



Australian Energy Market Commission

RULE DETERMINATION

NATIONAL ELECTRICITY AMENDMENT (MINOR CHANGES 3) RULE 2020

PROPONENT

AEMC

20 AUGUST 2020

RULE

INQUIRIES

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ABOUT THE AEMC

The AEMC reports to the ministerial forum of Energy Ministers (formerly 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 ministerial forum of Energy Ministers.

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SUMMARY

- 1 The Commission has determined under sections 102 and 103 of the National Electricity Law to make the National Electricity Amendment (Minor Changes 3) Rule 2020 No. 12 (final rule).
- 2 The final Rule corrects minor errors and makes non-material changes in the National Electricity Rules (NER or Rules), including to correct minor errors in the Rules resulting from the consolidation of the National Electricity Amendment (Integrated System Planning) Rule 2020 (Integrated System Planning Rule). The Integrated System Planning Rule was recommended by the Energy Security Board in accordance with the process under section 90F of the National Electricity Law and commenced on 1 July 2020.
- 3 The final Rule promotes clarity of meaning and removes identified minor errors in the Rules.
- 4 The Commission considers that the final Rule will, or is likely to, contribute to the achievement of the National Electricity Objective and therefore satisfies the rule making test under s. 88 of the National Electricity Law.
- 5 The final rule will commence on 27 August 2020.

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1 THE AEMC'S RULE CHANGE PROPOSAL

1.1 The proposed rule and commencement of rule making process

The Commission has power to make a rule without a request if it considers that the rule corrects a minor error in the Rules or makes a non-material change to the Rules.¹

The Commission initiated the proposed rule under the expedited process in s. 96(1)(a) of the National Electricity Law (NEL) as it considered the proposed rule was unlikely to have a significant effect on the national electricity market. The Commission therefore considered that the proposed rule fell within the definition of a non-controversial rule under s. 87 of the NEL.

The Commission did not receive any requests not to expedite the rule making process. Accordingly, the rule change proposal was considered under an expedited process.

The Commission invited submissions on the rule change proposal by 13 August 2020. The Commission received no submissions on the rule change proposal.

1.2 Rationale for the rule change proposal

As part of the Commission's rule making functions conferred on it under legislation, the Commission reviews, amends and maintains the Rules in accordance with the NEL. The purpose of this function, among other things, is to improve and enhance the quality of the Rules. The rule change proposal was prompted by the identification of various minor errors and non-material changes that should be corrected or made to improve the quality and clarity of the Rules.

In particular, the proposal sought to reflect the intended amendments to the Rules in the National Electricity Amendment (Integrated System Planning) Rule 2020 (Integrated System Planning Rule). The proposal sought to correct minor errors in the Rules resulting from the consolidation of the Integrated System Planning Rule, which was recommended by the Energy Security Board in accordance with the process under section 90F of the NEL and commenced on 1 July 2020.

1.3 Solution proposed in the rule change proposal

The proposed rule (now made as a final rule) sought to correct minor errors in the Rules resulting from the consolidation of the Integrated System Planning Rule, including to:

- correct the insertion of rule 5.16B to appear chronologically after clause 5.16A.5
- correct the reference to 'NTNDP' in clause 3.14.5A(k) to refer to 'Inputs, Assumptions and Scenario Report (as defined in clause 5.10.2)'
- correct the reference to 'NTNDP' in clauses 5.20B.1(f) and 5.20B.3(c) to refer to 'Inertia Report'

¹ Section 91(2) of the NEL.

- amend the definition of 'regulatory investment test for transmission' in Chapter 10 of the NER to reflect the intended amendments to the definition under item [5] of Schedule 3 of the Integrated System Planning Rule
- correct the reference to 'RIT Proponent' in clause 5.16A.4(h) to 'RIT-T Proponent'
- delete paragraph (a1)(4) in rule 5.21 to reflect the intended deletion of that paragraph under item [69] of the Integrated System Planning Rule
- italicise of the word 'path' in 'optimal development path' in clause 5.22.5(d)(5)
- correct the name of the Integrated System Planning Rule in the transitional provisions in Chapter 11 of the NER
- correct punctuation and formatting errors involving full stops, commas, numbering levels, bolding and italicisation.

