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Australian Energy Market Commission

## **RULE DETERMINATION**

### National Gas Amendment (Minor Changes) Rule 2011

**Rule Proponent(s)**

AEMC

16 June 2011

**JOHN PIERCE**

Chairman

For and on behalf of the Australian Energy Market Commission

**RULE  
CHANGE**

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## **About the AEMC**

The Council of Australian Governments, through its Ministerial Council on Energy (MCE), established the Australian Energy Market Commission (AEMC) in July 2005. The AEMC has two principal functions. We make and amend the national electricity and gas rules, and we conduct independent reviews of the energy markets for the MCE.

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## Summary

This Rule proposal was initiated by the Australian Energy Market Commission (the Commission) to correct minor errors and make non-material changes to the National Gas Rules (the Rules) to promote clarity of meaning and to remove identified errors in the Rules. The Commission expedited the Rule making process on the basis that it considers the Rule proposal to be a non-controversial Rule. The Commission considers that the Rule to be made is likely to contribute to the achievement of the National Gas Objective (NGO) and therefore satisfies the Rule making test under section 291 of the National Gas Law (NGL).

On 5 May 2011, the Commission gave notice under sections 303 and 304(1)(a) of the NGL of its intention to initiate the proposed National Gas Amendment (Minor Changes) Rule 2011 under the expedited Rule making process, subject to any written objections to the expedited Rule making process, and to initiate public consultation on the Rule proposal. No objections or submissions were received in relation to this Rule proposal.

In accordance with sections 311 and 313 of the NGL, the Commission has decided to make the Proposed Rule with two amendments. The National Gas Amendment (Minor Changes) Rule 2011 No. 3 will commence operation on 16 June 2011.

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# **1 The AEMC's Rule change Proposal**

## **1.1 The Rule Proposal and commencement of Rule making process**

The Rule proposal was initiated by the Commission to correct minor errors in the Rules and to make non-material changes to the Rules in accordance with section 295(2) of the NGL<sup>1</sup>.

On 5 May 2011 the Commission published a notice under section 303 of the NGL advising of its intention to commence the Rule change process and consultation in respect of the Rule Change Proposal.

The Commission considered that the Rule Change Proposal was a request for a non-controversial Rule as it is unlikely to have a significant effect on a market for gas or the regulation of pipeline services. Accordingly, the Commission intended to expedite the Rule Change Proposal under section 304(1)(a) of the NGL, subject to any written requests not to do so. The closing date for receipt of written requests was 19 May 2011.

No such requests were received. Accordingly, the Rule Change Proposal was considered under an expedited process under section 304(1)(a) of the NGL.

The Commission invited submissions on the Rule Proposal by 2 June 2011. The Commission received no submissions on the Rule Change Proposal as part of the consultation process.

## **1.2 Rule Change Proposal Rationale**

The Rule change proposal has been prompted by the identification by the AEMC and stakeholders of various minor errors in the Rules, and non-material changes that should be made to improve the quality and clarity of the Rules.

## **1.3 Solution proposed by the Rule change Proposal**

To address the issues identified in the Rules, the Commission proposed a Rule which seeks to:

- correct several minor errors, including formatting, numbering, and cross referencing anomalies in the Rules;
- amend and delete some defined terms to promote clarity;
- amend some references to terms to more accurately reflect the intent of the provision; and

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<sup>1</sup> Under section 295(2) of the NGL, the Commission must not make a Rule without a request unless it considers the Rule corrects a minor error in the Rules, or it considers the Rule involves a non-material change to the Rules.

- delete a schedule of the Rules that is now redundant.

## **2 Final Rule Determination**

### **2.1 Commission's determination**

In accordance with section 311 of the NGL, the Commission has made this final Rule determination in relation to the Rule initiated by the Commission. In accordance with section 313 of the NGL the Commission determines to make the Rule proposed by the Commission with three amendments.

The National Gas Amendment (Minor Changes) Rule 2011 No. 3 is published with this final Rule determination. The Rule as Made will commence operation on 16 June 2011.

### **2.2 Commission's considerations**

In assessing the Rule Change Proposal the following were taken into account:

- the Commission's powers under the NGL to make the Rule;
- the Rule Change Proposal;
- the Commission's analysis as to the ways in which the proposed Rule will or is likely to, contribute to the achievement of the NGO;
- any relevant Ministerial Council on Energy (MCE) statement of policy principles; and
- the compatibility with the Australian Energy Market Operator's (AEMO) declared system functions.

### **2.3 Commission's power to make the Rule**

The Commission is satisfied that the Rule as Made falls within the subject matter about which the Commission may make Rules. The Rule as Made falls within the matters set out in section 74 of the NGL as under section 74(1)(b) of the NGL the Commission may make Rules for or with respect to any matter or thing contemplated by the NGL, or is necessary or expedient for the purposes of the NGL.

### **2.4 Rule making test**

Under section 291(1) of the NGL the Commission may only make a Rule if it is satisfied that the Rule will, or is likely to, contribute to the achievement of the NGO. This is the decision making framework that the Commission must apply.

