retail gas markets. Exempt sellers are parties that are allowed to sell energy to consumers without needing to be authorised as retailers.
- 2 As a result, an exempt seller under the NERL regime:
  - Will be able to register with the Australian Energy Market Operator (AEMO) as a 'self contracting user' if they are only selling gas to related businesses in the NSW-ACT, Queensland and South Australian retail gas markets.
  - Will be able to register with AEMO as a 'retailer' if they are selling gas to unrelated third parties in the NSW-ACT, Queensland and South Australian retail gas markets.
  - Would be able to register as 'market participant - retailer' with AEMO if they are selling gas to unrelated third parties in the Victorian retail gas market or as a 'market participant - other' if they are only selling gas to related businesses, subject to Victoria's adoption of the NERL.
- 3 The Commission has determined that the rule will allow exempt sellers to participate in retail gas markets based on the nature of their interactions with their final customers. The Commission expects that making the rule will facilitate increased competition in these retail gas markets and provide gas customers with more choice in relation to how they purchase their gas.
- 4 The Commission assessed the rule change under an expedited rule change process on the basis that it was a non-controversial rule change request.

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# 1 AEMO'S RULE CHANGE REQUEST

## 1.1 The rule change request

On 12 November 2018, the Australian Energy Market Operator (AEMO) made a request to the Australian Energy Market Commission (AEMC or Commission) to make a rule regarding the recognition of the National Energy Retail Law (NERL) exempt seller regime in the National Gas Rules (NGR), enabling exempt sellers under the NERL regime to participate in retail gas markets (rule change request).

The AEMC considered the rule change as being non-controversial, and as a result, has assessed it under an expedited rule change process.<sup>1</sup>

## 1.2 Current arrangements

### 1.2.1 The retailer authorisation and exempt seller frameworks

Under the NERL, any person who sells energy to another person for use at premises needs to either obtain a retailer authorisation or an exemption from the requirement to be authorised.<sup>2</sup> Under the NERL, the Australian Energy Regulator (AER) is responsible for assessing and approving retailer authorisations.

Retailer authorisations are normally required for prospective energy sellers where:<sup>3</sup>

- the seller's core business is the sale of energy
- the seller's primary relationship with its customers is the sale of energy and the seller has no other, or an otherwise minor, relationship with the customer (for example, it does not also have a landlord/tenant relationship)
- the seller intends to sell to many customers and/or sell a large volume of energy.

Energy retailers must be able to comply with the NERL and the National Energy Retail Rules (NERR), as well as any relevant provisions of the National Electricity Law, the National Electricity Rules, the National Gas Law (NGL), the National Gas Rules (NGR), and jurisdictional energy legislation before they start selling energy.

For some sellers, the scale of the planned energy sales or the relationship between the energy seller and customer may mean that an authorisation is not necessary and an exemption is more appropriate. In addition to its responsibilities involving retailer authorisations, the AER has powers to impose exemption conditions and to issue and revoke exemptions under the exemption framework in the NERL and in accordance with the NERR.<sup>4</sup>

According to the AER, a person is likely to be eligible for an exemption from being authorised as a gas retailer if they are planning to sell gas:<sup>5</sup>

1 Section 304 of the NGL.

2 Section 88(1) of the NERL. Energy 'sales' do not necessarily have to be for profit, passing on energy costs to another person is considered to be a sale as well. AER, *AER Retailer Authorisation Guideline*, version 2, December 2014, p. 4.

3 *ibid*, p. 5.

4 For the NERL, this is set out in Part 5, and it applies under Part 9 of the NERR.

5 AER, *AER (Retail) Exempt Selling Guideline*, version 5, March 2018, p. 5.

- ‘incidentally’ to their main business
- as a community service or at cost, or
- to a defined group of customers at one site.

While an exemption allows a person to sell gas, it restricts their selling activity to a defined class (or classes) of customers, usually at a specific site (or sites). These restrictions are set out in the terms of the exemption. Exempt sellers still have to follow strict conditions and meet a range of obligations to their customers. However, these regulatory requirements are generally less onerous than those applied to authorised retailers.

