



Australian Energy Market Commission

CONSULTATION PAPER

HARMONISING THE NETWORK AND PIPELINE EXPENDITURE RULES WITH THE UPDATED ENERGY OBJECTIVES (ELECTRICITY AND GAS) RULE CHANGE AND HARMONISING THE ELECTRICITY NETWORK PLANNING AND INVESTMENT RULES AND AER GUIDELINES WITH THE UPDATED ENERGY OBJECTIVES (ELECTRICITY, GAS AND RETAIL) RULE CHANGE

PROPONENT

Energy senior officials, on behalf of the Ministerial Council on Energy (as constituted by the Energy Ministers Sub-Group)

20 JULY 2023

RULE

INQUIRIES

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Reference: ERC0362

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 Energy Ministers have approved an update to the national energy objectives which embeds emissions reduction. This allows for the explicit consideration of emissions by market bodies and other market participants. The *Statutes Amendment (National Energy Laws) (Emissions Reduction Objectives) Bill 2023* (Bill) will update the national energy laws and is currently before the South Australian Parliament.
- 2 The incorporation of emissions reduction into the national energy objectives provides the regulatory framework for market bodies to balance emissions reduction with the existing considerations of price, quality, safety, reliability and security in the objectives.
- 3 Rule changes are now required to harmonise key provisions of the national energy rules with the introduction of emissions reduction into the national energy objectives.
- 4 To ensure the consistent application of the updated objectives, energy senior officials on behalf of the Ministerial Council on Energy (as constituted by the Energy Ministers Sub-group) submitted two rule change requests on 4 July 2023 seeking to harmonise the rules to reflect the intent of the law change.
- 5 The rule change requests include three categories of priority amendments to give effect to the updated objectives and provide clarity on the treatment of emissions reductions:
1. Rules for network/pipeline expenditure proposals and assessment
 2. Rules for electricity network planning and investment frameworks
 3. Rules to enable a streamlined process for updating Australian Energy Regulator (AER) statutory guidelines, guidance documents and instruments to reflect the updated energy objectives.
- 6 Categories two and three are bundled in one rule change request.
- 7 The AEMC has commenced its consideration of the requests, and this consultation paper is the first stage.
- 8 We are seeking your feedback on the problems and their materiality, whether the proposed solutions will promote the long-term interests of consumers, whether there are better alternatives, and on our assessment criteria.

We are seeking your views on the proposal to harmonise the rules relating to network and pipeline expenditure (rule change request one)

- 9 We are considering the proposal to explicitly include emissions reduction in network and pipeline expenditure objectives.
- 10 The rule change request aims to ensure the application of the updated national energy objectives to those rules relating to capital and operating expenditure by networks and

pipelines,¹ as the emissions component of the updated national energy objectives will not automatically flow through to these provisions in the rules. The proponent considers this will contribute to the achievement of the updated energy objectives by ensuring that the capital and operating expenditure decisions of network and pipeline businesses take due consideration of the effects of these expenditures on emissions.

11 The proponent has suggested rule amendments to include emissions reduction considerations in the capital expenditure objectives and operational expenditure objectives that determine what a distribution network service provider's or transmission network service provider's revenue determination must include. A similar amendment is proposed for the gas rules relating to capital and operational expenditure of regulated gas pipelines to ensure harmonisation of the rules with the law.

We are seeking your views on the proposal to harmonise the rules relating to network planning and investment and AER guideline updates (rule change request two)

12 We are also considering a second rule change proposal to harmonise the rules with the updated national energy objectives and to streamline the process to update AER guidance to reflect the change in the energy objectives. Rule change request two includes:

- a proposal to harmonise the electricity network planning and investment rules to clarify how emissions reduction should be considered within the framework
- a proposal to enable the AER to carry out a streamlined consultation process to update its guidelines and guidance documentation to incorporate the new emissions reduction component of the national energy objectives.

13 The first of the above proposals builds on our recommendations in the Transmission planning and investment review. This component of the rule change is considered a priority, so that emissions reduction can be transparently and consistently balanced against the other components of the national electricity objective in the 2026 integrated system plan (ISP) and in regulatory investment tests (RITs). The proposal highlights a number of areas in the rules where amendments may be required, including whether emissions abatement should be included as a class of market benefits.

14 The second of the above proposals identifies an opportunity to reduce the administrative burden on the AER and market participants. The AER estimated that approximately 65 guidelines and guidance documents may need to be updated as a result of the change to the energy objectives. Rule change request two recommends that the rules are amended to enable the AER to streamline the consultation process for these updates.

We consider that there are four assessment criteria that are most relevant to this rule change request

15 We will apply the emissions component of the updated energy objectives in considering these

¹ NER clauses 6.5.6, 6.5.7, 6A.6.6, 6A.6.7. NGR rules 79 and 91.

rule changes. Although the law change has not yet taken effect, Ministers agreed to include a transitional provision in the Bill to allow us to proceed on this basis, given the importance of progressing these priority rule changes.

16 Considering the updated NEO, NGO and NERO² and the issues raised in the rule change requests, the Commission proposes to assess the rule change requests against four assessment criteria:

- **Emissions reduction:** do the proposals efficiently contribute to the achievement of government targets for reducing Australia’s greenhouse gas emissions?
- **Principles of market efficiency:** do the proposals deliver productive, dynamic and allocative efficiency across investment/planning, commitment and dispatch timeframes?
- **Implementation considerations:**
 - do the proposals balance the cost and complexity of implementation and ongoing regulation and administrative costs to all market participants, consumers and market bodies? Does this encourage successful implementation?
 - do the proposals manage the timing of benefits versus costs, direction of reform and interaction with other reforms and processes?
- **Principles of good regulatory practice:** do the proposals promote principles of good regulatory practice including predictability and stability in the regulatory framework and simplicity and transparency for all stakeholders? Do the proposals align with broader reform?

Submissions are due by 17 August with other engagement opportunities to follow

17 There are a number of opportunities for engaging with us throughout the rule change process.

18 Written submissions responding to this consultation paper must be lodged with Commission by 17 August 2023 via the Commission’s website, www.aemc.gov.au.

19 Other opportunities for engagement may include one-on-one discussions or industry briefing sessions. See the section of this paper about “How to engage with us” for further instructions and contact details for the project leader.

Full list of consultation questions

QUESTION 1: HOW SHOULD EMISSIONS REDUCTION BE TREATED IN NETWORK AND PIPELINE EXPENDITURE PROPOSALS AND ASSESSMENTS?

Do you agree that the rules should explicitly apply the new emissions reduction component of

² Section 7 of the NEL; Section 23 of the NGL; Section 13 of the NERL.

the national energy objectives to network and pipeline expenditure proposals and assessments?

QUESTION 2: WILL THE PROPOSED SOLUTION ENSURE THAT THE EMISSIONS REDUCTION COMPONENT OF THE ENERGY OBJECTIVES IS CONSIDERED IN NETWORK AND PIPELINE EXPENDITURE PROPOSALS?

- (a) Do you consider that the proposed changes to the rules will ensure emissions reduction is factored into the expenditure proposal and assessment process?
- (b) Would this approach solve the problem(s) raised or are there other factors that would have a greater impact?
- (c) Are there challenges or risks associated with the proposed approach, for example by enabling expenditure that is related to reducing emissions in other sectors of the economy, such as transport or heavy industry? How might these risks be mitigated?

QUESTION 3: WHAT ARE YOUR VIEWS ON THE COSTS AND BENEFITS OF INCLUDING EMISSIONS REDUCTION IN THE NETWORK/PIPELINE OPERATING AND CAPITAL EXPENDITURE RULES?

What do you consider will be the benefits and costs of the proposed solution?

If there are costs, will these be one off or ongoing? Are the costs likely to be proportionate to the problem they are intended to address?

QUESTION 4: ARE THERE IMPORTANT IMPLEMENTATION CONSIDERATIONS FOR THE NETWORK/PIPELINE EXPENDITURE RULES?

Do you have any suggestions regarding the commencement timeframes for the proposed rule changes? Are there additional transitional measures that should be considered that would support the effective implementation of the desired solution?

QUESTION 5: ARE THERE ALTERNATIVE SOLUTIONS TO THOSE PROPOSED IN RULE CHANGE REQUEST ONE (NETWORK/PIPELINE EXPENDITURE) THAT WOULD BE PREFERABLE?

Are there any alternative solutions that you think would be preferable and more aligned with

the long-term interests of consumers?

QUESTION 6: SHOULD THE RULES RELATING TO NETWORK PLANNING AND INVESTMENT BE UPDATED?

- a) Do you agree that the change to the NEO means it is appropriate to consider consequential or harmonising changes to the network planning and investment rules, for clarity and to give effect to the updated NEO?
- b) Do you agree with the areas in the investment and planning framework identified for harmonisation? Are there any areas that should not be considered further? Are there any additional areas that should be considered?

