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Australian Energy Market Commission

## **RULE DETERMINATION**

**NATIONAL ELECTRICITY AMENDMENT  
(MINOR CHANGES ) RULE 2020**

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**NATIONAL ENERGY RETAIL  
AMENDMENT (MINOR CHANGES )  
RULE 2020**

**PROPONENT**

AEMC

12 MARCH 2020

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**RULE**

## INQUIRIES

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Reference: ERC0288

## CITATION

AEMC, Minor changes , Rule determination, 12 March 2020

## ABOUT THE AEMC

The AEMC reports to the Council of Australian Governments (COAG) through the COAG Energy Council. We have two functions. We make and amend the national electricity, gas and energy retail rules and conduct independent reviews for the COAG Energy Council.

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## SUMMARY

- 1 The Commission has determined:
- under sections 102 and 103 of the National Electricity Law (NEL), to make the *National Electricity Amendment (Minor Changes) Rule 2020 No. 3* ("electricity Rule")
  - under sections 259 and 261 of the National Energy Retail Law (NERL), to make the *National Energy Retail Amendment (Minor Changes) Rule 2020 No. 2* ("retail Rule").
- 2 The electricity Rule and the retail Rule (together, the "final rules") correct minor errors and make non-material changes in the NER and NERR (together, the "Rules"), including to clarify drafting in amendments to the NER made by the *National Electricity Amendment (Register of distributed energy resources) Rule 2018 No. 9* ("Register of distributed energy resources rule").<sup>1</sup>
- 3 The final rules were proposed by the Commission and aim to promote clarity of meaning and remove identified errors in the Rules.
- 4 The Commission considers that:
- the electricity Rule will or is likely to contribute to the achievement of the National Electricity Objective (NEO) and therefore satisfies the rule making test under s. 88 of the NEL
  - the retail Rule will or is likely to contribute to the achievement of the National Energy Retail Objective (NERO) and therefore satisfies the rule making test under s. 236(1) of the NERL
  - the retail Rule is compatible with the development and application of consumer protections for small customers and therefore satisfies the rule making test under s. 236(2)(b) of the NERL.
- 5 The retail Rule and schedule 1 of the electricity Rule will commence on 19 March 2020.
- 6 Schedule 2 of the electricity Rule will commence on 6 February 2022, immediately after the commencement of schedules 3 to 5 of the *National Electricity Amendment (Five minute settlement and global settlement implementation amendments) Rule 2019 No. 7*.<sup>2</sup>

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1 AEMC, National Electricity Amendment (Register of distributed energy resources) Rule 2018 No. 9, available at: <https://www.aemc.gov.au/rule-changes/register-of-distributed-energy-resources>.

2 AEMC, National Electricity Amendment (Five minute settlement and global settlement implementation amendments) Rule 2019 No. 7, available at: <https://www.aemc.gov.au/rule-changes/five-minute-settlement-and-global-settlement-implementationamendments>.

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# 1 THE AEMC'S RULE CHANGE PROPOSAL

## 1.1 The proposed Rules 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>3</sup>

On 16 January 2020, the Commission initiated:

- the proposed electricity Rule under sections 95 and 96(1)(a) of the NEL
- the proposed retail Rule under sections 251 and 252(1)(a) of the NERL.

The Commission initiated the proposed rules under the expedited process in s. 96(1)(a) of the NEL and s. 252(1)(a) of the NERL respectively as it considered the proposed rules were unlikely to have a significant effect on the National Electricity Market (NEM) or on the market for energy or the regulation of customer connection services. The Commission therefore considered that the proposed rules fell within the definition of a non-controversial rule under s. 87 of the NEL and s. 235 of the NERL (as applicable).

The Commission 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 13 February 2020. The Commission received no submissions on the Rule change proposal.

## 1.2 Rationale for the rule change proposal

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

The Rule change proposal was 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 in the rule change proposal

The proposed rules (as now made as final) sought to:

1. correct minor errors and make non-material changes in the NER, including as set out in section 1.3.1 and 1.3.2 below
2. correct minor errors and make non-material changes in the NERR, including for example to correct spacing errors in clause numbering in rules 16(2) and 33(4), which have existed since version one of the NERR was introduced in June 2012 by the South Australian Minister under s. 238 of the *National Energy Retail Law (South Australia) Act 2011*.

