



Australian Energy Market Commission

## **RULE DETERMINATION**

National Electricity Amendment (Minor Changes) Rule 2013

National Gas Amendment (Minor Changes) Rule 2013

**Rule Proponent(s)**

AEMC

30 May 2013

**RULE  
CHANGE**

## **Inquiries**

Australian Energy Market Commission  
PO Box A2449  
Sydney South NSW 1235

E: [aemc@aemc.gov.au](mailto:aemc@aemc.gov.au)

T: (02) 8296 7800

F: (02) 8296 7899

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## **About the AEMC**

The Council of Australian Governments (CAG), through its then Ministerial Council on Energy (MCE), established the Australian Energy Market Commission (AEMC) in July 2005. In June 2011, COAG established the Standing Council on Energy and Resources (SCER) to replace the MCE. 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 SCER.

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## Executive Summary

The Commission has determined:

- under sections 102 and 103 of the National Electricity Law (NEL), to make the *National Electricity Amendment (Minor Changes) Rule 2013 No. 3* (electricity rule); and
- under sections 311 and 313 of the National Gas Law (NGL), to make the *National Gas Amendment (Minor Changes) Rule 2013 No. 3* (gas rule).

The electricity Rule and the gas Rule (the Rules) correct minor errors and make non-material changes to the National Electricity Rules (NER) and the National Gas Rules (NGR) respectively. The Rules were proposed by the Commission and aim to promote clarity of meaning and remove identified errors in the NER and NGR. The final Rules made by the Commission differ in minor respects from the Rules proposed by the Commission.

The Commission considers that:

- the electricity rule is likely to contribute to the achievement of the National Electricity Objective (NEO) and therefore satisfies the Rule making test under section 88 of the NEL; and
- The gas rule 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 NGL.

Both the electricity Rule and the gas Rule will commence operation on 4 July 2013.

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# 1 The AEMC's Rule Change Proposal

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

The Commission has power to make a Rule without a request if it considers that the Rule corrects a minor error in the Rules or makes a non-material change to the Rules.<sup>1</sup>

On 18 April 2013, the Commission initiated:

- the proposed *National Electricity Amendment (Minor Changes) Rule 2013* under sections 95 and 96(1)(a) of the NEL; and
- the proposed *National Gas Amendment (Minor Changes) Rule 2013* under sections 303 and 304(1)(a) of the NGL,

subject to any requests not to expedite the Rule making process and public consultation on the Rule change proposal.

The Commission initiated the proposed electricity Rule and proposed gas Rule under the expedited process in section 96(1)(a) of the NEL and section 304(1)(a) of the NGL respectively as it considered the Rules were unlikely to have a significant effect on the National Electricity Market (NEM) or a natural gas market and therefore fell within the definition of a non-material rule under section 87 of the NEL and section 290 of the NGL.

The AEMC did not receive any requests not to expedite the Rule making process. Accordingly, the Rule change proposal was considered under an expedited process.

The Commission invited submissions on the Rule change proposal by 16 May 2013. The Commission received two submissions on the Rule change proposal as part of the consultation process:

1. AGL made a submission dated 3 May 2013 requesting that the proposed gas rule be amended to correct a grammatical error identified in Rule 202(2)(c) of the NGR; and
2. Alinta Energy made a submission dated 16 May 2013 in support of the Rules proposed by the Commission.

## 1.2 Rationale for the Rule Change Proposal

As part of the AEMC's rule making functions conferred on it under legislation, the Commission reviews, amends and maintains the Rules in accordance with the NEL and NGL. The purpose of this function, among other things, is to improve and enhance the quality of the Rules.

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<sup>1</sup> Section 91(2) of the NEL and section 295 (2) of the NGL.

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

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

The Commission proposed Rules that seek to:

- correct minor errors, including formatting, typographical, cross-referencing and numbering anomalies in the NER and NGR;
- correct inconsistencies in the use of defined terms in the NER and NGR;
- insert notes “signposting” which provisions in the NGR are civil penalty and conduct provisions (consistent with the use of “signposting” notes in the NER); and
- omit redundant definitions from the NER and NGR and omit a redundant provision from the NGR.

## **2 Final Rule Determination - electricity**

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

In accordance with sections 102 and 103 of the NEL, the Commission makes this final Rule determination and the final Rule in relation to the electricity rule proposed by the Commission.

The *National Electricity Amendment (Minor Changes) Rule 2013 No.3* is published with this final Rule determination. The final Rule differs from the Rule proposed by the Commission in non-material respects. The key features of the electricity rule are described in section 4.1 below.

The *National Electricity Amendment (Minor Changes) Rule 2013 No.3* will commence operation on 4 July 2013.

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

In assessing the Rule change proposal the Commission considered:

- its powers under the NEL to make the Rule;
- the Rule change proposal;
- submissions received during consultation on the Rule change proposal;
- the ways in which the proposed Rule will or is likely to, contribute to the achievement of the National Electricity Objective; and
- the compatibility with the Australian Energy Market Operator's (AEMO) declared network functions.

There is no relevant Ministerial Council on Energy (MCE) Statement of Policy Principles relating to the Rule change proposal.

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

The Commission is satisfied that the final electricity Rule falls within a subject matter about which the Commission may make Rules.

The final electricity Rule falls within the matters set out in section 34 of the NEL as under section 34(1)(b) of the NEL the Commission may make Rules for or with respect to any matter or thing contemplated by the NEL, or which are necessary or expedient for the purposes of the NEL. The Commission considers the Rule necessary and expedient for the purposes of the NEL.

