



Australian Energy Market Commission

CONSULTATION PAPER

NATIONAL ENERGY RETAIL AMENDMENT (DELAYING IMPLEMENTATION OF THE AER BILLING GUIDELINE) RULE 2022

PROPONENT

Australian Energy Council

18 AUGUST 2022

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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1 THE REQUEST AND HOW WE WILL ASSES IT

On 30 June 2022, the Australian Energy Council (the AEC) submitted a rule change request to the Australian Energy Market Commission (AEMC or Commission) to delay the commencement date of the AER Better Bills Guideline from 31 March 2023 to 30 September 2023.¹ The AER Better Bills Guideline (Guideline) was developed as part of the Billing Contents and Billing Requirements rule change.²

The AEC says that the delay will reduce the costs to retailers arising from the implementation of the guideline. In turn, this should reduce costs being passed through to consumers, at a time when there are cost of living pressures.

The AER has provided a letter that states its support for the AEC's extension.³

This consultation paper has been prepared to facilitate public consultation on the impact of the date change and to seek stakeholder submissions.

This paper:

- provides a summary of, and background to, the rule change request
- identifies questions and issues to facilitate consultation on this rule change request
- outlines the process for making submissions.

1.1 The problem raised in the rule change request

The rule change proposed by the AEC seeks to delay the implementation of the Guideline to reduce the cost of implementation for retailers. Consultants engaged by the AEC benchmarked the cost to be approximately \$2.7 million per retailer to implement the Guideline.⁴ The AEC considers that a delay to implementation would reduce the costs on retailers and limit costs being passed on to consumers.

1.2 The proposed solution and implementation

The AEC proposes that the Guideline be implemented on 30 September 2023, six months after the current implementation date of 30 March 2023. The AEC considers that the six-month delay would allow retailers to optimise their implementation schedule and should reduce implementation costs and flow on impacts for consumers. The AEC contends there will be no impact on consumer protections as existing arrangements will continue until the implementation of the guideline.

The AER has provided a letter that supports the six-month delay.

1 The guideline is available on the AER's website at: <https://www.aer.gov.au/retail-markets/guidelines-reviews/better-bills-guideline/final-decision>. The rule change request is available on the Commission's website at: <https://www.aemc.gov.au/rule-changes/delaying-implementation-aer-billing-guideline>

2 RRC0036, 18 March 2021. Available at: <https://www.aemc.gov.au/rule-changes/bill-contents-and-billing-requirements>

3 Letter from AER to AEMC (AER Letter), 4 August 2022, available at: <https://www.aemc.gov.au/rule-changes/delaying-implementation-aer-billing-guideline>

4 Australian Energy Council, *Rule change request*, p.3.

The rule change request does not include a proposed rule. However, the AEC's proposed solution could be implemented by changing the date specified in rule 1(2) of Part 16 of Schedule 3 of the NERR.

QUESTION 1: ARE THERE ANY SIGNIFICANT MARKET OR CUSTOMER IMPACTS (POSITIVE OR NEGATIVE) THAT MAY ARISE IF THE IMPLEMENTATION OF THE GUIDELINE IS DELAYED BY SIX MONTHS TO 30 SEPTEMBER 2023?

1.3

Making our decision

1.3.1

Achieving the NERO

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 energy retail objective (NERO).⁵ This is the decision making framework that the Commission must apply.

The NERO is:⁶

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").⁷

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.⁸ 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.

1.3.2

We propose to assess the rule change using these two criteria

Considering the NERO and the issues raised in the rule change request, the Commission proposes to assess this rule change request using these focus areas:

- **Outcomes for consumers:** Does the proposed rule significantly affect outcomes for consumers? The Commission will consider the extent to which this rule change could impact consumer protections of small customers.

⁵ Section 236(1) of the NERL.

⁶ Section 13 of the NERL.

⁷ Section 236(2)(b) of the NERL.

