

Rule determination

National Electricity Amendment
(Harmonising the national energy
rules with the updated energy
objectives) Rule 2024

National Gas Amendment
(Harmonising the national energy
rules with the updated energy
objectives) Rule 2024

National Energy Retail Amendment
(Harmonising the national energy
rules with the updated energy
objectives) Rule 2024

Proponent

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

1 February 2024

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About the AEMC

The AEMC reports to the energy ministers. We have two functions. We make and amend the national electricity, gas and energy retail rules and conduct independent reviews for the energy ministers.

Acknowledgement of Country

The AEMC acknowledges and shows respect for the traditional custodians of the many different lands across Australia on which we all live and work. We pay respect to all Elders past and present and the continuing connection of Aboriginal and Torres Strait Islander peoples to Country. The AEMC office is located on the land traditionally owned by the Gadigal people of the Eora nation.

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Summary

- 1 The Commission has made more preferable final rules that harmonise the national energy rules with the updated national energy objectives. This is in response to two rule change requests submitted by energy senior officials on behalf of the Ministerial Council on Energy (as constituted by the Energy Ministers Sub-group).
- 2 Our final rules amend a number of provisions in the national electricity rules (NER) and national gas rules (NGR) to align with the updated national electricity objective (NEO) and national gas objective (NGO), which now include consideration of greenhouse gas emissions. The final rules ensure these changes to the NEO and NGO apply through the NER and NGR in a clear and consistent way. The final electricity rule adds 'changes in Australia's greenhouse gas emissions' as a class of market benefit to be considered as part of the Integrated System Plan (ISP) and the Regulatory Investment Test for Transmission and Distribution (RIT-T and RIT-D). The final electricity and gas rules also enable network and pipeline operators to include expenditure that contributes to achieving emissions reduction targets in their revenue proposals and access arrangement proposals.
- 3 The final rules provide for streamlined consultation processes for the AER guidelines that require updating as a result of the change to the energy objectives:
 - The AER is able to undertake a single, consolidated consultation process using the distribution consultation procedures for minor updates required to NER, NGR and national energy retail rules (NERR) guidelines as a result of the change to the energy objectives.
 - The AER is able to undertake a consolidated consultation process on five network planning guidelines and instruments using the standard rules consultation procedures, with two rounds of consultation, in time for the 2026 ISP.
 - For NER and NGR guideline updates that are not minor, other than the network planning instruments noted above, the AER would consult using the consultation processes specified in the rules for the relevant guidelines, either individually or in groups.
- 4 The final rules commence on 1 February 2024.

The final rules support the incorporation of emissions reduction in the energy regulatory framework

- 5 The national energy laws have been amended to incorporate emissions reduction into the national energy objectives. This change brings the achievement of emissions reduction targets set by jurisdictions for reducing Australia's greenhouse gas emissions (or other jurisdictional targets that contribute to reducing emissions) within scope of the national energy framework. It means emissions reduction is now a relevant consideration in market bodies' decision-making, as well as certain activities of market participants regulated under the national energy rules.
- 6 The final rules seek to ensure consistent application of the updated objectives throughout the national energy rules. In a number of instances the previous rules did not refer to the national energy objectives but instead referred to particular components of the objectives. As a result, a change to the objectives would not have automatically flowed through to these provisions in the rules. The final rules aim to resolve these inconsistencies and ensure the changes to the objectives take full effect.
- 7 The final rules promote predictability, stability and transparency in the application of the updated energy objectives throughout the national energy rules. The final rules ensure that the treatment of

emissions reduction in processes such as the RIT and expenditure proposals is transparent and replicable. Without these changes, market participants and the AER would be required to factor emissions reduction into decision-making on a case by case basis. Such an approach may result in an unpredictable regulatory framework and would increase administrative burden for market participants and market bodies.

- 8 The final rules also support emissions reduction to a greater extent than no change because they clarify how emissions reduction is expected to be factored into decision-making processes established under the national energy rules.
- 9 The final rules make changes to the majority of clauses identified for consideration in the rule change requests. In addition to the clauses identified in the rule change requests, the final rules also include:
 - changes to the NGR to clarify operating expenditure can include expenditure that contributes to emissions reduction and that existing exemptions to the prohibition against increasing charges to subsidise development also include consideration of emissions reduction
 - amendments to additional clauses in the NER that refer to net economic benefit, which the final rule amends to be consistent with changes to the RIT-T and RIT-D general principles
 - transitional arrangements for:
 - RIT projects underway
 - revenue determination and access arrangement processes underway
 - the Final 2024 ISP, in the event guidance on a value of emissions reduction is not issued by the Ministerial Council on Energy in time for AEMO to incorporate it in the ISP.
 - an additional process for the AER to update its network planning guidelines under one consolidated process using the standard rules consultation procedures.
- 10 The additional changes to those proposed in the rule change requests make these more preferable final rules and are discussed further in section 2.3.5.

The Commission has considered stakeholder feedback in making its decision

- 11 Stakeholder input and feedback helped shape our final determination. There was consistent support across stakeholder groups for the intent of the harmonising rule change in response to our consultation paper and draft determination. In particular, there was broad stakeholder support to:
 - harmonise identified sections of the network planning and investment framework with the updated energy objectives, such as including emissions reduction as a class of market benefit in the ISP and RITs
 - harmonise identified sections of the network and pipeline expenditure provisions with the updated energy objectives, so that network and pipeline operators can include expenditure to reduce emissions in their revenue proposals and access arrangement proposals
 - enable the AER to run a single, consolidated consultation process on minor changes to its guidelines required as a result of the updated energy objectives.
- 12 The Commission's decision-making was aided by this consistent support across diverse stakeholder groups. Engagement by stakeholders on detailed issues was also important in informing our final determination.
- 13 Energy ministers' public communication around the intent of the updated energy objectives, particularly the second reading speech in respect of the *Statutes Amendment (National Energy*

Laws) (*Emissions Reduction Objectives*) Act 2023, provided context to the intent of the changes to the energy objectives. The intent of the final determination is to make changes that are in the long term interests of consumers, while remaining aligned with the strategic direction set by energy ministers.

- 14 The final rules and determination also build on the recommendations made in our *Transmission planning and investment review (TPIR) – Stage 3 final report*. Following broad stakeholder consultation, this review recommended a rule change process to harmonise the network planning and investment framework with the updated energy objectives.

We assessed our final rules against four assessment criteria using regulatory impact analysis and stakeholder feedback

- 15 The Commission has considered the NEO, NGO and National Energy Retail Objective (NERO) and the issues raised in the rule change request and has assessed the final rules against four assessment criteria outlined below. We gathered stakeholder feedback and undertook regulatory impact analysis in relation to these criteria.
- 16 The more preferable final rules contribute to achieving the NEO, NGO and NERO by:
- **Contributing to achieving government targets for reducing Australia’s greenhouse gas emissions:** The final rules support emissions reduction to a greater extent than no change because they clarify how emissions reduction is expected to be factored into decision-making processes established under the national energy rules such as the RIT and the revenue determination and access arrangement decision processes for network service providers and for gas pipeline operators.
 - **Promoting principles of market efficiency:** The final rules improve transparency and clarity in how the updated energy objectives apply to decision-making processes established under the national energy rules. Improved clarity has a number of efficiency benefits, including:
 - improving allocative efficiency for emissions reduction activities over a planning/investment timeframe
 - sharpening incentives for market participants to contribute to the achievement of emissions reduction targets
 - improving information transparency and removing information asymmetries.
 - **Achieving successful and balanced implementation:** The final rules balance the need for timely reform driven by the broader regulatory context with the impact of the change on processes underway. Timely reform is required to resolve potential inconsistencies between the national energy rules and the updated national energy objectives.
 - **Promoting good regulatory practice:** The final rules promote predictability, stability and transparency in the application of the updated energy objectives throughout the national energy rules. The final rules ensure the treatment of emissions reduction in processes such as the RIT and expenditure proposals is transparent and replicable.

The final rules harmonise the energy rules with the updated energy objectives

- 17 The final rules amend sections of the rules that explicitly reflected the previous national energy objectives to also include consideration of emissions reduction, in accordance with the updated energy objectives. Specifically, the more preferable final rules do this by:
- Amending the NER to align the network planning and investment framework with the updated NEO, including adding emissions reduction as a class of market benefit to be considered in the ISP and RITs (see chapter 3 for more detail).
 - Amending the NER and NGR to enable network and pipeline operators to include expenditure that relates to emissions reduction in revenue proposals and access arrangement proposals (see chapter 4 for more detail).
 - Amending the NER, NGR and NERR to allow for consolidated consultation processes on changes to AER guidelines to reflect the updated energy objectives (see chapter 5 for more detail).

Key differences between the draft and final rules

- 18 We have made a number of clarifying drafting changes with no change to policy positions, to clarify interpretation and better reflect the policy intent. For example, the drafting of clause 5.22.3(b) of the final electricity rule better reflects how AEMO undertakes the ISP modelling in practice and the definitions of “net economic benefit” in the final electricity rule and “overall economic value” in the final gas rule have been revised to increase clarity and consistency. Amendments to incorporate emissions considerations in the criteria for operating and capital expenditure in the final gas rule have also been revised to better reflect the policy position.
- 19 The final electricity and gas rules also contain new or amended transitional arrangements that:
- give the AER and ERA discretion to apply the new or old rules to revenue determination and access arrangement processes underway at the time this final rule comes into effect
 - enable the AER to consult on five network planning instruments and guidelines in sub-groups, as well as individually and all together
 - enable AEMO to not include emissions as a class of market benefit in the Final 2024 ISP if guidance on a value of emissions reduction is not made available by the Ministerial Council on Energy by 29 February 2024
 - allow the AER to specify the date the new network planning instruments apply to ISP and RIT processes to which the updated rules apply and that are underway at the time the AER publishes the new instruments, and
 - align the application of the relevant parts of the final gas rule in Western Australia with adoption of the Gas Pipelines Rule.

The final rules come into effect immediately

- 20 The final rules come into effect immediately on 1 February 2024. Immediate implementation is important to ensure inconsistencies between the updated energy objectives and the current rules, identified through this rule change process, are resolved as quickly as possible.

Contents

1	The Commission has made a final determination	1
1.1	Our final rules harmonise the energy rules with the updated national energy objectives	1
1.2	Stakeholder feedback shaped our determination	2
1.3	Our determination supports the incorporation of emissions reduction in the energy regulatory framework	3
2	The final rules contribute to the energy objectives	5
2.1	The Commission must act in the long term interests of energy consumers	5
2.2	We must also take some additional factors into account	6
2.3	How we have applied the legal framework to our decision	8
3	Harmonising the electricity network planning and investment rules and rules on economic value	12
3.1	Including emissions reduction as a class of market benefit will provide certainty to market bodies and participants	12
3.2	Amending the ISP public policy clause to include emissions reduction targets aligns with the updated NEO	16
3.3	References to the 'long term interests of consumers' are updated	18
3.4	Clarifying that 'net economic benefit' and 'overall economic value' include emissions changes aligns with the NEO and NGO	19
3.5	The final electricity rule does not amend clauses on the AER's Cost Benefit Analysis guidelines	23
3.6	The final electricity rule includes transitional arrangements for RIT projects underway	24
3.7	We have made a minor change to the RIT-D rules to correct an administrative error	25
4	Harmonising the network and pipeline expenditure rules	26
4.1	Clarifying that network and pipeline operators can propose expenditure to reduce emissions improves regulatory certainty	26
4.2	Our final rules require proposed expenditure to relate to regulated services	29
4.3	Emissions reduction across the Australian economy should be considered	30
4.4	The final rule includes transitional arrangements relating to expenditure provisions	31
5	Introducing omnibus processes for updating AER guidelines	34
5.1	The AER is able to carry out an omnibus update for minor changes to its guidelines to address emissions reduction	34
5.2	The AER is able to consult on the network planning instruments together, using a two-round process	38

Appendices

A	Rule making process	43
A.1	Energy senior officials proposed rules to harmonise the energy rules with the updated national energy objectives	43
A.2	The rule change requests identified provisions in the rules that are not aligned with the updated energy objectives	43
A.3	The proposed rules would improve certainty for market bodies and market participants	44
A.4	The rule making process to date	44
B	Regulatory impact analysis	45
B.1	Our regulatory impact analysis methodology	45

C	Legal requirements to make a rule	48
C.1	Final rule determination and final rules	48
C.2	Power to make the rules	48
C.3	Commission's considerations	48
C.4	Making electricity rules in the Northern Territory	49
C.5	Making gas rules in Western Australia	50
C.6	Civil penalty provisions and conduct provisions	50
D	Summary of other issues raised in submissions	51
	Abbreviations and defined terms	55
	Tables	
Table 5.1:	Consultation requirements differ across the NER, NERR and NGR	35
Table B.1:	Regulatory impact analysis methodology	47
Table D.1:	Summary of other issues raised in submissions to the draft determination	51

1 The Commission has made a final determination

This final determination is to make more preferable final electricity, gas and retail rules in response to 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).¹ The final determination relates to priority rule changes to harmonise the network and pipeline expenditure rules and network planning investment rules with the incorporation of emissions reduction in the national energy objectives. The final determination also relates to updating the Australian Energy Regulator's (AER's) guidance to incorporate the emissions reduction component of the energy objectives.

1.1 Our final rules harmonise the energy rules with the updated national energy objectives

Our final rules harmonise the national energy rules with the updated national energy objectives which now include consideration of targets to reduce Australia's greenhouse gas emissions. The more preferable final rules amend sections of the rules that explicitly reflected the previous national energy objectives to also include consideration of emissions reduction, in accordance with the updated energy objectives. Specifically, the final rules do this by:

- Amending the national electricity rules (NER) to align the network planning and investment framework with the updated national electricity objective (NEO), including adding emissions reduction as a class of market benefit to be considered in the integrated system plan (ISP) and regulatory investment tests (RITs) (see chapter 3 for more detail).
- Amending the NER and national gas rules (NGR) to enable network and pipeline operators to include expenditure that relates to emissions reduction in revenue proposals and access arrangement proposals (see chapter 4 for more detail).
- Amending the NER, NGR and national energy retail rules (NERR) to enable the AER to make minor updates to its guidelines to reflect the updated energy objectives through one consolidated omnibus process, as well as enabling a consolidated update process to five network planning instruments requiring more substantive changes (see chapter 5 for more detail).

We have also made several transitional rules that aim to clarify the application of our final rules for various processes that may be underway. These include transitional rules that:

- clarify which regulatory investment tests (RITs) currently underway the final rules apply to² (see section 3.6)
- clarify how the AER may assess revenue proposals that have been submitted by network service providers (NSPs) before 1 February 2024³ (see section 4.4.1)
- allow AEMO not to include 'changes in Australia's greenhouse gas emissions' as a class of market benefit in the Final 2024 ISP if guidance on a value of emissions reduction (VER) is not

1 Energy senior officials on behalf of the Ministerial Council on Energy, 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 (**rule change request one (network/pipeline expenditure)**) and Energy senior officials on behalf of the Ministerial Council on Energy, Priority rule changes to support the incorporation of an emissions reduction component into the National Energy Objectives – Network Investment Planning Frameworks and the Australian Energy Regulator Regulatory Instrument Revisions (**rule change request two (planning and AER guidelines)**). Available on the AEMC [project page](#).

2 Clauses 11.162.2 and 11.162.3 of the final electricity rule.

3 Clauses 11.162.4 of the final electricity rule and rule 102 of the final gas rule.

provided via a Ministerial Council on Energy (MCE) statement by 29 February 2024⁴ (see section 3.1.3).

These transitional rules provide regulatory certainty to market bodies and stakeholders regarding how the updated objectives and final rules will be applied for a wide range of processes, while also minimising the risk of any unintended consequences.

1.2 Stakeholder feedback shaped our determination

Stakeholder input and feedback helped to shape our final determination. We obtained and considered stakeholder views via written submissions to a consultation paper and a draft determination.⁵ The consultation paper and draft determination were complemented by public forums where we explained policy positions, discussed issues and answered stakeholder questions.⁶ We also directly engaged with a diverse range of stakeholders through bilateral and multilateral discussions.

There was strong and consistent support across stakeholder groups for the intent of this harmonising rule change and to amend the areas identified in the consultation paper as potentially requiring change. In particular, there was broad stakeholder support to:

- harmonise identified sections of the network planning and investment framework with the updated energy objectives, such as including emissions reduction as a class of market benefit in the ISP and RITs
- harmonise identified sections of the network and pipeline expenditure provisions with the updated energy objectives, so that network and pipeline operators could include expenditure to reduce emissions in their revenue proposals and access arrangement proposals
- enable the AER to run a single, consolidated consultation process on minor changes to its guidelines required as a result of the updated energy objectives.

Stakeholders also supported the overall approach proposed in the draft determination and draft rules. Stakeholder feedback to the draft determination generally focused on specific drafting suggestions and implementation considerations, such as the need for transitional arrangements for specific processes.⁷

The Commission's decision-making was aided by this support across diverse stakeholder groups, including network and pipeline operators, generation and retail businesses, peak bodies, market bodies and consumer groups.