The core conditions that an exempt seller must meet are based on customer protections under the NERL but will vary according to the particular operations of the seller. The conditions applied to exempt sellers cover aspects such as an obligation to supply, provision of key information to customers, billing and payment arrangements, disconnection and reconnection, and concessions and rebates.<sup>6</sup>

The exemption framework under the NERL establishes three categories of exemptions: deemed, registrable and individual.<sup>7</sup>

Deemed exemptions apply automatically to certain classes of gas sellers that generally have small-scale selling arrangements that need little regulatory oversight. These classes include caravan parks that sell metered gas to people in short term holiday accommodation, sellers of gas to related businesses and persons that sell metered gas to fewer than ten small businesses or residents.

The second category of exemptions is a registrable exemption. Registrable exemptions need to be registered with the AER because the scale of the selling activity is larger than for a deemed exemption and therefore warrants more regulatory oversight. The AER publishes registered exemptions on its website, but does not assess or approve them. Energy sellers that can register an exemption include:

- persons who sell metered energy to ten or more small tenants or residents within a site
- retirement villages or caravan parks who sell metered energy to permanent residents
- persons selling energy to large customers.<sup>8</sup>

If deemed and registrable exemptions do not apply to the particular circumstance of the seller, then the seller can apply for an individual exemption. Individual exemptions normally apply to the sale of energy at a particular site and/or to a particular customer (or group of customers). These exemptions are more unusual and are often used for one-off arrangements. These exemption applications are assessed and decided upon by the AER. In making an individual exemption, the AER tailors the conditions of the exemption to the specific situation.

This exemption framework is currently under review as part of the Commission’s review into *Updating the regulatory frameworks for embedded networks*. The draft report for this review

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6 *ibid*, p. 6.

7 See Part 9, Division 2 of the NERR.

8 The threshold for large gas customers in all jurisdictions is 1 TJ/year.

was published in January 2019, and proposed significant reforms to the arrangements noted above, including reducing the scope of exemptions.<sup>9</sup>

### 1.2.2 The retail market participant framework

Under the NGL, a person needs to register with AEMO in order to be able to participate in a retail gas market and be able to ship gas to a distribution supply point in that market. Alternatively, a person can be exempted from market participant registration by AEMO.<sup>10</sup>

AEMO can only register a party in a retail gas market or exempt them from registration if it meets the criteria of one or more of the registrable categories described for the respective jurisdictions in rule 135AB of the NGR that the party intends to participate in. These jurisdictional categories vary slightly, but the three registrable categories generally available for the NSW-ACT, South Australian, Queensland and Victorian retail gas markets are:

- A 'network operator' for the NSW-ACT gas market and the South Australian gas market, and 'distributor' for the Queensland gas market and the Victorian gas market.<sup>11</sup>
- A 'retailer' for the Queensland gas market, 'user' for the NSW-ACT gas market or the South Australian gas market and 'market participant - retailer' for the Victorian gas market.
- A 'self contracting user'. This is defined in the NSW-ACT, South Australian and Queensland retail gas markets as an end user who is party to a contract with a service provider for haulage services and is not a retailer. The Victorian registrable capacity of 'market participant - other' has some overlap with this category.

There are some differences in costs and obligations between being registered as a retailer and being registered as a self-contracting user. AEMO operates a full retail contestability (FRC) hub as a communication infrastructure that facilitates gas transactions between AEMO, retailers, self-contracting users and distribution pipeline service providers in the retail gas markets of Victoria, Queensland, South Australia, NSW-ACT and Western Australia.

AEMO requires retailers and distribution pipeline service providers to have the necessary IT systems in place to interact with its FRC Hub, or to engage a third party to perform these interactions for them. Self-contracting users do not face this requirement. Any transactions with the FRC Hub required by self-contracting users are carried out by AEMO on their behalf.<sup>12</sup> The Commission understands that AEMO does not currently seek to recover the cost of these transactions from self-contracting users.<sup>13</sup>

9 AEMC, *Updating the regulatory frameworks for embedded networks*, draft report, 31 January 2019, pp. 54-56.

10 Section 91 LB(1) of the NGL.

11 The South Australian retail gas market also has registrable capacities of 'network operator (Mildura region)', 'transmission system operator', 'swing service provider' and 'shipper'. The Victorian retail gas market also includes a registrable capacity for a 'transmission system service provider'.

12 The Commission understands that in some jurisdictions, self-contracting users rely on a low volume interface maintained by AEMO rather than AEMO conducting the transactions on their behalf. This interface provides self-contracting users with an alternative mechanism for conducting transactions and enables them to avoid costs associated with connecting to the FRC hub.