QUESTION 7: SHOULD THERE BE A STREAMLINED PROCESS FOR UPDATING AER GUIDANCE TO INCORPORATE EMISSIONS REDUCTION?

- (a) Do you agree that an omnibus update process for all relevant guidelines would reduce the administrative burden for stakeholders and the AER?
- (b) If so, do you agree that distribution consultation procedures are the most appropriate consultation procedures to follow?
- (c) Should there be restrictions on the types of changes or types of guidelines included in the omnibus consultation? Should more significant changes be subject to two rounds of consultation, or individual consultation processes?
- (d) Should the rules exempt the AER from consulting on any emissions-related updates that are minor or administrative in nature and do not impact or change requirements for participants?

QUESTION 8: WHAT ARE YOUR VIEWS ON THE COSTS AND BENEFITS OF THE PROPOSED SOLUTIONS IN RULE CHANGE REQUEST TWO?

- a) What do you consider will be the benefits and costs of the proposed rule changes (as distinct from the benefits and costs of the change to the NEO itself)?
- b) If there are costs, will these be one-off or ongoing?
- c) Is there anything the Commission could do in designing the rule that would help to minimise the costs and maximise the benefits?

QUESTION 9: ARE THERE IMPORTANT IMPLEMENTATION CONSIDERATIONS FOR THE RULE CHANGES PROPOSED IN RULE CHANGE REQUEST TWO?

- a) Are there any implementation issues we should consider for either the changes to the planning and investment rules or in relation to a streamlined process for updating AER guidance?
- b) Could the proposed rule changes take effect as soon as they are made (early 2024)? If not, what implementation timing and transitional rules would be appropriate?

QUESTION 10: ARE THERE ALTERNATIVE SOLUTIONS THAT WOULD BE PREFERABLE TO THE SOLUTIONS PROPOSED IN RULE CHANGE REQUEST TWO?

- a) Are there any alternative solutions to incorporating emissions reduction into the network planning and investment framework that you think would be preferable and more aligned with the long-term interests of consumers?
- b) Are there alternative solutions to updating AER guidance than the solution proposed in the rule change request?

QUESTION 11: ASSESSMENT FRAMEWORK

Do you agree with the proposed assessment framework? Are there additional principles that the Commission should take into account or principles included here that are not relevant?

How to make a submission

We encourage you to make a submission

Stakeholders can help shape the solutions by participating in the rule change process. Engaging with stakeholders helps us understand the potential impacts of our decisions and, in so doing, contributes to well-informed, high quality rule changes.

We have included consultation questions in this paper, however, you are welcome to provide feedback on any additional matters that may assist the Commission in making its decision.

How to make a written submission

Due date: Written submissions responding to this consultation paper must be lodged with Commission by 17 August 2023.

How to make a submission: Go to the Commission’s website, www.aemc.gov.au, find the “lodge a submission” function under the “Contact Us” tab, and select the project reference **ERC0362**.³

Tips for making submissions are available on our website.⁴

Publication: The Commission publishes submissions on its website. However, we will not publish parts of a submission 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).⁵

For more information, you can contact us

Please contact the project leader with questions or feedback at any stage.

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Email: james.king@aemc.gov.au
Telephone: (02) 8296 0665

3 If you are not able to lodge a submission online, please contact us and we will provide instructions for alternative methods to lodge the submission.

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

5 Further information is available here: <https://www.aemc.gov.au/contact-us/lodge-submission>

1 THE CONTEXT FOR THE RULE CHANGE REQUESTS

This consultation paper seeks stakeholder feedback on the rule change requests submitted by energy senior officials, on behalf of the Ministerial Council on Energy (as constituted by the Energy Ministers Sub-Group), requesting priority rule changes relating to network/pipeline expenditure, network planning and investment, and updating of the Australian Energy Regulator's (AER) guidance to support the incorporation of the emissions reduction component into the national energy objectives.

1.1 The proponent has proposed rule changes to harmonise the rules with the updated national energy objectives

Energy ministers have approved an update to the national energy objectives which embeds emissions reduction and allows for the explicit consideration of emissions by market bodies and other market participants. The Statutes Amendment (*National Energy Laws*) (*Emissions Reduction Objectives*) Bill 2023 (Bill) was introduced into the South Australian Parliament on 14 June 2023.⁶ The Bill integrates emissions reduction into the existing 'economic efficiency' framework which "ensures all components of the objectives can be effectively balanced in decision-making."⁷

The new emissions reduction component of the energy objectives refers to "the achievement of targets set by a participating jurisdiction -

- for reducing Australia's greenhouse gas emissions; or
- that are likely to contribute to reducing Australia's greenhouse gas emissions."⁸

The incorporation of emissions reduction into the national energy objectives provides the regulatory framework for market bodies to balance emissions reduction with the existing considerations of price, quality, safety, reliability and security in the energy objectives.

To ensure the consistent application of the updated objectives, energy senior officials on behalf of the Ministerial Council on Energy (as constituted by the Energy Ministers Sub-Group) submitted two rule change requests on 4 July 2023 seeking to harmonise the national energy rules (the rules) to reflect the intent of the law change. The rule change requests are as follows:

- *Priority rule changes to support the incorporation of an emissions reduction component into the National Energy Objectives - harmonising the rules for network/pipeline expenditure proposals and assessment (referred to in this paper as 'rule change request one (network/pipeline expenditure)')*
- *Priority rule changes to support the incorporation of an emissions reduction component into the National Energy Objectives - Network Investment Planning Frameworks and the*

6 *National Energy Laws Amendment (Emissions Reduction Objectives) Bill 2023*(South Australia).

7 Energy ministers, *Incorporating an emissions reduction objective into the national energy objectives, Information paper*, May 2023, p. 7.

8 Bill, section 4.

Australian Energy Regulator Regulatory Instrument Revisions (referred to in this paper as **'rule change request two (planning and AER guidelines)'**)

In a number of instances the existing rules do not refer to the national energy objectives but instead refer to particular components of the objectives. As a result, a change to the objectives will not automatically flow through to all relevant provisions in the rules unless harmonising changes are made. Without rule changes the policy intent of the change to the objectives may not take full effect, impacting the ability of market bodies and participants to fully contribute to the achievement of the updated objectives. It may also result in regulatory uncertainty.

The rule change requests include three categories of priority amendments to give effect to the updated objectives and mitigate those risks⁹:

1. Rules for network/pipeline expenditure proposals and assessment
2. Rules for electricity network planning and investment frameworks
3. Rules to enable a streamlined process for updating AER statutory guidelines, guidance documents and instruments to reflect consideration of the emissions reduction component of the energy objectives.

Rule change request one (network/pipeline expenditure) relates to revenue determinations and resets, particularly rules that address the operating and capital expenditure objectives and criteria for electricity distribution and transmission businesses and gas pipeline operators.¹⁰ Rule change request one (network/pipeline expenditure) relates to category one in the list above.

Rule change request two (planning and AER guidelines) relates to harmonising key network planning and investment rules across the national electricity rules (NER) as well as facilitating a single omnibus guideline update process for relevant AER guidelines. This builds on the recommendations in our *Transmission planning and investment review* (TPIR) Stage 3 final report to ensure that the benefits of emissions reduction are considered in transmission and distribution planning. Rule change request two (planning and AER guidelines) combines categories two and three in the list above.

For further information on rule change request one (network/pipeline expenditure) see Chapter 2, and for information on rule change request two (planning and AER guidelines) see Chapter 3.

The rule change requests are available on the project pages on the AEMC website:
<https://www.aemc.gov.au/rule-changes/harmonising-electricity-network-planning-and-investment-rules-and-aer-guidelines-updated-energy>

⁹ Rule change request one (network/pipeline expenditure) pp. 3-4 and rule change request two (planning and AER guidelines) pp. 3-4.

¹⁰ Rule change request one (network/pipeline expenditure).

1.2 We and energy ministers have engaged with stakeholders on this issue previously

These priority rule changes have been identified by the proponent as a result of previous stakeholder engagement conducted by the energy ministers on the draft Bill which was published for consultation on 20 December 2022,¹¹ as well as through our consultation on emissions in TPIR.

We previously considered and recommended harmonising the rules for electricity investment and planning frameworks with the updated national electricity objective as part of our TPIR Stage 3 final report.¹² In that report, we commented specifically on the interaction between the updated objective and the network investment and planning frameworks and the potential for a harmonising rule change to ensure the consistent and timely application of the updated objectives. Our Stage 3 final report recommended a rule change to harmonise the NER with the updated national electricity objective to ensure that transmission investment decisions transparently balance emissions, price, quality, safety, reliability and security.¹³

Energy ministers issued an information paper in May 2023 which summarised changes made to the Bill arising from its consultation, and included information on the priority rule changes identified from stakeholder feedback. This included harmonisation of the rules for network/pipeline expenditure and network planning and investment.¹⁴

An additional matter to note is that stakeholders expressed an interest during consultation on the Bill in valuing the benefit of emissions reduction in order to inform regulatory processes and contribute to applying the national energy objectives. The Hon. A Koutsantonis MP, South Australian Minister for Energy and Mining advised in his second reading speech that “alongside the priority rule change, governments are considering the appropriate approach to valuing emissions reduction to support implementation.”¹⁵ A value of emissions will be a useful tool in processes such as regulatory investment tests and investment planning frameworks. The Commonwealth Government will lead work on developing a value, or method for determining one, in close consultation with market bodies, states and territories. The value or approach is expected to be available by November 2023.

