



Consultation paper

**Approach to additional reporting requirements
for NEM participants and AEMO**

**(Guideline on the imposition of additional or
more onerous requirements, procedures or
standards under clause 8.7.2(g) of the National
Electricity Rules)**

November 2010

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Request for submissions

Interested parties are invited to make written submissions on issues regarding this draft guideline to the Australian Energy Regulator (AER) by **31 December 2010**. Where an interested party considers it necessary or beneficial to have a meeting, the party should state the reasons why such a meeting is necessary or desirable.

Submissions can be sent electronically to: aer inquiry@ aer.gov.au. Please title your email 'Submission on draft guideline – attention Sonja Eibl'.

Alternatively, submissions can be mailed to:

Tom Leuner
General Manager
AER–Markets Branch
GPO Box 520
MELBOURNE VIC 3001

The AER prefers all submissions to be made public to facilitate an informed and transparent consultative process. Submissions should be made with reference to the ACCC–AER Information policy: the collection, use and disclosure of information (ACCC–AER Information Policy). This document is available at www.aer.gov.au.

Submissions will be treated as public documents unless otherwise requested. Parties wishing to submit confidential information are requested to submit this information as outlined in the ACCC–AER Information Policy.

All non-confidential submissions will be placed on the AER's website for general access by the public.

Inquiries about the draft guideline or how to make submissions can be directed to aer inquiry@ aer.gov.au or to Sonja Eibl on (02) 9230 9133.

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Shortened forms

Shortened Form	Extended Form
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
NEL	National Electricity Law
NEM	national electricity market
NER	National Electricity Rules
Registered Participant	has the meaning given in Chapter 10 of the National Electricity Rules
Reporting Guideline	Guideline regarding additional or more onerous requirements, procedures and standards

1 Introduction

The Australian Energy Regulator (AER) is responsible for the economic regulation of electricity transmission and distribution services in the national electricity market (NEM) as well as some gas transportation services. The AER also monitors the wholesale electricity and gas markets and is responsible for compliance with and enforcement of the National Electricity Rules (NER) and National Gas Rules.

The AER has broad enforcement and investigative functions and powers. These include: (i) monitoring compliance by Registered Participants¹ and other persons with the National Electricity Law (NEL), NER and National Energy Regulations; (ii) investigating breaches or possible breaches of provisions of the NEL, NER or Regulations² including offences against the NEL; and (iii) to institute and conduct proceedings.³

1.1 The purpose of the Reporting Guideline

The purpose of the Guideline regarding additional or more onerous requirements, procedures and standards (Reporting Guideline) is to:

- set out those matters the AER has to consider before it decides on the allocation of costs of any additional or more onerous requirements, procedures or standards under clause 8.7.2(g) of the NER.

¹ Has the meaning given in Chapter 10 of the NER.

² NEL, s. 15: 'Regulations' means the regulations made under Part 4 of the *National Electricity (South Australia) Act 1996* of South Australia that apply as a law of this jurisdiction.

³ NEL, s. 15.

2 Relevant law

2.1 Content of the Reporting Guideline

Clause 8.7.2(h) of the NER requires the AER to develop and implement guidelines governing the exercise of powers conferred on it by clause 8.7.2(g) of the NER.

Clause 8.7.2(g) of the NER provides that if the AER imposes additional or more onerous requirements, procedures or standards on a Registered Participant at the request of another Registered Participant and/or AEMO it can determine the allocation of the costs of any additional compliance monitoring between the relevant Registered Participant and/or AEMO.⁴

The Reporting Guideline sets out the matters the AER has to consider before deciding the allocation of costs of any additional or more onerous requirements, procedures or standards imposed pursuant to clause 8.7.2(g) of the NER between the relevant Registered Participants and/or AEMO.

2.2 Who can request the imposition of additional or more onerous requirements, procedures or standards

Any Registered Participant or AEMO may ask the AER to impose additional or more onerous requirements, procedures or standards on a Registered Participant in order to monitor or assess compliance with the NER by that Registered Participant.

The AER may but is not required to impose the additional or more onerous requirements, procedures or standards sought.⁵

2.3 Application to Registered Participants

For the purpose of performing its monitoring functions, the AER may, under clause 8.7.2(d) of the NER, establish additional or more onerous requirements or procedures and standards which do not apply to all or a particular category of Registered Participants. In formulating such requirements or procedures and standards the AER:

- Must take into consideration the matters set out in clause 8.7.1(c) of the NER.⁶ This requires that the AER ensures, to the extent practicable, that its monitoring processes are:
 - consistent over time;
 - do not discriminate unnecessarily between Registered Participants;
 - are cost effective for the AER, all Registered Participants and AEMO; and

⁴ If no allocation is made, the Registered Participant subject to the additional or more onerous requirements, procedures or standards has to bear its own costs of compliance: NER, cl. 8.7.2(g).