13 Rule change request, p. 5.

As a result, retailers are currently the only parties who are required to pay AEMO operational fees for the FRC Hub. These fees are paid on a \$/customer supply point/month basis.<sup>14</sup>

The frameworks described in section 1.2.1 and this section are overseen by the AER and AEMO, respectively, and do not always correspond.<sup>15</sup> For instance, a caravan park that sells metered energy to permanent residents can become an exempt seller without needing to register as a retail gas market participant with AEMO by contracting gas from an authorised retailer and then on-selling the gas to the residents. In addition, a large manufacturing company could be registered as a self-contracting user by AEMO without obtaining an authorised retailer or exempt seller status under the AER's framework because such a company does not intend to on-sell gas at all.

## 1.3 Rationale for the rule change request

AEMO has expressed concern that exempt sellers are not currently recognised in the NGR and that there are certain discrepancies in the naming of registrable categories relevant to enabling retail gas market participation for exempt sellers in different jurisdictions. These issues are discussed below.

### 1.3.1 Exempt sellers not being recognised in the NGR

Exempt sellers do not currently fit into any of the three registrable categories specified in the NGR for the NSW-ACT, South Australian and Queensland retail gas markets. As a result, AEMO cannot register these exempt sellers as market participants, nor enable them to participate in the retail gas market by exempting them from registering as a retail gas market participant.<sup>16</sup> This means that exempt sellers are barred from entry into these markets. This prevents exempt sellers from being able to make their own arrangements for the supply and haulage of gas to other customers instead of contracting gas from a retailer that participates in the retail gas market.<sup>17</sup> Exempt sellers could also be prevented from meeting their contractual obligations to provide gas to a purchaser.

In its rule change request, AEMO noted the registrable capacities for the Victorian retail gas market are capable of including some exempt sellers. The registrable capacity of 'market participant - other' under rule 135AB(4) of the NGR does not mention exempt sellers, but does include any user of the declared Victorian transmission system or any other Victorian transmission pipeline.<sup>18</sup>

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- 14 These fees vary across jurisdictions. The FRC fees currently collected for the NSW-ACT retail gas market are \$0.16 per customer supply per month. AEMO, *NSW and ACT FRC Gas 2018-19 AEMO Final Budget and Fees*, June 2018.
- 15 Separately the Essential Services Commission oversees an exempt selling regime in Victoria, in accordance with the *Gas Industry Act 2001* (Vic).
- 16 While AEMO can grant a person exemption from retail gas market participation unconditionally or on specified conditions under rule 135AG of the NGR, s. 91 LA(2) of the NGL requires, in effect, that if this person did not fit into one or more of the registrable capacities in rule 135AB of the NGR, they would not be able to participate in the respective regulated retail gas markets.
- 17 Sourcing gas directly from a producer requires registration in the retail gas market, although wholesale gas market participation could be required if the haulage service falls within one of the wholesale markets. For further details, see: [http://www.aemo.com.au/-/media/Files/PDF/GAS\\_MARKET\\_REGISTRATIONS\\_final.pdf](http://www.aemo.com.au/-/media/Files/PDF/GAS_MARKET_REGISTRATIONS_final.pdf)
- 18 Rule change request, p. 3.

### 1.3.2 Naming discrepancy for registrable categories

AEMO's rule change request identified jurisdictional naming discrepancies for equivalent registrable capacities in rule 135AB of the NGR. These discrepancies are relevant to recognising exempt sellers in retail gas markets. AEMO noted that the term 'retailer' is currently used in the Queensland retail gas market and the term 'user' is used for equivalent market participants in the NSW-ACT and South Australian retail gas markets.

## 1.4 Solutions proposed in the rule change request

AEMO sought to resolve the issues discussed above by proposing a rule that would allow exempt sellers to fit into appropriate registrable capacities for the NSW-ACT, Queensland, South Australian and Victorian gas markets.

Additionally, AEMO proposed a solution to resolve the naming discrepancies for registrable retail gas market participant categories.

Each of the solutions in the proposed rule are discussed in turn below.

### 1.4.1 Recognising exempt sellers selling gas to related parties in the NGR

The solution proposed by AEMO in its rule change request for exempt sellers not fitting into any registrable capacities for the NSW-ACT, Queensland and South Australian gas markets was to amend rule 135AB of the NGR to include exempt sellers within the registrable capacities available for retail market participants for these jurisdictions.