1.3 We have started the rule change process

This paper is the first stage of our consultation process.

We will undertake these rule change requests using a standard rule change process.

A standard rule change process includes the following formal stages:

-
- 11 Energy ministers, *Incorporating an emissions reduction objective into the national energy objectives*, Consultation paper, December 2022.
 - 12 AEMC, *Transmission planning and investment review*, Stage 3 final report, 4 May 2023.
 - 13 AEMC, *Transmission planning and investment review*, Stage 3 final report, 4 May 2023, p. 27.
 - 14 Energy ministers, *Incorporating an emissions reduction objective into the national energy objectives*, Information paper, May 2023, pp. 13-15.
 - 15 South Australia, *Parliamentary Debates*, House of Assembly, 14 June 2023 (A. Koutsantonis, Minister for Energy and Mining) <https://hansardsearch.parliament.sa.gov.au/daily/lh/2023-06-14/38?sid=ec9b15fd38994aa688>.

- a proponent submits a rule change request
- the Commission commences the rule change process by publishing a consultation paper and seeking stakeholder feedback
- stakeholders lodge submissions on the consultation paper and engage through other channels to make their views known to the AEMC project team
- the Commission publishes a draft determination and draft rule (if relevant)
- stakeholders lodge submissions on the draft determination and engage through other channels to make their views known to the AEMC project team
- the Commission publishes a final determination and final rule (if relevant).

Consistent with the timeframe of a standard rule change process the key dates we propose for this process are outlined in the figure below.

Figure 1.1: Key dates for the rule change process

Timeline for rule change



Source: AEMC

We seek stakeholder feedback on the problems and their materiality, whether the proposed solutions will promote the long term interests of consumers, whether there are better alternatives, and on our assessment criteria.

After submissions are made on the rule change requests in response to this consultation paper, and prior to making a draft determination(s), the Commission will determine whether to continue to treat these rule changes as separate rule change requests or to consolidate them.¹⁶ If they are consolidated there will be one draft determination and one final determination encompassing the issues raised in both rule change requests. If we decide to keep them separate there will be separate draft and final determinations for each rule change request. This may be helpful if the issues raised under each rule change request differ in complexity, enabling each rule change request to progress on different timelines if required.

Information on how to provide your submission and other opportunities for engagement is set out at the front of this paper in the Summary.

¹⁶ The AEMC may treat two or more requests as one request if it considers it necessary or desirable. See section 93 of the NEL, section 300 of the NGL and section 248 of the NERL.

You can find more information on the rule change process in our document [The Rule change process – a guide for stakeholders](#).

The remainder of this consultation paper is structured as follows:

- Chapter 2 details the issues raised and proposed solutions from rule change request one (network/pipeline expenditure) related to improving certainty around the treatment of emissions for network and pipeline expenditure and assessment.
- Chapter 3 considers the issues raised and proposed solutions from rule change request two (planning and AER guidelines) related to harmonising the network planning and investment framework with the updated national energy objectives as well as the proposal to enable the AER to carry out an omnibus consultation process to incorporate the updated objectives.
- Chapter 4 outlines how we make our decision and the relevant assessment criteria.

2 HARMONISING THE RULES FOR NETWORK/PIPELINE EXPENDITURE PROPOSALS AND ASSESSMENT

2.1 The current rules may not provide a pathway to consider emissions reduction in network and pipeline expenditure

This section relates to rule change request one (network/pipeline expenditure) and seeks feedback on:

- issues raised
- the solution proposed and any potential alternative solutions, and
- other implementation matters the Commission may need to consider in making its determination.

Rule change request one (network/pipeline expenditure) aims to reflect the updated national energy objectives in the rules relating to revenue determinations (for electricity) and access arrangement decisions (for gas). The proponent is seeking to explicitly align the rules that set out the operating and capital expenditure provisions with the amended energy objectives.¹⁷

The proponent considers this will contribute to the achievement of the updated energy objectives by ensuring that capital and operating expenditure decisions of network/pipeline service providers are consistent with the updated energy objectives and contribute to meeting emissions reduction targets.¹⁸

The existing objectives for electricity distribution capital expenditure and expenditure on prescribed transmission services in Chapters 6 and 6A of the NER refer to meeting demand, complying with regulatory obligations and maintaining safety, quality reliability and security of supply.¹⁹ The new emissions reduction component of the objective is (unsurprisingly) not explicitly covered by those provisions, and nor do those provisions contain a general reference to the NEO which would automatically pick up any changes to the NEO. The proponent suggests this may impede consideration of emissions reduction in capital expenditure options or result in capital or operational expenditure which would contribute to emissions reduction not being accepted by the AER.²⁰

The proponent has identified similar issues in relation to the capital and operating expenditure provisions for gas pipeline service providers in the National Gas Rules (NGR).²¹

The proponent has suggested rule amendments to include emissions reduction in the list of capital expenditure objectives and operational expenditure objectives that determine what a distribution network service provider's (DNSP's) or a transmission network service provider's

¹⁷ Rule change request one (network/pipeline expenditure), p. 4.

¹⁸ Rule change request one (network/pipeline expenditure), p. 5-6.

¹⁹ See clauses 6.5.6, 6.5.7, 6A.6.6 and 6A.6.7 of the NER.

²⁰ Rule change request one (network/pipeline expenditure), p. 5.

²¹ See rules 69, 79(1) and 79(2) of the NGR. Please note: The National Gas Access (WA) Act 2009 confers the functions of the AER to the ERA in Western Australia. From here on, any reference to the AER should be read as the ERA in a Western Australian context.

(TNSP's) revenue determination must include. A similar amendment is proposed for the gas rules relating to capital and operational expenditure of regulated gas pipelines to ensure harmonisation of the rules with the law.²²

2.1.1

Should the rules for expenditure proposals and assessment be harmonised with the updated objectives?

The proponent has suggested harmonisation of the rules for expenditure proposals and assessments to provide clarity for market bodies and participants, and to ensure consistent application of the updated objective.²³ The proponent has noted the risks that may arise if the rules are not harmonised, including administrative costs and burden on market bodies and participants in applying the rules, as well as the risk of legal challenge to market bodies' decisions should there be a disconnect between the law and the rules.²⁴

The proponent has also identified a risk to the ability of market participants to undertake investments that could contribute to the emissions reduction objective if the rules are not harmonised.²⁵ In its submission on the draft bill ENA highlighted the risk of proposed operational and capital expenditure to address emissions reduction being unable to meet existing criteria.²⁶

Energy Ministers determined that application of the new emissions reduction component of the objectives should commence from assent for certain revenue determinations and gas access arrangements which are due to be finalised early next year. As noted in the second reading speech "this has been done to ensure emissions are considered immediately on commencement to reduce uncertainty and delays to critical investments that could support emission reductions."²⁷ This provision applies to the 2024 to 2029 revenue determinations for:²⁸

- Ausgrid Operator Partnership
- Endeavour Energy Network Operator Partnership
- Essential Energy
- Evoenergy
- Power and Water Corporation, and
- Tasmanian Networks.

A similar provision applies in respect of 1 January 2025 access arrangements for the Mid-West and South West Gas Distribution System and the Goldfields Gas Pipeline.²⁹

22 Rule change request one (network/pipeline expenditure), table 1.

23 Rule change request one (network/pipeline expenditure), p 7.

24 Rule change request one (network/pipeline expenditure), p.7.

25 Rule change request (network/pipeline expenditure), p. 7.

26 ENA, submission to energy ministers, p 6, February 2023, available at: <https://www.energy.gov.au/sites/default/files/2023-03/NEO%20Submission%20-%20Energy%20Networks%20Australia.pdf>

27 South Australia, *Parliamentary Debates*, House of Assembly, 14 June 2023, (A. Koutsantonis, Minister for Energy and Mining)

28 See section 8 of the Bill, inserting section 39(5) in schedule 3 of the NEL.

29 See section 18 of the Bill, inserting section 134(5) in schedule 3 of the NGL.

Although the Bill requires the emissions reduction component of the national energy objectives to be applied to the above revenue determinations, the rule change seeks to provide clarity around the application to the revenue determinations, as well as future proposals and assessments.