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<sup>3</sup> Section 91(2) of the NEL and section 243(2) of the NERL

### 1.3.1 **Network Service Providers' obligations to provide DER generation information to AEMO**

In September 2018, the AEMC made the *National Electricity Amendment (Register of distributed energy resources) Rule 2018 No. 9*<sup>4</sup> (the DER final rule), which established a process by which the Australian Energy Market Operator (AEMO), Network Service Providers (NSPs) and other interested parties can obtain static data (including DER generation information) on distributed energy resources across the national electricity market (NEM).

The DER final rule inadvertently did not include:

- a new clause 5.3A.5(c)(1a), which was intended to provide that enquiry forms to connect to the NEM under clause 5.3A.5(b) must require connection applicants to provide the DER generation information that NSPs require
- cross-references in clause 3.7E(d) to clauses 5.3A.5(c)(1a) and 5A.B.4, which were intended to require NSPs to provide any DER generation information collected under these clauses to AEMO.

The electricity Rule addresses these drafting errors by inserting clause 5.3A.5(c)(1a) and inserting cross-references to clauses 5.3A.5(c)(1a) and 5A.B.4 in rule 3.7E(d).

These amendments give effect to the Commission's policy intent<sup>5</sup> when making the DER final rule, which was to require NSPs to request from their customers DER generation information and provide this information to AEMO. The amendments are consistent with clauses 5.3.3(c)(4a), 5A.B.2, 5A.C.3 and 5A.B.4 under the DER final rule.

### 1.3.2 **Unaccounted for energy adjustment**

In August 2019, the AEMC made the *National Electricity Amendment (Five minute settlement and global settlement implementation amendments) Rule 2019 No. 7*<sup>6</sup> ("five minute and global settlement rule"), which amended the provisions of the NER, as amended under the Five minute settlement rule<sup>7</sup> and the Global settlement and market reconciliation rule.

The electricity Rule amends clause 3.15.5(b) of the NER, as amended by the Global settlement and market reconciliation rule, to clarify that unaccounted for energy (UFE) will not be allocated by AEMO to distribution-connected generators, but will be allocated to all retailers in a local area, in respect of their market loads, based on their accounted for energy.

This amendment, which was intended to be included in the five minute and global settlement rule, is consistent with the Commission's policy intent<sup>8</sup> for the five minute and global

4 AEMC, *National Electricity Amendment (Register of distributed energy resources) Rule 2018 No. 9*, available at: <https://www.aemc.gov.au/rule-changes/register-of-distributed-energy-resources>.

5 AEMC, *Register of distributed energy resources Rule Determination* dated 13 September 2018, page 7, available at: <https://www.aemc.gov.au/rule-changes/register-of-distributed-energy-resources>.

6 AEMC, *National Electricity Amendment (Five minute settlement and global settlement implementation amendments) Rule 2019 No. 7*, available at: <https://www.aemc.gov.au/rule-changes/five-minute-settlement-and-global-settlement-implementationamendments>.

7 AEMC, *National Electricity Amendment (Five minute settlement) Rule 2017 No. 15*, available at: <https://www.aemc.gov.au/rulechanges/five-minute-settlement>.

8 AEMC, *Five minute settlement and global settlement implementation amendments Rule Determination* dated 8 August 2019, page 6, available at: <https://www.aemc.gov.au/rule-changes/five-minute-settlement-and-global-settlement-implementationamendments>.

settlement rule, which was not to allocate UFE to distribution-connected generators when they consume energy.

## 1.4 Final rule determination - summary

The Commission has determined:

- under sections 102 and 103 of the NEL, to make the *National Electricity Amendment (Minor Changes) Rule 2020 No. 3*
- under sections 259 and 261 of the NERL, to make the *National Energy Retail Amendment (Minor Changes) Rule 2020 No. 2*.