AEMO considered that this change would allow exempt sellers to interact with both AEMO and the retail gas markets where necessary, while providing regulatory certainty to the market. AEMO proposed to enable exempt sellers to register as retail gas market participants in one of two possible ways:<sup>19</sup>

- Where the exempt seller is selling gas only to end users that are related bodies corporate of that exempt seller, the exempt seller will be considered a self-contracting user (or equivalent).
- Where the exempt seller is selling gas to third parties, the exempt seller will be considered a retailer.

In suggesting these different options for registering exempt sellers, AEMO stated that exempt sellers who are only selling gas to their related bodies corporate are effectively end users in the way that they interact with the market. AEMO anticipates that the number of transactions they can be expected to conduct using the FRC hub are minimal, as with self-contracting users generally. Exempt sellers who are selling gas to a related party would be likely to prioritise obtaining the lowest possible gas price for the benefit of their related body, similarly to the way that a customer would prioritise obtaining the lowest possible gas price for themselves.

Due to the similarity in market participation behaviour between end users and exempt sellers who only sell gas to related bodies corporate, AEMO recommended such exempt sellers being

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<sup>19</sup> Rule change request, p. 4.

able to register as 'self contracting users' in the same way as end users.<sup>20</sup> Applying this registration category would benefit this type of exempt seller by enabling them to contract for gas on behalf of a related company. Otherwise, that related body would need to register as a self-contracting user themselves or would need to contract gas from an authorised retailer.<sup>21</sup> In AEMO's view, these alternatives potentially impose additional costs and regulatory burdens that may be more difficult to manage.

AEMO considered other options for exempt sellers selling gas to related parties, but found them to be unsatisfactory:

- One of the alternative options which AEMO explored involves this type of exempt seller being registered as a retailer. AEMO considered that this option would burden exempt sellers seeking only to transport gas for their own group operations with unnecessary costs associated with developing retail systems to interact with the FRC hub.<sup>22</sup>
- Another alternative option that AEMO considered but did not recommend is for this type of exempt seller to be registered as part of a new separate registrable capacity under the NGR in addition to retailers and self-contracting users. AEMO did not consider that there are any obligations under its gas retail market procedures for each jurisdiction that should be applied uniquely to this category of exempt seller. AEMO also considered that creating a new registrable category for exempt sellers would likely require more substantial changes to the retail market procedures and the retail gas market and registration systems. Such changes would impose more major costs on AEMO for no apparent benefit.

#### 1.4.2

#### Recognising exempt sellers selling gas to unrelated third parties in the NGR

AEMO proposed for exempt sellers selling gas to third parties that are not related bodies corporate of the exempt seller to be able to be registered in the NSW-ACT and South Australian jurisdictions under the 'retailer' registrable capacity. AEMO considered exempt sellers who wish to sell gas to unrelated third parties as effectively being retailers in the way that they interact with the market. Such exempt sellers are distinct from the final end user and are likely to have incentives that are different to their customers. For this reason, AEMO proposed that these exempt sellers be required to register as retailers in the same way as authorised retailers.<sup>23</sup>

Placing exempt sellers who retail gas to unrelated third parties into the 'retailer' category would, in AEMO's view, appropriately prevent the exempt seller obtaining a financial and regulatory advantage in terms of reduced costs associated with accessing the FRC hub at the expense of authorised sellers when competing to sell gas to third parties.

AEMO considered the alternative classifications, but found them to be unsatisfactory for similar reasons as discussed in section 1.4.1 above.

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20 *ibid.*

21 Contracting gas from an authorised retailer would mean not needing to fit within a registrable capacity under rule 135AB of the NGR.

22 Rule change request, p. 4.

23 *ibid.*

### 1.4.3 **Recognising the exempt seller regime in the NGR in Victoria**

AEMO also proposed a solution that notionally would enable exempt sellers under the NERL to be able to register as retail gas market participants in Victoria.<sup>24</sup> Because exempt sellers selling gas to related parties could already be registered under the 'market participant - other' capacity in Victoria as long as they are also users of the declared transmission system, AEMO's proposal for this jurisdiction was to change the registrable category of 'market participant - retailer' to incorporate exempt sellers under the NERL that intend to sell gas to third parties.