QUESTION 1: HOW SHOULD EMISSIONS REDUCTION BE TREATED IN NETWORK AND PIPELINE EXPENDITURE PROPOSALS AND ASSESSMENTS?

Do you agree that the rules should explicitly apply the new emissions reduction component of the national energy objectives to network and pipeline expenditure proposals and assessments?

2.2

The proposed solution and implementation

2.2.1

Changes to the rules on network and pipeline expenditure proposals and assessments are proposed

The proponent has recommended a rule change to update the capital and operational expenditure objectives for networks in the NER, and pipeline capital and operating expenditure criteria in the NGR, to ensure that all components of the national energy objective can be considered and balanced by the AER in its assessment of network/pipeline service providers' revenue proposals, consistent with the intent of Energy Ministers. This approach would not give primacy to any particular component of the objectives.³⁰ It would provide clarity to stakeholders and consistency in decision making, reducing the risk of uncertainty for TNSPs, DNSPs and gas pipeline service providers engaged in the expenditure proposal and assessment process.

The proponent requested the Commission consider changes to the relevant rules under the NER and NGR to reflect the updated energy objectives and allow for the consideration of emissions reduction when appropriate. The following rules have been highlighted for potential amendment:³¹

Table 2.1: Rules to be considered for amendment around operating and capital expenditure

| RULE AND DESCRIPTION | RECOMMENDED CHANGE |
|---|---|
| <i>National Electricity Rules - Distribution</i> | |
| Cl. 6.5.6 of the NER - Forecast operating expenditure. Paragraph (a) outlines the operating expenditure objectives (opex objectives) and requires DNSPs to include in building block proposals the forecast operating expenditure for the regulatory control period | The proponent recommends changes to cl. 6.5.6(a) to allow emission reductions to be considered in DNSP operating expenditure, along with any other changes to cl. 6.5.6 which may be required. This may include changes to the opex criteria in cl. 6.5.6(c). |

³⁰ Rule change request one (network/pipeline expenditure), p. 6.

³¹ Rule change one (network/pipeline expenditure), table 1.

| RULE AND DESCRIPTION | RECOMMENDED CHANGE |
|--|---|
| <p>which the DNSP considers is required to achieve the opex objectives. Paragraph (c) outlines the operating expenditure criteria which the AER must use when considering a DNSP's opex forecast.</p> | |
| <p>Cl. 6.5.7 of the NER- Forecast capital expenditure. Similar to clause 6.5.6, but in relation to DNSP capex rather than opex. Paragraph (a) outlines the capital expenditure objectives and paragraph (c) outlines the capital expenditure criteria.</p> | <p>The proponent recommends changes to cl. 6.5.7(a) to allow emission reductions to be considered in DNSP capital expenditure, along with any other changes to cl. 6.5.7 which may be required. This may include changes to the capex criteria in cl. 6.5.7(c).</p> |
| <p><i>National Electricity Rules - Transmission</i></p> | |
| <p>Cl. 6A.6.6 of the NER- Forecast operating expenditure. Similar to clause 6.5.6, but in relation to TNSP (rather than DNSP) operating expenditure. Paragraph (a) outlines the opex objectives and requires TNSPs to include in revenue proposals the forecast opex which the TNSP considers is required to achieve the opex objectives. Paragraph (c) outlines the opex criteria which the AER must use when considering a TNSP's opex forecast in its revenue proposal.</p> | <p>The proponent recommends changes to cl. 6A.6.6(a) to allow emission reductions to be considered in TNSP operating expenditure, along with any other changes to cl. 6A.6.6 which may be required. This may include changes to the opex criteria in cl. 6A.6.6(c).</p> |
| <p>Cl. 6A.6.7 of the NER- Forecast capital expenditure. Similar to clause 6A.6.6, but in relation to TNSP capex rather than opex. Paragraph (a) outlines the capital expenditure objectives and paragraph (c) outlines the capital expenditure criteria.</p> | <p>The proponent recommends changes to cl. 6A.6.7(a) to allow emission reductions to be considered in TNSP capital expenditure, along with any other changes to cl. 6A.6.7 which may be required. This may include changes to the capex criteria in cl. 6A.6.7(c).</p> |
| <p><i>National Gas Rules</i></p> | |
| <p>Rule 79 of the NGR- New capital expenditure criteria. This rule outlines the criteria that pipeline capital expenditure must meet to conform with the requirements and be justifiable.</p> | <p>The proponent recommends changes to rules 79(1), 79(2) and 79(3) to allow emission reductions to be considered in pipeline capital expenditure.</p> |
| <p>Rule 91(1) of the NGR - Criteria governing operating expenditure. This rule outlines requirements for operating expenditure on pipelines.</p> | <p>The proponent recommends changes to rule 91(1) to allow emission reductions to be considered in pipeline operating expenditure.</p> |

Source: NER, NGR, rule change request one (network/pipeline expenditure) table 1, pp. 1-7.
Note: AEMC, amended from rule change request one (network/pipeline expenditure), table 1.

The proponent noted it did not consider this list to be exhaustive, and requested the consideration of additional or consequential rule changes to support the implementation of the emissions component of the objectives.³²

QUESTION 2: WILL THE PROPOSED SOLUTION ENSURE THAT THE EMISSIONS REDUCTION COMPONENT OF THE ENERGY OBJECTIVES IS CONSIDERED IN NETWORK AND PIPELINE EXPENDITURE PROPOSALS?

(a) Do you consider that the proposed changes to the rules will ensure emissions reduction is factored into the expenditure proposal and assessment process?

(b) Would this approach solve the problem(s) raised or are there other factors that would have a greater impact?

(c) Are there challenges or risks associated with the proposed approach, for example by enabling expenditure that is related to reducing emissions in other sectors of the economy, such as transport or heavy industry? How might these risks be mitigated?

2.2.2

What are the costs and benefits of the proposed solution?

The rule change proponent has identified the following potential costs and benefits of the proposal to explicitly incorporate emissions reduction into the rules for capital and operational expenditure proposals and assessment processes.

Costs

The rule change proponent notes the proposed rule changes may introduce initial costs for regulators and stakeholders in regulatory decision-making processes as guidance materials and approaches to include emissions in proposals will need to be revised. The proponent notes some additional costs may also be incurred in preparing cost benefit analyses.³³

Benefits

The benefits of the rule change cited by the proponent in the rule change request include:³⁴

- harmonisation of the NER to the NEL and the NGR to the NGL, avoiding administrative burden and costs arising from any discord between the law and the rules
- avoiding legal risk for market bodies in their decision making that might arise from any inconsistency between the laws and the rules
- providing clarity and consistency on the application of the updated national energy objectives for market bodies and participants

³² Rule change request one (network/pipeline expenditure), p. 6.

³³ Rule change request one (network/pipeline expenditure), pp. 7-8.

³⁴ Rule change request one (network/pipeline expenditure), pp. 6-7.

- avoiding the consequential impact on consumers of regulatory determinations being set aside or remade, such as delayed investment, economic inefficiency and flow on impacts for networks and generators
- avoiding any unintended consequences from a misalignment of the regulatory framework with the policy intent of the law change
- long term benefits to consumers from a regulatory framework that supports investment which contributes to emissions reduction, balanced against the other components of the objective.

QUESTION 3: WHAT ARE YOUR VIEWS ON THE COSTS AND BENEFITS OF INCLUDING EMISSIONS REDUCTION IN THE NETWORK/PIPELINE OPERATING AND CAPITAL EXPENDITURE RULES?

What do you consider will be the benefits and costs of the proposed solution?

If there are costs, will these be one off or ongoing? Are the costs likely to be proportionate to the problem they are intended to address?

2.2.3

What implementation issues might there be?

The incorporation of the emissions reduction component of the energy objectives into the rules is intended to provide clarity for TNSPs, DNSPs and gas pipeline service providers in the development of expenditure proposals and the AER in its assessment process.

The proponent considers that explicitly including emissions reduction as a required or justifiable category of expenditure in electricity and gas revenue proposals will ensure that the intent of the law changes is included in those processes.³⁵ These changes are considered to be a priority to provide improved certainty and transparency for the 2024-2029 revenue determinations and the 1 January 2025 gas access arrangements.

We welcome views from stakeholders on whether the requirements in the Bill relating to the application of the updated objectives to specified determinations provide sufficient transparency or if any other transitional or implementation measures should be considered. Transitional arrangements that provide for delayed implementation would need to be considered against the intent to implement the updated energy objectives promptly.

QUESTION 4: ARE THERE IMPORTANT IMPLEMENTATION CONSIDERATIONS FOR THE NETWORK/PIPELINE EXPENDITURE RULES?

Do you have any suggestions regarding the commencement timeframes for the proposed rule changes? Are there additional transitional measures that should be considered that would support the effective implementation of the desired solution?

³⁵ Rule change request one (network/pipeline expenditure), p. 6.