The final rules correct minor errors and make non-material changes in the NER and NERR.

## 2 FINAL RULE DETERMINATION - ELECTRICITY

### 2.1 The Commission's final rule determination

In accordance with sections 102 and 103 of the NEL the Commission has made 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 2020 No. 3* ("final electricity Rule") is published with this final rule determination. The final electricity Rule does not differ from the rule originally proposed by the Commission.

A summary of the Commission's reasons for making this final rule determination are set out in section 2.3.

In relation to the final electricity Rule's application in the Northern Territory, the Commission has determined not to make a differential rule. See section 2.2 for the definition of a differential rule and the Commission's ability to make a differential rule.

This chapter outlines:

- the rule making test for changes to the NER
- the Commission's consideration of the final electricity Rule against the NEO
- the Commission's consideration in deciding whether to make a uniform or differential rule in accordance with the Northern Territory legislation adopting the NEL<sup>9</sup>
- a summary of the Commission's reasons in deciding to make the final electricity Rule.

Further information on the legal requirements for making this final rule determination is set out in Appendix A.

## 2.2 Rule making test

### 2.2.1 Achieving the NEO

Under 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.<sup>10</sup> This is the decision making framework that the Commission must apply.

The NEO is:<sup>11</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.

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

<sup>9</sup> National Electricity (Northern Territory) (National Uniform Legislation) Act 2015.

<sup>10</sup> Section 88 of the NEL.

<sup>11</sup> Section 7 of the NEL.

following the Commission considers appropriate in the circumstances having regard to the nature, scope or operation of the rule:<sup>12</sup>

- (a) the national electricity system
- (b) one or more, or all, of the local electricity systems<sup>13</sup>
- (c) all of the electricity systems referred to above.

For the purposes of the final electricity Rule, the Commission regards the reference to the "national electricity system" in the NEO to be a reference to item (c) above.

## 2.3 Summary of reasons

The Commission considers that the final electricity Rule will improve the quality of the NER in terms of accuracy and consistency and is likely to contribute to the achievement of the NEO.

As with previous similar rule changes initiated by the Commission, these minor corrections and non-material changes make the NER clearer to stakeholders. This is important as the NER informs stakeholders of their rights and obligations for participating in the NEM.

Under s. 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 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.

### **Northern Territory rule making requirements**

The NER, as amended from time to time, applies in the Northern Territory, subject to derogations 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 final electricity Rule, in part, 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, having regard to any relevant MCE statement of policy principles, a different 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:

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12 Section 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.

13 These are specified Northern Territory systems, defined in schedule 2 of the NT Act.

14 The regulations under the NT Act are the National Electricity (Northern Territory) (National Uniform Legislation) (Modifications) Regulations.

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

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

- varies in its term 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 the local electricity systems, and has effect with respect to all of those systems.<sup>17</sup>

The Commission has made a uniform rule.

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<sup>17</sup> Section 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.

## 3 FINAL RULE DETERMINATION - RETAIL

### 3.1 The Commission's final rule determination

In accordance with s. 259 of the NERL the Commission makes this final rule determination and the final rule in relation to the retail Rule proposed by the Commission. The *National Energy Retail Amendment (Minor Changes) Rule 2020 No. 2* ("final retail Rule") is published with this final rule determination. The final retail Rule does not differ from the rule originally proposed by the Commission.

A summary of the Commission's reasons for making this final rule determination are set out in section 3.3.

This chapter outlines:

- the rule making test for changes to the NERR
- the Commission's consideration of the final retail Rule against the NERO
- a summary of the Commission's reasons in deciding to make the final retail Rule.

Further information on the legal requirements for making this final rule determination is set out in Appendix A.

### 3.2 Rule making test

#### 3.2.1 Achieving the NERO

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 NERO.<sup>18</sup> This is the decision making framework that the Commission must apply.

The NERO is:<sup>19</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 price, quality, safety, reliability and security of supply of energy.

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>20</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>21</sup> If the Commission is satisfied that one test, but not the other, has been met, the rule cannot be made.