AEMO suggested that this proposal would establish a similar distinction between exempt sellers selling gas to related parties and exempt sellers selling gas to third parties to that proposed by AEMO for the NSW-ACT, Queensland and South Australian retail gas markets.<sup>25</sup>

This proposed change would not have any immediate effect in Victoria because Victoria has not adopted the NERL, which is part of the National Energy Customer Framework (NECF). Only specific parts of the NECF apply in Victoria for electricity, while other NECF components such as the NERR and associated amendments to the NGR do not currently apply at all.<sup>26</sup> Instead, the relevant energy laws in Victoria for this rule change request include the *Gas Industry Act 2001* (Vic) and the Energy Retail Code. The Victorian jurisdictional legislation includes an exempt seller regime for gas, under the *Gas Industry Act 2001* (Vic).

### 1.4.4 **Naming discrepancy for registrable categories**

As part of this rule change, AEMO also proposed changing the 'user' category for the South Australian gas market and the NSW-ACT gas market to 'retailer'. AEMO suggested that this change would align the name of that registrable category of these jurisdictions with that of Queensland and AEMO's retail market procedures and systems.

AEMO did not propose similar changes to align equivalent registrable capacities for pipeline service providers. Nor did AEMO propose changes to the names of any registrable capacities for the Victorian gas market to align them with the NSW-ACT, Queensland and South Australian retail gas market equivalents or with AEMO's retail market procedures and systems.

### 1.4.5 **Proposed implementation**

AEMO has indicated that the proposed rule, if made, would necessitate minor consequential amendments to the retail market procedures.<sup>27</sup>

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24 Subject to the NERL being adopted in that jurisdiction. Victoria has a separate exempt seller regime for gas under the *Gas Industry Act 2001* (Vic).

25 Rule change request, p. 3.

26 In Victoria, the NECF associated amendments to the National Electricity Rules relating to retail connections (Chapter 5A) have applied since 2016. The NECF currently applies, with jurisdictional specific amendments, in Queensland, New South Wales, South Australia, Tasmania and the Australian Capital Territory.

27 Rule change request, p. 4.

AEMO therefore proposed a delayed implementation of the rule of at least three months to allow AEMO a suitable amount of time to consult on and make the required changes to the retail market procedures.<sup>28</sup>

## 1.5 Relevant background

AEMO noted in its rule change request that this issue was brought to its attention because one exempt seller sought to participate in the NSW-ACT retail gas market. With agreement from the AER, AEMO implemented a short term solution of registering this particular exempt seller as a self-contracting user, even though this market participant did not meet the requirements for that registrable capacity.<sup>29</sup>

## 1.6 The rule making process

On 7 March 2019, the Commission published a notice advising of its commencement of the rule making process and consultation in respect of the rule change request.<sup>30</sup> A consultation paper identifying specific issues for consultation was also published. Submissions closed on 4 April 2019.

The Commission considered that the rule change request was a request for a non-controversial rule as defined in s. 290 of the NGL. Accordingly, the Commission commenced an expedited rule change process, subject to any written requests not to do so. The closing date for receipt of written requests to not use the expedited process was 21 March 2019.

No requests to not carry out an expedited rule change process were received. Accordingly, the rule change request was considered under an expedited process.<sup>31</sup>

The Commission received three submissions. Issues that are not discussed in the body of this document have been summarised and responded to in Appendix A.

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28 *ibid.*

29 Rule change request, p. 3.

30 This notice was published under s. 303 of the National Gas Law (NGL).

31 Section 304 of the NGL.

## 2 FINAL RULE DETERMINATION

### 2.1 The Commission's final rule determination

The Commission's final rule determination is to make the final rule as proposed by AEMO. It will commence on 8 August 2019. The final rule is broadly the same as the proposed rule, but also incorporates the defined term "related body corporate" to apply throughout the NGR.

The Commission's reasons for making this final rule determination are set out in section 2.4.

This chapter outlines:

- the rule making test for changes to the NGR
- the assessment framework for considering the rule change request
- the Commission's consideration of the final rule against the national gas objective

Further information on the legal requirements for making this final rule determination is set out in Appendix B.

### 2.2 Rule making test

#### 2.2.1 Achieving the NGO

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 gas objective (NGO).<sup>32</sup> This is the decision-making framework that the Commission must apply.

The NGO is:<sup>33</sup>

to promote efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas.

### 2.3 Assessment framework

In assessing the rule change request against the NGO the Commission has considered the following principles:

- **Do these issues create an inefficient barrier to entry in the retail gas market?** As previously noted, AEMO considers that the existing arrangements create a barrier to entry into the retail gas market for exempt sellers. The AEMC has considered whether the proposed rule would enable exempt sellers to retail natural gas as an alternative to authorised retailers under certain circumstances.
- **What is the proposed rule's impact on competition and choice in the retail gas market?** The Commission noted that the proposed rule would enable some parties to register as self-contracting users, while other consumers would be able to purchase

<sup>32</sup> Section 291(1) of the NGL.