1.4 Final rule determination summary

The Commission has determined under sections 102 and 103 of the NEL to make the *National Electricity Amendment (Minor Changes 3) Rule 2020 No. 12*. The final rule corrects minor errors and makes non-material changes in the Rules.

2 FINAL RULE DETERMINATION

2.1 The Commission's final rule determination

In accordance with sections 102 and 103 of the NEL, the Commission has made this final rule determination and the final rule in relation to the electricity rule change proposal initiated by the Commission. The *National Electricity Amendment (Minor Changes 3) Rule 2020 No. 12* is published with this final rule determination. The final rule does not differ from the rule originally proposed by the Commission.

A description of the final rule and the Commission's reasons for making this final rule determination are set out in section 2.3.

In relation to the final rule's application in the Northern Territory, the Commission has determined not to make a differential rule. See section 2.2 for the definition of a differential rule and the Commission's ability to make a differential rule.

This chapter outlines:

- the rule making test for changes to the Rules
- the Commission's consideration of the final rule against the NEO
- the Commission's consideration in deciding whether to make a uniform or differential rule in accordance with the Northern Territory legislation adopting the NEL²
- a summary of the Commission's reasons in deciding to make the final rule.

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

2.2 Rule making test

2.2.1 Achieving the NEO

Under the NEL the Commission may only make a rule if it is satisfied that the rule will, or is likely to, contribute to the achievement of the national electricity objective (NEO).³ This is the decision making framework that the Commission must apply.

The NEO is:⁴

to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to:

- (a) price, quality, safety, reliability and security of supply of electricity; and
- (b) the reliability, safety and security of the national electricity system.

Under the Northern Territory legislation adopting the NEL, the Commission must regard the reference in the NEO to the "national electricity system" as a reference to whichever of the

² National Electricity (Northern Territory) (National Uniform Legislation) Act 2015.

³ Section 88 of the NEL.

⁴ Section 7 of the NEL.

following the Commission considers appropriate in the circumstances having regard to the nature, scope or operation of the rule:⁵

- (a) the national electricity system
- (b) one or more, or all, of the local electricity systems⁶
- (c) all of the electricity systems referred to above.

For the purposes of the final rule, the Commission regards the reference to the “national electricity system” in the NEO to be a reference to item (c) above.

2.2.2

Making a differential rule

The NER, as amended from time to time, applies in the Northern Territory, subject to derogations set out in regulations made under the Northern Territory legislation adopting the NEL.⁷ Under those regulations, only certain parts of the NER have been adopted in the Northern Territory.⁸ As the final rule, in part, relates to the parts of the NER that apply in the Northern Territory, the Commission is required to assess whether to make a uniform or differential rule (defined below) under Northern Territory legislation.

Under the Northern Territory legislation adopting the NEL, the Commission may make a differential rule if, having regard to any relevant MCE statement of policy principles, a different rule will, or is likely to, better contribute to the achievement of the NEO than a uniform rule. A differential rule is a rule that:

- varies in its term as between:
 - the national electricity system, and
 - one or more, or all, of the local electricity systems, or
- does not have effect with respect to one or more of those systems

but is not a jurisdictional derogation, participant derogation or rule that has effect with respect to an adoptive jurisdiction for the purpose of s. 91(8) of the NEL.

The Commission has made a uniform rule.

2.3

Description of final rule and summary of reasons

The final Rule corrects minor errors and makes non-material changes to the NER to reflect the intended amendments of the Integrated System Planning Rule, including to:

- correct the insertion of rule 5.16B to appear chronologically after clause 5.16A.5
- correct the reference to 'NTNDP' in clause 3.14.5A(k) to refer to 'Inputs, Assumptions and Scenario Report (as defined in clause 5.10.2)'

⁵ Section 14A of Schedule 1 to the National Electricity (Northern Territory) (National Uniform Legislation) Act 2015 (referred to here as the NT Act), inserting section 88(2a) into the NEL as it applies in the Northern Territory.

⁶ These are specified Northern Territory systems, defined in schedule 2 of the NT Act.

⁷ The regulations under the NT Act are the National Electricity (Northern Territory) (National Uniform Legislation) (Modifications) Regulations.