Engagement by stakeholders on detailed issues was also important in informing both our draft and final determinations. For example, Energy Networks Australia's (ENA) engagement on the network and pipeline expenditure topics helped inform our thinking on how emissions reduction targets might link to relevant expenditure objectives as well as the interaction between the expenditure objectives and criteria in the NER. The ENA proposed rules drafting for some sections, which assisted us in considering the merits of different drafting options.⁸ Engagement with ATCO and the Economic Regulatory Authority (ERA) informed our analysis of how the gas rules would apply in Western Australia.

⁴ Clause 11.162.7(a) of the final electricity rule.

⁵ AEMC, Harmonising the network and pipeline expenditure rules with the updated energy objectives; Harmonising the electricity network planning and investment rules and AER guidelines with the updated energy objectives, 20 July 2023; Harmonising the national energy rules with the updated national energy objectives, draft determination, 26 October 2023.

⁶ The public forums were held online on 7 August 2023 and 21 November 2023. The presentation slides are available on our [project page](#).

⁷ See Chapters 3, 4 and 5 for discussion of stakeholder feedback and specific changes from draft to final.

⁸ ENA, submission to the consultation paper, Appendix A & B, pp. 18-40 and submission to the draft determination, pp. 4-5.

Input from the AER also informed our policy development regarding network and pipeline expenditure, particularly on linking expenditure to regulated services, as well as transitional arrangements for regulated processes underway.⁹ Input from AEMO shaped our thinking on a range of matters, with particular focus on the implications of changes for the ISP, including the need for transitional arrangements to account for the event that an MCE-issued VER is not made available in time for inclusion in the Final 2024 ISP.¹⁰ AEMO also suggested minor changes to the draft rules to improve the clarity of the final rules and to better reflect how AEMO prepares the ISP.¹¹

Other stakeholders, including the Clean Energy Council, EnergyAustralia and PIAC, raised broader considerations in response to the draft determination. These issues included the interaction of the new energy objectives and the VER,¹² co-ordination between electricity and gas expenditure,¹³ and consideration of non-network options in RITs and the ISP (discussed further in section 3.1.1 and appendix D).¹⁴ While the final rules do not directly address these issues, their highlighting assisted the Commission to consider this rule change process in the broader context of regulatory developments and challenges.

Energy ministers' public communication around the intent of the updated energy objectives, particularly the second reading speech in respect of the *Statutes Amendment (National Energy Laws) (Emissions Reduction Objectives) Act 2023* (the Emissions Act), provided context as to the intent of the changes to the energy objectives. The intent of our final rules and determination is to propose changes that are in the long term interests of consumers, while remaining aligned with the strategic direction set by energy ministers.

The final rules and determination also build on the recommendations made in our *Transmission planning and investment review (TPIR) – Stage 3 final report*. Following broad stakeholder consultation, this review recommended a rule change process to harmonise the network planning and investment framework with the updated energy objectives.¹⁵ Chapter 3 covers the areas identified for harmonisation in the *TPIR – Stage 3 final report*. The approach to these topics in the final rules remains strongly aligned with the relevant recommendations made in the *TPIR – Stage 3 final report*.

1.3 Our determination supports the incorporation of emissions reduction in the energy regulatory framework

The national energy laws have been amended to incorporate emissions reduction into the national energy objectives under the Emissions Act. This change brings the achievement of emissions reduction targets set by jurisdictions for reducing Australia's greenhouse gas emissions (or other jurisdictional targets that would contribute to reducing emissions) within the scope of the national energy framework.¹⁶ It means emissions reduction is now an explicit and relevant consideration in

⁹ AER, submission to the consultation paper, p. 2 and submission to the draft determination, pp. 1-3.

¹⁰ AEMO, submission to the draft determination, p. 2.

¹¹ AEMO, submission to the draft determination, pp. 2-4.

¹² EnergyAustralia, submission to the draft determination, pp. 1-2.

¹³ Clean Energy Council, submission to the consultation paper, p. 2 and submission to the draft determination, p. 2; EnergyAustralia, submission to the draft determination, p. 3.

¹⁴ PIAC, submission to the consultation paper, pp. 3-4 and submission to the draft determination, pp. 3-4.

¹⁵ AEMC, Transmission planning and investment review, Stage 3 final report, 4 May 2023.

¹⁶ Under the updated NEL, NGL and NERL, the AEMC is required to maintain and update a *targets statement* that contains a list of all emissions reduction targets set by jurisdictions for reducing Australia's greenhouse gas emissions and targets that are likely to contribute to reducing emissions. The targets statement is available at <https://www.aemc.gov.au/regulation/targets-statement-emissions>.

market bodies' decision-making, as well as certain activities of market participants regulated under the national energy rules.

Our final rules seek to ensure consistent application of the updated objectives throughout the national energy rules. In several instances, the old rules did not refer to the national energy objectives but instead referred to particular components of the objectives. As a result, a change to the objectives did not automatically flow through to these provisions in the rules. The final rules remove these inconsistencies between the old rules and updated energy objectives to ensure the changes to the objectives take full effect.

The final rules establish a link between the energy rules and jurisdictions' emissions reduction targets covered by the updated energy objectives. Under the final electricity and gas rules, these emissions reduction targets determine where network and pipeline operators can seek to achieve emissions reduction through their expenditure on regulated services.¹⁷ The relevant emissions reduction targets must also be considered by AEMO when developing the ISP.¹⁸

In developing these final rules, the Commission has sought to strike a balance between providing regulatory certainty for stakeholders in how emissions reduction should be taken into account in multiple decision-making processes, while also providing flexibility for detailed guidance on implementation matters to be developed over time.

1.3.1 **Our final rules do not explicitly reference a value of emissions reduction to maintain regulatory flexibility**

Under the final rules, changes in greenhouse gas emissions must be assessed as a new class of market benefit in the ISP and RIT processes. To support this assessment in cost benefit analyses, guidance on a value of emissions reduction (VER) may be issued by the Ministerial Council on Energy (MCE) in the form of an MCE Statement.¹⁹

Any such guidance on the VER, if and when it becomes available, would be an important tool in determining the appropriate trade-off between emissions reduction and other consumer interests covered by other components of the energy objectives. The Commission considers this guidance would be used in analytical matters that will be regulated by the AER, with guidance on these matters provided predominantly through AER guidelines. For this reason, the Commission does not consider it necessary to refer directly to a VER in the rules at this time. Limiting references to a VER to subordinate instruments such as guidelines also maintains flexibility for market bodies if methodological considerations develop over time.

¹⁷ Clauses 6.5.6(a)(5), 6.5.7(a)(5), 6A.6.6(a)(5) and 6A.6.7(a)(5) of the final electricity rule; rules 79(2)(c)(v) and 91(1) of the final gas rule.

¹⁸ Clause 5.22.3(b)(1) of the final electricity rule.

¹⁹ NEL schedule 3 clause 42.

2 The final rules contribute to the energy objectives

The final rules promote the national energy objectives because they clarify how the updated national energy objectives apply to processes prescribed under the national energy rules, where this application was unclear. The final rules reduce regulatory uncertainty and complexity for stakeholders in applying the updated energy objectives to processes established under the rules. They also ensure emissions reduction outcomes are achieved and balanced with the other long term interests of consumers.

2.1 The Commission must act in the long term interests of energy consumers

The Commission can only make a rule if it is satisfied that the rule will or is likely to contribute to the achievement of the relevant energy objectives.²⁰

For this rule change, the relevant energy objectives are the NEO, NGO and NERO.

The NEO is:²¹

to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to—

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

The NGO is:²²

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—

- (a) price, safety, reliability and security of supply of natural gas; and
- (b) the achievement of targets set by a participating jurisdiction—
 - (i) for reducing Australia’s greenhouse gas emissions; or
 - (ii) that are likely to contribute to reducing Australia’s greenhouse gas emissions.

The NERO is:²³

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—

- (a) price, safety, reliability and security of supply of energy; and

²⁰ Section 88(1) of the NEL, section 291(1) of the NGL and section 236(1) of the NERL.

²¹ Section 7 of the NEL.

²² Section 23 of the NGL.

²³ Section 13 of the NERL.

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

The targets statement, available on the AEMC website, lists the emissions reduction targets that must be considered, at a minimum, in having regard to the NEO, NGO and NERO.²⁴

2.2 We must also take some additional factors into account

2.2.1 We have considered whether to make more preferable rules

The Commission may make a rule that is different, including materially different, to a proposed rule (a more preferable 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 and NERO.²⁵

For this rule change, the Commission has made more preferable final electricity, gas and retail rules. The reasons are set out in section 2.3 below and discussed further in chapter 3, chapter 4 and chapter 5.

2.2.2 We have considered the revenue and pricing principles for the final electricity and gas rules

We have to take into account the revenue and pricing principles when making rules with respect to:

- electricity distribution and transmission system revenue and pricing, and regulatory economic methodologies²⁶
- gas regulatory economic methodologies.²⁷

We consider the final electricity and gas rules relate to these issues because they amend provisions in the NER and NGR relating to revenue proposals and investment decisions. Therefore, we have taken the revenue and pricing principles into account in making the final electricity and gas rules.

Relevant to the final electricity and gas rules, the revenue and pricing principles state that:

- the AEMC should have regard to the economic costs and risks associated with investment and utilisation by network service providers and gas pipeline operators
- regulated network service providers and gas pipeline operators should have effective incentives in order to promote economic efficiency.²⁸

Our final rules are consistent with the revenue and pricing principles within both the NEL and NGL. Our final rules clarify how network businesses, pipeline operators and the AER should assess economic efficiency and economic costs in determining efficient costs following the updated NEO and NGO. This will reduce uncertainty for all parties and drive a consistent approach to proposing and approving investment that contributes to meeting emissions reduction targets. Our final rules

²⁴ AEMC, [Emissions targets statement under the national energy laws](#). Section 32A(5) of the NEL, section 224A(5) of the NERL and section 72A(5) of the NGL.

²⁵ Section 91A of the NEL, section 296 of the NGL and section 244 of the NERL.

²⁶ Section 88B of the NEL, referring to Schedule 1 items 15-24 and 25-26J of the NEL. The electricity revenue and pricing principles are set out in section 7A of the NEL.

²⁷ Section 293 of the NGL, referring to Schedule 1 items 45-53 of the NGL. The gas revenue and pricing principles are set out in section 24 of the NGL.

²⁸ Section 7A of the NEL and Section 24 of the NGL.

do this in a way that is consistent with the preceding approach to applying the NEO and NGO before they were updated.

Our final rules retain the existing incentives to promote economic efficiency through the determination process and incentive mechanisms available to network service providers and pipeline operators. The final rules should make it easier for network businesses, pipeline operators and the AER to adopt consistent approaches for incorporating emissions reductions in how they assess and achieve economic efficiency. Under our final rule, the AER maintains discretion on its methodologies, including how it considers a VER in its decision-making and for small scale incentive mechanisms.

2.2.3 We have considered how the consumer protections test applies for the final retail rule

In making rules relating to the NERR, in addition to the NERO the Commission must, 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').²⁹

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.³⁰ 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.

The Commission considers the final retail rule meets the consumer protections test because the final changes to the NERR provide for appropriate consultation on changes to AER guidelines under the NERR, giving consumers the protection of the opportunity to comment on changes to guidelines that affect their retail services, while allowing for a consolidated consultation process to reduce costs and administrative burden.

2.2.4 We have considered how the final electricity rule applies in the Northern Territory

In developing the final electricity rule, the Commission has considered how it should apply to the Northern Territory according to the following questions:

- Should the NEO test include the Northern Territory electricity systems?
- Should the rule be different in the Northern Territory?

The Commission's final determination is that the reference to the 'national electricity system' in the NEO includes the local electricity systems in the Northern Territory. Additionally, the Commission's final determination is that a uniform rule, rather than a differential rule, should apply to the Northern Territory.

See appendix C for more detail on the legal requirements for our decision.

2.2.5 We have considered how the final gas rule applies in Western Australia

In developing the final gas rule, the Commission has considered how it should apply to Western Australia according to the following questions:

- Does the AEMC have a relevant rule-making power?
- Is the AEMC amending parts of the NGR that apply in Western Australia?

²⁹ Section 236(2)(b) of the NERL.

³⁰ That is, the legal tests set out in sections 236(1) and (2)(b) of the NERL.

The subject matter of the final rule falls within the AEMC's relevant rule-making powers. See appendix C for more detail on the legal requirements for a decision.

The final rule amends provisions in Part 1, Part 7 and Part 9 of the NGR.

Part 1 and Part 9 apply in the Western Australian version of the NGR and hence our amendments to those provisions in the NGR will apply in Western Australia.

The current version of Part 7 of the NGR does not apply in Western Australia. It was introduced when the South Australian Minister for Energy and Mining made the *National Gas Amendment (Gas Pipelines) Rule 2023* (Gas Pipelines Rule) under section 294FB(1) of the NGL. The rule commenced operation on 16 March 2023 and was consolidated into version 66 of the NGR.³¹ As part of that rule, old Part 7 of the NGR was deleted and replaced, introducing new rules 39A and 39B. The Western Australian Minister is yet to adopt the Gas Pipelines Rule into the *National Gas Access (WA) Act 2009* meaning that the current version of Part 7 of the NGR does not currently apply to Western Australia.

For this reason, the final gas rule includes transitional provisions that delay the application of the amendments to rule 39A to Western Australia until the Gas Pipelines Rule takes effect in Western Australia.

2.3 How we have applied the legal framework to our decision

The Commission has considered the issues raised in the rule change requests in light of the overall legal framework and the specific considerations outlined above.

We identified the following criteria to assess whether the proposed rule changes, no changes to the rules (business-as-usual), or other viable, rule-based options are likely to better contribute to achieving the NEO, NGO and NERO and are consistent with the revenue and pricing principles:

- **Emissions reductions:** 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:** 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?

These assessment criteria reflect the key potential impacts — costs and benefits — of the rule change requests, for impacts within the scope of the NEO, NGO and NERO. There are no changes from the assessment criteria proposed in the consultation paper.³²

31 To access the final rule, visit our website [here](#).

32 Stakeholders did not raise concerns with the assessment criteria selected in response to the consultation paper or draft determination.

The Commission has undertaken regulatory impact analysis to evaluate the impacts of the various policy options against the assessment criteria. Appendix B outlines the methodology of the regulatory impact analysis.

The rest of this section explains why the final rules best promote the long term interest of consumers when compared to other options and assessed against the criteria, including why our more preferable final rules better promote the NEO, NGO and NERO when compared to the proposed rules.

2.3.1 Contributing to achieving government targets for reducing Australia's greenhouse gas emissions

The final rules support the achievement of greenhouse gas emissions reduction targets set by governments. They do this by clarifying how emissions reduction is expected to be factored into decision-making processes established under the national energy rules such as the RIT (see chapter 3) and the revenue determination and access arrangement decision processes for network service providers and for gas pipeline operators, respectively (see chapter 4). The introduction of an emissions reduction limb to the national energy objectives brings emissions reduction within scope of these processes. However, without the changes made by the final rules, it would be unclear how emissions reduction should be factored into many decision-making processes. Energy market entities may fail to adequately incorporate emissions reduction into their decision-making. This lack of clarity would risk emissions reduction not being efficiently accounted for in these decisions, which would be inconsistent with the revised objectives.

The final rules also clarify the link between the greenhouse gas emissions reduction targets set by governments and the actions of market participants and market bodies as required under the rules (see section 1.3). This improves the alignment of the actions of market participants (and market bodies) with emissions reduction targets set by governments.

2.3.2 Promoting principles of market efficiency

The final rules improve transparency and clarity in how the updated energy objectives apply to decision-making processes established under the national energy rules. The Commission considers improved clarity would have a number of efficiency benefits, including:

- Improving allocative efficiency for emissions reduction activities over a planning/investment timeframe.
 - The final rule incentivises market participants to assess the marginal benefit of emissions reduction and the marginal costs of emissions increases, against other costs and benefits of proposed projects. This helps ensure network and pipeline operators reduce emissions at an efficient cost. This will ensure emissions changes (reductions and increases) are appropriately and consistently factored into planning and investment decisions, in line with the emissions reduction targets and a VER set by governments.
- Sharpening incentives for market participants to contribute to the achievement of emissions reduction targets.
 - Clarity in how emissions reduction is to be included in relevant decision-making processes ensures that market participants are incentivised to consider and propose activities or approaches that would contribute to emissions reduction.
- Improving information transparency and removing information asymmetries.
 - Clarity in how market participants are expected to factor emissions reduction into their decision-making improves the transparency for processes such as the RIT, ISP and expenditure proposals.

2.3.3 Achieving successful and balanced implementation

The final rules balance the need for timely reform driven by the broader regulatory context with the impact of the change on processes underway. Timely reform is required to resolve potential inconsistencies between the national energy rules and the updated national energy objectives which passed South Australian parliament on 12 September 2023 and received royal assent from the South Australian governor on 21 September 2023.³³

Under the final rules, the changes to the NER, NGR and NERR come into effect on 1 February 2024, subject to the transitional arrangements for the NGR in Western Australia discussed above, and other transitional arrangements discussed below.

Transitional arrangements are included for some processes underway when the final rules take effect. The transitional arrangements manage the impact of the rule changes on processes underway, while also aligning with transitional arrangements in the Emissions Act.