<sup>33</sup> Section 23 of the NGL.

natural gas from market participants that are exempt sellers, in addition to market participants that are authorised retailers.

The Commission considered that the issues raised in the rule change request focused on whether the NGR should recognise the exempt seller framework in the NERL.

The rule change request did not raise any issues regarding the merits of that exempt seller framework itself or the details of how that framework currently operates. The Commission therefore did not consider these issues as part of this rule change process.

## 2.4 Summary of reasons

The final rule made by the Commission is attached to and published with this final rule determination. The key features of the final rule are that AEMO will be able to register an exempt seller under the NERL:

- as a 'self contracting user' if the exempt seller is only selling gas to related businesses in the NSW-ACT, Queensland or South Australian retail gas markets
- as a 'retailer' if the exempt seller is selling gas to third parties in the NSW-ACT, Queensland or South Australian retail gas markets
- as a 'market participant - retailer' if the exempt seller is selling gas to third parties in the Victorian retail gas market, subject to Victoria's adoption of the NERL.

The final rule is consistent with the proposed rule with the addition of incorporating a defined term for "related body corporate" to apply throughout the NGR. Including this globally defined term in rule 3 of the NGR provides clarity on the related parties that an exempt seller could retail gas to as a self-contracting user. To provide consistency across the NGR, the rule will provide a single definition of "related body corporate" that will apply throughout the NGR. This definition is the same as the definition used in the National Electricity Rules.

Having regard to the issues raised in the rule change request and during consultation, the Commission is satisfied that the final rule will, or is likely to, contribute to the achievement of the NGO for the following reasons:

- the rule reduces an inefficient barrier to entry in the retail gas markets
- the rule supports competition and choice in retail gas markets.

### 2.4.1 Addressing an inefficient barrier to entry in the retail gas market

The final rule will address a barrier that currently exists to entry in the retail gas markets by enabling parties that would act in similar ways to current retail gas market participants to register for retail gas market participation.

This rule will enable exempt sellers that wish to sell gas to unrelated third parties to register as retailers in retail gas markets. Such exempt sellers are expected to participate in the retail gas market in a way similar to authorised retailers, which were already able to register with AEMO as gas retail market participants under the NGR.

In addition, this rule will enable exempt sellers that wish to only sell gas to related bodies corporate to register as self-contracting users in retail gas markets. Such exempt sellers are

expected to participate in the retail gas market in a way similar to self-contracting users, which are already able to register with AEMO as gas retail market participants under the NGR.

## 2.4.2 **Improve competition and choice in the retail gas market**

Making the final rule is expected to promote greater competition and choice in retail gas markets by expanding the number of market participants that can sell gas in the relevant retail gas markets.

In addition, making this rule will open up more ways for final customers to purchase gas, providing additional consumer choice.

As a result of this rule, some final users of gas will be able to purchase gas from exempt sellers who are related bodies corporate in retail gas markets, where this option was not previously available to these customers.

In addition, final users of gas will now be able to purchase gas from unrelated exempt sellers through retail gas markets. This option was not previously available to final customers.

## 2.5 **Other issues**

### 2.5.1 **Clarifying the impact of the rule**

The Commission received submissions from the Shopping Centre Council of Australia and Active Utilities. Both of these stakeholders sought to clarify the effect of the proposed rule.

This final rule will recognise the NERL exempt seller regime in the NGR and in doing so will give exempt sellers the option to register as gas retail market participants with AEMO.<sup>34</sup>

Any exempt seller intending to make its own arrangements for the supply and haulage of gas to customers who are unrelated third parties will be able to make these arrangements themselves and be able to access the FRC Hub to support these activities.<sup>35</sup>

An exempt seller intending to make their own arrangements for the supply and haulage of gas to customers who are related parties will be able to do so by AEMO conducting FRC hub transactions on their behalf.<sup>36</sup>

This rule does not require exempt sellers to register or comply with any gas retail market requirements or any associated retail market procedures unless they decide to procure gas from a gas producer and arrange haulage of that gas rather than use the services of a retailer.<sup>37</sup> Instead, the rule will provide an option to exempt sellers to procure gas from a producer and haulage from the pipeline service provider and also register as a participant in the relevant retail market that was not previously available to them.

