



Australian Energy Market Commission

RULE DETERMINATION

NATIONAL ELECTRICITY AMENDMENT (MINOR CHANGES 3) RULE 2021

PROPONENT

AEMC

16 DECEMBER 2021

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 (NEL) to make the National Electricity Amendment (Minor Changes 3) Rule No. 15 2021 (electricity rule).
- 2 The electricity rule corrects minor errors and makes non-material changes to the National Electricity Rules (NER), including correcting cross-references to defined terms and provisions, and spelling and formatting errors.
- 3 The rule change was initiated by the Commission and aims to promote clarity of meaning and removes identified minor errors in the NER.
- 4 The Commission conducted the rule change under the expedited process in section 96 of the NEL on the basis that the Commission considered the proposed rule fell within the definition of a non-controversial rule under section 87 of the NEL.
- 5 The Commission considers 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.
- 6 The electricity rule will commence on 10 January 2022.

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1 THE COMMISSION'S RULE CHANGE PROPOSAL

1.1 The proposed rule and commencement of rule making process

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

On 21 October 2021, the Commission initiated the proposed electricity rule under sections 95 and 96(1)(a) of the NEL.

The Commission initiated the proposed rule under the expedited process in section 96 of the NEL as it considered the proposed electricity rule was unlikely to have a significant effect on the National Electricity Market (NEM). The Commission therefore considered that the proposed electricity rule fell within the definition of a non-controversial rule under section 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 to be submitted by 18 November 2021. 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 NEL.

This 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 NEL.

1.3 Solution proposed in the rule change proposal

The proposed electricity rule sought to:

- ensure consistency of nomenclature of, and references to, provisions throughout the NEL;
- remove duplication and ensure consistency in the use of local definitions in Chapter 2A;
- amend the Ancillary Service Generating Unit and Ancillary Service Load Data table in Schedule 3.1 to re-insert definitions for the terms "maximum enablement level", "maximum lower angle", "maximum upper angle" and "minimum enablement level". These terms were previously defined in Chapter 10 but the definitions were subsequently deleted and are now only used in Schedule 3.1. The local definitions that are proposed have the same meaning as they were previously defined in Chapter 10;

¹ Section 91(2) of the NEL.

- clarify interactions between clauses 4.9.2, 4.9.3, 4.9.3A and 4.9.5 in respect of AEMO's requirements for giving a dispatch instruction;
- insert a note in clause 4.16.1 as a signpost to the relevant transitional provision;
- insert a note in clause 5.20B.6 to identify the relevant tier classification for that civil penalty provision;
- correct cross-references to defined terms and provisions;
- remove references to redundant defined terms; and
- correct punctuation, spelling and formatting errors, including numbering levels, indentation, italicisation and bolding.

The proposed electricity rule also sought to give effect to the intent of an instruction for amending clauses 3.2.2(c) and (c1) under the National Electricity Amendment (Five Minute Settlement) Rule 2017, by re-inserting clause 3.2.2(c1) and changing "dispatch interval" to "trading interval".²

² See page 2 of the Rule Proposal, *National Electricity Amendment (Minor Changes 3) Rule 2021*, 21 October 2021.

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 proposed by the Commission. The National Electricity Amendment (Minor Changes 3) Rule No. 15 2021 is published with this final rule determination.

The Commission's final rule determination is to make the electricity rule as proposed by the Commission, with the following additional minor errors and non-material changes:

- [change the proposed deletion of clause 2A.2.5\(b\)\(2\) to instead remove the redundant reference to the last resort planning power regime;](#)
- correcting a reference in the note in clause 3.8.3(a2) to "rule 3.15" rather than "clause 3.15";
- indenting the formula and definitions in clause 3.14.5A(f1) so that they align with the text in that paragraph;
- inserting a comma in clause 3.20.6(g)(2) after "scheduled generating unit";
- in the definitions of "abnormal baseline notice procedures" and "Market Participant", correcting the italicisation of the term "AEMO";
- amending the definition title of "SRD (settlement residue distribution agreement)" to "SRD agreement (settlement residue distribution agreement)"; and
- in the definition of "transmission network", correcting the reference to "an identified user shared asset" rather than "identified shared user asset".

In relation to the electricity rule's application in the Northern Territory, the Commission has determined to make a uniform rule. See section 2.2.2.

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

This chapter outlines:

- the rule making test for changes to the NER;
- the Commission's reasons in deciding to make the electricity rule;
- the Commission's consideration of the electricity rule against the NEO; and
- the Commission's consideration in deciding whether to make a uniform or differential rule in accordance with the Northern Territory legislation adopting the NEL.³

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

³ *National Electricity (Northern Territory) (National Uniform Legislation) Act 2015* (NT Act).

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.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 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 electricity rule, the Commission has determined that the reference to the "national electricity system" in the NEO is a reference to item (c) above (noting that the electricity rule will have effect in relation to all of the electricity systems referred to above).

2.2.2 Rule making in the Northern Territory

The NER, as amended from time to time, apply in the Northern Territory, subject to modifications 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 electricity rule relates to 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 Act, the Commission may make a differential rule if it is satisfied that, having regard to any relevant Ministerial Council on Energy (MCE) statement of policy

⁴ Section 88 of the NEL.

⁵ Section 7 of the NEL.

⁶ Section 14A of Schedule 1 to the NT Act, inserting section 88(2a) into the NEL as it applies in the Northern Territory.

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

⁸ These regulations under the NT Act are the *National Electricity (Northern Territory) (National Uniform Legislation) (Modifications) Regulations 2016*.

⁹ The version of the NER that applies in the Northern Territory is available on the AEMC website at <https://www.aemc.gov.au/legal/energy-rules/northern-territory-electricity-market-rules/current>

principles, a differential 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:

- 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 one or more, or all, of the local electricity systems, and has effect with respect to all of those systems.¹¹

The Commission has determined to make a uniform rule as it does not consider that a differential rule will, or is likely to, better contribute to the achievement of the NEO than a uniform rule.

2.3 Summary of reasons

The Commission considers that the 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. These improvements are likely to reduce the regulatory burden associated with understanding and complying with the NER, and therefore allow electricity services to be provided more efficiently.

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

¹¹ Clause 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.

ABBREVIATIONS

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
Commission	See AEMC
MCE	Ministerial Council on Energy
NT Act	<i>National Electricity (Northern Territory) (National Uniform Legislation) Act 2015</i>
NEL	National Electricity Law
NEM	National Electricity Market
NEO	National electricity objective
NER	National Electricity Rules

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 section 102 of the NEL, the Commission has made this final rule determination in relation to the rule proposed by the Commission.

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

In accordance with section 103 of the NEL, the Commission has made a final rule. A copy of the final rule is attached to and published with this final rule determination. Its key features are described in sections 1.3 and 2.1.

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 section 34(1) 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 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 MCE statement of policy principles for this rule change request.¹²

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 the Australian Energy Market Operator's (AEMO's) declared network functions. At present, Victoria is the only relevant "adoptive jurisdiction". Given the electricity rule only seeks to make minor or non-material changes to the NER and does not change AEMO's functions in any material respect, the Commission is satisfied that the electricity rule is compatible with the proper performance of AEMO's declared network functions.

¹² 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 COAG Energy Council.

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 Commission's final rule amends clauses that are currently classified as civil penalty provisions under the NEL or National Electricity (South Australia) Regulations. However, as the amendments correct minor errors or make non-material changes that do not affect the operation of those provisions, the Commission considers that those provisions should continue to be classified as civil penalty provisions and therefore does not propose to recommend any change to the classifications to the Energy Ministers' Meeting.

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.