2.2.4

Can the problem be resolved in a different or more efficient way?

We are interested in stakeholders' views on whether there are alternative approaches to ensure network and pipeline expenditure proposals and assessments take into consideration the updated national energy objectives and promote the long term interests of consumers. The proponent has suggested updating those provisions that refer specifically to the existing components of the objectives, as changes to the energy objectives will not automatically flow through to the rules in these cases.³⁶

There may be other approaches that could give effect to the change to the energy objectives. For example, under the NEL the AER is required to "perform or exercise that function or power [in respect of its economic regulatory functions and powers] in a manner that will or is likely to contribute to the achievement of the national electricity objective."³⁷ It may be argued that the AER and ERA could consider emissions reduction on a case by case basis under the existing expenditure rules in the NER and NGL. However, such an approach may result in uncertainty for stakeholders, particularly for network/ pipeline service providers seeking to prepare proposals that comply with the rules, as well as a lack of transparency in decision making.

QUESTION 5: ARE THERE ALTERNATIVE SOLUTIONS TO THOSE PROPOSED IN RULE CHANGE REQUEST ONE (NETWORK/PIPELINE EXPENDITURE) THAT WOULD BE PREFERABLE?

Are there any alternative solutions that you think would be preferable and more aligned with the long-term interests of consumers?

³⁶ Rule change request one (network/pipeline expenditure), pp. 4-6.

³⁷ NEL section 16 1(a).

3 HARMONISING THE ELECTRICITY NETWORK PLANNING AND INVESTMENT FRAMEWORK AND UPDATING AER GUIDELINES

3.1 Harmonising the electricity network planning and investment framework

This section relates to rule change request two (planning and AER guidelines) and seeks feedback on:

- issues raised
- the solution proposed and any potential alternative solutions, and
- other implementation matters the Commission may need to consider in making its determination.

3.1.1 Rule changes could clarify how emissions reduction will be considered in electricity network planning and investment

This rule change request builds on our recommendation in the TPIR Stage 3 final report to harmonise network investment and planning frameworks in the NER with the new emissions component of the energy objectives. In that report, we identified the need for a harmonising rule change to address time critical rule changes necessary to inform network planning processes, including the Integrated System Plan (ISP).³⁸ The proponent identifies this rule change as necessary and time critical because of the central role of transmission and distribution networks in the transition to net zero and the timing required to ensure the emission reduction component of the updated objective is explicitly considered in the 2026 ISP.

The rule change request seeks to harmonise the electricity transmission and distribution planning and investment framework with the updated national electricity objective to ensure the components of the objective, including emissions reduction, are transparently and consistently applied to the rules and balanced by decision-makers.³⁹ There are a number of areas in the rules which the proponent has requested the Commission analyse to determine if changes are required to provide clarity.⁴⁰ These areas are detailed in the subsections below.

3.1.2 Should the network planning and investment rules in the NER be amended to provide clarity around the treatment of emissions?

The rule proponent has suggested the Commission consider the following issues relating to the electricity network investment and planning framework:

- should emissions reductions be included as a class of market benefit to be considered in the ISP, RIT-T and regulatory investment test for distribution (RIT-D), to ensure the

³⁸ AEMC, *Transmission planning and investment review, Stage 3 final report*, May 2023, p. 30.

³⁹ Rule change request two (planning and AER guidelines), p. 7.

⁴⁰ Rule change request two (planning and AER guidelines), Table 1.

transparent consideration and balancing of the emissions component of the national electricity objective with the other components?

- should any changes be made to the definition of power systems needs and the range of policies AEMO takes into account in the ISP to ensure alignment with the updated national electricity objectives?
- should references to the 'long term interests of consumers' in ISP provisions be changed to refer to the national electricity objective, to clarify that all components of the objective are to be considered?
- should the rules relating to the Cost Benefit Analysis Guidelines for ISP projects be updated to allow for cost-benefit analysis of emissions reductions?

The first three areas were identified in our TPIR Stage 3 final report.⁴¹

Should emissions reduction be included as a class of market benefit?

The proponent has suggested that emissions reduction be included as a class of market benefit in the ISP, RIT-T and RIT-D.⁴² Specifically, the proponent has recommended the Commission consider updating the market benefits clauses in provisions relating to each process to include changes in the level of greenhouse gas emissions from the energy system/emissions reduction benefits.⁴³ The proponent considers that these changes may ensure that emissions reduction is explicitly balanced against the other components of the NEO in network investment decisions.⁴⁴

In preparing the ISP, AEMO is required to consider specified classes of market benefits that could be delivered by the projects included in the ISP that together address power system needs.⁴⁵ Each of these market benefits have a clear link to an existing component of the energy objectives, i.e they each relate to price, quality, safety, reliability or security.⁴⁶ Similar classes of market benefit are relevant for both the RIT-T and RIT-D,⁴⁷ and if changes are made to the ISP provisions the same changes could be considered for the RIT-T and RIT-D provisions.⁴⁸ The classes of market benefits do not currently include emissions reduction. As indicated in the second reading speech for the bill amending the energy objectives, "introducing an emissions reduction component implies that the reduction of greenhouse gas emissions is a new category of market benefit to be assessed in market body decisions and processes where appropriate."⁴⁹

41 AEMC, *Transmission planning and investment review, Stage 3 final report*, May 2023, p. 30.

42 Rule change request two (planning and AER guidelines), table 1.

43 Clauses 5.15A.2(b), 5.15A.3(b), 5.17.1(c) and 5.22.10(c) of the NER.

44 Rule change request two (planning and AER guidelines), p. 7.

45 Clause 5.22.10(c) of the NER.

46 The classes of market benefits are: changes in fuel consumption arising through different patterns of generation dispatch, changes in voluntary load curtailment, changes in involuntary load shedding, changes in costs for parties due to differences in the timing of new plant, differences in capital costs and differences in operating and maintenance costs, differences in the timing of expenditure, changes in network losses, changes in ancillary services costs, competition benefits and any additional option value.

47 Clauses 5.15A.2(b) and 5.17.1(c) of the NER.

48 AEMC, *Transmission planning and investment review, Stage 3 final report*, May 2023, pp. 30-31.

49 South Australia, *Parliamentary Debates*, House of Assembly, 14 June 2023, (A. Koutsantonis, Minister for Energy and Mining) <https://hansardsearch.parliament.sa.gov.au/daily/lh/2023-06-14/38?sid=ec9b15fd38994aa688>.

In the TPIR, the Commission considered it would be desirable to have a consistent approach to accounting for emissions reductions across the ISP, RIT-T and other economic assessment processes for network investments. We considered that adding emissions reductions as a standard class of market benefit via a rule change may help drive this consistent approach to valuing emissions reduction across network service providers and projects.⁵⁰

Should the provision on power system needs for the ISP be revised to align with the updated objective?

The NER use the term “power system needs” in relation to the ISP, for example in the provision on the purpose of the ISP and the definition of “development path”.⁵¹ The rule change proponent notes that the current list of power system needs relate to reliability, security standards and technical requirements, reflecting the existing components of the NEO, and asks if emissions reduction should be included as a power system need in clause 5.22.3(a), to reflect the emissions component of the updated NEO. The proponent notes the importance of ensuring there are no unintended consequences in considering this proposal.⁵²

The proponent also raises whether the policies considered by AEMO in determining the power system needs should be amended to include policies in the target statement the Commission will prepare under the Emissions bill.⁵³

The current rules allow AEMO to consider a current environmental or energy policy when determining power system needs in the development of the ISP.⁵⁴ The rules require that the “policy has been sufficiently developed to enable AEMO to identify impacts of it on the power system and at least one of the following is satisfied:⁵⁵

1. a commitment has been made in an international agreement to implement that policy
2. that policy has been enacted in legislation
3. there is a regulatory obligation in relation to that policy
4. there is material funding allocated to that policy in a budget of the relevant participating jurisdiction; or
5. the MCE has advised AEMO to incorporate the policy.”

The amendment to the NEO contemplates a broader scope of policies than the existing public policy clause, including those that are ‘likely to contribute to’ emissions reduction, and has no requirements relating to enactment or funding of the policy. Energy ministers stated that the intent is to include in the emissions component of the NEO targets that “may not be

50 AEMC, *Transmission planning and investment review, Stage 3 final report*, May 2023 p. 31.

51 Clauses 5.10.2 and 5.22.2 of the NER.

52 Rule change request two (planning and AER guidelines), table 1.

53 Rule change request two (planning and AER guidelines), table 1, Emissions bill section 6, targets statement for greenhouse gas emissions targets.

54 Note the direct relationship between clause 5.22.3(a), defining the power system needs, and clause 5.22.3(b), defining the policies AEMO may consider in determining power system needs. For this reason the scopes of paragraphs (a) and (b) should remain consistent; if one is expanded, the other may also need to be expanded.

