
Monthly Energy Regulatory Update – October

Updated October 31, 2017

In this curated regulatory update, we bring to your attention the main policy and regulatory changes, proposed and developing, by our national and state rule-makers and regulators, divided into electricity and gas sectors¹.

Electricity

Federal Regulators

National Energy Guarantee	Sector	More information	Date
Energy Security Board advises Commonwealth Government The ESB has provided advice to Ministers on reliability, affordability and meeting Australia’s international commitments. Advice is given on the reliability of the system is maintained; the emissions reduction required to meet Australia’s international commitments are achieved; and the above objectives are met at the lowest overall costs.	All	News ESB Advice	October 13, 2017
Commonwealth Government announces a National Energy Guarantee The Commonwealth Government accepted advice from the ESB to establish a National Energy Guarantee. The ESB has provided the COAG Energy Council with advice on changes to the National Electricity Market and legislative framework. The ESB specifically provided recommendations to introduce the National Energy Guarantee, requiring retailers to take certain steps to acquire and provide reliable, secure and affordable electricity.	All	AEMC News AER: News Advice AEMO News	October 17, 2017

¹ Please note that we have chosen to summarise only the developments that are likely to be of interest to you. *When we indicate that “no relevant news this month” has occurred, this does not mean that the relevant regulator or policy maker has necessarily been inactive.

Australian Energy Market Commission (AEMC)	Sector	More information	Date
<p>More short-term operational reliability in the National Energy Market for this summer The AEMC has called for submissions on a proposal to give the market operator more flexible tools to signal when the market needs to increase electricity supply or reduce demand at short notice. Submissions to the draft determination are due by November 28, 2017.</p>	Generation, Transmission, Distribution, Retail	News Draft rule	October 17, 2017
<p>Final rule: Changes to pricing arrangements during periods of spot market suspension AEMO suspends the spot market when the market cannot operate as normal, for example, if there is no electricity supply due to a black system event. In these situations, AEMO must determine the prices which generators are paid, and customers receive, while the issues which led to the suspension are being resolved. The final rule aims to simplify the process for setting prices if the spot market is suspended, and establishes a simpler, more workable market suspension pricing framework.</p>	Generation, Retail	News Final rule	October 10, 2017
<p>Final rule: Facilitating secondary trading of inter-regional settlements distribution units The AEMC today made a final rule AEMO to provide a platform for secondary trading of settlements residue distribution units. Enabling AEMO to provide a platform for secondary trading of units will, if implemented, improve liquidity in the market for these units.</p>	Transmission	News Final Rule	October 10, 2017
Australian Energy Regulator (AER)	Sector	More information	Date
<p>AER re-examination of NSW and ACT electricity distributors shows customers benefiting from efficiency gains The AER released an issues paper seeking views on how to revise its decision on operating costs for NSW and ACT electricity distributors, following a Full Federal Court decision on the matter in May. The issues paper will affect the operating expenditure for electricity distributors Ausgrid and Endeavour Energy in NSW and ActewAGL in the ACT for the 2014-19 period.</p>	Distribution, Consumer	News Issues Paper	October 19, 2017
<p>AER releases draft decision on ring-fencing waiver applications The AER released its draft decision on applications for waivers from the Electricity Distribution Ring-fencing Guideline (Guideline). The majority of waivers are for short term extensions, allowing the distribution businesses to continue with existing operating arrangements while new separate legal entities can be established or until the next regulatory review. This would mean that new regulatory arrangements can be put in place to facilitate ring-fencing compliance at the next review. Submissions on the draft decision are due by October 18, 2017.</p>	Distribution	News	October 18, 2017
<p>AER publishes final amended Ring-fencing Guideline The AER has made an amendment to the November 2016 Electricity Distribution Ring-fencing Guideline (Guideline). The Guideline amendment process was intended to address the need for improved clarity of certain terms and definitions used in the Guideline and to address unintended consequences stemming from the way the Guideline was initially drafted.</p>	Distribution	News Guideline Explanatory Statement	October 17, 2017