<sup>34</sup> Shopping Centre Council of Australia, submission to the consultation paper, p. 1.

<sup>35</sup> Subject to AEMO making the necessary changes to its retail market procedures and systems.

<sup>36</sup> In some jurisdictions, self-contracting users rely on a low volume interface maintained by AEMO rather than AEMO conducting the transactions on their behalf. This interface provides self-contracting users with an alternative mechanism for conducting transactions and enables them to avoid costs associated with connecting to the FRC hub.

<sup>37</sup> Shopping Centre Council of Australia, submission to the consultation paper, p. 1.

In addition, it should be noted that this rule also does not make any changes to the exemption framework for exempt sellers.<sup>38</sup> The scope of this rule change relates to the gas retail market participation framework managed by AEMO and does not relate to the AER exemption framework for exempt sellers.

Significant changes to the exempt seller framework are being considered as part of the Commission's review into *Updating the regulatory frameworks for embedded networks*. These changes should not have any impact on the ability of exempt sellers to register with AEMO as retail gas market participants.<sup>39</sup>

### 2.5.2 Implementation of the rule

As part of its rule change request, AEMO noted that it may need to make minor consequential amendments to the retail market procedures as a result of its proposed rule, if made.

Red Energy and Lumo Energy suggested that the Commission consider placing timeframes on AEMO to complete all the requisite consequential amendments to their retail market procedures.<sup>40</sup>

This final rule will include a delayed commencement date of 8 August 2019. During this time, AEMO will be able to consult on and make any required consequential amendments to its retail gas market procedures and systems, as well as its registration guidelines.

### 2.5.3 Registrable capacities for distribution pipeline service providers

As noted in section 1.2.2, the gas retail market participant framework also includes a registrable capacity for distribution pipeline service providers. The terminology varies slightly across jurisdictions:

- 'network operator' is used for the NSW-ACT and South Australian retail gas markets<sup>41</sup>
- 'distributor' is used for the Queensland and Victorian retail gas markets.

In response to the consultation paper, Red Energy and Lumo Energy suggested changing the term 'network operator' to 'distributor' for the NSW-ACT and South Australian gas markets in rule 135AB of the NGR.<sup>42</sup>

Red Energy and Lumo Energy suggested that this inconsistency in terms (like the discrepancy between the 'user' and 'retailer' registrable capacities outlined in sections 1.2.2 and 1.3.2) creates confusion for businesses and for customers.<sup>43</sup> However, AEMO did not request these changes as part of its rule change request, and the AEMC has not consulted on making these changes.

38 Active Utilities, submission to the consultation paper, p. 2.

39 For additional details of the proposed changes to the exempt seller framework, see AEMC, *Updating the regulatory frameworks for embedded networks*, draft report, 31 January 2019, pp. 54-56.

40 Red Energy and Lumo Energy, submission to the consultation paper, p. 1.

41 The South Australian gas market also has a registrable capacity of 'network operator (Mildura region)'.

42 Red Energy and Lumo Energy, submission to the consultation paper, p. 1.

43 *ibid.*

While there is a discrepancy in the terms used to refer to a distribution pipeline service provider, rule 135AB is clear in the definitions that both the terms 'network operator' and 'distributor' refer to parties holding a gas distribution licence or authority in the relevant jurisdiction.

The Commission also notes that changing the registrable capacity of 'user' to 'retailer' for the NSW-ACT and South Australian retail gas markets in the final rule is a consequential amendment that is not intended to solely be made to align the term for this registrable capacity with that of Queensland. Instead, the purpose of these changes is to enable exempt sellers to register as retailers and participate in retail gas markets.

Changing the term 'network operator' to 'distributor' for the NSW-ACT and South Australian gas markets would not have any similar impacts on the ability of exempt sellers or other parties to participate in retail gas markets. In addition, the terms 'distributor' and 'network operator' reflect terminology used in jurisdictional gas supply legislation.

Making this change without sufficient consultation with stakeholders and the relevant jurisdictions could lead to the risk of unintended consequences and inconsistency between the NGR and the jurisdictional legislation.

As a result, the Commission has decided not to include Red Energy and Lumo Energy's suggested rule amendment in the final rule.

