



RULE

Australian Energy Market Commission

RULE DETERMINATION

**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

27 MAY 2021

INQUIRIES

Australian Energy Market Commission
GPO Box 2603
Sydney NSW 2000

E aemc@aemc.gov.au
T (02) 8296 7800

Reference: ERC0328, GRC0061 and RRC0041

CITATION

AEMC, Minor changes 2, Rule determination, 27 May 2021

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.

This work is copyright. The Copyright Act 1968 permits fair dealing for study, research, news reporting, criticism and review. Selected passages, tables or diagrams may be reproduced for such purposes provided acknowledgement of the source is included.

SUMMARY

- 1 The Commission has determined:
 - under sections 102 and 103 of the National Electricity Law (NEL), to make the National Electricity Amendment (Minor change 2) Rule No. 4 2021 (“electricity Rule”)
 - under sections 311 and 313 of the National Gas Law (NGL), to make the National Gas Amendment (Minor changes 2) Rule No. 1 2021 (“gas Rule”)
 - under sections 259 and 261 of the National Energy Retail Law (NERL), to make the National Energy Retail Amendment (Minor changes 2) Rule No. 3 2021 (“retail Rule”)
- 2 The electricity Rule, the gas Rule and retail Rule (together, the “final rules”) correct minor errors and make non-material changes in the NER, NGR and NERR (together, the “Rules”). The final rules were proposed by the Commission and aim to promote clarity of meaning and remove identified errors in the Rules.
- 3 The Commission considered that:
 - the electricity Rule will or is likely to contribute to the achievement of the National Electricity Objective (NEO) and therefore satisfies the rule making test under section 88 of the NEL
 - the gas Rule will or is likely to contribute to the achievement of the National Gas Objective (NGO) and therefore satisfies the rule making test under section 291 of the NGL
 - the retail Rule will or is likely to contribute to the achievement of the National Energy Retail Objective (NERO) and therefore satisfies the rule making test under section 236(1) of the NERL and the retail Rule is compatible with the development and application of consumer protections for small customers and therefore satisfies the rule making test under section 236(2)(b) of the NERL.
- 4 The electricity Rule, the gas Rule and Schedule 1 of the retail Rule will commence on 27 May 2021. Schedule 2 of the retail Rule will commence on 1 August 2021.¹

¹ Schedule 2 of the retail Rule commences immediately after the commencement of Schedule 1 of the *National Energy Retail Amendment (Maintaining life support customer registration when switching) Rule 2021 No. 1*.

CONTENTS

| | | |
|----------|--|-----------|
| 1 | The AEMC's rule change request | 1 |
| 1.1 | The proposed Rules and commencement of rule making process | 1 |
| 1.2 | Rationale for the rule change request | 1 |
| 1.3 | Solution proposed in the rule change request | 1 |
| 1.4 | Final rule determination - summary | 2 |
| 2 | Final rule determination - Electricity | 3 |
| 2.1 | The Commission's final rule determination | 3 |
| 2.2 | Rule making test | 3 |
| 2.3 | Summary of reasons | 4 |
| 3 | Final rule determination - Gas | 6 |
| 3.1 | The Commission's final rule determination | 6 |
| 3.2 | Rule making test | 6 |
| 3.3 | Summary of reasons | 7 |
| 4 | Final rule determination - Retail | 8 |
| 4.1 | The Commission's final rule determination | 8 |
| 4.2 | Rule making test | 8 |
| 4.3 | Summary of reasons | 9 |
| | Abbreviations | 10 |
| | APPENDICES | |
| A | Legal requirements under the NEL, NGL and NERL | 11 |
| A.1 | Final rule determination | 11 |
| A.2 | Power to make the rule | 11 |
| A.3 | Commission's considerations | 11 |

1 THE AEMC'S RULE CHANGE REQUEST

1.1 The proposed Rules 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.²

On 1 April 2021, the Commission initiated the rule change process in respect of the draft:

- electricity Rule under sections 95 and 96(1)(a) of the NEL
- gas Rule under sections 303 and 304(1)(a) of the NGL
- retail Rule under sections 251 and 252(a) of the NERL.