<sup>18</sup> Section 236(1) of the NERL.

<sup>19</sup> Section 13 of the NERL.

<sup>20</sup> Section 236(2)(b) of the NERL.

<sup>21</sup> That is, the legal tests set out in s. 236(1) and (2)(b) of the NERL.

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.

### 3.3 Summary of reasons

The Commission considers that the final retail Rule will improve the quality of the NERR in terms of accuracy and consistency and is likely to contribute to the achievement of the NERO and satisfy the consumer protections test.

As with previous similar rule changes initiated by the Commission, these minor corrections and non-material changes make the NERR clearer to stakeholders. This is important as the NERR informs stakeholders of their rights and obligations for participating in the retail energy markets.

## ABBREVIATIONS

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
Commission	See AEMC
MCE	Ministerial Council on Energy
NEL	National Electricity Law
NEM	National Energy Market
NEO	National electricity objective
NERL	National Energy Retail Law
NERO	National energy retail objective

## A LEGAL REQUIREMENTS UNDER THE NEL AND NERL

This appendix sets out the relevant legal requirements under the NEL and NERL for the AEMC to make this final rule determination.

### A.1 Final rule determination

In accordance with sections 102 and 103 of the NEL and sections 259 and 261 of the NERL the Commission has made this final rule determination in relation to the final rules.

A summary of the Commission's reasons for making this final rule determination are set out in sections 2.3 and 3.3.

A copy of the final rules are attached to and published with this final rule determination. Their key features are described in section 1.3.

### A.2 Power to make the rule

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

The electricity Rule falls within the matters set out in s. 34 of the NEL, as under s. 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 electricity Rule is necessary and expedient for the purposes of the NEL.

Further, the retail Rule falls within the matters set out in s. 237 of the NERL, as under s. 237(1)(b) of the NERL the Commission may make Rules for or with respect to any matter or thing contemplated by the NERL, or which are necessary or expedient for the purposes of the NERL. The Commission considers the retail Rule is necessary and expedient for the purposes of the NERL.

### A.3 Commission's considerations

In assessing the rule change proposal the Commission considered:

- its powers under the NEL and NERL to make the final rules
- the Rule Proposal
- the Commission's analysis as to the ways in which the final rules will or are likely to, contribute to the NEO and the NERO
- the extent to which the retail rule is compatible with the development and application of consumer protections.

There is no relevant Ministerial Council on Energy (MCE) statement of policy principles for this rule change proposal.<sup>22</sup>

The Commission may only make a rule that has effect with respect to an adoptive jurisdiction if satisfied that the rule is compatible with the proper performance of AEMO's declared network functions.<sup>23</sup> The final rules are compatible with AEMO's declared network functions because they make only minor and non material changes to the NER and do not change AEMO's functions in any material respect.

#### A.4 Civil penalties

The Commission cannot create new civil penalty provisions. However, it may recommend to the COAG Energy Council that new or existing provisions of the NER and NERR be classified as civil penalty provisions.

The final rules do not amend any clauses that are currently classified as civil penalty provisions under the NEL or National Electricity (South Australia) Regulations or NERL or the National Energy Retail Regulations. The Commission does not propose to recommend to the COAG Energy Council that any of the amendments made by the final rules be classified as civil penalty provisions.

#### A.5 Conduct provisions

The Commission cannot create new conduct provisions. However, it may recommend to the COAG Energy Council that new or existing provisions of the NER and NERR be classified as conduct provisions.

The final rules do not amend any rules that are currently classified as conduct provisions under the NEL or National Electricity (South Australia) Regulations or NERL or the National Energy Retail Regulations. The Commission does not propose to recommend to the COAG Energy Council that any of the amendments made by the final rules be classified as conduct provisions.

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<sup>22</sup> Under s. 33 of the NEL and s. 225 of the NERL 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. On 1 July 2011, the MCE was amalgamated with the Ministerial Council on Mineral and Petroleum Resources. The amalgamated council is now called the COAG Energy Council.

<sup>23</sup> Section 91(8) of the NEL.