



RULE

Australian Energy Market Commission

RULE PROPOSAL

**NATIONAL ELECTRICITY AMENDMENT
(MINOR CHANGES 2) RULE 2021**

**NATIONAL GAS AMENDMENT (MINOR
CHANGES 2) RULE 2021**

**NATIONAL ENERGY RETAIL
AMENDMENT (MINOR CHANGES 2)
RULE 2021**

PROPONENT

AEMC

01/04/2021

INQUIRIES

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ABOUT THE AEMC

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

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1 INTRODUCTION

As part of its rule making function, the Australian Energy Market Commission (Commission or AEMC) reviews, amends and maintains:

- the National Electricity Rules (NER) in accordance with the National Electricity Law (NEL)
- the National Gas Rules (NGR) in accordance with the National Gas Law (NGL)
- the National Energy Retail Rules (NERR) in accordance with the National Energy Retail Law (NERL).

The purpose of this function, among other things, is to improve and enhance the quality of the NER, the NGR and the NERR (together the "energy rules"). This consultation paper has been prepared to facilitate public consultation on the rule change proposal and to seek stakeholder submissions. This paper:

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

1.1 Background

The Commission undertakes AEMC initiated rule change proposals to correct minor errors in the energy rules or make clarifications that are minor or non-material in nature. This rule change proposal includes proposed amendments identified by the Commission since the last minor changes rules, which were completed in December 2020.

1.2 Proposed Rules

The National Electricity Amendment (Minor Changes 2) Rule 2021 (electricity Rule), the National Gas Amendment (Minor Changes 2) Rule 2021 (gas Rule) and the National Energy Retail Amendment (Minor Changes 2) Rule 2021 (retail Rule) (together, the "Proposed Rules") are proposed by the AEMC to correct minor errors and make non-material changes in the NER, NGR and NERR. In particular, the Proposed Rules seek to:

- insert notes in the Rules to identify the relevant tier classification for civil penalty provisions that resulted from changes made under the *Statutes Amendment (National Energy Law) (Penalties and Enforcement) Act 2020*¹
- ensure consistency across the NER, including changing certain references to "the Law" to "NEL"
- correct punctuation and formatting errors, including italicisation and bolding of defined terms and legislation.

The Proposed Rules are published with this rule proposal.

¹ The *Statutes Amendment (National Energy Laws) (Penalties and Enforcement) Act 2020* came into effect on 29 January 2021 and provides for three tiers of civil penalties for breaches of the National Energy Laws. Tier 1 provisions will carry maximum penalties for corporations of \$10 million, or if greater, three times the benefit obtained from the breach if this can be determined, or if not, 10% of annual turnover. Tier 2 maximum penalties are up to \$1,435,000 (plus \$71,800 per day for continuing breaches) and Tier 3 are up to \$170,000 (plus \$14,400 per day for continuing breaches). These amounts will be indexed every three years to ensure their deterrent value is maintained.

1.3

1.3.1

Rule making test

Achieving the NEO, NGO and NERO

National Electricity Objective

The Commission may only make a rule under the NEL if it is satisfied that the rule will, or is likely to, contribute to the achievement of the national electricity objective (NEO).² This is the decision making framework that the Commission must apply.

The NEO is:³

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.

National Gas Objective

The Commission may only make a rule under the NGL if it is satisfied that the rule will, or is likely to, contribute to the achievement of the national gas objective (NGO).⁴ This is the decision making framework that the Commission must apply.

The NGO is:⁵

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, safety, reliability and security of supply of natural gas.

National Energy Retail Objective

The Commission may only make a rule under the NERL if it is satisfied that the rule will, or is likely to, contribute to the achievement of the national energy retail objective (NERO).⁶ This is the decision making framework that the Commission must apply.

The NERO is:⁷

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.

2 Section 88 of the NEL.

3 Section 7 of the NEL.

4 Section 291(1) of the NGL.

5 Section 23 of the NGL.

6 Section 236(1) of the NERL.

7 Section 13 of the NERL.

The Commission must also, where relevant, satisfy itself that the rule is "compatible with the development and application of consumer protections for small customers, including (but not limited to) protections relating to hardship customers" (the "consumer protections test").⁸

Where the consumer protections test is relevant in the making of a rule, the Commission must be satisfied that both the NERO test and the consumer protections test have been met.⁹ If the Commission is satisfied that one test, but not the other, has been met, the rule cannot be made.

There may be some overlap in the application of the two tests. For example, a rule that provides a new protection for small customers may also, but will not necessarily, promote the NERO.

Conclusion

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

1.3.2

Northern Territory rule-making requirements

The NER, as amended from time to time, apply in the Northern Territory, subject to derogations set out in regulations made under the Northern Territory legislation adopting the NEL.¹⁰ Under those regulations, only certain parts of the NER have been adopted in the Northern Territory.¹¹

As the proposed electricity Rule, in part, relates to the parts of the NER that apply in the Northern Territory, the Commission is required to assess whether to make a uniform or differential rule (defined below) under Northern Territory legislation. Under the NT Act, the Commission may make a differential rule if, having regard to any relevant MCE statement of policy principles, a different rule will, or is likely to, better contribute to the achievement of the NEO than a uniform rule.¹²

A differential rule is a rule that:

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

⁸ Section 236(2)(b) of the NERL.

⁹ That is, the legal tests set out in s. 236(1) and (2)(b) of the NERL.

¹⁰ The regulations under the NT Act are the National Electricity (Northern Territory) (National Uniform Legislation) (Modifications) Regulations.