The Commission initiated the proposed rules under the expedited process in section 96(1)(a) of the NEL, section 304(1)(a) of the NGL and section 252(1)(a) of the NERL respectively as it considered the proposed rules were unlikely to have a significant effect on the National Electricity Market (NEM), or a natural gas market or the regulation of pipeline services, or on the market for energy or the regulation of customer connection services. The Commission therefore considered that the proposed rules fell within the definition of a non-controversial rule under section 87 of the NEL, section 290 of the NGL and section 235 of the NERL (as applicable).

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 29 April 2021. The Commission received no submissions on the Rule change proposal.

1.2 Rationale for the rule change request

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, NGL and NERL. 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 rules (as now made as final) sought to:

² Section 91(2) of the NEL, section 295(2) of the NGL and section 243(2) of the NERL.

- 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*³
- 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.

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 2) Rule No. 4 2021
- under sections 311 and 313 of the NGL, to make the National Gas Amendment (Minor changes 2) Rule No. 1 2021
- under sections 259 and 261 of the NERL, to make the National Energy Retail Amendment (Minor changes 2) Rule No. 3 2021.

The final rules correct minor errors and make non-material changes in the NER, NGR and NERR.

³ 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 Tier3 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.

2 FINAL RULE DETERMINATION - ELECTRICITY

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 proposed by the Commission. The National Electricity Amendment (Minor changes 2) Rule 2021 No. 4 ("final electricity Rule") is published with this final rule determination. The final electricity Rule does not differ from the rule originally proposed by the Commission except for correcting some additional formatting errors identified during the rule change process.

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

In relation to the final electricity Rule's application in the Northern Territory, the Commission has determined not to make a differential rule. See section 2.3 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 NEL
- the Commission's consideration of the final electricity 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 NEL
- a summary of the Commission's reasons in deciding to make the final electricity 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

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 NEO.⁴ This is the decision making framework that the Commission must apply.

The NEO is:⁵

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

⁴ Section 88 of the NEL.

⁵ Section 7 of the NEL.

following the Commission considers appropriate in the circumstances having regard to the nature, scope or operation of the rule:⁶

- (a) the national electricity system
- (b) one or more, or all, of the local electricity systems⁷
- (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.

2.3 Summary of reasons

The Commission considers that the final electricity 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 NER informs stakeholders of their rights and obligations for participating in the NEM.

Under section 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 electricity 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 in any material respect.

Northern Territory rule making requirements

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.⁸ Under those regulations, only certain parts of the NER have been adopted in the Northern Territory.⁹

As the final 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.¹⁰ A differential rule is a rule that:

6 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.

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

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

9 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

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

- 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 section 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.¹¹

The Commission has made a uniform rule.

¹¹ 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

3 FINAL RULE DETERMINATION - GAS

3.1 The Commission's final rule determination

In accordance with sections 311 and 313 of the NGL the Commission has made this final rule determination and the final rule in relation to the gas Rule proposed by the Commission. The National Gas Amendment (Minor changes 2) Rule 2021 No. 1 ("final gas Rule") is published with this final rule determination. The final gas Rule does not differ from the rule originally proposed by the Commission.

A summary of the Commission's reasons for making this final rule determination are set out in section 3.3.

This chapter outlines:

- the rule making test for changes to the NGR
- the Commission's consideration of the final gas Rule against the NGO
- the Commission's consideration of the gas Rule's application in Western Australia
- a summary of the Commission's reasons in deciding to make the final gas Rule.

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

3.2 Rule making test

3.2.1 Achieving the NGO

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 NGO.¹² This is the decision making framework that the Commission must apply.

The NGO is:¹³

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.

3.2.2 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 The final gas Rule is amending a part of the NGR that does not apply in Western Australia. Accordingly, the gas Rule will not apply in Western Australia.

¹² Section 291(1) of the NGL.

¹³ Section 23 of the NGL.

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>.

