

## Consultation Paper

National Electricity Amendment  
(Minor changes 1) Rule 2024

National Gas Amendment (Minor  
changes 1) Rule 2024

National Energy Retail Amendment  
(Minor changes 1) Rule 2024

Proponent

AEMC

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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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# 1 Introduction

As part of its rule-making function, the Australian Energy Market Commission (Commission or AEMC) reviews, amends and maintains the:

- National Electricity Rules (NER) in accordance with the National Electricity Law (NEL);
- National Gas Rules (NGR) in accordance with the National Gas Law (NGL); and
- National Energy Retail Rules (NERR) in accordance with the National Energy Retail Law (NERL).

The purpose of this function, among other things, is to improve and enhance the quality of the NER, NGR and the NERR (together the “energy rules”).

## 1.1 Background

The Commission initiates rule changes to correct minor errors in the energy rules or make clarifications that are non-material in nature. This rule change proposal includes proposed amendments identified by the Commission since the last minor rule changes, which were completed on 7 September 2023.

This consultation paper has been prepared to facilitate public consultation on the rule change proposal and to seek stakeholder submissions.

This paper:

- provides a summary of, and background to, the rule change proposal, and sets out the proposed assessment framework (chapter 1)
- outlines the rule-making process the Commission proposes to use for this rule change proposal (chapter 2)
- outlines the process for making submissions (chapter 3).

## 1.2 Proposed rules

The National Electricity Amendment (Minor changes 1) Rule 2024 (the “proposed electricity Rule”), the National Gas Amendment (Minor changes 1) Rule 2024 (the “proposed gas Rule”) and the National Energy Retail Amendment (Minor changes 1) 2024 (the “proposed retail Rule”) (together, the “Proposed Rules”) are proposed by the AEMC to correct minor errors and make non-material changes in the NER, NGR and NERR. In particular, the Proposed Rules seek to:

- insert notes identifying relevant rules or clauses in the NER, NGR and NERR that are classified as a civil penalty provisions under the National Electricity (South Australia) Regulations, National Gas (South Australia) Regulations or National Energy Retail Regulations, respectively.
- make non-material changes in chapters 2, 5, 5A, 6, 7 and 10 of the NER. These changes ensure consistency between the *National Electricity Amendment (Integrating energy storage systems into the NEM) Rule 2021 No. 13*, commencing on 3 June 2024, and the *National Electricity Amendment (Regulated stand-alone power systems) Rule 2022* made by the South Australian Minister, which has already commenced.
- correct inconsistent numbering in clause 7.8.2.
- correct erroneous phrasing in clause 6A.3.3(d) of the NER relating to concessional finance adjustments to ensure consistency with the remainder of clause 6A.3.3.
- correct a reference error in the definition of “concessional finance agreement” in chapter 10 of the NER.

The Proposed Rules are published with this rule proposal.

## 1.3 Assessment framework

### 1.3.1 Achieving the NEO, NGO and NERO

#### National Electricity Objective

The Commission may only make an electricity amending rule if it is satisfied that the rule will, or is likely to, contribute to the achievement of the national electricity objective (NEO).<sup>1</sup> This is the decision making framework that the Commission must apply.

The NEO is:<sup>2</sup>

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 targets statement, available on the AEMC website, lists the emissions reduction targets to be considered, as a minimum, in having regard to the NEO.<sup>3</sup>

Under the Northern Territory legislation adopting the NEL, the Commission must regard the reference in the NEO to the “national electricity system” as a reference to whichever of the following the Commission considers appropriate in the circumstances having regard to the nature, scope or operation of the Proposed Rule:<sup>4</sup>

1. the national electricity system
2. one or more, or all, of the local electricity systems<sup>5</sup>
3. all of the electricity systems referred to above.

For the purposes of the proposed electricity Rule, the Commission proposes to regard the reference to the “national electricity system” in the NEO to be a reference to item 3 from the list above.

#### National Gas Objective

The Commission may only make a gas amending rule if it is satisfied that the rule will, or is likely to, contribute to the achievement of the national gas objective (NGO).<sup>6</sup> This is the decision making framework that the Commission must apply.

1 Section 88 of the NEL.

2 Section 7 of the NEL.

3 Section 32A(5) of the NEL.

4 Clause 14A of Schedule 1 to the *National Electricity (Northern Territory) (National Uniform Legislation) Act 2015* (referred to here as the NT Act), inserting section 88(2a) into the NEL as it applies in the Northern Territory.

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

6 Section 291(1) of the NGL.

The NGO is:<sup>7</sup>

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

- (a) price, safety, reliability and security of supply of covered 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 targets statement, available on the AEMC website, lists the emissions reduction targets to be considered, as a minimum, in having regard to the NGO.<sup>8</sup>

### National Energy Retail Objective

The Commission may only make a retail amending rule if it is satisfied that the rule will, or is likely to, contribute to the achievement of the national energy retail objective (NERO).<sup>9</sup> This is the decision making framework that the Commission must apply.