⁸ That is, the legal tests set out in s. 236(1) and (2)(b) of the NERL.

- **Implementation considerations:** Would delaying implementation allow retailers to reduce costs and contribute to cost savings being passed on to consumers?

1.3.3

We have three options when making our decision

After using the assessment framework to consider the rule change request, the Commission may decide:

- to make the rule as proposed by the proponent - in this case, to delay implementation of the Guideline by six months
- to make a rule that is different to the proposed rule (a more preferable rule), as discussed below, or
- not to make a rule.

The Commission may make a more preferable rule (which may be materially different to the proposed rule) if it is satisfied that, having regard to the issue or issues raised in the rule change request, the more preferable rule will or is likely to better contribute to the achievement of the NERO.⁹

QUESTION 2: IS THE PROPOSED ASSESSMENT FRAMEWORK APPROPRIATE FOR CONSIDERING THE AEC'S RULE CHANGE REQUEST? ARE THERE ANY OTHER RELEVANT CONSIDERATIONS THAT SHOULD BE INCLUDED?

⁹ Section 244 of the NERL.

2 PROCESS FOR THIS RULE CHANGE

2.1 Treatment as a non-controversial rule change

The AEC proposes the rule change request be treated as non-controversial in accordance with s. 252 of the NERL such that it could be processed on an expedited basis. In addition, the AEC considers the benefits that might be obtained by a deferral will reduce the longer it takes to finalise the rule change request.

The Commission considers that the rule change request should be subject to the expedited rule making process under s. 252 of the NERL on the grounds that it considers the rule change request to be non-controversial under the definition in the NERL.

That is, the rule change is unlikely to have a significant impact on a market for energy or the regulation of customer connection services.¹⁰ This is because the rule change, in mitigating the Guideline implementation costs, is likely to have a small beneficial effect on the market for energy and no impact on the regulation of customer connection services. A short delay in implementing the Guideline is unlikely to significantly impact upon the longer-term benefits of introducing the Guideline.

The Commission has decided to use an expedited process to consider this rule change request provided that it does not receive any valid requests not to use the expedited process by **1 September 2022**. To be valid, an objection should set out the reasons why the rule change request is not unlikely to have a significant effect on a market for energy or the regulation of customer connection services.

2.2 Key dates

The key dates for stakeholders in this process are as follows:

- Commencement of this rule change process: **18 August 2022**
- Objections to an expedited process to be received by: **1 September 2022**
- Submissions to the proposal to be received by: **15 September 2022**
- Final decision to be published under an expedited process by: **13 October 2022**

¹⁰ Section 235 of the National Energy Retail Law.

3 LODGING A SUBMISSION

All enquiries on this project should be addressed to Lauren Taborda on (02) 8296 0617 or lauren.taborda@aemc.gov.au.

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. 252 of the NERL must include reasons for the request, and must be lodged with the Commission by **1 September 2022** online in accordance with the process specified below.

3.2 Lodging a submission to this rule change request

Written submissions on the rule change request must be lodged with Commission by **15 September 2022** online in accordance with the process specified below.

Tips for making submissions on rule change requests are available on our website.¹¹

3.3 Lodging online

Submissions, or requests not to make a rule under the expedited process, must be lodged online via the Commission's website, www.aemc.gov.au, using the "lodge a submission" function under the "Contact Us" tab, and selecting the project reference code **RRC0046**.

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

3.4 Publication

The Commission publishes submissions and process requests on its website. However, we will not publish materials that we agree are confidential, or that we consider inappropriate (for example offensive or defamatory content, or content that is likely to infringe intellectual property rights).

¹¹ See: <https://www.aemc.gov.au/our-work/changing-energy-rules-unique-process/making-rule-change-request/our-work-3>.

ABBREVIATIONS

AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
AEC	Australian Energy Council
Commission	See AEMC
NERL	National Energy Retail Law
NERO	National energy retail objective