## **2.4 Rule making test**

Under section 88(1) of the NEL 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 NEO. This is the decision making framework that the Commission must apply.

The NEO is set out in section 7 of the NEL as follows:

“The objective of this Law is 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.”

The Commission considers that the final electricity rule will improve the quality of the NER in terms of accuracy and consistency. The Commission considers that the proposed Rule is likely to contribute to the achievement of the NEO. However, the efficiency benefits that will result from the final electricity 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-material changes will make the NER clearer to stakeholders. This is important as the NER inform stakeholders of their rights and obligations for participating in the NEM and stakeholders rely on the NER in their commercial transactions and documentation.

Under section 91(8) of the NEL, 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 network functions. At present Victoria is the only relevant "adoptive jurisdiction". The Commission is satisfied that the final electricity rule is compatible with AEMO's declared network functions because it makes only minor and non-material changes to the NER and does not change AEMO's functions in any material respect.

## **3 Final Rule Determination – gas**

### **3.1 Commission's determination**

In accordance with sections 311 and 313 of the NGL, the Commission makes this final Rule determination and the final Rule in relation to the gas Rule proposed by the Commission.

The *National Gas Amendment (Minor Changes) Rule 2013 No. 3* is published with this final Rule determination. The final Rule differs from the Rule proposed by the

Commission in non-material respects. The key features of the gas Rule are described in section 4.1 below.

The *National Gas Amendment (Minor Changes) Rule 2013 No.3* will commence operation on 4 July 2013.

### **3.2 Commission's considerations**

In assessing the Rule change proposal the Commission considered:

- its powers under the NGL to make the Rule;
- the Rule change proposal;
- submissions received during consultation on the Rule change proposal;
- the ways in which the proposed Rule will or is likely to, contribute to the achievement of the National Gas Objective (NGO); and
- the compatibility with the Australian Energy Market Operator's (AEMO) declared system functions.

There is no relevant Ministerial Council on Energy (MCE) Statement of Policy Principles relating to the Rule change proposal.

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

The Commission is satisfied that the final gas Rule falls within the subject matter about which the Commission may make Rules.

The final gas Rule 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 which are necessary or expedient for the purposes of the NGL. The Commission considers the Rule is necessary and expedient for the purposes of the NGL.

### **3.4 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 final gas Rule will improve the quality of the NGR in terms of accuracy and consistency. The Commission considers that the proposed Rule is likely to contribute to the achievement of the NGO. However, the efficiency benefits that will result from the final gas 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-material changes will make the NGR clearer to stakeholders. This is important as the NGR inform stakeholders of their rights and obligations for participating in the natural gas markets and stakeholders rely on the NGR in their commercial transactions and documentation.

Under section 295(4) of the NEL, 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 Commission is satisfied that the final gas rule is compatible with AEMO's declared system functions because it makes only minor and non-material changes to the NGR and does not change AEMO's declared system functions in any material respect.

## 4 Commission's reasons

The final electricity Rule and final gas Rule correct minor errors and make non-material changes to the NER and NGR respectively. The Commission has analysed the Rule change proposal and for the reasons set out below, has determined to make the final electricity Rule and final gas Rule.

### 4.1 Differences between the proposed Rules and the final Rules

#### Electricity Rule

The final electricity Rule differs from the proposed electricity Rule in the following respects:

- the final Rule does not omit clause 3.13.12 of the NER. This is because:
  - a definition used in clause 3.13.12A (*jurisdictional NMI standing data schedules*) is defined by reference to clause 3.13.12; and
  - clause 3.13.12 continues to operate in jurisdictions that have not applied the National Electricity Retail Law as a law of their jurisdiction;
- Notes have been inserted after the headings to clauses 3.13.12 and 3.13.12A indicating the application of these clauses to participating jurisdictions having regard to their application of the National Electricity Retail Law as a law of their jurisdiction;
- Corrections have been made to typographical errors in a defined term used in clause 3.13.12A; and
- A correction has been made to a typographical error in a defined term used in the definition of "Metering Provider".

#### Gas Rule

The final gas Rule includes an additional item to the proposed gas Rule (new item 7). This item relates to the correction of a punctuation error in rule 202(2)(c) which was identified in a submission from AGL.

### 4.2 Assessment of the final Rules

The final Rules support effective and transparent regulation and operation of the NEM and natural gas markets by clarifying the operation of those markets in the following ways:

- correcting several minor errors, including formatting, typographical, cross-referencing and numbering anomalies in the NER and NGR;

- correcting inconsistencies in the use of defined terms in the NER and NGR;
- inserting notes “signposting” which provisions in the NGR are civil penalty and conduct provisions (consistent with the use of “signposting” notes in the NER); and
- omitting redundant definitions and from the NER and NGR and a redundant provision from the NGR.

The Commission considers the amendments will increase the accuracy and consistency of the NER and NGR thereby promoting a clearer understanding of the provisions of these Rules.

## Abbreviations

AEMO	Australian Energy Market Operator
MCE	Ministerial Council on Energy
NEL	National Electricity Law
NEM	National Electricity Market
NEO	National Electricity Objective
NER	National Electricity Rules
NGL	National Gas Law
NGO	National Gas Objective
NGR	National Gas Rules
the Commission	Australian Energy Market Commission

## A Summary of issues raised in submissions

Stakeholder	Issue	AEMC response
AGL	Identified a punctuation error in Rule 202(2)(c) of the NGR.	The error identified has been corrected as part of the final gas rule.
Alinta Energy	No issue identified. Submission outlines Alinta Energy's support of the AEMC initiated minor rule changes.	Noted.