## ABBREVIATIONS

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
Commission	See AEMC
FRC	full retail contestability
MCE	Ministerial Council on Energy
NCEF	National Energy Customer Framework
NERL	National Energy Retail Law
NERR	National Energy Retail Rules
NGL	National Gas Law
NGO	National gas objective
NGR	National Gas Rules

## A SUMMARY OF OTHER ISSUES RAISED IN SUBMISSIONS

This appendix sets out the issues raised in consultation on this rule change request and the AEMC’s response to each issue. If an issue raised in a submission has been discussed in the main body of this document, it has not been included in this table.

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

STAKEHOLDER	ISSUE	AEMC RESPONSE
Active Utilities, p. 2	Has the Essential Services Commission (ESC) or any other relevant body been consulted in relation to the rule change?	The Commission has discussed this rule change request with the ESC and with the Victorian Department of Environment, Land, Water and Planning.
Active Utilities, p. 2	AEMO has indicated that the proposed rule will necessitate minor consequential amendments to the retail market procedures. This implementation should be conducted transparently and consider stakeholders’ opinions.	AEMO’s process for amending the retail gas market procedures is a consultative and inclusive process in accordance with the NGR.
Shopping Centre Council of Australia, p. 1	The SCCA expect that policy and regulatory issues for gas embedded networks will potentially be considered separately in due course.	Arrangements for gas embedded networks are being progressed as part of <i>Updating the regulatory frameworks for embedded networks</i> .
Red Energy and Lumo Energy, p. 1	Red and Lumo recommend the Commission placing timeframes on AEMO to ... include the new registrable capacity in the AEMO fees and charges.	The final rule will not create a new registrable capacity, it will change the names of existing registrable capacities.

## B LEGAL REQUIREMENTS UNDER THE NGL

This appendix sets out the relevant legal requirements under the NGL for the AEMC to make this final rule determination.

### B.1 Final rule determination

In accordance with s. 311 of the NGL the Commission has made this final rule determination in relation to the rule proposed by AEMO.

The Commission's reasons for making this final rule determination are set out in section 2.4.

A copy of the final rule is attached to and published with this final rule determination. Its key features are described in section 2.4.

### B.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 s. 74 of the NGL as it relates to the operation of regulated retail gas markets and because it relates to regulating the activities of registered participants, users, end users and other persons in regulated gas markets.<sup>44</sup>

Further, the final rule falls within the matters set out in Schedule 1 to the NGL because it relates to a registration scheme administered by AEMO for registered participants in relation to a regulated gas market and exemption from registration.<sup>45</sup> The final rule also falls within the matters set out in Schedule 1 to the NGL because it relates to the operation and administration of regulated gas markets.<sup>46</sup>

### B.3 Commission's considerations

In assessing the rule change request the Commission considered:

- its powers under the NGL to make the rule
- the rule change request
- submissions received during first round consultation
- the Commission's analysis as to the ways in which the proposed rule will or is likely to, contribute to the NGO.

There is no relevant Ministerial Council on Energy (MCE) statement of policy principles for this rule change request.<sup>47</sup>

<sup>44</sup> Section 74(1)(a)(iv) and (vi) of the NGL.

<sup>45</sup> Item 55A, Schedule 1 to the NGL.

<sup>46</sup> Item 55B, Schedule 1 to the NGL.

<sup>47</sup> Under 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. The amalgamated council is now called the COAG Energy Council.

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 Australian Energy Market Operator (AEMO)'s declared system functions.<sup>48</sup> The final rule is compatible with AEMO's declared system functions because it does not affect AEMO's ability to perform its obligations.

## B.4 Civil penalties

The Commission cannot create new civil penalty provisions. However, it may recommend to the COAG Energy Council that new or existing provisions of the NGR be classified as civil penalty provisions.

The final rule does not amend any clauses that are currently classified as civil penalty provisions under the NGL or National Gas (South Australia) Regulations. The Commission does not propose to recommend to the COAG Energy Council that any of the proposed amendments made by the final rule be classified as civil penalty provisions.

## B.5 Conduct provisions

The Commission cannot create new conduct provisions. However, it may recommend to the COAG Energy Council that new or existing provisions of the NGR be classified as conduct provisions.

The final rule does not amend any rules that are currently classified as conduct provisions under the NGL or National Gas (South Australia) Regulations. The Commission does not propose to recommend to the COAG Energy Council that any of the proposed amendments made by the final rule be classified as conduct provisions.

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<sup>48</sup> Section 295(4) of the NGL.