The final rules include transitional provisions that:

- Apply the updated NER to the same RIT projects to which the updated NEO applies (see section 3.6).
- Enable the AER to apply either the updated NER, and the ERA to apply either the updated NGR, or the old versions of those rules, to revenue determination and access arrangement proposals submitted before the rules were made. This is to allow the AER and ERA to use the new rules to assess proposals that include capital or operating expenditure for the purposes of reducing greenhouse gas emissions (see section 4.4.1).
- Provide that AEMO does not have to include emissions as a class of market benefit in the Final 2024 ISP if guidance on a VER is not made available (through an MCE statement) by 29 February 2024 (see section 3.1.3).

The final rules also enable the AER to update its guidelines that require change due to the updated energy objectives through a consolidated process. This assists with timely reform by enabling an efficient and streamlined consultation process. Specifically, the final rules:

- Require the AER to update five network planning instruments using the standard rules consultation procedure by 31 December 2024. Consultation on the network planning instruments that commenced prior to these final rules is recognised and the updated network planning instruments can apply to processes underway at the time the update is made.
- Require the AER to update its other instruments and guidelines, where required as a result of the updated energy objectives and these final rules, using the distribution consultation procedures. This process must commence by 1 July 2024.

2.3.4 Promoting good regulatory practice

The final rules promote predictability, stability and transparency in the application of the updated energy objectives throughout the national energy rules. The final rules ensure the treatment of emissions reduction in processes such as the RIT and expenditure proposals is transparent and replicable. For example, the final electricity and gas rules make clear that network and pipeline service providers must consider, and if proposed the AER must assess, expenditure on regulated services that would contribute to meeting emissions reduction targets (see section 4.1).

Without these changes, market participants and the AER would be left to factor emissions reduction into decision-making on a case by case basis. Such an approach may result in an

³³ Statutes Amendment (National Energy Laws) (Emissions Reduction Objectives) Act 2023 (the Emissions Act). The amendments made by the Emissions Act to the NGL were adopted in Western Australia with effect from 25 January 2024.

unpredictable regulatory framework and would increase administrative burden for market participants and market bodies. The Commission's assessments of the 'no change' option are discussed in section 4.1.1 and in the draft determination.³⁴

The final rules also promote good regulatory practice in that they support the broader direction of reform. The final rules align with, and were proposed as a result of, the changes to the national energy objectives. The final rules support the implementation and achievement of the strategic direction set by energy ministers relating to emissions reduction.

2.3.5 **Our more preferable final rules better promote the national energy objectives than the rules proposed in the rule change request**

The final rules better promote the national energy objectives than the rules proposed in the rule change requests, because they ensure emissions reduction considerations are balanced transparently with other interests of consumers covered by the energy objectives. The final rules clarify when and how emissions reduction should be factored into decision-making processes established under the energy rules. They link the activities of market participants and market bodies to the emissions reduction targets covered by the updated energy objectives and set by governments.

The final rules include changes to the provisions identified in the rule change requests, with the exception of the clause that governs the AER's cost benefit analysis guidelines.³⁵

The final rules are more preferable final rules because, in addition to the changes proposed in the rule change request, they also include:

- changes to the NGR to clarify operating expenditure can include expenditure that contributes to emissions reduction and that the existing process to seek exemptions from the prohibition against increasing charges to subsidise development also includes consideration of emissions reduction
- amendments to additional clauses in the NER that refer to net economic benefit, which the final electricity rule amends consistently with changes to the RIT-T and RIT-D general principles
- transitional arrangements, as discussed in section 2.3.3.

³⁴ See section 3.1.3 and 4.1.1 of AEMC, Harmonising the rules with the updated objectives, Draft rule determination, 26 October 2023.

³⁵ Clause 5.22.5 of the NER. The rule change request noted changes to this section may not be required if other amendments considered under the rule change process were made.

3 Harmonising the electricity network planning and investment rules and rules on economic value

3.1 Including emissions reduction as a class of market benefit will provide certainty to market bodies and participants

Box 1: FINAL POSITION – Include emissions reduction as a class of market benefit in the ISP and RITs

Our final electricity rule includes emissions reduction as a class of market benefit for the ISP, RIT-T and RIT-D.

This change means that AEMO is required to consider emissions reduction as a class of market benefit when preparing development paths for the ISP. RIT-T and RIT-D proponents are also required to consider emissions reduction as a class of market benefit when identifying credible and preferred options.

The Commission considers that this change provides clarity and consistency in how the updated NEO is applied in the ISP and in RITs.

Changes from draft to final rules

- A transitional rule that allows AEMO not to consider emissions reduction as a class of market benefit for the Final 2024 ISP if guidance on a value of emissions reduction is not provided via an MCE statement by 29 February 2024.

3.1.1 The final rule includes emissions reduction as a class of market benefit

The Commission's final electricity rule adds emissions reduction as a new class of market benefit for the ISP, RIT-T and RIT-D. This change means that:

- AEMO is required to consider emissions reduction as a class of market benefit when assessing development paths for the ISP, and
- RIT-T and RIT-D proponents are required to consider emissions impacts when assessing each credible option.

The final rule includes 'changes in Australia's greenhouse gas emissions' (including increases and decreases in emissions) in the list of market benefits that must be considered by AEMO when preparing the ISP and by NSPs when undertaking RIT-Ts and RIT-Ds.³⁶ The classes of market benefits that AEMO and RIT proponents are required to consider are set out in Box 2, with the inclusion of emissions reduction benefits as per our final rule shown in bold.

³⁶ Clauses 5.15A.2(b)(4)(viii), 5.17.1(c)(4)(viii) and 5.22.10(c)(1)(viii) of the final electricity rule.

Box 2: List of market benefits for the ISP, RIT-T and RIT-D

When AEMO prepares the ISP and when NSPs prepare a RIT-T or RIT-D, they must have regard to the following classes of market benefits:

- changes in fuel consumption arising through different patterns of generation dispatch
- changes in voluntary load curtailment
- changes in involuntary load shedding, with the market benefit to be considered using a reasonable forecast of the value of electricity to consumers
- changes in costs for parties due to:
 - differences in the timing of new plant
 - differences in capital costs
 - differences in operating and maintenance costs
- differences in the timing of expenditure
- changes in network losses
- changes in ancillary service costs
- **changes in Australia's greenhouse gas emissions**
- competition benefits
- any additional option value gained or foregone from implementing a credible option
- other classes of market benefits that are agreed to by the AER in writing.

Source: Clauses 5.15A.2(b)(4), 5.17.1(c)(4), 5.22.10(c) of the NER; clauses 5.15A.2(b)(4)(viii), 5.17.1(c)(4)(viii) and 5.22.10(c)(1)(viii) of the final electricity rule.

Note: The new class of market benefit in our final rule is shown in bold. Some classes of market benefits are slightly different between the ISP, RIT-T and RIT-D provisions due to the differences in the roles between AEMO, TNSPs and DNSPs.

The rule change request asked the Commission to consider including emissions reduction as a class of market benefit to ensure emissions reduction is explicitly balanced against the other limbs of the NEO in the economic assessment process.³⁷

Including emissions reduction as a class of market benefit ensures that the updated NEO is clearly reflected through the ISP and RIT processes. The Commission considers that this will provide certainty and clarity to market bodies, market participants and other stakeholders in how the updated NEO is applied through the ISP, RIT-T and RIT-D.

This approach aligns with our *TPIR – Stage 3 final report*³⁸ recommendations and is also consistent with the second reading speech in respect of the Emissions Act, which stated that:³⁹

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.

Stakeholders noted their support for including emissions as a class of market benefit for the ISP and RIT processes in submissions to the draft determination.⁴⁰ Transgrid noted that the change ensures that each market benefit has a clear link to a component of the updated objectives,

37 Energy senior officials, rule change request two (planning and AER guidelines), Table 1, p. 12.

38 AEMC, [Transmission planning and investment review](#). Final report, 4 May 2023, p. 30.

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

40 Submissions to the draft determination: AEMO, p. 2; Clean Energy Council, p. 1; PIAC, Transgrid, p. 3.

providing certainty to stakeholders and market bodies.⁴¹ No stakeholders objected to the inclusion of emissions reduction into the classes of market benefits in these submissions. However, PIAC noted its concern that this change could exacerbate a possible existing bias towards network options over non-network options in the ISP and RIT processes. PIAC considered this is due to AEMO having limited capacity to consider the co-optimisation of the demand and supply sides of the energy system, and RIT proponents having limited expertise or incentives to assess non-network options.⁴²

The Commission notes that the consideration of non-network options is required in both the ISP and RIT processes under the current NER.⁴³ The Commission considers there is insufficient evidence that including emissions reduction as a class of market benefit would impact the consideration of non-network options to warrant rule changes as part of this rule change process.

3.1.2 The final rule enables consideration of both decreases and increases in greenhouse gas emissions

The final rule provides for emissions reduction benefits to be assessed on the basis of ‘changes in Australia’s greenhouse gas emissions’. This wording ensures that both positive and negative changes to greenhouse gas emissions can be considered throughout the ISP and RIT processes. It allows the quantification of benefits to include both positive and negative outcomes, depending on the emissions reductions or increases associated with a major network project or ISP development path. This approach is also consistent with the treatment of other market benefits under the ISP and RITs, whereby a change in a specific market benefit can be considered as a positive or negative market benefit.⁴⁴

In its submission to the draft determination, Transgrid encouraged the Commission to provide additional guidance on the boundaries and appropriate inclusions for economic assessments of emissions reduction when considering the new class of market benefit.⁴⁵ EnergyAustralia also stated in its submission that it would like the Commission to provide further guidance about how emissions reduction should generally be assessed, particularly how economy-wide considerations of emissions or complex counterfactual scenarios should be assessed in cost-benefit analyses.⁴⁶

While the Commission acknowledges that these issues are important to operationalising emissions reduction as a new class of market benefit, we consider it appropriate that all formal guidance on this matter should come from the AER. If the AEMC were to issue guidance in this final determination, it could constrain the AER’s decision-making process through its upcoming guideline update process and stakeholder consultation. This could lead to conflicting guidance and confusion for stakeholders if the AER were to issue different guidance than the AEMC.⁴⁷ Therefore, our final determination and rule do not seek to provide guidance on this matter.

41 Transgrid, submission to the draft determination, p. 2.

42 PIAC, submission to the draft determination, pp. 1-3.

43 Clause 5.15A.3(b)(7) requires RIT-T proponents to consider non-network options identified in the ISP as being likely to meet the relevant identified need, and any new credible options (which include non-network options, such as those submitted to AEMO) that meet the identified need; clauses 5.16.4(b)(3) and 5.17.4(e)(4)-(7) require RIT-T and RIT-D proponents to identify the technical characteristics that a non-network option would be required to deliver; clause 5.15.2 defines ‘credible options’ as including both network and non-network options; clause 5.22.10(a)(5) requires AEMO to consider credible options (which include non-network options) and the efficient integration of ISP development opportunities; clause 5.22.12 requires AEMO to publish a notice requesting non-network proponents to submit proposals to meet identified needs in the draft ISP.

44 See, for example, AER Cost Benefit Analysis Guideline, p. 62 and Application Guidelines: Regulatory investment test for transmission, p. 30.

45 Transgrid, submission to the draft determination, p. 3.

46 EnergyAustralia, submission to the draft determination, p. 3.

47 In September 2023, the Commission published [high-level guidance](#) on how it applies the emissions component of the energy objectives. The AER has also [published its own high-level guidance](#) and will include further details in its amendments to the network planning instruments under clause 11.162.5 of the final electricity rule.

3.1.3 **AEMO does not have to include emissions reduction as a class of market benefit in the Final 2024 ISP if a VER is not available in time**

AEMO is not required to include emissions as a class of market benefit in the Final 2024 ISP if an MCE statement issuing guidance on a VER⁴⁸ is not issued by 29 February 2024, under the final rule.⁴⁹

AEMO requested this arrangement in its submission to the draft determination.⁵⁰ After discussion with AEMO, the date of 29 February 2024 was selected, as this is considered to be the latest date by which AEMO is confident it could factor a VER into the Final 2024 ISP modelling. The final rule provides AEMO with the flexibility to include emissions as a class of market benefit if a VER is provided after this date — for example, if it is provided in early March, it may still be feasible to include it in the ISP. However, AEMO would not be required to include it. We consider this flexibility is appropriate as it would enable AEMO to include emissions reduction benefits in the ISP where it is practicable to do so.

If VER guidance is provided by 29 February 2024, this transitional would not apply and AEMO would be required to include emissions as a class of market benefit in the Final 2024 ISP.⁵¹

AEMO will still be required to consider emissions reduction policies in the Final 2024 ISP

Regardless of whether emissions reduction is included as a class of market benefit in the Final 2024 ISP, AEMO will still consider emissions in a way that is broadly consistent with the updated NEO. This is because AEMO has an established process for considering government policies, including emissions reduction policies, in the ISP through the ‘public policies clause’.⁵² Changes to this clause (discussed below in section 3.2.1) under this final rule require AEMO to consider all emissions reduction targets on the targets statement when developing the ISP. AEMO has already considered and included these targets in the Draft 2024 ISP and has noted its intent to do the same for the Final 2024 ISP.⁵³

The impact that including emissions as a class of market benefit in the ISP will have on ISP modelling outcomes will depend on the level at which the VER is set. Exempting AEMO from having to include emissions as a class of market benefit in the 2024 Final ISP may have some impact on modelling outcomes. However, emissions reduction will still be factored in, so the Final 2024 ISP will still be consistent with the targets statement and the updated NEO. The Commission therefore considers the risk of this transitional arrangement to be low.

48 As defined in schedule 3 clause 42(6) of the NEL.

49 Clause 11.162.7(a) of the final electricity rule.

50 AEMO, submission to the draft determination, pp. 1-2.

51 Clause 5.22.10(c)(1)(viii) of the final electricity rule.

52 NER clause 5.22.3(b).

53 AEMO, Draft 2024 ISP, pp. 8, 13, 38. In its 2023 Inputs, Assumptions and Scenarios Report and Appendix 2. Generation and Storage Development Opportunities to the 2024 Draft ISP, AEMO explains and details its use of carbon budgets based on the emissions targets included in the targets statement. The Commission understands that AEMO will continue to use these carbon budgets for the Final 2024 ISP. The transitional clause 11.162.7(a) will not disallow AEMO from using carbon budgets in its analysis and preparation of the ISP.

If new projects are deemed actionable in the Final 2024 ISP, RIT-Ts for those projects must consider emissions reduction as a class of market benefit

Under the final electricity rule, RIT-Ts for actionable ISP projects will still be required to consider changes in greenhouse gas emissions as a class of market benefit, regardless of whether the Final 2024 ISP includes consideration of this class of market benefit.⁵⁴

This approach ensures consistency with respect to emissions as a class of market benefit between RIT-Ts for actionable ISP projects and other RITs (that is, RIT-Ts for projects that are not actionable ISP projects, and all RIT-Ds). Therefore, it is clear that all RIT processes will be required to consider changes in emissions as a class of market benefit.⁵⁵

3.2 Amending the ISP public policy clause to include emissions reduction targets aligns with the updated NEO

Box 3: FINAL POSITION — ISP public policy clause to include emissions targets on the targets statement

Our final rule amends NER clauses 5.22.2 and 5.22.3 to require AEMO to consider targets that are included in the targets statement when determining power system needs for the ISP and determining how the ISP contributes to the NEO.

The Commission considers that this change improves the transparency of the ISP and aligns it with the updated NEO, in line with other changes in our final rule.

Changes from draft to final rules

- No policy changes. Minor drafting changes to better reflect how the ISP is developed.

3.2.1 AEMO must consider policies on the targets statement when developing the ISP

The final rule ensures consistency between the updated NEO and how emissions reduction is considered in the ISP. It amends clause 5.22.3 of the NER to make clear that, in making determinations for the ISP, AEMO must, at a minimum, consider the greenhouse gas emissions reduction targets included in the targets statement.⁵⁶

AEMO has the discretion to consider other emissions reduction targets not stated in the targets statement, as well as other relevant public policies that are not emissions reduction targets, subject to the criteria listed under existing clause 5.22.3(b) when determining power system needs.⁵⁷ This could include other energy or environmental policies that are not emissions reduction targets but still meet the threshold for being sufficiently developed to enable AEMO to

⁵⁴ See clause 11.162.7(b) of the final electricity rule. Clause 5.15A.3(b)(4) of the NER requires that RIT-Ts for actionable ISP projects must include all classes of market benefits identified in the ISP and may include consideration of other classes of market benefits in accordance with the Cost Benefit Analysis Guidelines. Although the updated Cost Benefit Analysis Guidelines may compel RIT-T proponents to consider emissions reduction as a class of market benefit in the RIT-T, the update may not be completed by the time a RIT-T for a particular project needs to consider market benefits.

⁵⁵ Subject to transitional clauses 11.162.2(b) and 11.162.3(b) of the final electricity rule, which apply the old rules if, under the NEL, the old NEO applies to those projects.

⁵⁶ Clause 5.22.3(b)(1) of the final electricity rule. The targets statement is available here: <https://www.aemc.gov.au/regulation/targets-statement-emissions>

⁵⁷ These criteria are: that the policy has been sufficiently developed to enable AEMO to identify the impacts of it on the power system, and at least one of the following: a commitment has been made in an international agreement to implement that policy, that policy has been enacted in legislation, there is a regulatory obligation in relation to that policy, there is material funding allocated to that policy in a budget of the relevant jurisdiction, or the MCE has advised AEMO to incorporate the policy.

identify the impacts of that policy on the power system (as well as meeting one of the other criteria).