The NGO is set out in section 23 of the NGL as follows:

"The objective of this Law is to promote efficient investment in, and efficient operation and use of, natural gas services for the long term

interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas”

The Commission considers that the Rule as Made will improve the quality of the Rules in terms of accuracy and consistency. The Commission considers that the proposed Rule is likely to contribute to the achievement of the NGL, albeit the efficiency benefits that will result from the Rule are considered to be very small given the minor or non-material nature of the changes proposed.

As with previous similar AEMC initiated rule changes, these minor corrections and non-controversial changes will make the Rules clearer to stakeholders. This is important as the Rules inform stakeholders of their rights and obligations and stakeholders rely on these Rules in their commercial transactions and documentation.

Under section 295(4) of the NGL the Commission may only make a Rule that has effect with respect to an adoptive jurisdiction if satisfied that the proposed Rule is compatible with the proper performance of AEMO's declared system functions. At present Victoria is the only relevant "adoptive jurisdiction". The Rule as Made is compatible with AEMO's declared system functions because the Rule as Made seeks to make only minor and non-material changes to the Rules and does not change AEMO's functions in any material respect. Therefore the Commission is satisfied this Rule as made is compatible with the proper performance of AEMO's declared system functions.

## **2.5 Other requirements under the NGL**

In applying the Rule making test in section 291 of the NGL, the Commission must also have regard to any relevant MCE Statements of Policy Principles as required under section 73 of the NGL. There is no relevant MCE statement of policy principles to which it must have regard to in relation to this Rule as Made.

### 3 Commission's reasons

The Commission has analysed the Rule Change Proposal and assessed the issues arising out of this Rule Change Proposal. For the reasons set out below, the Commission has determined that a Rule be made. Its analysis of the Rule initiated by the AEMC is also set out below.

#### 3.1 Assessment

The Rule as Made seeks to correct minor errors and make non-material changes to the Rules. The Rule as Made supports effective and transparent regulation and operation of the market, by clarifying the operation of the Rules in the following ways:

- it corrects several minor errors, including formatting, numbering, and cross referencing anomalies in the Rules;
- it amends and deletes some defined terms to promote clarity;
- it amends some references to terms to more accurately reflect the intent of the provision; and
- it deletes a schedule of the Rules that is now redundant.

#### 3.2 Rule as Made

The Rule as Made is the same as the Proposed Rule, with three changes. The first change relates to item number [5] of the Proposed Rule, and the second and third change relate to the insertion of a new item. Item [5] of the Proposed Rule proposed to omit "the NER" and substitute "the Rules". Based on discussion with stakeholders the Commission has decided to retain the existing reference to "the NER" to clearly distinguish between the National Gas Rules and the National Electricity Rules. Therefore this item has not been included in the Rule as Made.

The second and third changes are in new items [5] and [9] of the Rule as Made. Item [5] removes a reference to the Electricity Supply Industry Planning Council (ESIPC). Under the *Statute Amendments (Australian Energy Market Operator) Act 2009, SA* all functions, powers, assets and liabilities of the ESIPC were transferred to AEMO, therefore the Commission considers the existing reference to ESPIC in the Rule 141 definition of "eligible BB participant" to be redundant. The Rule as Made removes clause (n) of the definition of "eligible BB participant". Item [9] of the Rule as Made makes a cross-referencing change consequential to item [5] of the Rule as Made.

The items in the Rule as Made can be categorised as follows:

### **3.2.1 Amendment and deletion of defined terms**

The Rule as Made amends and deletes several defined terms to clarify their use and meaning in the Rules, and to remove definitions which relate to provisions which the Rule as Made omits (see 3.2.2. below). The Rule as Made also corrects errors in the way defined terms are treated in the body of the Rules. The amendments will increase the accuracy and consistency of the Rules, and remove unnecessary inoperative definitions, thereby promoting a clearer understanding of the provisions of the Rules.

### **3.2.2 Deletion of Schedule 2 of the Rules**

The Rule as Made deletes Schedule 2 of the Rules in its entirety. Schedule 2 is a transitional Schedule which outlined the initial Bulletin Board (BB) facilities. This Schedule has not been updated since the initial certified Rules were made. The BB website however maintains a list of all the current facilities including all BB pipelines, BB production facilities and BB storage facilities. This report is updated every time a facility is amended, added or removed. On this basis we consider Schedule 2 to now be redundant, and the removal of this Schedule will reduce the length of the Rules.

### **3.2.3 Miscellaneous changes to the Rules**

A number of other errors such as typographical errors, formatting errors, numbering and cross referencing errors, and inconsistencies in style and drafting approach have been identified by the AEMC and stakeholders. The Rule as Made rectifies these errors.

The Commission considers the correction of these minor errors and non-material changes made in the Rule as Made as important in improving the accuracy and clarity of the Rules.

## Abbreviations

AEMO	Australian Energy Market Operator
MCE	Ministerial Council on Energy
NGL	National Gas Law
NGO	National Gas Objective
the Commission	Australian Energy Market Commission