55 Clause 5.22.3(b) of the NER, known as the public policy clause.

promoted as primarily for reducing emissions, but which would contribute to that goal, such as renewable energy targets or electric vehicle targets”.⁵⁶

Without amendment to clause 5.22.3, it is possible that not all government targets included in the Targets Statement would be considered in determining power system needs for the purposes of the ISP. This may be inconsistent with the intended impact of the change to the NEO.

Should references to the long-term interests of consumers in ISP provisions be updated?

There are two rules in relation to the purpose of the ISP and the functioning of the ISP consumer panel that refer to the “long term interests of consumers”, rather than referring to the national electricity objective.⁵⁷ These references do not pick up the full detail of the current NEO as it relates to the interests of consumers in price, quality, safety and reliability and security of supply of electricity. This means the updated NEO may not automatically flow through to these rules.

The proponent has suggested that clauses that reference the long term interests of consumers instead of the NEO be amended to refer to the NEO as a whole, to ensure emissions reduction is considered alongside the existing components of the NEO. Amendments have been suggested for the following NER clauses:⁵⁸

- 5.22.3- Purpose of the ISP
- 5.22.7(d)(2)- the ISP consumer panel.

Is there a need to update the rules for the Cost Benefit Analysis Guideline or the rules relating to the general principles for RIT-Ts and RIT-Ds?

The proponent requested the Commission consider whether changes are required to the following rules to incorporate consideration of the emissions component of the objective, including allowing a value of emissions reduction to be applied:⁵⁹

- The rules that govern the Cost Benefit Analysis Guidelines.⁶⁰ The guidelines are used by AEMO in preparing the ISP and by TNSPs in applying the RIT-T.
- The general principles for the RIT-T and the RIT-D, which currently focus on maximising the present value of the net economic benefit to all those who produce, consume and transport electricity in the market.⁶¹

56 Energy ministers, *Incorporating an emissions reduction objective into the national energy objectives*, Information paper, May 2023, p. 8.

57 Clauses 5.22.2 and 5.22.7(d)(2) of the NER.

58 Rule change request two (planning and AER guidelines), table 1.

59 Rule change request two (planning and AER guidelines), table 1.

60 Clause 5.22.25 of the NER.

61 Clauses 5.15A.1(c), 5.15A.2(b) and 5.17.1(b) of the NER. The same phrase is used in some additional provisions of the NER, eg clause 5.12.1(b) on the transmission annual planning review, clause 3.11.6(a) on dispatching network support and control ancillary services (and in the definition of NSCAS need), and clause 6.6.3(c) on the demand management incentive scheme. If this phrase is changed in the RIT-T and RIT-D provisions, it may be appropriate to make the same changes to the other instances.

The proponent notes that amendments to other rules under this rule change request may mean that the rules relating to the Cost Benefit Analysis Guidelines do not have to be amended.⁶²

QUESTION 6: SHOULD THE RULES RELATING TO NETWORK PLANNING AND INVESTMENT BE UPDATED?

- a) Do you agree that the change to the NEO means it is appropriate to consider consequential or harmonising changes to the network planning and investment rules, for clarity and to give effect to the updated NEO?
- b) Do you agree with the areas in the investment and planning framework identified for harmonisation? Are there any areas that should not be considered further? Are there any additional areas that should be considered?

3.2

Updating AER guidelines

3.2.1

Should the rules enable the AER to carry out an omnibus consultation on including emissions in its documentation?

Rule change request two (planning and AER guidelines) also identifies an opportunity to reduce the administrative burden on the AER and market participants of implementing the updated energy objectives. The rule change request notes the AER may need to update approximately 65 guidelines and guidance documents to ensure emissions reduction is explicitly referenced where appropriate.⁶³ A list of the guidelines and other guidance documents which may be included in this streamlined process is included in Appendix A, based on materials provided by the AER.

The proponent has suggested that requiring stakeholders to engage in multiple consultation processes simultaneously or consecutively may create a significant administrative burden for stakeholders and is contrary to facilitating appropriate engagement. It proposes that the rules are amended to enable the AER to streamline the consultation process for amendments relating to the emissions component.⁶⁴

The proponent notes that the change to the NEO itself, together with the changes proposed in rule change request one (network/pipeline expenditure) and two (planning and AER guidelines), are expected to require the AER to amend statutory guidelines, guidance documents and instruments under the NER, NGR and NERR. These guidelines are subject to different consultation requirements under the rules. For example, in the NER, there are three consultation processes used in different circumstances: the transmission and distribution consultation procedures (which are largely the same), and the rules consultation procedures

⁶² Rule change request two (planning and AER guidelines), table 1.

⁶³ Rule change request two (planning and AER guidelines), p. 8.

⁶⁴ Rule change request two (planning and AER guidelines), pp. 8-11.

(which include the standard, expedited and minor consultation procedures).⁶⁵ The NGR and NERR also have their own consultation procedures.

To ease the administrative burden on the AER and stakeholders the rule change request proposes that the AER be allowed to undertake a single consultation to update relevant guidelines to incorporate consideration of emissions reduction.⁶⁶

The rule change request notes that the AER has indicated that it will retain dedicated single consultation processes for material or complex updates, such as the *Expenditure forecast assessment guideline 2013*.⁶⁷ This is to ensure stakeholders have the opportunity to provide input to significant updates to its instruments, while allowing the AER to implement the updated objectives as efficiently as possible.

QUESTION 7: SHOULD THERE BE A STREAMLINED PROCESS FOR UPDATING AER GUIDANCE TO INCORPORATE EMISSIONS REDUCTION?

- (a) Do you agree that an omnibus update process for all relevant guidelines would reduce the administrative burden for stakeholders and the AER?
- (b) If so, do you agree that distribution consultation procedures are the most appropriate consultation procedures to follow?
- (c) Should there be restrictions on the types of changes or types of guidelines included in the omnibus consultation? Should more significant changes be subject to two rounds of consultation, or individual consultation processes?
- (d) Should the rules exempt the AER from consulting on any emissions-related updates that are minor or administrative in nature and do not impact or change requirements for participants?

3.3

What are the costs and benefits of the proposed solutions?

The proponent has identified that there may be an initial increase in the cost of regulatory decision making processes associated with the need to revise guidance materials and approaches to incorporate emissions reduction into relevant instruments. In addition, an update to the ISP public policy clause may result in costs for AEMO in changing its methodology in preparing the ISP.

The benefits of the proposed rule change cited in the rule change request include:⁶⁸

- harmonisation of the NER to the NEL, avoiding administrative burden and costs arising from any discord between the law and the rules

⁶⁵ Rule change request two (planning and AER guidelines), p. 8., Clauses 6.16, 6A.20, 8.9 of the NER.

⁶⁶ Rule change request two (planning and AER guidelines), pp. 8-9.

⁶⁷ Rule change request two (planning and AER guidelines), p. 9.

⁶⁸ Rule change request two (planning and AER guidelines), p. 9-11.

- providing clarity to market bodies and participants in the application of the emissions reduction objective
- supporting the intent of the law change and maximising the potential for decisions under the energy laws to contribute to greater emissions reduction for the long term interests of energy consumers by aligning the rules with the amended energy objectives, and
- providing net benefits to energy consumers over the long term from a rules framework that supports investments that could contribute to reduced emissions, while delivering on the other components of the objectives.

The benefits of the changes requested to facilitate the streamlined AER consultation process are noted as easing the administrative burden and costs on both the AER and stakeholders of undertaking and participating in multiple consultation process.⁶⁹The request also cited the benefit of ensuring timely implementation of the new emissions reduction component of the objectives in AER guidelines, compared to sequential or potentially overlapping consultation processes.⁷⁰

QUESTION 8: WHAT ARE YOUR VIEWS ON THE COSTS AND BENEFITS OF THE PROPOSED SOLUTIONS IN RULE CHANGE REQUEST TWO?

- a) What do you consider will be the benefits and costs of the proposed rule changes (as distinct from the benefits and costs of the change to the NEO itself)?
- b) If there are costs, will these be one-off or ongoing?
- c) Is there anything the Commission could do in designing the rule that would help to minimise the costs and maximise the benefits?

3.4

What implementation issues might there be?

3.4.1

Network investment and planning rules

The proposed approach would progress those changes regarded as a priority for the network planning framework.

We welcome stakeholder views on matters that should be taken into account in implementing changes to the planning framework, particularly transitional provisions, consequential changes to other provisions of the NER, or consequential changes to subordinate instruments or guidance that are not already included in the list of guidelines to update. For example, the inclusion of emissions reduction as a class of market benefit may require consequential updates to AER guidelines that affect the development of the ISP and the application of the RIT-T and RIT-D.

⁶⁹ Rule change request two (planning and AER guidelines), p. 9-11.

⁷⁰ Rule change request two (planning and AER guidelines), p. 10.