As part of the changes to the NEL resulting from the Emissions Act, the AEMC is required to publish and maintain a targets statement that states the greenhouse gas emissions reduction targets, or targets likely to reduce emissions, set by participating jurisdictions that are covered by the updated NEO.⁵⁸ Section 32A(5) of the NEL makes clear that:

In having regard to the national electricity objective under this Law, the Regulations or the Rules with respect to the matters mentioned in section 7(c) [the emissions component of the NEO], a person or body must consider, as a minimum, the targets stated in the targets statement.

This means that market bodies are expected to consider the targets on the targets statement when applying the NEO through their work. In the case of the ISP, this means that AEMO must have regard to all relevant targets on the targets statement when preparing ISP scenarios. This is because the final rule clarifies that the purpose of the ISP involves contributing to achieving the NEO (which now includes an emissions component).⁵⁹

The Commission considers that amending the public policy clause to directly reference the targets statement aligns the development of the ISP with requirements under the NEL for market bodies to consider, at a minimum, targets on the targets statement.⁶⁰ Establishing an explicit link to the targets statement provides consistency and transparency for market bodies, participants and stakeholders in how AEMO prepares its scenarios for the ISP and meets its statutory obligations. This consistency and transparency of application aligns with principles of good regulatory practice.

The final rule incorporates AEMO's drafting suggestions

AEMO suggested minor drafting changes to clause 5.22.3 of the draft electricity rule to better describe how AEMO prepares the ISP.⁶¹ AEMO's suggestions were to more clearly reflect the whole-of-system approach that AEMO undertakes when considering jurisdictional policies. For example, AEMO considered that the draft rule may be misinterpreted to require them to take a jurisdiction-by-jurisdiction approach when modelling jurisdictional policies, which is not what is done in practice. The Commission agrees with AEMO's suggestions and has incorporated them in the final electricity rule.

⁵⁸ Section 32A(1)-(4) of the NEL.

⁵⁹ This change is discussed in section 3.4 of this determination.

⁶⁰ Section 32A(5) of the NEL.

⁶¹ AEMO, submission to the draft determination, p. 2.

3.3 References to the ‘long term interests of consumers’ are updated

Box 4: FINAL POSITION – Change references to the ‘long term interests of the consumers of electricity’ to references to the NEO

Our final rule replace the phrase ‘long term interests of the consumers of electricity’ with references to the full NEO in two places. These are both in relation to the ISP:

- clause 5.22.2, which outlines the purpose of the ISP
- clause 5.22.7, which outlines what the ISP consumer panel must have regard to when preparing the consumer panel report.

This change clarifies that all limbs of the NEO, including emissions reduction, are relevant considerations.

Changes from draft to final rules

- None.

The final rule replace references to the ‘long term interest of the consumers of electricity’ with references to the NEO. The phrase appears in two places in the NER with regard to the ISP.⁶² For example, old clause 5.22.2 stated that the purpose of the ISP is to (emphasis added):

establish a whole of system plan for the efficient development of the power system that achieves power system needs for a planning horizon of at least 20 years for the long term interests of the consumers of electricity.

The phrase ‘the long term interests of the consumers of electricity’ appears in the NEO, before referencing the limbs of the energy objective. As used in the NER, it was intended to be a shorthand reference to the NEO.

However, as these clauses did not directly refer to the NEO, the inclusion of the emissions reduction component in the NEO did not automatically flow through to these two clauses. The final rules replace the phrase ‘the long term interests of consumers’ with direct references to the NEO.⁶³ For example, clause 5.22.2 of the final electricity rule now states that the purpose of the ISP is to (emphasis added):

establish a whole of system plan for the efficient development of the power system that achieves power system needs for a planning horizon of at least 20 years to contribute to achieving the national electricity objective.

These changes ensure that the ISP and the ISP consumer panel report should have regard to all components of the NEO, including emissions. This approach is consistent with our recommendation in the *TPIR – Stage 3 final report*.⁶⁴ Referencing the NEO directly in these clauses is also in line with good regulatory practice, as it clarifies the purpose of the ISP and the ISP consumer panel report.

⁶² Clauses 5.22.2 and 5.22.7 of the final electricity rule.

⁶³ Clause 5.22.2 and 5.22.7 of the final electricity rule.

⁶⁴ AEMC, Transmission planning and investment review, Final report, 4 May 2023, p. 33.

3.4 Clarifying that ‘net economic benefit’ and ‘overall economic value’ include emissions changes aligns with the NEO and NGO

Box 5: FINAL POSITION – Clarify that ‘net economic benefit’ and ‘overall economic value’ include emissions reduction benefits

Our final rule amends the NER and NGR to clarify that:

- emissions reduction benefits (and the costs of increased emissions) are relevant considerations when assessing net economic benefits and overall economic value
- emissions reduction benefits (and the costs of increased emissions) can be considered even if they do not accrue to those who produce, consume or transport electricity in the market or to service providers, producers, users or end users of gas.

These amendments improve the alignment of the NER and NGR with the updated NEO and NGO and provide clarity and certainty for stakeholders.

Changes from draft to final rules

- No change to policy position. Minor drafting changes to the definition of ‘net economic benefit’ in the NER and ‘overall economic value’ in the NGR to improve clarity on its operation.

3.4.1 The final rules amend provisions on economic benefits and economic value throughout the NER and NGR

The Commission’s final electricity and gas rules clarify that changes to emissions (positive or negative) are a relevant consideration when an assessment of net economic benefits or overall economic value is required by the NER or NGR.

The final electricity rule includes amendments to all instances in the NER that require market participants to consider net economic benefits.⁶⁵

The final rule also clarifies in these instances that the benefits of emissions reduction (and the costs of increased emissions) can be considered beyond those who produce, consume or transport electricity. This change ensures that the benefits of emissions reduction and costs of emissions increases, which accrue to a broad range of parties beyond the electricity sector, can be adequately considered when an assessment of net economic benefits is undertaken as required by the NER.⁶⁶

⁶⁵ Clause 3.11.6(a)(2), 5.12.1(b)(4), 5.12.1(b)(6), 5.15A.1(c), 5.15A.2(b)(12), 5.17.1(b), 5.17.1(c)(9)(v), Schedule 5.8(e)(4)(i), 6.6.6(c)(3), Chapter 10 glossary definition of *NSCAS need* of the final electricity rule.

⁶⁶ Consideration of other classes of benefits remains consistent with the approach under the previous NEO – they can only be considered to the extent they accrue to those who produce, consume or transport electricity in the NEM.

The final electricity rule makes ‘net economic benefit’ a defined term in the NER, meaning:⁶⁷

net economic benefit

The sum of:

- (a) the net economic benefit, other than in relation to changes to Australia’s greenhouse gas emissions, to all those who produce, consume or transport electricity in the *NEM*; and
- (b) the net economic benefit of changes to Australia’s greenhouse gas emissions, whether or not that net benefit is to those who produce, consume or transport electricity in the *NEM*.

The rule change request asked us to specifically consider whether the formulation of net economic benefits under the general principles for the RIT-T and RIT-D was appropriate.⁶⁸ The Commission’s final rule makes changes to these provisions and to other NER and NGR clauses that use the term ‘net economic benefit’ or ‘overall economic value’ for consistency in aligning the energy rules with the updated energy objectives.

Without changes to the NER and NGR, it is unclear whether the terms ‘net economic benefit’ and ‘overall economic value’ include emissions reduction considerations. If emissions reduction were added as a new class of market benefit without amending the general principles and purpose of the RIT-T and RIT-D, then there is a risk that ‘net economic benefit’ may not be taken to include emissions reduction considerations, creating uncertainty in how the NER should be applied. A similar risk would arise in relation to capital expenditure under the NGR.

In addition to the RIT-T and RIT-D principles, the final electricity rule applies the new defined term *net economic benefit* in these provisions:

- clause 3.11.6(a)(2), relating to dispatch of network support and control ancillary services (NSCAS) by AEMO
- clause 5.12.1(b), relating to transmission annual planning reviews
- schedule 5.8, relating to the Distribution Annual Planning Report (DAPR)
- clause 6.6.3(c), relating to the Demand Management Incentive Scheme (DMIS)
- the definition of ‘NSCAS need’ in Chapter 10.

The final gas rule uses a similar approach in the NGR where an assessment is required of ‘overall economic value’. The inclusion of emissions reduction in the assessment of overall economic value in the final gas rule uses a similar formulation to the definition of net economic benefit in the final electricity rule.⁶⁹

⁶⁷ Chapter 10 glossary definition of ‘*net economic benefit*’ of the final electricity rule.

⁶⁸ Energy senior officials, rule change request two (planning and AER guidelines), Table 1, pp. 1, 5.

⁶⁹ Rules 39A(4) and 79(3) of the final gas rule.

In deciding whether the **overall economic value** of ... expenditure ... is positive, consider the sum of:

- (a) the economic value, other than of changes to Australia's greenhouse gas emissions, directly accruing to the service provider, producers, users and end users; and
- (b) the economic value of changes to Australia's greenhouse gas emissions, whether or not that value accrues (directly or indirectly) to the service provider, producers, users or end users.

The Commission considered the potential operational impact of updating NSCAS provisions in the NER

The final electricity rule amends 'net market benefit' in relation to NSCAS.⁷⁰ The Commission does not consider the final changes adversely impact the procurement and dispatch of NSCAS for system security purposes.

EnergyAustralia expressed the view that the change to the definition of 'net market benefit' could be inconsistent with the ministerial intent of the law amendments by affecting AEMO's real-time operation of the NEM.⁷¹ However, the Commission does not consider that the change to the definition of 'net market benefit' will affect the real-time scheduling and dispatch of NSCAS because any consideration of changes in emissions would occur at the procurement stage and not on an operational timeframe.

The NSCAS provisions relate to AEMO's procurement of network support and control ancillary services to maintain power system security, but also to change power transfer capability for the purposes of maximising economic benefits (typically by alleviating constraints).⁷² When NSCAS is procured for this second purpose, it is known as a *market benefit ancillary service* (MBAS). Each year, AEMO performs a cost-benefit analysis to determine whether an MBAS gap should be declared by considering solution costs and market benefits.⁷³

The real-time scheduling and dispatch of NSCAS is unaffected by the final rule as AEMO retains its discretion as to when to dispatch NSCAS (including MBAS) to maintain system security or to maximise net economic benefit.⁷⁴ Any consideration of emissions reduction would only happen in the procurement process when declaring MBAS gaps through its cost-benefit analysis.

The Commission considers that this cost-benefit analysis should remain consistent with the other analyses that regulated entities are required to perform. Changes in emissions should be considered when determining whether an MBAS gap should be declared and whether to enter into new NSCAS contracts for MBAS.

3.4.2 The benefits of emissions reduction apply beyond the electricity and gas sectors

As noted in section 3.4.1, the definition of net economic benefit under our final rule clarifies that the benefits and costs of emissions reductions and increases can be considered regardless of whether they accrue to those who produce, consume or transport electricity in the NEM.⁷⁵ Consideration of other classes of benefits remains consistent with the approach under the

⁷⁰ Clause 3.11.6(a)(1) and Chapter 10 glossary definition *NSCAS need* of the final electricity rule.

⁷¹ EnergyAustralia, submission to the draft determination, p. 2.

⁷² Chapter 10 of the NER, definition of *NSCAS need*.

⁷³ AEMO, [Network Support and Control Ancillary Services \(NSCAS\) Description and Quantity Procedure](#), p. 13.

⁷⁴ Clause 3.11.6(a) of the final electricity rule.

⁷⁵ Chapter 10 glossary definition *net economic benefit* of the final electricity rule.

previous NEO — they can only be considered to the extent they accrue to those who produce, consume or transport electricity in the NEM.⁷⁶

Consideration of market benefits under the NER was constrained to benefits that accrue to those who produce, consume or transport electricity in the NEM. Similarly, the consideration of overall economic value under the NGR was constrained to benefits to service providers, gas producers, users and end users. This was appropriate under the previous energy objectives, where the interests of consumers were only with regard to the national electricity or gas system. Following that approach, under the NER, benefits that extended beyond the electricity system or the supply of electricity were not able to be considered as part of the ‘net economic benefit’.⁷⁷

By referring to broad emissions targets not limited to the electricity sector, the updated NEO makes clear that emissions considerations (which include benefits of emissions reductions and costs of emissions increases) apply at the national level and are not constrained to a single market. Clauses in the NER that limit consideration of net economic benefits to within the electricity system need to be amended, in the case of emissions reduction benefits, to align with the updated NEO.

AEMO suggested a drafting change to the definition of ‘net economic benefit’ in our draft electricity rule.⁷⁸ It considered that the phrase ‘however also including’ in the draft definition could be improved to more accurately capture the intent of the new definition. AEMO noted that there are two groups of recipients of benefits: producers, consumers and transporters, and those who benefit from emissions reduction.

We have incorporated this feedback and amended the definition of ‘net economic benefit’ to have two sub-clauses, for clarity. The final definition includes ‘the sum of’ in the chapeau of the definition, indicating that the two groups of beneficiaries should be considered together. This reduces the risk of uncertainty in applying the new definition and more accurately reflects the updated NEO throughout the NER wherever ‘net economic benefit’ is used.

The final gas rule takes a consistent and similar approach for the consideration of overall economic value under the NGR, adopting similar changes from the draft definition to the final. It clarifies that the economic value beyond service providers, producers, users and end users of gas can be considered in relation to changes in Australia’s greenhouse gas emissions.⁷⁹

This wording mirrors the approach taken in the definition of ‘net economic benefit’ in the final electricity rule to ensure consistency in how economic benefits are considered under the NER and NGR.

3.4.3 We have not made a transitional rule in relation to transmission annual planning reviews

Transgrid noted its preference for a transitional provision to allow the delayed implementation of the new definition of ‘net economic benefit’ to transmission annual planning reviews (TAPRs) due to be undertaken in 2024 in its submission to our draft determination.⁸⁰ Transgrid stated that such a transitional rule would give TNSPs more time to consider market body guidance prior to incorporating emissions benefits into their annual review.

⁷⁶

⁷⁷ This is specified in most of the clauses of the NER that use the term ‘net economic benefits’, by adding the words ‘to all those who produce, consume and transport electricity in the market’. See, for example, old clause 5.12.1(b)(4) of the NER.

⁷⁸ AEMO, submission to the draft determination, p. 3.

⁷⁹ Subrules 39A(4) and 79(3) of the final gas rule.

⁸⁰ Transgrid, submission to the draft determination, p. 3.

The Commission has not included such a transitional as this treatment would be inconsistent with other processes that use the definition of 'net economic benefit' under the final rule.⁸¹ The Commission considers that it is important to treat the definition of 'net economic benefit' consistently across these processes to provide clarity across all processes.

3.5 The final electricity rule does not amend clauses on the AER's Cost Benefit Analysis guidelines

Box 6: FINAL POSITION – The final rule does not change the rules governing the AER's Cost Benefit analysis guidelines (other than transitional provisions)

The Commission considers that no change is required to NER clause 5.22.5, which governs the AER's Cost Benefit Analysis guidelines. The existing rules will require the AER to provide guidance on quantifying emissions reduction as a class of market benefit in the ISP and through RIT-Ts and RIT-Ds.

Changes from draft to final rules

- None.

The final rule does not include changes to further specify how the AER's Cost Benefit Analysis guidelines should provide guidance on quantifying emissions reduction as a class of market benefits. However, the final rules do include transitional provisions that affect the application of updates to the Cost Benefit Analysis guidelines under clause 5.22.5(g) of the NER, discussed in section 5.2.4.

In the rule change request, energy senior officials asked the Commission to consider whether the rules for the Cost Benefit Analysis Guidelines need to be changed.

The Commission considers that no additional changes are required to clause 5.22.5 on the Cost Benefit Analysis Guidelines given the other changes in the final rules, because:

- the existing rules and the NEL are sufficient for the AER to provide guidance to AEMO and RIT proponents on how to value emissions reduction benefits, including how to apply an MCE-issued VER
- the final rule contains transitional provisions requiring the AER to update the Cost Benefit Analysis Guidelines (among others) to reflect the Emissions Act and the amending rule⁸²
- the AER noted in its submission that it intends to update the Cost Benefit Analysis Guidelines to reflect the updated energy objectives,⁸³ and the AER's guidance is required to align with any administrative guidance provided by energy ministers that relates to a VER⁸⁴
- prescribing in the NER that a guideline must include reference to a particular value or methodology would be inconsistent with how other classes of market benefits are treated within the NER.

The Commission does not recommend a change to clause 5.22.5 governing the Cost Benefit Analysis Guidelines on the basis that change is not necessary for the AER to incorporate the VER

81 For example, RITs that are subject to the updated NEO and are underway are currently incorporating emissions reduction benefits and the new definition of 'net economic benefit'.

82 The guideline update transitional rules are discussed in chapter 5.

83 AER, submission to the consultation paper, p. 2.

84 Schedule 3, clause 42 of the NEL.

into its guidance. Amendments could lead to inconsistencies in approach and reduce the AER's flexibility to adapt its guidance if required in the future. This is the same as our position in the draft determination. No stakeholders suggested changes to this position in submissions.