The NERO is:<sup>10</sup>

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
- (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 target statement, available on the AEMC website, lists the emissions reduction targets to be considered, as a minimum, in having regard to the NERO.<sup>11</sup>

The Commission must also, where relevant, satisfy itself that the rule is “compatible with the development and application of consumer protections for small customers, including (but not limited to) protections relating to hardship customers” (the “consumer protections test”).<sup>12</sup>

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.<sup>13</sup> 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.

<sup>7</sup> Section 23 of the NGL.

<sup>8</sup> Section 72A(5) of the NGL.

<sup>9</sup> Section 236(1) of the NERL.

<sup>10</sup> Section 13 of the NERL.

<sup>11</sup> Section 224A(5) of the NERL.

<sup>12</sup> Section 236(2)(b) of the NERL.

<sup>13</sup> That is, the legal tests set out in sections 236(1) and (2)(b) of the NERL.

### Contribution of Proposed Rules to the achievement of the NEO, NGO and NERO

The Commission considers that the Proposed Rules are likely to contribute to the achievement of the NEO, NGO and NERO because the Proposed Rules, if made, will improve the quality of the NER, NGR and NERR in terms of accuracy, consistency and clarity.

As with previous minor rule changes initiated by the Commission, these minor corrections and non-material changes will make the NER, NGR and NERR clearer to stakeholders. This is important as the NER, NGR and NERR inform stakeholders of their rights and obligations in relation to participating in the NEM, wholesale gas market and energy retail markets, and stakeholders rely on these rules in their commercial transactions. Clearer and more consistent rules will reduce the regulatory burden on stakeholders and allow for more efficient provision of electricity, gas and retail energy services.

#### 1.3.2 Rule making in the Northern Territory - electricity

The NER, as amended from time to time, apply in the Northern Territory, subject to modifications set out in regulations made under the Northern Territory legislation adopting the NEL.<sup>14</sup> Under those regulations, only certain parts of the NER have been adopted in the Northern Territory.<sup>15</sup>

As the proposed electricity Rule relates to the parts of the NER that apply in the Northern Territory, the Commission is required to assess whether to make a uniform or differential rule (defined below) under Northern Territory legislation.

Under the NT Act, the Commission may make a differential rule if 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.<sup>16</sup>

A differential rule is a rule that:

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

but is not a jurisdictional derogation, participant derogation or rule that has effect with respect to an adoptive jurisdiction for the purpose of 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.<sup>17</sup>

The Commission proposes to make a uniform rule.

<sup>14</sup> The regulations under the NT Act are the *National Electricity (Northern Territory) (National Uniform Legislation) (Modification) Regulations 2016*.

<sup>15</sup> For the version of the NER that applies in the Northern Territory, refer to: [www.aemc.gov.au/regulation/energy-rules/northern-territory-electricity-market-rules/current](http://www.aemc.gov.au/regulation/energy-rules/northern-territory-electricity-market-rules/current).

<sup>16</sup> Clause 14B of Schedule 1 to the NT Act, inserting section 88AA into the NEL as it applies in the Northern Territory.

<sup>17</sup> 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.

### 1.3.3 Rule making in Western Australia - gas

The versions of the NGL and NGR that apply in Western Australia differ from the NGL and NGR as they apply in other participating jurisdictions.<sup>18</sup>

As a result the Commission's power to make rules for Western Australia differs from its rule-making power under the NGL.<sup>19</sup>

The proposed gas Rule (if made as a final rule) will have no effect in Western Australia.

### 1.3.4 Additional assessment requirements

Under s. 91(8) of the NEL and s. 295(4) of the NGL, the Commission may only make a Rule that has effect with respect to an adoptive jurisdiction if satisfied that the Proposed Rule is compatible with the proper performance of the Australian Energy Market Operator's (AEMO's) declared electricity network and gas system functions.

Given the Proposed Rules only seek to make minor or non-material changes to the energy rules, the Commission is satisfied that the Proposed Rules are compatible with the proper performance of AEMO's declared electricity network and gas system functions.

<sup>18</sup> Under the *National Gas Access (WA) Act 2009* (WA Gas Act), a modified version of the NGL, known as the National Gas Access (Western Australia) Law (WA Gas Law), was adopted. Under the WA Gas Law, the National Gas Rules applying in Western Australia are version 1 of the uniform NGR as amended by the SA Minister under an adoption of amendments order made by the WA Minister for Energy and by the AEMC in accordance with its rule making power under section 74 of the WA Gas Law. See the AEMC website for further information, <https://www.aemc.gov.au/regulation/energy-rules/national-gas-rules/western-australia>

<sup>19</sup> See section 74 of the WA Gas Law for the subject matters for the AEMC's rule making power in Western Australia.



## 2 Process for this rule change

### 2.1 The Commission's power to initiate the making of a rule

Under s. 91(2) of the NEL, s. 295(2) of the NGL and s. 243(2) of the NERL respectively:

The AEMC must not make a Rule without a request under subsection (1) unless-

- (a) it considers the Rule corrects a minor error in the Rules; or
- (b) it considers the Rule involves a non-material change to the Rules; or
- (c) the Rule is in respect of any matter that is prescribed by the Regulations as a matter on which it may make a Rule on its own initiative.