3.4.2

AER guidance update

The streamlining of AER consultation is proposed to cover guidance documentation required under the NER, NGR and NERR under multiple different consultation processes. The rule change request proposes that the guidelines be updated through the distribution consultation procedures. These procedures are currently set out in the NER, but not in the NERR or NGR. The NERR and NGR would need to set out these procedures in a transitional rule, or refer to the relevant provision in the NER, including the relevant defined terms.

We will consider any consequential amendments and transitional arrangements that may be required to accommodate the implementation of the proposed solution.

QUESTION 9: ARE THERE IMPORTANT IMPLEMENTATION CONSIDERATIONS FOR THE RULE CHANGES PROPOSED IN RULE CHANGE REQUEST TWO?

a) Are there any implementation issues we should consider for either the changes to the planning and investment rules or in relation to a streamlined process for updating AER guidance?

b) Could the proposed rule changes take effect as soon as they are made (early 2024)? If not, what implementation timing and transitional rules would be appropriate?

3.5

Can the problems be resolved in a better way?

3.5.1

Network investment and planning rules

We are seeking input on whether there are more preferable ways to incorporate emissions reduction considerations into the investment and planning framework which might better promote the long term interests of consumers than the proposed rule changes.

For example, the existing rules guiding ISP development allow other market benefits to be considered that are “determined to be relevant by AEMO and agreed to by the AER in writing before the publication of the draft Integrated Systems Plan; or specified as a class of market benefit in the Cost Benefit Analysis Guidelines.”⁷¹ Similar provisions relating to the potential consideration of other classes of market benefits exist for RIT-T and RIT-D proponents, potentially providing an avenue for emission reductions to be considered in these processes without a change to the rules.⁷² However, this avenue would not promote a consistent approach to the treatment of emissions; different networks could put forward different approaches.

As another example of an alternative to the proposed rule changes, as we noted in TPIR, AEMO is of the view that the current wording of the public policy clause provides an appropriate threshold for sufficiently developed emissions policies to be included in the ISP.⁷³

⁷¹ Clause 5.22.10(c)(1)(x) of the NER.

⁷² Clauses 5.15A.2(b) and 5.17.1(c) of the NER.

⁷³ AEMC, *Transmission planning and investment review*, Stage 3 final report, May 2023, p. 33.

3.5.2

AER guidance update

We are seeking input on whether the updates to the AER guidelines could be resolved outside of a rule change or whether there are more preferable rules which might promote the long term interests of consumers.

QUESTION 10: ARE THERE ALTERNATIVE SOLUTIONS THAT WOULD BE PREFERABLE TO THE SOLUTIONS PROPOSED IN RULE CHANGE REQUEST TWO?

- a) Are there any alternative solutions to incorporating emissions reduction into the network planning and investment framework that you think would be preferable and more aligned with the long-term interests of consumers?
- b) Are there alternative solutions to updating AER guidance than the solution proposed in the rule change request?

4 MAKING OUR DECISION

When considering a rule change proposal, the Commission considers a range of factors.

This chapter outlines:

- issues the Commission must take into account
- the proposed assessment framework
- decisions the Commission can make
- rule-making for the Northern Territory and Western Australia.

We would like your feedback on the proposed assessment framework.

4.1 The Commission must act in the long-term interests of consumers

We will apply the emissions component of the updated energy objectives in considering these rule changes, in reliance on transitional provisions in the Bill that provide that, on commencement of the Bill (expected to occur this year), the Commission is taken to have satisfied a requirement in the energy laws to apply the energy objectives in the rule-making process in relation to a request from the MCE or Ministers to make a rule as if the amended objectives were in force.⁷⁴

As the rule change requests include changes to the NER, NGR and NERR, all three updated energy objectives are relevant.

The Commission is bound by the National Electricity Law (NEL) to only make an electricity rule if it is satisfied that the rule will, or is likely to, contribute to the achievement of the national electricity objective.⁷⁵

The NEO, as it applies to these rule changes, is:⁷⁶

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:

- price, quality, safety, reliability and security of supply of electricity
- the reliability, safety and security of the national electricity system; and
- the achievement of targets set by a participating jurisdiction—
 - for reducing Australia’s greenhouse gas emissions; or
 - that are likely to contribute to reducing Australia’s greenhouse gas emissions.

The Commission is bound by the National Gas Law (NGL) to only make a gas rule if it is satisfied that the rule will, or is likely to, contribute to the achievement of the national gas objective.⁷⁷

⁷⁴ Section 8 of the Bill, inserting clause 43 in NEL schedule 3; section 13 of the Bill, inserting clause 12 in NERL schedule 1; section 18 of the Bill, inserting clause 138 in NGL schedule 3.

⁷⁵ Section 88(1) of the NEL.

⁷⁶ Section 7 of the NEL; section 4 of the Bill.

⁷⁷ Section 291(1) of the NGL.

The NGO, as it applies to these rule changes, is:⁷⁸

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; and
- the achievement of targets set by a participating jurisdiction—
 - for reducing Australia’s greenhouse gas emissions; or
 - that are likely to contribute to reducing Australia’s greenhouse gas emissions.

The Commission is bound by the National Energy Retail Law (NERL) to only make a retail rule if it is satisfied that the rule will, or is likely to, contribute to the achievement of the national energy retail objective.⁷⁹

The NERO, as it applies to these rule changes, is:⁸⁰

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; and
- the achievement of targets set by a participating jurisdiction—
 - for reducing Australia’s greenhouse gas emissions; or
 - that are likely to contribute to reducing Australia’s greenhouse gas emissions.

The Commission must also, where relevant, satisfy itself that a retail 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).⁸¹ 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.⁸² If the Commission is satisfied that one test, but not the other, has been met, the rule cannot be made (noting that there may be some overlap in the application of the two tests).

4.2 We must also take revenue and pricing principles into account

In addition to the NEO, NGO and NERO, the Commission must take into account certain other principles and factors when it makes rules on particular topics.

Under section 88B of the NEL, the Commission must take into account the revenue and pricing principles set out in NEL section 7A when making a rule for or with respect to distribution and transmission system revenue and pricing.⁸³ Similar requirements apply under

78 Section 23 of the NGL; section 14 of the Bill.

79 Section 236(1) of the NERL.

80 Section 13 of the NERL; section 9 of the Bill.

81 Section 236(2)(b) of the NERL.

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

83 Section 88B of the NEL refers to items 15 to 24 and 25 to 26J of Schedule 1 to the NEL, which cover revenue and pricing for transmission and distribution systems.

section 293 of the NGL for mandatory consideration of regulatory economic methodologies - the Commission must take into account the revenue and pricing principles set out in NGL section 24.⁸⁴

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, such as Victoria, if satisfied that the proposed Rule is compatible with the proper performance of AEMO's declared network functions.

4.3 We propose to assess the rule changes using these four criteria

Considering the updated NEO, NGO and NERO, the Commission proposes to assess these rule change requests and the issues raised in them against the set of criteria outlined below:

- **Emissions reduction:** do the proposals efficiently contribute to the achievement of government targets for reducing Australia's greenhouse gas emissions?
- **Principles of market efficiency:** do the proposals deliver productive, dynamic and allocative efficiency across investment/planning, commitment and dispatch timeframes? Are the proposals consistent with the revenue and pricing principles, where relevant?
- **Implementation considerations:**
 - do the proposals balance the cost and complexity of implementation and ongoing regulation and administrative costs to all market participants, consumers and market bodies, across all potential solutions? Does this encourage successful implementation, including through clear roles for market participants and market bodies?
 - do the proposals manage the timing of benefits versus costs, direction of reform and interaction with other reforms and processes? Is now the right time to introduce this taking into account interactions with other reforms?
- **Principles of good regulatory practice:** does the proposal promote principles of good regulatory practice including predictability and stability in the regulatory framework and simplicity and transparency for all stakeholders? Does the proposal align with broader reform?

QUESTION 11: ASSESSMENT FRAMEWORK

Do you agree with the proposed assessment framework? Are there additional principles that the Commission should take into account or principles included here that are not relevant?

4.4 We have three options when making our decision

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

⁸⁴ Section 293 of the NGL refers to items 45 to 53 of Schedule 1 to the NGL, which cover regulatory economic methodologies.

- to make the rule as proposed by the proponent⁸⁵
- 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 is likely to better contribute to the achievement of the NEO, NGO or NERO.⁸⁶

4.5 We may make a different rule to apply in the Northern Territory

Parts of 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.⁸⁷

The proposed rule would apply in the Northern Territory, as it amends provisions in NER chapters 5 and 6 that apply in the Northern Territory.⁸⁸

The Commission will therefore assess the proposed rule against additional elements required by Northern Territory legislation:

- *Should the NEO test include the Northern Territory electricity systems?* For this rule change request, the Commission will determine whether the reference to the “national electricity system” in the NEO includes the local electricity systems in the Northern Territory, or just the national electricity system, having regard to the nature, scope or operation of the proposed rule.⁸⁹
- *Should the rule be different in the Northern Territory?* The Commission will consider whether a uniform or differential rule should apply to the Northern Territory, taking into account whether the different physical characteristics of the Northern Territory’s network would affect the operation of the rule in such a way that a differential rule would better contribute to the NEO.⁹⁰

4.6 We may make a gas rule applying 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.⁹¹

⁸⁵ The proponent describes its proposed rules in Table 1 in each of the rule change requests.