3.6 The final electricity rule includes transitional arrangements for RIT projects underway

Box 7: FINAL POSITION – RIT projects that are subject to the updated NEO are also subject to our final rules

RIT projects that are subject to the updated NEO are subject to the final rule. This aligns with NEL transitional provisions, which apply the updated NEO to any RIT-T or RIT-D projects underway when the law was changed that had not reached a certain stage of their process (publishing an assessment report) before 21 November 2023.

Changes from draft to final rules

- No change to policy position. Drafting amendments to the transitional provision to account for situations where RIT-T projects are exempt from publishing a project assessment draft report (PADR).

The final electricity rule includes transitional arrangements to align the application of the NER with the application of the updated NEO to RIT-T and RIT-D projects underway.⁸⁵

The Emissions Act includes transitional provisions that make clear the updated NEO applies to any RIT-T project that was required to publish a PADR where the deadline for doing so was after 21 November 2023. The updated NEO also applies to any RIT-D project that had not published a draft project assessment report (DPAR) by the same date.⁸⁶

The final rule includes a transitional arrangement to ensure the updated rules apply to the same RIT-T and RIT-D projects to which the updated NEO applies. Conversely, the final rule makes clear that the old rules apply to the assessment of PADRs, DPARs and project specification consultation reports (PSCRs) published before 21 November 2023, as the old NEO applies to those projects under the NEL. The final rule makes clear that the old rules apply only to the PADR (or PSCR) or DPAR stage of the relevant RIT-T or RIT-D.⁸⁷ Any subsequent process, including if a revised version of the same document needs to be issued at a later date (under other provisions in the NER), would not be subject to this transitional and so the updated rules would apply.

The Commission considers that the alignment of the application of the updated RIT rules with the updated NEO improves regulatory certainty and reduces the administrative burden for market bodies and NSPs.

3.6.1 We have amended the draft rule to cover RIT-T projects that are exempt from publishing a PADR

ENA suggested minor changes to the transitional arrangements for RITs in the draft electricity rule to account for RIT-T projects where the proponent is exempt from preparing a PADR.⁸⁸ ENA noted

⁸⁵ Clauses 11.162.2 and 11.162.3 of the final electricity rule.

⁸⁶ Schedule 3, clause 40(4)(b)-(c) of the NEL, introduced by the Emissions Act.

⁸⁷ Clauses 11.162.2(b) and 11.162.3(b) of the final electricity rule.

⁸⁸ ENA, submission to the draft determination, p. 4. Under clause 5.16.4(z1) of the NER, RIT-T proponents may be exempt from preparing a PADR if the estimated capital cost of the proposed preferred option in the PSCR is less than \$35 million and is not expected to have a material market benefit, among other criteria.

that it was not clear under the draft transitional arrangement whether a RIT-T project that did not require a PADR to be published would be subject to the old rules or the new rules.

The final electricity rule clarifies this situation for any RIT-T projects that are exempt from preparing a PADR. If a RIT-T project is exempt from preparing a PADR, and published a PSCR before 21 November 2023, the old rules apply to the assessment of the PSCR.⁸⁹ Conversely, if a RIT-T project is exempt from preparing a PADR and a PSCR was not published by 21 November 2023, then that RIT-T project is subject to the new rules.⁹⁰

This approach gives greater assurance that the outcomes of the assessment of the PADR/DPAR (and PSCR, where applicable) are consistent with the stakeholder consultation undertaken when preparing them.

3.7 We have made a minor change to the RIT-D rules to correct an administrative error

The final electricity rule includes a change to clause 5.17.1(d) to amend the requirement that RIT-D proponents 'may' quantify each material class of market benefit, to 'must' quantify each material class of market benefit.⁹¹ The Commission has made this change as we consider the inclusion of the term 'may' within this clause to be an administrative error. This is because:

- The relevant change to this section was proposed and consulted on as part of the AEMC's *Updating the regulatory frameworks for distributor-led stand-alone power systems review*, which recommended the use of the term 'must' in this clause.⁹² While the package of rule changes on stand-alone power systems was made as a South Australian Minister-made rule change in 2022, this particular change appears to have been omitted.⁹³
- The equivalent provision for the RIT-T has a similar requirement as the proposed change ('must quantify').⁹⁴
- It is in accordance with good regulatory practice for RIT-D proponents to have the same requirements as RIT-T proponents in this respect.

89 Clause 11.162.2(b)(2) of the final electricity rule. A PSCR identifies the need for transmission investment and describes the potential credible options that could address it. A PSCR is required for all non-actionable RIT-T projects – see clause 5.16.4 of the NER.

90 Clause 11.162.2(a)(2) of the final electricity rule.

91 Clause 5.17.1(d) of the final electricity rule.

92 AEMC, [Updating the regulatory frameworks for distributor-led stand-alone power systems: package of proposed rules](#), p. 51.

93 The rule is available here: <https://www.aemc.gov.au/sites/default/files/2022-02/SAPS%20NER%20amending%20rule%20final%202022.pdf>

94 Clause 5.15A.2(5) of the NER.

4 Harmonising the network and pipeline expenditure rules

Box 8: FINAL POSITION — Network service providers and pipeline operators to include expenditure to reduce emissions in their revenue and access arrangement proposals

The final rules amend the NER and NGR to enable network and gas pipeline operators to include capital and operating expenditure in their revenue proposals and access arrangement proposals that would contribute to achieving greenhouse gas emissions reduction targets. Network and pipeline operators are only able to propose expenditure that relates to regulated services.

The final electricity rule also makes minor amendments to the expenditure criteria for network service providers to ensure assumptions relevant to emissions reduction are treated consistently with other input assumptions for expenditure proposals.

Changes from draft to final rules:

- Changes to the gas rule drafting relating to capital and operational expenditure criteria to better reflect the intended policy position.
- Additional transitional provisions to give the AER and ERA discretion to apply the new rules in assessing expenditure proposals submitted before the rules changed, noting that the new NEO/ NGO applies to that assessment under the Emissions Act, but that much of the work of developing the proposals was done before the NEO/ NGO and rules were changed.
- Transitional provisions to align the application of the relevant parts of the final gas rule with the adoption of the Gas Pipelines Rule in Western Australia.

4.1 Clarifying that network and pipeline operators can propose expenditure to reduce emissions improves regulatory certainty

4.1.1 Our final rules clarify that network and pipeline operators can propose expenditure to reduce emissions

The final rules amend the NER and NGR to enable TNSPs, DNSPs and gas pipeline operators to include capital and operating expenditure that contributes to meeting emissions reduction targets in their revenue proposals and access arrangement proposals. This is achieved by amending the operating expenditure objectives and capital expenditure objectives for TNSPs⁹⁵ and DNSPs,⁹⁶ and the equivalent operating and capital expenditure provisions for gas.⁹⁷

The final rules clarify that expenditure for the purposes of reducing emissions can be included in revenue and access arrangement proposals, but leave detailed guidance on how this expenditure would be justified and assessed as a matter for the AER. This is consistent with the level of detail and approach for other components of these provisions — for example, components that relate to expenditure required to meet peak demand or to comply with regulatory obligations. The change provides clarity and consistency for the AER and stakeholders that emissions reduction should be included in expenditure forecasts for revenue proposals and access arrangement proposals.

⁹⁵ Clauses 6A.6.6 and 6A.6.7 of the NER.

⁹⁶ Clauses 6.5.6 and 6.5.7 of the NER.

⁹⁷ Rules 69, 79 and 91(1) of the NGR.

The Commission considers the amendments align these expenditure provisions with the updated energy objectives.

Change is required because the provisions of the NER that relate to capital and operating expenditure (which are included in revenue proposals for TNSPs⁹⁸ and DNSPs⁹⁹) referred to the components of the previous NEO.¹⁰⁰ The relevant provisions make clear that NSPs' revenue proposals must include expenditure required to meet these minimum requirements.¹⁰¹ These provisions did not mention emissions reduction, nor did they refer to the NEO as a whole.

The provisions for gas pipeline operators are less prescriptive in terms of the categories of expenditure that must be included in access arrangement proposals, but are similar in that emissions reduction activities are not explicitly included as part of operating or capital expenditure, nor are there general references to the NEO in these provisions.¹⁰²

If the Commission had not made the final rules, the AER¹⁰³ could potentially still consider proposed expenditure that relates to emission reduction as it is required to perform its economic regulatory functions and powers in a way that will or is likely to contribute to the achievement of the NEO and NGO.¹⁰⁴ However, without changes to the identified provisions, it would be unclear how network and pipeline operators could include emissions reduction-related expenditure in their proposals, and how the AER should assess this information.

Stakeholders who commented in response to the draft determination were supportive of enabling emissions reduction activities to be included in capital and operating expenditure forecasts¹⁰⁵ and there was broad stakeholder support for this general approach in response to our consultation paper.¹⁰⁶

Proposals raised by stakeholders in response to our draft determination which were not adopted in the final rules focused on specific implementation considerations such as the need for particular transitional arrangements and rules drafting suggestions. These considerations included:¹⁰⁷

- clarification that operating expenditure step changes are permitted in the next regulatory determinations for NSPs¹⁰⁸
- a formal process to enable NSPs and pipeline operators to revise their expenditure proposals in the event of a significant change in emissions reduction targets while the AER's assessment is underway¹⁰⁹

98 Clause 6A.6.6 and 6A.6.7 of the NER.

99 Clause 6.5.6 and 6.5.7 of the NER.

100 For example, they related only to meeting demand, complying with regulatory obligations and maintaining safety, quality, reliability and security of supply.

101 Clauses 6.5.6, 6.5.7, 6A.6.6 and 6A.6.7 of the NER.

102 Rule 69, 79 and rule 91(1) of the NGR.

103 And the Economic Regulatory Authority, in the case of Western Australian gas access arrangements.

104 Section 16(1)(a) of the NEL and section 28(1)(a) of the NGL.

105 Submissions to the draft determination: AER, p. 2; Clean Energy Council, p. 2; ENA, p. 1; EnergyAustralia, p. 1; Jemena, p. 1; PIAC, p. 5; Transgrid, p. 1.

106 Submissions to the consultation paper: AER, p. 1; AGIG, p. 1; APA, p. 5; APGA, p. 2; ATCO, p.1; Ausgrid, p.1; Clean Energy Council, p. 1; ENA, pp. 5-6; EnergyAustralia, p. 10; Energy Consumers Australia, p.1; Energy Queensland, p. 1; Hydro Tasmania, p. 3; PIAC, p. 6; Transgrid, p. 2.

107 Submissions to the draft determination: Transgrid, p. 2; Jemena, p. 1; ENA, p. 3.

108 Transgrid suggested the final determination should make clear that operational expenditure step changes are allowed as a result of this rule change proposal; Transgrid submission to the draft determination, p. 2.

109 Jemena and ENA noted emissions reduction targets could be subject to change during regulatory the assessment process, and there is currently limited scope for energy businesses to update their proposals at this time; submissions to the draft determination: ENA, p. 3; Jemena, p. 1.

- further consideration of how electricity and gas decarbonisation pathways can be coordinated.¹¹⁰

The Commission has not adopted these suggestions in the final rules as it considers the AER's existing processes for addressing these situations are sufficient or the issues are outside the scope of this rule change process. These issues are discussed further in appendix D.

The Commission considers the approach taken in the final rules supports good regulatory practice and is needed to allow network and pipeline operators to prepare expenditure proposals that are consistent with the revised objectives. In the Commission's view, these final rules align with the updated energy objectives and improve the predictability and stability of the NER and NGR.

4.1.2 Our final rules make minor changes to the NER expenditure criteria

The rule change request also asked us to consider whether other changes to the operating and capital expenditure provisions may be required.¹¹¹ This included the operating and capital expenditure criteria in the NER.¹¹²

The Commission recognises that, in preparing expenditure proposals that include emissions reduction elements, networks may need to make assumptions that relate to emissions reduction, which might not involve cost inputs or demand forecasts (the existing categories covered by the operating and capital expenditure criteria). Therefore, the final rules require any relevant inputs required to achieve the operating and capital expenditure objectives, not just inputs relating to cost and demand, to meet realistic expectations.¹¹³ The Commission anticipates this change would primarily cover assumptions relating to quantities of greenhouse gas abated as a result of an action by an NSP. Estimated greenhouse gas abatement, along with the cost of achieving this abatement, are both expected to be important inputs in the AER's assessment of whether proposed expenditure for the purposes of reducing emissions is prudent and efficient.

The Commission is of the view that this change aligns the accuracy requirements for any additional input assumptions relating to emissions reduction with other assumptions and provides for consistent treatment of assumptions by network service providers and the AER. Without this change, there is a risk of NSPs using less rigorous assumptions relating to emissions, or disputes between NSPs and the AER over emissions reduction assumptions. This would increase regulatory complexity and uncertainty, and potentially increase costs to consumers.

4.1.3 Our final gas rule changes the gas pipeline expenditure framework

The final gas rule:

- amends the criteria governing operating expenditure and the criteria for conforming capital expenditure to make clear that contributing to meeting emissions reduction targets is a relevant objective of capital and operating expenditure¹¹⁴

¹¹⁰ The Clean Energy Council, EnergyAustralia and PIAC raised the risk that electricity and gas decarbonisation is implemented in parallel, without consideration of the most cost-effective emissions reduction opportunities between sectors; submissions to the draft determination: Clean Energy Council, p. 2; EnergyAustralia, p. 3; PIAC, pp. 7-8.

¹¹¹ Rule change request: 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 assessments, Table 1.

¹¹² Clauses 6.5.6(c), 6.5.7(c), 6A.6.6(c) and 6A.6.7(c) of the NER.

¹¹³ Clauses 6.5.6(c), 6.5.7(c), 6A.6.6(c) and 6A.6.7 of the final electricity rule.

¹¹⁴ Rule 79(1)(a) and rule 91(1) of the final gas rule.

- enables pipeline operators to include capital and operating expenditure in their access arrangement proposals where that expenditure would contribute to meeting emissions reduction targets through the supply of pipeline services¹¹⁵
- amends the exemption criteria under rule 39A to provide an exemption to the prohibition on increasing charges to develop pipeline assets if the expansion is necessary to contribute to meeting emissions reduction targets.¹¹⁶

The final gas rule is consistent with the policy intent outlined in the draft determination. However, the final rule takes a different approach from the draft rule with regard to the criteria governing operating expenditure and criteria for conforming capital expenditure to improve clarity.¹¹⁷ The final gas rule now requires capital and operating expenditure to be at the lowest sustainable cost of providing services ‘in a manner consistent with the achievement of the national gas objective’. This differs from the draft gas rule which proposed such expenditure be required to be at the lowest sustainable cost of providing services ‘in a manner that contributes to meeting emissions reduction targets.’

Several stakeholders raised concerns that the draft gas rule could potentially be interpreted to constrain pipeline operators from including expenditure that did not contribute to meeting emissions reduction targets but that was otherwise warranted to meet other components of the NGO – for example, to maintain the safety of services, or to maintain the service provider’s capacity to meet demand.¹¹⁸ PIAC considered the wording proposed in the draft gas rule to be appropriate and that emissions reduction should be required to be considered in all new capital and operating expenditure proposals.¹¹⁹

The Commission’s view is that emissions should be considered in new capital and operating expenditure proposals but that the expenditure framework needs to retain the flexibility to balance different limbs of the NGO. A quantified value of emissions reduction is expected to play a key role in determining any trade-off between emissions reduction and other limbs of the objectives. We consider the draft gas rule could have been interpreted to constrain expenditure that did not contribute to reducing emissions but that was otherwise required to meet other limbs of the NGO.

The Commission considers the final gas rule achieves the policy intent of requiring gas pipeline operators to consider emissions reduction when proposing capital and operating expenditure while also enabling sufficient flexibility for different limbs of the NGO to be balanced. This aligns with the approach for electricity revenue proposals while accounting for the differences in the operation and regulation of the two markets.

4.2 Our final rules require proposed expenditure to relate to regulated services

The final rules require any proposed expenditure targeted at reducing emissions to relate to regulated services. This means network and pipeline operators are only able to propose operating and capital expenditure for regulated services to achieve emissions reduction in their building block proposals. In the case of DNSPs, the expenditure would need to be towards *standard control*

¹¹⁵ Rule 79(2)(c)(v) and revised definition of ‘operating expenditure’ in rule 69 of the final gas rule.

¹¹⁶ Rule 39A(3)(b)(v) of the final gas rule. For further discussion, see AEMC, Harmonising the rules with the updated energy objectives, draft determination, 26 October 2023, p. 30.

¹¹⁷ Rules 79(1)(a) and 91(1) of the final gas rules, respectively.

¹¹⁸ Submissions to the draft determination: APA, p. 1; ATCO, p. 1; ENA, p. 3; Jemena, p. 2.

¹¹⁹ PIAC submission to the draft determination, p. 5.

services and for TNSPs towards *prescribed transmission services*.¹²⁰ There is a similar constraint for gas such that expenditure would need to be towards *pipeline services*.¹²¹

This is consistent with the current approach in the rules where network service providers can only propose operating and capital expenditure in their revenue proposals that relates to regulated services. For example, all other components of the current operating expenditure objectives and capital expenditure objectives in the electricity rules link to the provision of standard control services or prescribed transmission services, for distribution and transmission, respectively.¹²²

The Commission had regard to principles of market efficiency and design in forming this position. In particular, the Commission does not consider it appropriate for regulated natural monopoly businesses such as network and pipeline operators to invest in competitive sectors of the economy, including for the purposes of reducing emissions, while recovering costs from consumers through regulated revenue. The final rules maintain the existing approach whereby network and pipeline operators can only propose expenditure that relates to the provision of relevant regulated services.