¹¹ For the version of the NER that applies in the Northern Territory, refer to: www.aemc.gov.au/regulation/energy-rules/northernterritory-electricity-market-rules/current.

¹² Section 14B of Schedule 1 to the NT Act, inserting section 88AA into the NEL as it applies in the Northern Territory.

- one or more, or all, of the local electricity systems, or
 - does not have effect with respect to one or more of those systems
- but is not a jurisdictional derogation, participant derogation or rule that has effect with respect to an adoptive jurisdiction for the purpose of s. 91(8) of the NEL.

A uniform rule is a rule that does not vary in its terms between the national electricity system and the local electricity systems, and has effect with respect to all of those systems.¹³

The Commission proposes to make a uniform rule.

1.3.3 Rule making in Western Australia

The versions of the NGL and NGR that apply in Western Australia differ from the NGL and NGR as they apply in other participating jurisdictions.¹⁴

Accordingly, the proposed gas Rule (if made as a final rule) will not apply in Western Australia.

1.3.4 Additional assessment requirements

Under s. 33 of the NEL, s. 73 of the NGL and s. 225 of the NERL, as applicable, the Commission must have regard to any relevant MCE statements of policy principles in making an energy rule. There are currently no MCE statements of policy principles.

Under s. 91(8) of the NEL and s. 295(4) of the NGL, as applicable, the Commission may only make a rule that has effect with respect to an adoptive jurisdiction if satisfied that the proposed rule is compatible with the proper performance of the Australian Energy Market Operator's (AEMO's) declared electricity network. Given the Proposed Rules only seek to make minor or non-material changes to the energy rules, the Commission is satisfied that the Proposed Rules are compatible with the proper performance of AEMO's declared network/system functions.

13 Section 14 of Schedule 1 to the NT Act, inserting the definitions of "differential Rule" and "uniform Rule" into section 87 of the NEL as it applies in the Northern Territory.

14 Under the National Gas Access (WA) Act 2009 (WA Gas Act), a modified version of the NGL, known as the National Gas Access (Western Australia) Law (WA Gas Law), was adopted. Under the WA Gas Law, the National Gas Rules applying in Western Australia are version 1 of the uniform NGR as amended by the SA Minister under an adoption of amendments order made by the WA Minister for Energy and by the AEMC in accordance with its rule making power under section 74 of the WA Gas Law. See the AEMC website for further information, <https://www.aemc.gov.au/regulation/energy-rules/national-gas-rules/western-australia>.

2 PROCESS FOR THIS RULE CHANGE

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

Under s. 91(2) of the NEL, s. 295(2) of the NGL and s. 243(2) of the NERL respectively:

The AEMC must not make a Rule without a request under subsection (1) unless-

- (a) it considers the Rule corrects a minor error in the Rules; or
- (b) it considers the Rule involves a non-material change to the Rules; or
- (c) the Rule is in respect of any matter that is prescribed by the Regulations as a matter on which it may make a Rule on its own initiative.

As the Proposed Rules outlined in chapter 1 make changes that are minor and non-material in nature, the Commission considers that the Proposed Rules satisfy the requirements of s.91(2) of the NEL, s. 295(2) of the NGL and s. 243(2) of the NERL, as applicable.

2.2 Treatment as a non-controversial rule change

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

Under s. 290 of the NGL, a "non-controversial Rule" is defined as "a Rule that is unlikely to have a significant effect on a market for gas or the regulation of pipeline services". As the proposed changes to the NGR are minor or non-material in nature, the Commission considers that the proposed gas Rule is unlikely to have a significant effect on a market for gas or the regulation of pipeline services. The proposed gas Rule therefore falls within the definition of a non-controversial rule under s. 290 of the NGL.

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

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

The Commission has decided to use an expedited process to consider this rule change proposal provided that it does not receive any valid reasons not to use the expedited process

by 15 April 2020.¹⁵ To be valid, an objection should set out the reasons why the rule change proposal is likely to have a significant impact on:

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

2.3 Key dates

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

- Commencement of this rule change process: 1 April 2021
- Objections to an expedited process to be received by: 15 April 2021
- Submissions to the proposal to be received by: 29 April 2021
- Final decision to be published under an expedited process by: 27 May 2021.

¹⁵ The Commission has published a notice under sections: 95 and 96 of the National Electricity Law; 251 and 252 of the National Energy Retail Law; 303 and 304 of the National Gas Law, to commence and assess this rule change proposal as a non-controversial rule.

3 LODGING A SUBMISSION

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

All enquiries on this project should be addressed to Carlos Dias at carlos.dias@aemc.gov.au or on (02) 8296 7800.

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

Written requests not to make a rule under the expedited process in s. 96 of the NEL, s. 304 of the NGL and s. 252 of the NERL must include reasons for the request, and must be lodged with the Commission by 15 April 2021 in accordance with the process specified below.

3.2 Lodging a submission to this rule change proposal

Written submissions on the rule change proposal must be lodged with the Commission by 29 April 2021 in accordance with the process specified below. Where practicable, submissions should be prepared in accordance with the Commission's guidelines for making written submissions on rule change requests.¹⁶ The Commission publishes all submissions on its website, subject to accepted claims of confidentiality.

3.3 Process for lodging a request or submission

Please lodge submissions, or requests not to make a rule under the expedited process, online via the Commission's website, www.aemc.gov.au, using the "lodge a submission" function and selecting the project reference code ERC0328.

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

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

¹⁶ This guideline is available on the Commission's website, www.aemc.gov.au.