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Australian Energy Market Commission

## **RULE DETERMINATION**

# NATIONAL ELECTRICITY AMENDMENT (MINOR CHANGES 1) RULE 2021

### **PROPONENT**

AEMC

22 APRIL 2021

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# RULE

## 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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## SUMMARY

- 1 The Commission has determined under sections 102 and 103 of the National Electricity Law to make the National Electricity Amendment (Minor changes 1) Rule 2021 (final Rule).
- 2 The final Rule corrects minor errors and makes non-material changes in the National Electricity Rules (NER or Rules). The final Rule was proposed by the Commission and aims to promote clarity of meaning and remove identified errors in the Rules.
- 3 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.
- 4 The final Rule will commence on 22 April 2021.

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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.<sup>1</sup>

The Commission initiated the proposed rule under the expedited process in s. 96(1)(a) of the 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 25 March 2021. The Commission received one submission on the rule change proposal, which was from TasNetworks.

## 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.

## 1.3 Solution proposed in the rule change request

The proposed rule (now made as a final rule, with limited changes) sought to correct minor errors in the Rules, including to:

- simplify and ensure consistency across the NER, including changing references to the "National Electricity Law" to "NEL" and moving local definitions in Chapter 9 out of a table into the format used elsewhere in the NER
- remove duplication in definitions that resulted from a drafting error in the National Electricity Amendment (Simplification of NER definitions) Rule 2020 No. 17, including omitting definitions in Chapter 10 that cross-reference definitions set out in clause 6B.A1.2 (for example, "date of issue" and "network charges")
- correct a cross-reference in the definition of "customer energy" in clause 11.52.1(d) from "clause 3.15.6A(o)(3)" to "clause 3.15.6A(a0)"
- correct punctuation and formatting errors, including italicisation and bolding of defined terms.

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<sup>1</sup> Section 91(2) of the NEL.

## 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 1) Rule 2021 No. 3. 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 rule change proposal initiated by the Commission. The National Electricity Amendment (Minor changes 1) Rule 2021 No. 3 is published with this final rule determination. The final rule does not differ from the rule originally proposed by the Commission except for correcting a typographical error identified by TasNetworks during the consultation process.

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 NER
- the Commission's consideration of the final rule against the national electricity objective (NEO)<sup>2</sup>
- the Commission's consideration in deciding whether to make a uniform or differential rule in accordance with the Northern Territory legislation adopting the NEL.<sup>3</sup>
- 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 B.

## 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 NEO. This is the decision making framework that the Commission must apply.

The NEO is:<sup>4</sup>

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.

<sup>2</sup> Section 88 of the NEL.

<sup>3</sup> National Electricity (Northern Territory) (National Uniform Legislation) Act 2015.

<sup>4</sup> Section 7 of the NEL.

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

- (a) the national electricity system
- (b) one or more, or all, of the local electricity systems<sup>6</sup>
- (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.<sup>7</sup> Under those regulations, only certain parts of the NER have been adopted in the Northern Territory.<sup>8</sup> 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 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:

<sup>5</sup> 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.

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

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

<sup>8</sup> 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](http://www.aemc.gov.au/regulation/energyrules/northernterritory-electricity-market-rules/current).



- simplify and ensure consistency across the NER, including changing references to the “National Electricity Law” to “NEL” and moving local definitions in Chapter 9 out of a table into the format used elsewhere in the NER
- remove duplication in definitions that resulted from a drafting error in the National Electricity Amendment (Simplification of NER definitions) Rule 2020 No. 17, including omitting definitions in Chapter 10 that cross-reference definitions set out in clause 6B.A1.2 (for example, “date of issue” and “network charges”)
- correct a cross-reference in the definition of “customer energy” in clause 11.52.1(d) from “clause 3.15.6A(o)(3)” to “clause 3.15.6A(a0)”
- correct punctuation and formatting errors, including italicisation and bolding of defined terms.

The final rule is largely the same as the proposed rule. The differences between the final rule and the proposed rule are limited to rectifying the typographical error identified by TasNetworks in its submission.

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.

## ABBREVIATIONS

AEMC	Australian Energy Market Commission
AEMO Commission	Australian Energy Market Operator See AEMC
MCE	Ministerial Council on Energy
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 AEMC to make this final rule determination.

### A.1 Final rule determination

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

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

A copy of the final rule is attached to and published with this final rule determination. Its key features are described in section 1.3.

### 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 the matters set out in 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 change request
- a submission received during the consultation period
- 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 proposal.<sup>9</sup>

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 Australian Energy Market Operator's (AEMO) 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 NEL and does not change AEMO's functions.

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<sup>9</sup> 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 was called the COAG Energy Council and is now called the Energy Ministers' Meeting.

## A.4 Civil penalties

The Commission cannot create new civil penalty provisions. However, it may recommend to the Energy Ministers' Meeting 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 Energy Ministers' Meeting 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 Energy Ministers' Meeting 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 Energy Ministers' Meeting that any of the proposed amendments made by the final rule be classified as conduct provisions.