3.3 Summary of reasons

The Commission considers that the final gas Rule will improve the quality of the NGR in terms of accuracy and consistency and is likely to contribute to the achievement of the NGO. As with previous similar rule changes initiated by the Commission, these minor corrections and non-material changes make the NGR clearer to stakeholders. This is important as the NGR informs stakeholders of their rights and obligations for participating in the natural gas markets.

Under section 295(4) of the NGL, 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 gas Rule is compatible with AEMO's declared network functions because it makes only minor and non-material changes to the NGR and does not change AEMO's functions in any material respect.

4 FINAL RULE DETERMINATION - RETAIL

4.1 The Commission's final rule determination

In accordance with sections 259 and 261 of the NERL the Commission has made this final rule determination and the final rule in relation to the retail Rule proposed by the Commission. The National Energy Retail Amendment (Minor changes 2) Rule 2021 No. 3 ("final retail Rule") is published with this final rule determination. The final retail Rule does not differ from the rule originally proposed by the Commission.

A summary of the Commission's reasons for making this final rule determination are set out in section 4.3.

This chapter outlines:

- the rule making test for changes to the NERR
- the Commission's consideration of the final retail Rule against the NERO
- a summary of the Commission's reasons in deciding to make the final retail Rule.

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

4.2 Rule making test

4.2.1 Achieving the NERO

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 NERO.¹⁵ This is the decision making framework that the Commission must apply.

The NERO is:¹⁶

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.

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").¹⁷

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.¹⁸ If the Commission is satisfied that one test, but not the other, has been met, the rule cannot be made.

¹⁵ Section 236(1) of the NERL.

¹⁶ Section 13 of the NERL.

¹⁷ Section 236(2)(b) of the NERL.

¹⁸ That is, the legal tests set out in sections 236(1) and (2)(b) of the NERL.

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.

4.3 Summary of reasons

The Commission considers that the final retail Rule will improve the quality of the NERR in terms of accuracy and consistency and is likely to contribute to the achievement of the NERO and satisfy the consumer protections test.

As with previous similar rule changes initiated by the Commission, these minor corrections and non-material changes make the NERR clearer to stakeholders. This is important as the NERR informs stakeholders of their rights and obligations for participating in the retail energy markets.

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 |
| NERL | National Energy Retail Law |
| NERO | National energy retail objective |
| NGL | National Gas Law |
| NGO | National gas objective |

A LEGAL REQUIREMENTS UNDER THE NEL, NGL AND NERL

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

A.1 Final rule determination

In accordance with sections 102 and 103 of the NEL, sections 311 and 313 of the NGL and sections 259 and 261 of the NERL the Commission has made this final rule determination in relation to the final rules.

The Commission's reasons for making this final rule determination are set out in sections 2.3, 3.3 and 4.3.

Copies of the final rules are 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 rules fall within the subject matter about which the Commission may make rules.

The electricity Rule falls within the matters set out in section 34 of the NEL, as under section 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 electricity Rule is necessary and expedient for the purposes of the NEL.

Further, the gas Rule falls within the matters set out in section 74 of the NGL, as under section 74(1)(b) of the NGL the Commission may make Rules for or with respect to any matter or thing contemplated by the NGL, or which are necessary or expedient for the purpose of the NGL. The Commission considers the gas Rule is necessary and expedient for the purposes of the NGL.

Finally, the retail Rule falls within the matters set out in section 237 of the NERL, as under section 237(1)(b) of the NERL the Commission may make Rules for or with respect to any matter or thing contemplated by the NERL, or which are necessary or expedient for the purposes of the NERL. The Commission considers the retail Rule is necessary and expedient for the purposes of the NERL.

A.3 Commission's considerations

In assessing the rule change request the Commission considered:

- its powers under the NEL, NGL and NERL to make the final rules
- the Commission's analysis as to the ways in which the final rules will or are likely to, contribute to the NEO, NGO and NERO

- the extent to which the retail rule is compatible with the development and application of consumer protections.

There is no relevant Ministerial Council on Energy (MCE) statement of policy principles for this rule change request.¹⁹

¹⁹ Under section 33 of the NEL, section 73 of the NGL and section 225 of the NERL 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 known as the Energy Ministers' Meeting.