The final gas rule incorporates a clarifying change proposed by the AER

The final gas rule clarifies that, under the revised definition of operating expenditure, expenditure that contributes to meeting emissions reduction targets must be towards pipeline services.¹²³ The AER raised in its submission to the draft determination that the draft rule could be interpreted as including any expenditure that contributes to meeting emissions reduction targets, regardless of whether that expenditure is incurred in providing pipeline services.¹²⁴ The Commission considers this change clarifies the policy intent of the final gas rules and improves regulatory certainty for stakeholders.

4.3 Emissions reduction across the Australian economy should be considered

The final rules do not require emissions reduction resulting from expenditure on regulated services to only occur within the electricity or gas sectors. Emissions reduction achieved in any sector of the economy¹²⁵ as a result of expenditure on regulated services could be used as a basis for inclusion in a revenue proposal or access arrangement proposal, subject to more detailed guidance or constraints being issued on this matter by the AER under its relevant guidelines.¹²⁶

Expenditure contributing to emissions reduction outside Australia should not be included as the new NEO refers to targets for reducing Australia's greenhouse gas emissions.¹²⁷ This represents no change from the draft determination and draft rules.

¹²⁰ Paragraph (5) in clauses 6.5.6(a), 6.5.7(a), 6A.6.6(a) and 6A.6.7(a) of the final electricity rule.

¹²¹ Rules 79(1)(a) and 91(1) of the final gas rule. The definition of *capital expenditure* in existing rule 69 of the NGR is limited to expenditure on pipeline services. The final gas rule does not change this definition.

¹²² Clauses 6.5.6, 6.5.7, 6A.6.6 and 6A.6.7 of the NER.

¹²³ Rule 69, definition of operating expenditure, of the final gas rule.

¹²⁴ AER, submission to the draft determination, p. 2.

¹²⁵ Specifically, any sector of the economy to which an emissions reduction target covered by the energy objectives applies, which at present is all sectors of the Australian economy. See AEMC, [Emissions targets statement under the national energy laws](#), p. 1.

¹²⁶ AER, Expenditure forecast assessment guideline for electricity distribution, August 2022; AER, Expenditure forecast assessment guideline for electricity transmission, November 2013; AER, Access arrangement guideline, March 2009. The AER may make amendments to these guidelines as a result of the Emissions Act and this harmonising rule change.

¹²⁷ NEL section 7(c); NGL section 23(b); NERL section 13(b).

The attribution of emissions reduction elsewhere in the economy to expenditure by a network or pipeline operator on regulated services is potentially complex.¹²⁸

The final rules do not prescribe how this assessment should be done to retain flexibility for the AER in how it would make this assessment and consistent with the level of detail for other aspects of the capital and operating expenditure provisions. The AER expressed support for this approach in its response to the draft determination.¹²⁹

The AER will assess which jurisdictional emissions reduction targets are within scope of the objectives

Under the final electricity rule, NSPs can propose expenditure towards regulated services where it contributes to meeting emissions reduction targets.¹³⁰ *Emissions reduction targets* is a defined term under the final electricity rule, which directly mirrors the jurisdictional targets covered by the updated NEO. The AER will need to assess whether it considers a jurisdictional target proposed by an NSP as justification for expenditure meets the definition established in the rules.

The AER raised in its submission that it would prefer an approach whereby it must consider all targets on the AEMC's targets statement, with the discretion to take other targets into account.¹³¹ We have not opted to make this change for the final rule because, in our view, the AER's proposed approach is functionally the same as the approach proposed in our draft and final rule.

We would expect the AER to approve NSP references to any target that is on the AEMC's target statement because these targets have already been considered to meet the criteria under the NEO, in consultation with jurisdictions. The AER would then need to exercise judgement with respect to a proposed target that is not on the targets statement – for example, new targets that have not yet been included in the targets statement.

4.4 The final rule includes transitional arrangements relating to expenditure provisions

4.4.1 The final rule includes transitional arrangements for revenue determinations and access arrangements underway

The final rules include transitional provisions for revenue determination and access arrangement processes underway when these final rules come into effect.¹³² This transitional arrangement provides for the AER (and the ERA in the case of Western Australian gas access arrangements) to choose whether to apply the new rules in assessing expenditure proposals submitted before the rules changed. The Commission developed these transitional provisions on the understanding that, while the new energy objectives apply to the AER's and ERA's assessment of those proposals under the national energy laws,¹³³ much of the work of developing the proposals was done before the energy objectives and rules were changed. The transitional does not provide NSPs or pipeline operators additional time to revise their expenditure proposals.¹³⁴

¹²⁸ EnergyAustralia and Transgrid sought further guidance on these matters, which is discussed in section 3.1.2. Submissions to the draft determination: EnergyAustralia, p. 3; Transgrid, p. 3.

¹²⁹ AER, submission to the draft determination, p. 2.

¹³⁰ Clauses 6.5.6(a)(5) and 6A.6.6(a)(5) of the final electricity rule.

¹³¹ AER, submission to the draft determination, p. 2.

¹³² Clause 11.162.4 of the final electricity rule, and rule 103 of the final gas rule.

¹³³ NEL, schedule 3, clauses 39 and 40; NGL, schedule 3, clause 134.

¹³⁴ ENA's submission to the consultation paper proposed network and pipeline businesses be provided 20 business days to update their expenditure forecasts after this final rule is made.

This transitional applies to a number of revenue proposal and access arrangement processes that were submitted to the AER before the date the final rule commences. These include NSP revenue proposals for the 2024-2029 regulatory control period, which are nearing completion, as well as for the 2025-2030 regulatory control period, which has just commenced.¹³⁵ Access arrangement proposals for gas pipeline operators in Western Australia are also underway at this time.¹³⁶

ENA and ATCO raised in their submissions that they considered that a transitional provision was required to enable the AER or ERA to approve expenditure related to emissions reduction for these processes.¹³⁷ As we noted in the draft determination, we expect the AER or ERA would be able to approve emissions-related expenditure in these processes on the basis that the updated energy objectives apply¹³⁸, but agree that a specific transitional arrangement on this matter clarifies the AER's and ERA's ability to do so. The AER also noted in its submission that a transitional on this matter would clarify there are no barriers to the AER accepting expenditure forecasts based on the new rules.¹³⁹

The final rules provide the AER and ERA discretion to apply either the new rules or the previous rules to these processes. This discretion is considered appropriate on the understanding that some NSPs and pipeline operators have included emissions-related expenditure in their proposals, while others have not. The Commission considers mandatory application of the new rules to all processes might not be appropriate given the development of these proposals commenced prior to this rule change process. The new rules on emissions expenditure in regulatory proposals were not in effect when the NSPs and pipeline operators were preparing their proposals.

The Commission expects the AER and ERA will take a consistent approach in using their discretion, and apply the new rules to proposals which include forecast expenditure for the purposes of contributing to the achievement of emissions reduction targets. The Commission also notes that the new capital and operating expenditure rules (and not this transitional provision) will apply to the revised regulatory proposals for the 2025-2030 regulatory control period, as that stage of these processes will commence after these final rules come into effect.¹⁴⁰

The final rules include transitional provisions for the revenue determination and access arrangement processes underway on the basis that it will allow flexibility for proposals that contain emissions expenditure to be considered, without going so far as to require all existing proposals to have included emissions considerations or risk being rejected by the AER or ERA (which could have been the result if this transitional was not included). This balances the need to harmonise the rules with the revised energy objectives as soon as possible, with practical implementation considerations and consideration of procedural fairness for all parties.

¹³⁵ Revised proposals were due in December 2023, and final determinations are due on 31 April 2024, for the 2024-2029 control period including NSW/ACT DNSPs (Ausgrid, Endeavour Energy, Essential Energy, Evoenergy), Tasmania DNSP TasNetworks, NT DNSP Power and Water, Tasmania TNSP TasNetworks. Initial proposals were due 31 January 2024 for the 2025-2030 control period including Queensland and South Australian DNSPs (Energex, Ergon Energy, SA Power Networks) and TNSP Directlink.

¹³⁶ A final decision is expected April-May 2024 for the Mid-West and South-West Gas Distribution System and the initial access arrangement proposal for the Goldfields Gas Pipeline access arrangement was due 1 January 2024.

¹³⁷ Submissions to the draft determination: ATCO, p. 1; ENA, p. 2.

¹³⁸ Under transitional provisions in the Emissions Act, now reflected in NEL schedule 3 and NGL schedule 3.

¹³⁹ AER submission to the draft determination, p. 2.

¹⁴⁰ This group contains Queensland and South Australian DNSPs. A draft decision is due to be published by the AER on 30 September 2024, with revised regulatory proposals due in December 2024. The transitional clause 11.162.4 applies only to proposals submitted before the rule start date of 1 February 2024.

4.4.2 The final gas rule includes a transitional for Western Australia

On 24 January 2024, Western Australia declared the Emissions Act amendments to the *National Gas Law (SA) Act 2008* to be relevant and adopted them in the *National Gas Access (WA) Act 2009*.¹⁴¹ This means the updated NGO now applies in all relevant participating jurisdictions. Therefore, amendments to Part 1 and Part 9 of the NGR as part of this rule change process will apply to Western Australia, along with all other participating jurisdictions, on and from 1 February 2024.

However, as discussed in chapter 2 of this determination, the amendments to Part 7 of the NGR will apply to other participating jurisdictions, except for Western Australia. The final gas rule includes transitional arrangements to delay these changes to the NGR applying to Western Australia until the relevant Gas Pipelines Rule takes effect in Western Australia.¹⁴²

¹⁴¹ Western Australian Government Gazette, 24 January 2024, No. 8, pp 91-92.

¹⁴² Rule 102 of the final gas rule.

5 Introducing omnibus processes for updating AER guidelines

5.1 The AER is able to carry out an omnibus update for minor changes to its guidelines to address emissions reduction

Box 9: FINAL POSITION — Introduce an omnibus one-round consultation process for AER instruments and guidelines requiring minor updates due to changes in the energy objectives and this rule

The final rules enable the AER to consult on minor updates to its NER, NGR and NERR instruments and guidelines required due to the change in the energy objectives and our final rules through a single, consolidated process.

The AER identified 40 to 50 guidelines it expects will require minor changes as a result of the change to the energy objectives, such as updating references to the NEO, NGO or NERO. A number of different consultation requirements apply to these guidelines under the rules, with different consultation timeframes.

The final rules enable the AER to use the distribution consultation procedures for consultation on all NER and NGR guidelines requiring these minor updates, and all NERR guidelines. This approach enables the AER to consult on the changes across the relevant guidelines at the same time, through one consolidated process.

The Commission considers this approach significantly reduces administrative burden for both market participants and the AER, compared to running several separate sets of consultation under the different consultation processes specified in the rules.

The process for changes to network planning instruments is discussed in section 5.2 below.

Changes from draft to final rules

- No policy changes have been made. Several clarifying drafting changes are included in the final electricity and gas rules.

5.1.1 Enabling the AER to use an omnibus update for minor amendments reduces administrative burden

The final rules enable the AER to consult on updates to its guidelines required as a result of the change in the energy objectives and this rule change using one, consolidated consultation process.¹⁴³ The final rules enable the AER to use the distribution consultation procedures to consult on the required updates, which requires one round of consultation and gives stakeholders 30 business days to make a submission.¹⁴⁴

The AER has identified around 40-50 guidelines established under the NER, NGR and NERR that will require updates due to the changes in the national energy objectives and this rule change.¹⁴⁵

¹⁴³ Clause 11.162.7 of the final electricity rule; Schedule 1 Part 18 rules 100-101 of the final gas rule; Schedule 3, Part 19, rule 2 of the final retail rule.

¹⁴⁴ Rule 6.16 of the NER.

¹⁴⁵ See AEMC, Updated national energy objectives harmonising rule changes, Consultation paper, Appendix A for an indicative list of guidelines identified by the AER as requiring updates.

The majority of changes are anticipated to be minor in that they are not expected to change the regulated parties' obligations or necessitate a change in analysis or process.¹⁴⁶

Under the current provisions in the NER, NGR and NERR, the guidelines would need to be updated according to different consultation procedures, each with different timing requirements. This could mean separate consultation processes would need to be run by the AER for similar types of updates, depending on the consultation requirements that apply. For example, the standard rules consultation procedure under the NER and the standard consultative procedure under the NGR both have two rounds of consultation but the minimum length of consultation and due dates for publications differ. Similarly, the timing of the retail consultation procedures differs from that required under the transmission and distribution consultation procedures. Consultation and publishing requirements for these consultation procedures are outlined in Table 5.1 below.

Table 5.1: Consultation requirements differ across the NER, NERR and NGR

Consultation procedure	Consultation and publishing requirements
Standard rules consultation procedure (NER) ¹	<ul style="list-style-type: none"> Two rounds of consultation At least 20 business days for stakeholders to make a submission final then final report made within 50 business days after the due date for submissions
Distribution and transmission consultation procedures (NER) ²	<ul style="list-style-type: none"> One round of consultation At least 30 business days for stakeholders to make a submission Final decision made within 80 business days after publishing the initial consultation documentation
Retail consultation procedure (NERR) ³	<ul style="list-style-type: none"> One round of consultation At least 20 business days for stakeholders to make a submission Final instrument made as soon as reasonably practicable after the due date for submissions
Standard consultative procedure (NGR) ⁴	<ul style="list-style-type: none"> One round of consultation with a second round if the final decision differs from the proposal At least 15 business days for stakeholders to make a submission for both steps Final decision made within 20 business days after the due date for submissions on the final decision.

Source: AEMC

Note: ¹ Standard rules consultation procedure: clause 8.9.2 of the NER. ² Distribution consultation procedure: Rule 6.16 of the NER, transmission consultation procedure: Rule 6A.20 of the NER. ³ Retail consultation procedure: Rule 173 of the NERR.

⁴ Standard consultative procedure: Rule 8 of the NGR.

Note: Under the NER there is also an expedited rules consultation procedure (clause 8.9.3) and a minor rules consultation procedure (clause 8.9.4), not shown here.

In the rule change request, energy senior officials noted that requiring guideline updates to follow different consultation pathways would place a significant administrative burden on the AER and

¹⁴⁶ Energy senior officials, Rule change request two (planning and AER guidelines), p. 9.

stakeholders.¹⁴⁷ It may also impact stakeholders' ability to meaningfully engage in the processes and provide feedback.

Stakeholder submissions to the consultation paper were supportive of the intent to reduce administrative burden on the AER and market participants and stakeholders did not comment on this proposal in response to the draft determination.¹⁴⁸

Under the final rules, the AER has the ability to consult on guideline updates individually, together or in groups, using the distribution consultation procedures (for minor changes to NER and NGR guidelines, and all changes to NERR guidelines) or using the relevant consultation procedures that ordinarily apply to that guideline under the relevant rules (for non-minor changes to NER and NGR guidelines). The rule change request noted the AER's intention to use a separate consultation process for more complex or substantive amendments.¹⁴⁹ The use of an omnibus consultation process is at the AER's discretion, provided the updates were required as a result of the change in the energy objectives or this rule change. A separate consultation process that follows the standard rules consultation procedure is required for updates to the network planning instruments (discussed below in section 5.2).

The Commission considers this omnibus consultation process for minor changes that do not materially impact the obligations of participants streamlines the AER's consultation process while providing opportunities for receiving and incorporating comprehensive feedback from stakeholders. This approach will reduce administrative burden and enable stakeholders to better engage in the consultation process.

5.1.2 The AER can use the distribution consultation procedures with one round of consultation

Under the final rules, the AER can use the distribution consultation procedures to consult on minor changes to NER and NGR guidelines, and all changes to NERR guidelines, required due to the change in the energy objectives and this rule change.¹⁵⁰ The distribution consultation procedures are summarised in Box 10.

Box 10: The distribution consultation procedures provide appropriate timeframes

The distribution consultation procedures are as follows:

- The AER publishes its proposed changes to the guideline, an explanatory statement and an invitation for written submissions.
- Stakeholders have at least 30 business days to make submissions to the proposed changes.
- The AER may publish additional papers and host information sessions or conferences to consult with stakeholders as it sees fit.
- The AER has 80 business days (from publishing the proposed changes) to make its final decision.

¹⁴⁷ Energy senior officials, rule change request two (planning and AER guidelines), p. 10.

¹⁴⁸ Submissions to the consultation paper: AEC, p. 2; AEMO, p. 3; AER, p. 3; Ausgrid, p. 2; CEIG, p. 2; ENA, pp. 5, 16-17; EnergyAustralia, p. 11; Energy Queensland, p. 5; Hydro Tasmania, p. 3; Transgrid, p. 4.