⁸ For the version of the NER that applies in the Northern Territory, refer to: www.aemc.gov.au/regulation/energyrules/northernterritory-electricity-market-rules/current.

- correct the reference to 'NTNDP' in clauses 5.20B.1(f) and 5.20B.3(c) to refer to 'Inertia Report'
- amend the definition of 'regulatory investment test for transmission' in Chapter 10 of the NER to reflect the intended amendments to the definition under item [5] of Schedule 3 of the Integrated System Planning Rule
- correct the reference to 'RIT Proponent' in clause 5.16A.4(h) to 'RIT-T Proponent'
- delete paragraph (a1)(4) in rule 5.21 to reflect the intended deletion of that paragraph under item [69] of the Integrated System Planning Rule
- italicise of the word 'path' in 'optimal development path' in clause 5.22.5(d)(5)
- correct the name of the Integrated System Planning Rule in the transitional provisions in Chapter 11 of the NER
- correct punctuation and formatting errors involving full stops, commas, numbering levels, bolding and italicisation.

The Commission considers that the final rule will improve the quality of the NER in terms of accuracy and consistency and is likely to contribute to the achievement of the NEO. As with previous similar rule changes initiated by the Commission, these minor corrections and non-material changes make the NER clearer to stakeholders. This is important as the Rules inform stakeholders of their rights and obligations for participating in the national electricity market.

Under s. 91(8) of the NEL, the Commission may only make a rule that has effect with respect to an adoptive jurisdiction if satisfied that the rule is compatible with the proper performance of AEMO's declared network functions. At present Victoria is the only relevant "adoptive jurisdiction". The Commission is satisfied that the final rule is compatible with AEMO's declared network functions because it makes only minor and non-material changes to the NER and does not change AEMO's functions.

ABBREVIATIONS

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
Commission	See AEMC
MCE	Ministerial Council on Energy
NER	National Electricity Rules
NEL	National Electricity Law
NEO	National electricity objective

A LEGAL REQUIREMENTS UNDER THE NEL

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

A.1 Final rule determination

In accordance with sections 102 and 103 of the NEL, the Commission has made this final rule determination in relation to the Commission's proposal.

The Commission's reasons for making this final rule determination are set out in section 2.3.

A copy of the final rule is published with this final rule determination. It is described in section 2.3.

A.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. 34 of the NEL, as under s. 34(1)(b) of the NEL the Commission may make Rules for or with respect to any matter or thing contemplated by the NEL, or which are necessary or expedient for the purposes of the NEL. The Commission considers the final rule is necessary and expedient for the purposes of the NEL.

A.3 Commission's considerations

In assessing the rule change request the Commission considered:

- its powers under the NEL to make the rule
- the rule proposal
- the Commission's analysis as to the ways in which the proposed rule will or is likely to, contribute to the NEO.

There is no relevant Ministerial Council on Energy (MCE) statement of policy principles for this rule change request.⁹

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 network functions.¹⁰ The final rule is compatible with AEMO's declared network functions because it makes only minor and non material changes to the NEL and does not change AEMO's functions.

⁹ Under s. 33 of the NEL 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 ministerial forum of Energy Ministers (formerly COAG Energy Council).

¹⁰ Section 91(8) of the NEL.

A.4 Civil penalties

The Commission cannot create new civil penalty provisions. However, it may recommend to the ministerial forum of Energy Ministers (formerly COAG Energy Council)¹¹ that new or existing provisions of the NER be classified as civil penalty provisions.

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

A.5 Conduct provisions

The Commission cannot create new conduct provisions. However, it may recommend to the ministerial forum of Energy Ministers that new or existing provisions of the NER be classified as conduct provisions.

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

¹¹ On 29 May 2020, the Prime Minister announced the establishment of the National Federation Reform Council and the disbanding of COAG. New arrangements for the former COAG Energy Council will be finalised following the National Cabinet Review of COAG Councils and Ministerial Forums which is due to provide recommendations to National Cabinet by September 2020. The Prime Minister has advised that, while this change is being implemented, former Councils may continue meeting as a Ministerial Forum to progress critical and/or well developed work.