As the Proposed Rules outlined in chapter 1 make changes that are minor and non-material in nature, the Commission considers that the Proposed Rules satisfy the requirements of s. 91(2) of the NEL, s. 295(2) of the NGL and s. 243(2) of the NERL.

### 2.2 Treatment as a non-controversial rule change

Under s. 87 of the NEL, a "non-controversial Rule" is defined as "a Rule that is unlikely to have a significant effect on the national electricity market". As the proposed changes to the NER are minor or non-material in nature, the Commission considers that the proposed electricity Rule is unlikely to have a significant effect on the NEM. The proposed electricity Rule therefore falls within the definition of a non-controversial rule under s. 87 of the NEL.

Under s. 290 of the NGL, a "non-controversial Rule" is defined as "a Rule that is unlikely to have a significant effect on a market for gas or the regulation of pipeline services". As the proposed changes to the NGR are minor or non-material in nature, the Commission considers that the proposed gas Rule is unlikely to have a significant effect on a market for gas or the regulation of pipeline services. The proposed gas Rule therefore falls within the definition of a non-controversial rule under s. 290 of the NGL.

Under s. 235 of the NERL, a "non-controversial Rule" is defined as "a Rule that is unlikely to have a significant effect on a market for energy or the regulation of customer connection services". As the proposed changes to the NERR are minor or non-material in nature, the Commission considers that the proposed retail Rule is unlikely to have a significant effect on a market for energy or the regulation of customer connection services. The proposed retail Rule therefore falls within the definition of a non-controversial rule under s. 235 of the NERL.

Rule changes that are considered to be non-controversial may be processed under an expedited (faster) process under which there is only one round of consultation and the Commission is required to publish its final rule determination within eight weeks of commencing the rule change process.

The Commission has decided to use an expedited process to consider this rule change proposal provided that it does not receive any written requests not to use the expedited process by 25 April.<sup>20</sup> If the Commission receives a written request not to expedite the process, the Commission will consider whether the reasons set out in that request are misconceived or lacking in substance. An objection to the use of the expedited process must be in writing and must set out the reasons why the rule change proposal is not unlikely to have a significant effect on:

<sup>20</sup> The Commission has published a notice under ss. 95 and 96 of the National Electricity Law, ss. 303 and 304 of the National Gas Law, ss.303 and 304 of the WA Gas Law and ss. 251 and 252 of the National Energy Retail Law to commence and assess this rule change proposal as a non-controversial rule.

- for the proposed electricity Rule, the NEM;
- for the proposed gas Rule, a market for gas or the regulation of pipeline services; and/or
- for the proposed retail Rule, a market for energy or the regulation of customer connection services.

## 2.3 Key dates

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

- Commencement of this rule change process: 11 April 2024
- Objections to an expedited process to be received by: 25 April 2024
- Submissions to the rule change proposal to be received by: 9 May 2024
- Final decision to be published under an expedited process by: 30 May 2024
- Rule changes to be implemented (under an expedited process): 3 June 2024

## 3 Lodging a submission

The Commission invites written requests not to make a rule under the expedited process and written submissions on this rule change proposal.

If you have questions on this project please contact Dominique Retamal on (02) 8296 7800 or [dominique.retamal@aemc.gov.au](mailto:dominique.retamal@aemc.gov.au).

### 3.1 Requests not to make a rule under an expedited process

Written requests not to make a rule under the expedited process in s. 96 of the NEL, s. 304 of the NGL, s. 304 of the WA Gas Law and s. 252 of the NERL respectively, must include reasons for the request, and must be lodged with the Commission by 25 April 2024 in accordance with the process specified below.

### 3.2 Submissions to this rule change proposal

Written submissions on the rule change proposal must be lodged with the Commission by 9 May 2024 in accordance with the process specified below. Tips for making a submission are available on the Commission website.<sup>21</sup>

The Commission publishes submissions on its website. However, we will not publish parts of a submission that we agree are confidential, or that we consider inappropriate (for example offensive or defamatory content, or content that is likely to infringe intellectual property rights).<sup>22</sup>

### 3.3 How to lodge a request or submission

Please lodge submissions, or requests not to make a rule under the expedited process, online via the Commission's website, [www.aemc.gov.au](http://www.aemc.gov.au), using the "lodge a submission" function under the "Contact Us" tab, and selecting the project reference code ERC0387.

The request or submission must be on letterhead (if submitted on behalf of an organisation), signed and dated. If you are not able to lodge submissions or requests online, please contact us and we will provide instructions for alternative methods to lodge the submission or request.

<sup>21</sup> See: <https://www.aemc.gov.au/our-work/changing-energy-rules-unique-process/making-rule-change-request/submission-tips>

<sup>22</sup> Further information is available here: <https://www.aemc.gov.au/contact-us/lodge-submission>

## Abbreviations

Amend as required.

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
Commission	See AEMC
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