¹⁴⁹ Energy senior officials, rule change request two (planning and AER guidelines), p. 10

¹⁵⁰ New clauses 11.162.5 and 11.162.6 in the final electricity rule; Schedule 1 Part 18 rule 101 in the final gas rule; Schedule 3, Part 19 rule 2 in the final retail rule. The AER would consult on non-minor changes to NER and NGR guidelines using the process set out in the relevant provisions of the NER and NGR, which may require two rounds of consultation in some cases. As the only NERR consultation process is a one-round consultation, the final retail rule does not distinguish between minor and non-minor changes to NERR guidelines.

- The AER may choose to extend this timeframe if consultation involves complex or difficult issues, and circumstances beyond the AER's control make an extension necessary.

Source: NER, rule 6.16.

The Commission considers the distribution consultation procedures are appropriate for this process given:¹⁵¹

- the changes are not anticipated to be significant, meaning one round of consultation is appropriate
- stakeholders would have 30 days to make a submission and the AER has 80 business days to make a final decision, which is appropriate given the large volume of material that would be consulted on at the same time
- the AER has the ability to extend these timeframes, which provides an appropriate level of flexibility if complex issues arise that require more time to address.

In the second rule change request, energy senior officials suggested that an omnibus process could use the distribution consultation procedures.¹⁵² Similarly, the AER expressed its preference to use the distribution consultation procedures as it is ideal for undertaking updates that are less significant in nature.¹⁵³ Stakeholders did not comment in their submissions to the draft determination on the consultation process to be followed for minor updates.

In the draft determination, the Commission outlined the advantages and disadvantages of using other one-stage consultation procedures that exist within the NER, including the transmission consultation procedures and the expedited and minor rules consultation procedures.¹⁵⁴

The Commission continues to consider the distribution consultation procedures strike an appropriate balance between reducing administrative burden and providing sufficient time for stakeholders to provide their input through submissions.

5.1.3 The AER is required to commence consultation by 1 July 2024

The final rules require the AER to commence consulting on guideline changes (other than network planning instruments, discussed below) by 1 July 2024.¹⁵⁵

A required start date is included to ensure relevant guideline updates occur in a timely manner. Under the final rules, the AER could commence consultation earlier than this date if it chooses. A start date of 1 July 2024 would imply a final decision by late October 2024,¹⁵⁶ which the Commission considers is an appropriate timeframe for the AER to make minor updates to its guidelines resulting from the change in the energy objectives.

A required start date is included instead of a required finish date to provide the AER with the same flexibility to extend the time within which it is required to publish its final decision, in the event the consultation involves particularly complex issues or due to circumstances outside the AER's control, as is provided ordinarily under the distribution rules consultation procedures.¹⁵⁷

151 The transmission consultation procedures, set out in rule 6A.20 of the NER, are similar to the distribution consultation procedures.

152 Energy Senior Officials, rule change request two (planning and AER guidelines), p. 8.

153 AER, submission to the consultation paper, p. 3.

154 AEMC, Harmonising the national energy rules with the updated national energy objectives, Draft rule determination, 26 October 2023, p. 40.

155 New clause 11.162.6 in the final electricity rule; Schedule 1 Part 18 rule 101 in the final gas rule; Schedule 3, Part 19 rule 2 in the final retail rule.

156 Assuming the minimum consultation time and maximum time to develop the final decision allowed under the distribution consultation procedures (rule 6.16 of the NER), noting that this timeframe could be more or less if the minimums and maximums were not taken.

157 Rule 6.16(g) of the NER.

5.2 The AER is able to consult on the network planning instruments together, using a two-round process

Box 11: FINAL POSITION — Network planning instruments, requiring more significant changes, can be updated together using a separate two-round process

The final electricity rule requires two rounds of consultation on the network planning instruments, which will need more significant changes to reflect the new NEO and this rule. It enables the AER to consult on changes to these documents under one consolidated process, using the standard rules consultation procedure. The five network planning instruments are the:

- Cost Benefit Analysis Guidelines
- Regulatory investment test for transmission instrument
- Regulatory investment test for transmission application guidelines
- Regulatory investment test for distribution instrument
- Regulatory investment test for distribution application guidelines.

Updates to these guidelines and instruments required as a result of the change in the NEO and this rule are expected to be substantive and inter-related. These documents also require timely updates as they impact long term planning processes such as the ISP and RITs. Different consultation procedures would ordinarily apply to changes to these guidelines and instruments. Consulting on these changes separately would increase administrative burden.

The final electricity rule includes transitional arrangements that recognise consultation undertaken by the AER prior to the final rule coming into effect as meeting the relevant consultation requirements. A further transitional rule is also made to allow the updated network planning instruments and guidelines to apply to ISP and RIT processes underway at the time the updates are made. This ensures that emissions reduction is treated consistently in RIT and ISP processes as soon as practicable.

Changes from draft to final rules

- AER can consult on the network planning instruments in sub-groups, as well as individually or all together.
- A new transitional arrangement to allow the updated guidelines and instruments to specify when they take effect for ISP and RIT processes underway at the time the updates are finalised.

5.2.1 Enabling the AER to use one process to update the related network planning instruments reduces administrative burden

The final electricity rule enables the AER to consult on updates to specific network planning instruments through one consolidated process and requires the AER to use the standard rules consultation procedure under clause 8.9.2 of the NER.¹⁵⁸ The AER will use this procedure when making updates to the following guidelines and instruments:

- Cost Benefit Analysis Guidelines
- RIT-T instrument

¹⁵⁸ Clause 11.162.6 of the final electricity rule.

- RIT-T application guidelines
- RIT-D instrument
- RIT-D application guidelines.

Prior to this final electricity rule, the AER would have been required to use the rules consultation procedure when updating the Cost Benefit Analysis Guidelines, the transmission consultation procedures for the RIT-T guideline and instrument and the distribution consultation procedures for the RIT-D guideline and instrument. As noted in section 5.1.1, the rules consultation procedures have different consultation stages and timing requirements to the distribution and transmission consultation procedures.

The Commission considers it preferable for these types of guidelines and instruments to be consulted on together as they will all need to similarly consider the addition of emissions reduction as a class of market benefit that must be considered under the ISP and RITs, as discussed in chapter 3. The Commission considers that a dedicated consultation process for these substantive and related updates is more likely to facilitate higher-quality consultation. It also reduces administrative burden for the AER and stakeholders, compared to separate consultations using different processes.

ENA suggested in its submission to the draft determination that the AER should also be able to consult on the network planning instruments in sub-groups (as well as individually or all together, as proposed in the draft electricity rule).¹⁵⁹ The Commission agrees this approach would provide additional flexibility to the AER and aligns with the approach taken for minor guideline updates discussed in section 5.1. The final electricity rule enables the AER to consult on the network planning guidelines using the standard rules consultation procedure as a single process, individually, or in groups.¹⁶⁰

5.2.2 The AER must use the standard rules consultation procedure with two rounds of consultation

The final electricity rule requires the AER to use the standard rules consultation procedure when updating the five network planning instruments.¹⁶¹ The standard rules consultation procedure is outlined in Box 12.

¹⁵⁹ ENA, submission to the draft determination, p. 5.

¹⁶⁰ Clause 11.162.5(b) of the final electricity rule.

¹⁶¹ Clause 11.162.5(a) of the final electricity rule.

Box 12: The standard rules consultation procedure requires two rounds of consultation

The standard rules consultation procedure is as follows:

- The AER publishes a consultation paper that sets out the issues involved and any options to address them, along with an invitation for written submissions
- Stakeholders have at least 20 business days to make submissions to the consultation paper, although the AER could choose a longer period
- The AER then has 50 business days after the due date for submissions to publish a final report, outlining its proposed changes and reasoning, along with an invitation for written submissions
- Stakeholders then have at least 20 business days to make submissions to the final report
- The AER has 50 business days after the due date for submissions to publish its final decision and changes
- The AER may choose to extend the due date for its final decision if there are complex issues or the circumstances have materially changed.

Source: Clause 8.9.2 of the NER.

Note: Although only the AER is mentioned above, the standard rules consultation procedure is also used by other market bodies.

Using the standard rules consultation procedure would be familiar to stakeholders, and would give the AER sufficient time to consider all relevant issues fully when updating its network planning guidelines.

The final electricity rule applies the highest consultation requirements that apply within the group (the standard rules consultation procedure) and applies them to the entire group. The Commission considers this approach is appropriate as it increases the overall consultation requirements. Applying the distribution or transmission consultation procedures to this process is not recommended as they only have one round of consultation. This would decrease consultation on the Cost Benefit Analysis Guidelines and therefore decrease the overall consultation requirements.

The Commission considers utilising the standard rules consultation procedure enables an appropriate level of transparency and stakeholder engagement, given the significance of the changes required to the network planning guidelines and instruments.

The final electricity rule requires the AER to complete its updates to these instruments by 31 December 2024, in time for changes to be factored into the 2026 ISP.

5.2.3 Consultation that has commenced on the network planning instruments before the rule commences counts towards consultation requirements

The final electricity rule enables consultation by the AER on the network planning instruments conducted prior to the commencement of the final rule, in anticipation of the rule being made, to satisfy the equivalent consultation or step under the relevant consultation procedure.¹⁶² This transitional arrangement only applies to the five network planning instruments outlined in section 5.2.1 and consultation would only be recognised to the extent it would otherwise meet the consultation requirements that apply under the standard rules consultation requirements.

The AER noted in its submission to the consultation paper that AEMO requires the network planning guidelines to be updated by October 2024 in order for the updated guidelines to apply to

¹⁶² New clause 11.162.5(c) in the final electricity rule.

the 2026 ISP.¹⁶³ To meet this deadline, the AER requested a transitional arrangement that would recognise consultation undertaken by the AER prior to the final rule taking effect as satisfying the equivalent consultation procedure under the rules.¹⁶⁴ The Commission has included this transitional given the importance of the ISP aligning with the broader national electricity framework to incorporate emissions reduction.

This transitional provision enables the AER to commence its consultation early, allowing for additional time to complete the guideline updates prior to the commencement of the 2026 ISP if the AER considers it necessary. Enabling the AER's network planning instruments to be updated in advance of the time required for the 2026 ISP ensures that AEMO has clear guidance on how to implement emissions reduction considerations in the ISP in a way that is consistent with the approach proposed for the RITs and other processes established under the NER. This improves consistency and certainty for market bodies and market participants.

5.2.4 **ISP and RIT processes that are underway will generally be subject to the updated network planning instruments**

Under existing provisions in the NER, an amendment to the RIT-T and RIT-D guidelines and instruments and Cost Benefit Analysis Guidelines would not apply to a RIT or ISP process that has already commenced when the amended guideline or instrument is published.¹⁶⁵

The final electricity rule includes a new transitional rule that will override these provisions and allow the updated network planning instruments to specify the date(s) they apply to RIT and ISP processes:

- that have started and are not completed by the time the relevant amended guidelines and instruments have been published by the AER and
- to which this final rule applies.¹⁶⁶

The Commission considers it is important that the updated guidelines and instruments apply as soon as possible in order to give full effect to the updated NEO and incorporate emissions considerations in these processes consistently and transparently. The Commission considers the risk of disruption to processes underway is generally low given the guideline and instrument updates will primarily be for the purposes of clarifying how emissions reductions should be factored into these processes. Regulated entities will already be required to assess emissions outcomes in these processes under this final rule, and the guideline and instrument updates are expected to clarify this requirement, rather than introduce new obligations for processes already in train.¹⁶⁷

However, the Commission recognises there is potential for some processes to be adversely impacted if the new guidelines or instruments were to become binding and place new obligations on a process that was nearing finalisation.¹⁶⁸ For example, if a RIT instrument were to require a specific methodology or approach with regard to considering emissions reduction benefits, this could require analysis to be restarted, which would cause project delays. To address this possibility, the transitional rule allows the AER to specify when the new network planning

¹⁶³ AER, submission to the consultation paper, p. 2.

¹⁶⁴ Ibid.

¹⁶⁵ Clauses 5.16.2(f)(1), 5.17.2(f)(1) and 5.22.5(g)(1) of the NER.

¹⁶⁶ Clause 11.162.5(d)-(e) of the final electricity rule. Under this transitional arrangement, the previous network planning instruments apply to RIT and ISP processes to which the previous NEO and NER apply.

¹⁶⁷ Clauses 5.15A.2(b)(4)(viii), 5.17.1(c)(4)(viii) and 5.22.10(c)(1)(viii) of the final electricity rule.

¹⁶⁸ Based on discussion with ENA, the Commission understands there are at least some RIT-T projects to which this transitional rule will apply and which could be nearing finalisation when the network planning instruments are expected to be updated.

instruments take effect for processes underway at the time of the guideline or instrument update. The transitional rule requires this to be done in each amended instrument, meaning that the proposed application dates for existing processes will be subject to consultation as part of the update to the guideline as a whole.

The Commission expects that, in exercising its discretion, the AER will balance the desirability of a consistent approach to emissions reduction in RIT and ISP processes with the impact of project delays. The Commission considers this transitional provision is likely to improve the consistency and transparency of the treatment of emissions reduction under the relevant processes, while providing flexibility for cases where the benefits of consistency are likely to be outweighed by the costs of delay.

A Rule making process

A standard rule change request includes the following stages:

- a proponent submits a rule change request
- the Commission initiates 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).

You can find more information on the rule change process in *The rule change process – a guide for stakeholders*.¹⁶⁹

A.1 Energy senior officials proposed rules to harmonise the energy rules with the updated national energy 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 to harmonise the energy rules with the updated energy objectives.

Both rule change requests related to ensuring changes to the national energy objectives to include emissions reduction are properly reflected in the application of the rules.

Rule change request one sought to align the capital and operational expenditure provisions for network and pipeline operators with the updated energy objectives.¹⁷⁰ The proposal recognised that the relevant provisions in the NER and NGR were finalised to reflect the previous objectives.

Rule change request two sought to align the electricity network planning and investment framework with the updated energy objectives.¹⁷¹ The proposal also proposed a process for the AER to update its guidelines, guidance documents and instruments to reflect the change in the energy objectives.

A.2 The rule change requests identified provisions in the rules that are not aligned with the updated energy objectives

The rule change requests identified instances in the then-current NER and NGR that refer to particular components of the energy objectives rather than the energy objectives overall. As a result, a change to the objectives would not have automatically flowed through to all relevant provisions in the rules unless harmonising changes were 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.

¹⁶⁹ AEMC, *The rule change process: a guide for stakeholders*, June 2017, available here: <https://www.aemc.gov.au/sites/default/files/2018-09/A-guide-to-the-rule-change-process-200617.PDF>

¹⁷⁰ Energy senior officials, rule change request one (network/pipeline expenditure).

¹⁷¹ Energy senior officials, rule change request two (planning and AER guidelines).

The misalignment between the identified provisions in the rules and the updated energy objectives would lead to regulatory uncertainty in how emissions should be factored in or applied in these cases.

A.3 The proposed rules would improve certainty for market bodies and market participants

The rule change requests proposed changes that would clarify the application of the updated energy objectives through key provisions in the NEL and NGR. Improving alignment between the energy rules and objectives would reduce administrative costs for market bodies and industry in applying the rules, as well as reducing the risk of legal challenge. Energy senior officials noted that legal challenge to regulatory decisions could have flow on implications for energy consumers.

Energy senior officials also considered that the rule changes may support network and pipeline operators considering and undertaking emissions reduction projects that would otherwise not be considered economically efficient, thereby contributing to emissions reduction.

The proposed approach to enable the AER to use an omnibus process to consult on changes to its guidelines required as result of the updated energy objectives would also reduce administrative burden for the AER and stakeholders.

A.4 The rule making process to date

On 20 July 2023, the Commission published notices advising of its intention to initiate the rule making process in respect of the two rule change requests.¹⁷² A consultation paper identifying specific issues for consultation was also published. Submissions closed on 17 August 2023, with the Commission receiving 21 submissions.

The Commission made a decision to consolidate the two rule change requests using its powers under s. 93 of the NEL, 300 of the NGL and 248 of the NERL. Consolidation was considered necessary and desirable to reduce administrative burden for stakeholders and because no complexities were identified in response to the consultation paper that the Commission considered were likely to delay a final determination for either rule change request.

On 26 October 2023, the Commission published its draft determination and draft rules under s. 99 of the NEL, s. 308 of the NGL and s. 256 of the NERL. Submissions closed on 7 December 2023, with the Commission receiving 12 submissions.

The Commission considered all issues raised by stakeholders in these submissions. Issues raised in submissions are discussed and responded to throughout this final determination and in Appendix D.

¹⁷² These notices were published under s. 95 of the NEL, s. 303 of the NGL and s. 251 of the NERL.

B Regulatory impact analysis

The Commission has undertaken regulatory impact analysis to make its final determination.

B.1 Our regulatory impact analysis methodology

We considered a range of policy options

The Commission compared a range of viable policy options that are within our statutory powers. The Commission analysed these options: the rules proposed in the rule change requests; more preferable rules; and a business-as-usual scenario where we do not make a rule. These options are described in Chapter 2.

We identified who would be affected and assessed the benefits and costs of each policy option

The Commission's regulatory impact analysis for these rule changes used qualitative methodologies. It involved identifying the stakeholders impacted and assessing the benefits and costs of policy options. The depth of analysis was commensurate with the potential impacts. The Commission focused on the types of impacts within the scope of the new NEO, NGO and NERO.