⁸⁶ Section 91A of the NEL, section 296 of the NGL and section 244 of the NERL.

⁸⁷ National Electricity (Northern Territory) (National Uniform Legislation) Act 2015 (**NT Act**). The regulations under the NT Act are the National Electricity (Northern Territory) (National Uniform Legislation) (Modification) Regulations 2016.

⁸⁸ Under the NT Act and its regulations, only certain parts of the NER have been adopted in the Northern Territory. 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>.

⁸⁹ Clause 14A of Schedule 1 to the NT Act, inserting section 88(2a) into the NEL as it applies in the Northern Territory.

⁹⁰ Clause 14B of Schedule 1 to the NT Act, inserting section 88AA into the NEL as it applies in the Northern Territory.

⁹¹ 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 NGR 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 and 313 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>

As a result, the Commission's power to make gas rules for Western Australia differs from its rule-making power under the NGL.⁹²

The Commission will therefore assess the proposed rule against the following questions:

- *Does the AEMC have a relevant rule-making power?* The proposed rule falls within Schedule 1 items 39, 43-47, 49-50 of the WA Gas Law as it relates to:
 - the determination of capital base and treatment of capital contributions
 - investment in pipelines and incentives to make efficient operating and investment decisions
 - the regulator's economic regulation functions and powers.
- *Is the proposed rule amending parts of the NGR that apply in Western Australia?* The rule change request proposes to amend provisions in Part 9 of the NGR, which apply in Western Australia.

⁹² Section 74 and Schedule 1 of the WA Gas Law sets out the subject matters for the AEMC's rule making power in Western Australia.

ABBREVIATIONS

| | |
|------------|--|
| AEMC | Australian Energy Market Commission |
| AEMO | Australian Energy Market Operator |
| AER | Australian Energy Regulator |
| Bill | Statutes Amendment (National Energy Laws) (Emissions Reduction Objectives) Bill 2023 of South Australia |
| Commission | See AEMC |
| DNSP | Distribution network service provider |
| ISP | Integrated system plan |
| NEL | National Electricity Law |
| NEM | National Electricity Market |
| NEO | National Electricity Objective |
| NER | National Electricity Rules |
| NERL | National Energy Retail Law |
| NERO | National Energy Retail Objective |
| NERR | National Energy Retail Rules |
| NGL | National Gas Law |
| NGO | National Gas Objective |
| NGR | National Gas Rules |
| Proponent | The proponent of the rule change requests, energy senior officials on behalf of the Ministerial Council on Energy (as constituted by the Energy Ministers Sub-group) |
| RIT-D | Regulatory investment test for distribution |
| RIT-T | Regulatory investment test for transmission |
| TNSP | Transmission network service provider |

A LIST OF AER GUIDELINES AND GUIDANCE DOCUMENTS IMPACTED UNDER THE RULE CHANGE REQUEST

An indicative list of AER guidelines that may require updating due to the introduction of an emissions reduction component into the energy objectives are grouped by consultation procedure in Figure A.1, Figure A.2, Figure A.3 and Figure A.4 below.

Figure A.1: AER guidelines subject to rules consultation procedures (NER rule 8.9 - two rounds of consultation)

| NO. | GUIDELINE TITLE |
|-----|--|
| 1 | NSP registration exemption guideline |
| 2 | Customer export curtailment value methodology |
| 3 | Guidelines to make the ISP actionable: Cost benefit analysis guidelines |
| 4 | Confidentiality guidelines for dispute resolution under clause 8.2 of the NER |
| 5 | Reliability Compliance Procedures and Guidelines |
| 6 | Significant price reporting guideline for wholesale electricity |
| 7 | Generator notice of closure exemption guideline |
| 8 | Retailer reliability obligation - reliability compliance procedures and guidelines |
| 9 | Retailer reliability obligation - Opt-in guideline |
| 10 | Retailer reliability obligation - Interim market liquidity obligation guideline |
| 11 | Retailer reliability obligation - Interim contracts and firmness guidelines |
| 12 | Retailer reliability obligation - Interim reliability instrument guidelines |
| 13 | Retailer reliability obligation - Forecasting best practice guidelines |
| 14 | Wholesale demand response participation guidelines |
| 15 | Trial projects guidelines - Regulatory sandboxing |
| 16 | Compulsory notice guidelines (NB: These relate to the AER's powers to obtain information under the NEL, NGL and NERL.) |

Source: AEMC, adapted from AER information

Figure A.2: AER guidelines subject to transmission consultation procedures, distribution consultation procedures and retail consultation procedures (NER or NERR; one round of consultation)

| NO. | GUIDELINE TITLE | RULES | CONSULTATION PROCEDURE |
|-----|---|-------|--|
| 17 | Pricing methodology guidelines 2022 - system strength pricing | NER | Transmission consultation procedures |
| 18 | Ring-fencing guideline (electricity transmission) | NER | Transmission consultation procedures |
| 19 | Guidelines to make ISP actionable: RIT-T | NER | Transmission consultation procedures |
| 20 | Guidelines to make ISP actionable: RIT-T application guidelines | NER | Transmission consultation procedures |
| 21 | Transmission annual planning report guidelines | NER | Transmission consultation procedures |
| 22 | Cost allocation guideline (transmission) | NER | Transmission consultation procedures |
| 23 | Process guideline for contingent projects 2007 | NER | Transmission consultation procedures |
| 24 | Connection charge guideline | NER | Distribution consultation procedures |
| 25 | Distribution Reliability Measures Guideline | NER | Distribution consultation procedures |
| 26 | Export tariff guidelines | NER | Distribution consultation procedures |
| 27 | Ring-fencing guideline (electricity distribution) | NER | Distribution consultation procedures |
| 28 | RIT-D application guidelines 2018 | NER | Distribution consultation procedures |
| 29 | Distribution service classification guidelines and asset exemption guidelines | NER | Distribution consultation procedures |
| 30 | Shared asset guideline | NER | Distribution consultation procedures |
| 31 | Cost allocation guideline (distribution) | NER | Distribution consultation procedures |
| 32 | Rebidding and Technical Parameters Guideline | NER | Distribution consultation procedures |
| 33 | Confidentiality guidelines (distribution and transmission) | NER | Transmission consultation procedures Distribution consultation procedures |
| 34 | Expenditure forecast assessment guideline - RIN for category analysis | NER | Transmission consultation procedures Distribution consultation procedures |
| 35 | Expenditure forecast assessment guideline - RIN for economic benchmarking | NER | Transmission consultation procedures Distribution consultation procedures |

Source: AEMC, adapted from AER information

Figure A.3: AER guidelines subject to transmission consultation procedures, distribution consultation procedures and retail consultation procedures (NER or NERR; one round of consultation) (continued)

| NO. | GUIDELINE TITLE | RULES | CONSULTATION PROCEDURE |
|-----|---|-------|--|
| 36 | Expenditure incentives guidelines 2013 - CESS guideline - EBSS guideline - STPIS | NER | Transmission consultation procedures Distribution consultation procedures |
| 37 | Expenditure forecast assessment guideline 2013 | NER | Transmission consultation procedures Distribution consultation procedures |
| 38 | Retail Exempt Selling Guideline | NERR | Retail consultation procedures |
| 39 | Retailer Authorisation Guideline | NERR | Retail consultation procedures |
| 40 | Retailer of Last Resort Guideline, Plan and Statement of Approach | NERR | Retail consultation procedures |
| 41 | AER (Retail Law) Performance Reporting Procedures and Guidelines | NERR | Retail consultation procedures |
| 42 | Customer hardship policy guideline | NERR | Retail consultation procedures |
| 43 | Benefit change notice guidelines | NERR | Retail consultation procedures |
| 44 | Retail pricing information guidelines | NERR | Retail consultation procedures |
| 45 | Minimum disconnection amount | NERR | Retail consultation procedures |
| 46 | Sustainable payment plans framework | NERR | Retail consultation procedures |
| 47 | Better bills guideline - Version 2 | NERR | Retail consultation procedures |

Source: AEMC, adapted from AER information

Figure A.4: AER guidelines subject to NGR standard consultative procedure (NGR rule 8 - two rounds of consultation)

| NO. | GUIDELINE TITLE |
|-----|---|
| 48 | Compliance Procedures and Guidelines (for Gas Networks) |

Source: AEMC, adapted from AER information