⁵ NER, cl. 8.7.2(g).

⁶ NER, cl. 8.7.2(d).

- subject to confidentiality obligations, are publicised or available to the public.⁷
- The AER must consult with the relevant Registered Participants. The AER is not required to consult or notify other Registered Participants to whom the additional or more onerous requirements, or procedures and standards do not apply.

⁷ NER, cl. 8.7.1(c).

3 Confidentiality

The ACCC–AER Information policy: the collection, use and disclosure of information (ACCC–AER Information Policy) sets out the AER’s general policy regarding the treatment of confidentiality claims. A copy of this document is available on the AER’s website (www.aer.gov.au).

4 Background

The Reporting Guideline will be an updated version of a guideline originally drafted by the National Electricity Code Administrator (NECA) under clause 8.7.2 of the National Electricity Code (NEC) and published in 2000. It sets out the matters to which the AER will have regard before it decides on the allocation of costs of any additional or more onerous:

- reporting requirements; or
- procedures or standards relating to information or data that must be provided

which has been requested by any Registered Participant or the Australian Energy Market Operator (AEMO).

On 1 July 2005 the AER assumed responsibility for developing and implementing the Reporting Guideline. The AER is engaging in this consultation process in accordance with its obligations under clause 8.7.2(h) of the NER to update the guideline in accordance with the rules consultation procedures.⁸

Set out in below in Table 1 immediately below is a brief summary of the differences between the legislation that applied when the guidelines were issued by NECA and those in force currently⁹. As the NER follows the NEC's numbering, the clause numbers stated relate to both the NEC and NER.

⁸ NER, cl. 8.7.2(h) provides that the AER must develop and implement guidelines in accordance with the procedures for consultation with registered participants or other persons set out in clause 8.9 of the NER (the rules consultation procedure).

⁹ For the avoidance of doubt, the version current as at the date of issuance of this draft guideline is NER, version 39.

Table 1. Summary of significant differences between clauses 8.7.2 of the NEC and NER

Clause Number (NEC/NER)	Relevant difference between NEC and NER
8.7.2(a)	‘NECA’ has been replaced with ‘AER’ and references to ‘AEMO’ have also been included. This recognises that NECA is not operational any more and its functions have been reallocation to the AER.
8.7.2(b)	<p>A requirement that the AER consult with the Australian Energy Market Commission (AEMC) and AEMO in establishing reporting requirements, standards and procedures has been included in the NER. This recognises the importance of: (i) the AEMC as rule maker and developer of the NEM; and (ii) AEMO in managing the NEM and overseeing the security of the NEM grid.</p> <p>The requirement to have regard to the ‘monitoring objective’ and the classification of reporting requirements, standards and procedures as ‘reviewable decisions’ have been deleted as these are no longer relevant concepts.</p>
8.7.2(d)	The reference to ‘confidentiality provisions in clause 8.6’ is not included in the NER.
8.7.2(f)	The obligation not to provide misleading or deceptive data or information now applies to the AEMO.
8.7.2(g)	A decision to impose additional requirements, procedures or standards is not classified as a ‘reviewable decision’ ¹⁰ in the NER as this concept is no longer relevant.

The Reporting Guideline will incorporate the above changes and use practical headings to assist readers in their understanding. It will also set out the form that a request for the imposition of additional or more onerous requirements, procedures or standards on a Registered Participant or AEMO should take and specify the things to which the AER must have regard when exercising its powers to impose additional or more onerous requirements procedures or standards.

¹⁰ NEC, Chapter 10 provides that a reviewable decision is a decision of NEMMCO or NECA that is specified as a reviewable decision.

5 Consultation procedure

The AER is required to follow the consultation procedures set out in clause 8.9 of the NER in developing and implementing guidelines governing the exercise of the powers conferred on it by clause 8.7.2(g) of the NER.

The consultation process for the Reporting Guideline will consist of the following:

- Publication by the AER of a notice on its website advising that it is consulting on the revised draft Reporting Guideline and inviting written submissions: 15 November 2010.
- Close of submissions: 31 December 2010.
- Publication by the AER of a draft report on its website setting out its reasoned conclusions; its reasons for these conclusions; the procedure followed in considering the matter; summaries of material issues raised in submissions; and inviting submissions on the draft report: 1 February 2011.
- Close of submissions on the draft report: 15 February 2011.
- the AER will publish the Reporting Guideline: 29 March 2011.