Table B.1 summarises the regulatory impact analysis the Commission undertook for these rule changes. Based on this regulatory impact analysis, the Commission evaluated the primary potential costs and benefits of policy options against the assessment criteria. The Commission's determination considered the benefits of the options minus the costs.

Table B.1: Regulatory impact analysis methodology

Assessment criteria	Primary costs – Low, medium or high	Primary benefits – Low, medium or high	Stakeholders affected	Methodology QT = quantitative, QL = qualitative
1. Emissions reduction	Nil	Clear guidance on how to incorporate the emissions reduction objective will encourage timely investment and planning. (Medium impact)	<ul style="list-style-type: none"> • Network service providers • AER • AEMO • All energy customers • All Australians 	<ul style="list-style-type: none"> • QL: stakeholder feedback to assess all benefits and costs to market participants, AER and AEMO. • QL: Public forums and bilateral discussions with key stakeholders.
2. Principles of market efficiency	Risk of inefficient costs to consumers if implemented poorly. (Low impact).	Including the emissions reduction objective explicitly into the network cost assessments will increase overall efficiency. (Low impact).	<ul style="list-style-type: none"> • AER • Network service providers 	<ul style="list-style-type: none"> • QL: stakeholder feedback to assess all benefits and costs to market participants, AER and AEMO. • QL: Public forums and bilateral discussions with key stakeholders.
3. Implementation considerations	Nil	Consistency between the Law and Rules will reduce consultation time and risks of conflicts between the two. (Medium impact)	<ul style="list-style-type: none"> • AER • AEMO • Network service providers 	<ul style="list-style-type: none"> • QL: stakeholder feedback to assess all benefits and costs to market participants, AER and AEMO. • QL: Public forums and bilateral discussions with key stakeholders
4. Principles of good regulatory practice	Nil	Consistency between the Law and Rules will reduce uncertainty and regulatory burden. (High impact)	<ul style="list-style-type: none"> • AER • Network service providers 	<ul style="list-style-type: none"> • QL: stakeholder feedback to assess all benefits and costs to market participants, AER and AEMO. • QL: Public forums and bilateral discussions with key stakeholders

Note: All primary costs are relative to not updating the NER, NGR and NERR to reflect the updated NEO, NGO and NERO.

C Legal requirements to make a rule

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

C.1 Final rule determination and final rules

In accordance with sections 102 and 102A of the NEL, sections 311 and 312 of the NGL and sections 259 and 260 of the NERL, the Commission has made this final rule determination to make more preferable final electricity, gas and retail rules in relation to the rule change requests from energy senior officials on behalf of the Ministerial Council on Energy.

The Commission's reasons for making this final rule determination are set out in chapter 2.

Copies of the more preferable final rules are attached to and published with this final determination. Their key features are described in chapters 3, 4 and 5.

C.2 Power to make the rules

The Commission is satisfied that the more preferable final rules fall within the subject matter about which the Commission may make rules.

The more preferable final electricity rule falls within s. 34 of the NEL and the matters set out in Schedule 1 of the NEL as it relates to:

- regulating the operation of the national electricity market
- regulating any matter or thing necessary or expedient for the purposes of the Law
- transmission and distribution system revenue and pricing
- regulatory economic methodologies.

The more preferable final gas rule falls within s. 74 of the NGL and the matters set out in Schedule 1 of the NGL and *National Gas Access (WA) Act 2009* as it relates to:

- regulating the operation of a regulated retail gas market
- regulating any matter or thing necessary or expedient for the purposes of the Law
- regulatory economic methodologies
- the regulator's economic regulatory function or powers.

The more preferable final retail rule falls within s. 237 of the NERL as it relates to regulating any matter or thing necessary or expedient for the purposes of the NERL.

C.3 Commission's considerations

In assessing the rule change requests the Commission considered:

- its powers under the NEL, NGL and NERL to make the more preferable final rules
- the rule change requests
- submissions received during the first and the second rounds of consultation
- stakeholder input received at the public workshops held on 7 August 2023 and 21 November 2023
- the Commission's analysis as to the ways in which the final rules will or are likely to contribute to the achievement of the NEO, NGO and NERO

- the application of the final electricity rule to the Northern Territory and the application of the final gas rule to Western Australia
- the revenue and pricing principles under the NEL and NGL.

There is no relevant Ministerial Council on Energy (MCE) statement of policy principles for this rule change request.¹⁷³

The Commission may only make an electricity or gas 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 and system functions.¹⁷⁴ The more preferable final electricity and gas rules are compatible with AEMO's declared network and system functions because they do not affect those functions.

C.4 Making electricity rules in the Northern Territory

Test for scope of 'national electricity system' in the NEO

Under the NT Act, the Commission must regard the reference in the NEO to the 'national electricity system' as a reference to whichever of the following the Commission considers appropriate in the circumstances having regard to the nature, scope or operation of the proposed rule:¹⁷⁵

1. the national electricity system
2. one or more, or all, of the local electricity systems¹⁷⁶
3. all of the electricity systems referred to above.

Test for differential rule

Under the NT Act, the Commission may make a differential rule if it is satisfied that, having regard to any relevant MCE statement of policy principles, a differential rule will, or is likely to, better contribute to the achievement of the NEO than a uniform rule.¹⁷⁷ A differential rule is a rule that:

- varies in its term as between:
 - the national electricity systems, and
 - one or more, or all, of the local electricity systems, or
- does not have effect with respect to one or more of those systems

but is not a jurisdictional derogation, participant derogation or rule that has effect with respect to an adoptive jurisdiction for the purpose of s. 91(8) of the NEL.

A uniform rule is a rule that does not vary in its terms between the national electricity system and one or more, or all, of the local electricity systems, and has effect with respect to all of those systems.¹⁷⁸

The Commission's final determinations in relation to the meaning of the 'national electricity system' and whether to make a uniform or differential rule are set out in chapter 2.

¹⁷³ Under s. 33 of the NEL and s. 73 of the NGL the AEMC must have regard to any relevant MCE statement of policy principles in making a rule. The MCE is referenced in the AEMC's governing legislation and is a legally enduring body comprising the Federal, State and Territory Ministers responsible for energy.

¹⁷⁴ Section 91(8) of the NEL and 295(4) of the NGL.

¹⁷⁵ Clause 14A of Schedule 1 to the NT Act, inserting section 88(2a) into the NEL as it applies in the Northern Territory.

¹⁷⁶ These are specified Northern Territory systems, listed in schedule 2 of the NT Act.

¹⁷⁷ Clause 14B of Schedule 1 to the NT Act, inserting section 88AA into the NEL as it applies in the Northern Territory.

¹⁷⁸ Clause 14 of Schedule 1 to the NT Act, inserting the definitions of 'differential Rule' and 'uniform Rule' into section 87 of the NEL as it applies in the Northern Territory.

C.5 Making gas rules in Western Australia

Under the *National Gas Access (WA) Act 2009* (WA Gas Act), a modified version of the NGL was adopted in Western Australia, known as the National Gas Access (Western Australia) Law (WA Gas Law). Under the WA Gas Law, the NGR applying in Western Australia is version 1 of the NGR, as amended by rules made by the South Australian Minister for Energy¹⁷⁹ and rules made by the AEMC in accordance with its rule making powers under section 74 and 313 of the WA Gas Law.¹⁸⁰

The final gas rule amends parts of the NGR that apply in Western Australia and parts of the NGR that do not currently apply in Western Australia. For more information on the application of the final rule to Western Australia, see chapter 2 of the determination.

C.6 Civil penalty provisions and conduct provisions

The Commission cannot create new civil penalty provisions or conduct provisions. However, it may recommend to the energy ministers that new or existing provisions of the NER, NGR and NERL be classified as civil penalty provisions or conduct provisions.

The more preferable final rules do not amend any clauses that are currently classified as civil penalty provisions or conduct provisions under the *National Electricity (South Australia) Regulations*, *National Gas (South Australia) Regulations*, *National Energy Retail Regulations* or *National Gas Access (WA) (Part 3) Regulations 2009*.

The Commission does not propose to recommend to the energy ministers that any of the proposed amendments made by the more preferable final rules be classified as civil penalty provisions or conduct provisions.

¹⁷⁹ The Statutes Amendment (National Energy Laws) (Binding Rate of Return Instrument) Act 2018 and the National Gas (South Australia (Pipelines Access—Arbitration) Amendment Act 2017.

¹⁸⁰ See the AEMC website for further information at <https://www.aemc.gov.au/regulation/energy-rules/national-gas-rules/western-australia>.

D Summary of other issues raised in submissions

Table D.1: Summary of other issues raised in submissions to the draft determination

Stakeholder and page reference	Issue	Response
Revenue determinations		
Ausgrid, p. 1	Ausgrid and Transgrid suggested a transitional arrangement to provide NSPs more than the usual 90 business days to submit a regulatory change event pass through application in response to this final electricity rule.	We do not consider such a transitional arrangement necessary because there are no apparent immediate regulatory compliance costs for NSPs as a result of the final electricity rule. The Commission's view is that capital and operational expenditure proposals for the purposes of reducing emissions should be made through the formal revenue determination process, rather than the regulatory cost pass through process. We consider it important to maintain the rigour of the formal determination process for such expenditure, including stakeholder consultation and AER assessment of prudence and efficiency.
Transgrid, p. 2		Our view is that subsequent processes, such as the updates to AER guidelines (see clause 11.162.6 of the final electricity rule) could also act as the trigger for a regulatory change cost pass-through process if they meet the relevant tests. The Commission does not consider an extended timeframe to submit a cost pass through application is warranted as part of this final rule.
ENA, p. 3	ENA and Jemena raised that jurisdictions' emissions reduction targets could significantly change while revenue reset processes are under assessment, potentially impacting the proposal.	The Commission considers there is sufficient scope within the existing revenue determination framework for the AER to account for changes in the regulatory environment, including emissions reduction targets, part way through the assessment process. If there was to be a significant regulatory change during the process (including relating to emissions reduction targets), the AER would be expected to request NSPs or pipeline operators
Jemena, p. 1	ENA also noted this is a broader issue relevant to	

Stakeholder and page reference	Issue	Response
	other substantive regulatory changes. ENA raised that there is currently no scope under the electricity or gas rules to amend an expenditure proposal to account for a regulatory change in circumstances (including a change in an emissions reduction target), unless the amendment was otherwise necessary to address matters raised in a draft decision.	to respond to the change in its draft determination. The Commission does not consider the case for changing the broader revenue proposal framework to be within scope of this rule change process.
Transgrid, p. 2	Transgrid considered operating expenditure step changes should be permitted in the next regulatory determinations for NSPs to provide clarity around the recovery of additional expenditure required to meet the updated energy objectives.	The Commission does not consider such clarification is necessary as the AER has an existing process for considering and assessing operating expenditure step changes. This process is set out in the AER's Better Resets Handbook: Towards consumer-centric network proposals , December 2021, p. 28.
Additional guidance on whether the 'old' or 'new' rules apply if the AER decides to apply the updated energy objectives		
Transgrid, p. 3	<p>Transgrid requested that the AEMC clarify which version of the rules would apply to processes considered underway at the law start date (21 November 2023) to which the AER subsequently decides to apply the updated energy objectives.</p> <p>Under NEL schedule 3 clause 40(3), the AER (or other regulatory entity) may decide to consider or apply the updated energy objectives to a particular process, even if the project was underway on 21 November 2023, but subject to certain exceptions where the new NEO is mandated to apply.</p>	The Commission has considered a wide variety of processes that may be affected and has addressed these, to the extent necessary, through the final rule transitional provisions. Aside from the RIT and ISP processes, regulatory proposals, access arrangements and AER guideline updates, the Commission has not identified other investment or planning processes that would benefit from additional guidance in the rules. The AER may provide further guidance.
Cross-sectoral expenditure, climate change and decarbonisation considerations		
Clean Energy Council,	The Clean Energy Council, EnergyAustralia and PIAC	The Commission recognises the risk of not considering electricity and gas

Stakeholder and page reference	Issue	Response
p. 2 EnergyAustralia, p. 3 PIAC, pp. 7-8	suggested that the Commission should consider further how emissions reduction expenditure might be coordinated across the electricity and gas sectors. They raised the risk of electricity and gas decarbonisation pathways being planned and implemented in parallel, without consideration of the most cost-effective emissions reduction options across sectors (such as substituting natural gas for renewable electricity).	<p>decarbonisation pathways in parallel. However, we have not changed the final rules in this regard for similar reasons outlined in the draft determination (see p. 29 of our draft determination).</p> <p>As the NEO and NGO are independent of each other, as are the expenditure frameworks for electricity networks and gas pipelines, the Commission does not consider joint consideration of electricity and gas pathways to be within the scope of this rule change process.</p> <p>However, we note that the interaction and co-optimisation of electricity and gas planning, including in the context of emissions reduction, is being considered by the Commonwealth Government as part of its review of the ISP, in close consultation with jurisdictions and market bodies — see DCCEEW's Terms of reference for the ISP review, August 2023.</p>
Clean Energy Council, p. 2	The Clean Energy Council recommended the AEMC consider how climate adaptation and resilience can be more effectively accounted for in the NER. It considers the effects of climate change will increasingly impact the ability of the power system to deliver a reliable and secure supply of electricity.	<p>The Commission recognises the risk of climate change impacts on the reliability and security of the power system. We noted that some considerations of climate resilience may be included in existing concepts that are throughout the rules, such as the reliability and security of supply (see p. 23 of our draft determination).</p> <p>However, climate change and resilience considerations are outside the scope of this harmonising rule change, so we have not addressed this issue through our final rules.</p> <p>We note that the Victorian Department of Energy, Environment and Climate Action (DEECA) has indicated its support for a rule change request that would account for resilience by including it as a capital expenditure objective in NSPs' revenue proposals — see DEECA's Electricity Distribution Network Resilience Review, Victorian Government Response to the Expert Panel's Electricity Distribution Network Resilience Review, September 2023,</p>

Stakeholder and page reference	Issue	Response
		p. 11.
Interaction between targets statement and VER		
EnergyAustralia, pp. 1-2.	EnergyAustralia considered that additional clarification on how the VER will relate to the requirement for market bodies to consider emissions targets is warranted. It also considered that it does not seem possible for emissions to be adequately traded off with the other components of the NEO if market bodies are required to comply with the VER.	<p>The targets statement and the VER have different regulatory functions, depending on the circumstances.</p> <p>The NEL requires government and regulatory entities to use the VER issued by the MCE, if such a VER is issued (see NEL, schedule 3 cl 42(2)), when quantitatively analysing the costs and benefits relating to emissions reduction. Market bodies retain the ability to consider and balance the various limbs of the objectives (including emissions) in a way that promotes the long term interests of consumers.</p> <p>For further information, see AER guidance on amended National Energy Objectives, Guidance Note, September 2023, p. 5; AEMC, How the national energy objectives shape our decisions, September 2023, section A.4.</p>
AER guideline updates		
Ergon Energy Network and Energex, p. 1	Ergon Energy Network and Energex encouraged the AER to commence the process of updating relevant instruments and guidelines as soon as possible. They also encouraged the AER to incorporate worked examples to assist DNSPs in applying the final rules.	The Commission has noted these concerns and has provided a transitional provision that allows the AER to commence consultation on the network planning instruments and guidelines prior to the rule start date on 1 February 2024 – see clause 11.162.5(c) of the final electricity rules.

Abbreviations and defined terms

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
AGIG	Australian Gas Infrastructure Group
Commission	See AEMC
DAPR	Distribution Annual Planning Report
DCCEEW	Department of Climate Change, Energy, the Environment and Water
DEECA	Department of Energy, Environment and Climate Action
DMIS	Demand Management Incentive Scheme
DNSP	Distribution network service provider
DPAR	Final project assessment report, prepared under the NER as part of the RIT-D process
Emissions Act	<i>Statutes Amendment (National Energy Laws) (Emissions Reduction Objectives) Act 2023</i>
ENA	Energy Networks Australia
ERA	Economic Regulation Authority
ISP	Integrated System Plan
MBAS	Market benefit ancillary service
MCE	Ministerial Council on Energy
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
NSCAS	Network support and control ancillary services
NSP	Network service provider under the NER (a DNSP or TNSP)
NT Act	<i>National Electricity (Northern Territory) (National Uniform Legislation) Act 2015</i>
PADR	Project assessment final report, prepared under the NER as part of the RIT-T process
PIAC	Public Interest Advocacy Centre
Proponent	The entity who submitted the rule change request to the Commission – Energy senior officials on behalf of the Ministerial Council on Energy
PSCR	Project specification consultation report, prepared under the NER as part of the RIT-T process for non-actionable ISP projects
RIT	Regulatory investment test

RIT-D	Regulatory investment test for distribution
RIT-T	Regulatory investment test for transmission
Rule change request one (network/pipeline expenditure)	Energy senior officials on behalf of the Ministerial Council on Energy, Rule change request: 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, 4 July 2024
Rule change request two (planning and AER guidelines)	Energy senior officials on behalf of the Ministerial Council on Energy, Rule change request: Priority rule changes to support the incorporation of an emissions reduction component into the National Energy Objectives – Network Investment Planning Frameworks and the Australian Energy Regulator Regulatory Instrument Revisions, 4 July 2024
TAPR	Transmission annual planning review
TNSP	Transmission network service provider
TPIR	Transmission planning and investment review
VER	Value of emissions reduction