



Australian Energy Market Commission

RULE DETERMINATION

NATIONAL ELECTRICITY AMENDMENT (MINOR CHANGES 1) RULE 2022

NATIONAL GAS AMENDMENT (MINOR CHANGES 1) RULE 2022

PROPONENT

AEMC

21 APRIL 2022

RULE

INQUIRIES

Australian Energy Market Commission
GPO Box 2603
Sydney NSW 2000

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

Reference: ERC0342, GRC0064

CITATION

AEMC, Minor changes 1, Rule determination, 21 April 2022

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 changes 1) Rule No. 3 2022 (“electricity Rule”)
 - under sections 311 and 313 of the National Gas Law (NGL), to make the National Gas Amendment (Minor changes 1) Rule No. 1 2022 (“gas Rule”).
- 2 The electricity Rule and the gas Rule (together, the “final rules”) correct minor errors and make non-material changes in the National Electricity Rules (NER) and the National Gas Rules (NGR) (together, the “Rules”), including correcting cross-references to defined terms and provisions, and spelling and formatting errors.
- 3 The rule changes were initiated by the Commission and aim to promote clarity of meaning and remove identified minor errors in the Rules.
- 4 The Commission conducted:
 - the electricity 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
 - the gas Rule change under the expedited process in section 304 of the NGL on the basis that the Commission considered the proposed rule fell within the definition of a non-controversial rule under section 290 of the NGL.
- 5 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.
- 6 The final rules will commence on 21 April 2022.

CONTENTS

1	THE COMMISSION'S RULE CHANGE PROPOSAL	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
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	5
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
	Abbreviations	8
	APPENDICES	
A	Legal requirements under the NEL AND NGL	9
A.1	Final rule determination	9
A.2	Power to make the rule	9
A.3	Commission's considerations	9
A.4	Civil penalties	10
A.5	Conduct provisions	10

1 THE COMMISSION'S RULE CHANGE PROPOSAL

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.¹

On 24 February 2022, 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.

The Commission initiated the proposed Rules under the expedited process in section 96(1)(a) of the NEL and section 304(1)(a) of the NGL 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. The Commission therefore considered that the proposed Rules fell within the definition of a non-controversial rule under section 87 of the NEL and section 290 of the NGL (as applicable).

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

The Commission invited submissions on the Rule change proposals by 24 March 2022. The Commission received no submissions on the Rule change proposals.

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 and NGL. The purpose of this function, among other things, is to improve and enhance the quality of the Rules.

The Rule change proposals were 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:

- correct the definition of "TransGrid" in clause 11.143.1(a) of the NER to capture the TransGrid entity that is the relevant Transmission Network Service Provider (TNSP);
- ensure consistency of references to provisions throughout the NER and the NGR;
- ensure consistency in the use of local definitions in Chapter 4A of the NER;
- remove duplication of a subheading in the NGR;
- correct cross-references to defined terms in the NER; and

¹ Section 91(2) of the NEL and section 295 of the NGL.

- correct punctuation, spelling and formatting errors, including numbering levels, indentation, italicisation, underlining and bolding.

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 1) Rule 2022 No. 3 ("final electricity Rule") is published with this final rule determination.

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

- correcting a reference in clause 6A.29A.2(a)(3) to "Transmission Network Service Providers" rather than "Transmission Network Services Providers";
- amending the placement of the subheading "LNSP obligations" in clause 7.8.6 so that it is placed above the correct sub clause;
- in the definition of "ancillary service price", correcting the reference to "rule 3.9" rather than "clause 3.9"; and
- in the definition of "Rules consultation procedures", correcting the reference to "rule 8.9" rather than "clause 8.9".

In relation to the final 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 final electricity Rule;
- the Commission's consideration of the final 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.²

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 national electricity objective NEO.³ This is the decision-making framework that the Commission must apply.

The NEO is:⁴

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

³ Section 88 of the NEL.

⁴ Section 7 of the NEL.

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: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 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.⁷ Under those regulations, only certain parts of the NER have been adopted in the Northern Territory.⁸

As the final 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 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.⁹ 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,

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

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

⁷ These regulations under the NT Act are the *National Electricity (Northern Territory) (National Uniform Legislation) (Modifications) Regulations 2016*.

⁸ The version of the NER that applies in the Northern Territory is available on the AEMC website at <https://energy-rules.aemc.gov.au/ntner/380>

⁹ Clause 14B of Schedule 1 to the NT Act, inserting section 88AA into the NEL as it applies in the Northern Territory.

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.¹⁰

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 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. 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 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

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 1) Rule 2022 No. 1 ("final gas Rule") is published with this final rule determination.

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

- correcting the use of an apostrophe in subrule 235(11) to "Market Participant's" rather than "Market Participants";
- amending the semicolon in subrule 239(5)(c) to a comma; and
- removing the second semicolon in subrule 260(2)(c)(ii) after "or".

3.1 The Commission's final rule determination

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 final gas Rule's application in Western Australia; and
- 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 if it is satisfied that the rule will, or is likely to, contribute to the achievement of the national gas objective (NGO).¹¹ This is the decision making framework that the Commission must apply.

The NGO is:¹²

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.

¹¹ Section 291(1) of the NGL.

¹² Section 23 of the NGL.

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.¹³ The final gas Rule is only amending a limited part of the NGR that applies in Western Australia.¹⁴ Accordingly, only a limited part of the final gas Rule will apply in 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.

13 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>.

14 Item 1 of Schedule 1 to the final gas Rule is the only minor change to the NGR that will apply in Western Australia pursuant to the WA Gas Act.

ABBREVIATIONS

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
Commission	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 AND NGL

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

A.1 Final rule determination

In accordance with sections 102 and 103 of the NEL and sections 311 and 313 of the NGL 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 and 3.3.

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.

A.3 Commission's considerations

In assessing the rule change request the Commission considered:

- its powers under the NEL and NGL to make the final rules;
- 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 and the NGO.

There is no relevant Ministerial Council on Energy (MCE) statement of policy principles for this rule change request.¹⁵

¹⁵ Under s. 33 of the NEL and 73 of the NGL 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 became the COAG Energy Council, and is now the Energy Ministers' Meeting.

Under section 91(8) of the NEL and 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 the Australian Energy Market Operator's (AEMO's) declared network functions. At present, Victoria is the only relevant "adoptive jurisdiction". Given the electricity Rule and the gas Rule only seek to make minor or non-material changes to the NER and NGR and do not change AEMO's functions in any material respect, the Commission is satisfied that the electricity Rule and gas Rule are compatible with the proper performance of AEMO's declared network functions.

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 and NGR be classified as civil penalty provisions.

The Commission's final electricity 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 and NGR be classified as conduct provisions.

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