Australian Energy Regulator (AER)	Sector	More information	Date
<p>AER invites submissions on its preliminary position on the regulatory treatment of inflation The AER has released a preliminary position paper on its industry wide review of the regulatory treatment of inflation. Submissions are due by November 6, 2017.</p>	Transmission, Distribution	<p>News</p> <p>Preliminary Position Paper</p>	October 13, 2017
<p>Consultation: Draft AER Compliance Procedures and Guidelines The AER released for consultation draft amendments to the current Compliance Procedures and Guidelines. Among its functions, the AER monitors, investigates and enforces compliance with obligations under the National Energy Retail Law and National Energy Retail Rules. This includes developing Guidelines for energy businesses. Submissions on the draft Guideline are due by November 10, 2017.</p>	Retail	News	October 11, 2017
<p>AER to hold Demand Management Feedback Forum The AER will soon publish a new Demand Management Incentive Scheme and Innovation Allowance Mechanism. The AER would like anyone who has previously engaged with them to attend their Feedback Forum in the morning of 8 November 2017 via videoconference at the ACCC/AER offices. At this Forum, the AER will discuss how they intend to incorporate stakeholder submissions into their final Scheme and Mechanism. Attendees will also have another opportunity to provide input before we publish the Scheme and Mechanism. Anyone wishing to attend the videoconference is asked to formally register by emailing DM@aer.gov.au before close of business on Friday, 3 November 2017.</p>	Generation, Transmission, Distribution, Retail	News	October 9, 2017
<p>Limited merits review abolished Merits review of future AER revenue determinations has been abolished as the <i>Competition and Consumer Amendment (Abolition of Limited Merits Review) Act 2017</i> has taken effect.</p>	Transmission, Distribution	Legislation	October 31, 2017
Australian Energy Market Operator (AEMO)	Sector	More information	Date
<p>Drew Clarke is appointed new chair of the AEMO Board Mr Clarke's appointment follows an extensive national search with an independent Appointment Selection Panel. The Selection Panel recommended the appointment of Mr Clarke, which was endorsed by the AEMO Board, AEMO's members, and subsequently approved by the COAG Energy Council. Mr Clarke will replace Dr Anthony (Tony) Marxsen, who is retiring from the Board following the 2017 Annual General Meeting in November.</p>	All	News	October 20, 2017
<p>AEMO and ARENA demand response trial to provide 200 megawatts of emergency reserves for extreme peaks The Australian Renewable Energy Agency (ARENA) and the AEMO jointly announced 10 pilot projects have been awarded funding under the demand response initiative to manage electricity supply during extreme peaks.</p>	Generation, Retail	News	October 11, 2017

Clean Energy Regulator (CER)	Sector	More information	Date
[No relevant news this month]			
Australian Competition and Consumer Commission (ACCC)	Sector	More information	Date
<p>Preliminary report on Electricity supply & prices inquiry The ACCC released its preliminary report for the Inquiry following the report being provided to the Treasurer. The ACCC preliminary report into the electricity market highlights significant concerns about the operation of the National Electricity Market, which is leading to serious problems with affordability for consumers and businesses. Submissions to the preliminary report will close on November 17, 2017.</p>	All	News Preliminary Report	October 16, 2017
<p>Extensive changes to competition law become effective Extensive changes to the <i>Competition and Consumer Act</i> became effective on 6 November 2017. Businesses need to be aware of these changes, particularly the broadening of the prohibition against misuse of market power and the introduction of a prohibition against more tacit forms of collusion, known as “concerted practices”.</p>	All	Norton Rose Fulbright updates	November 6, 2017
COAG Energy Council	Sector	More information	Date
<p>Consultation Paper on Consumer Resourcing: Consumer participation in revenue determinations and associated regulatory processes In July 2017, the COAG Energy Council agreed to consult on options to improve resourcing available to consumer groups to support more effective engagement in the AER’s revenue determinations and access arrangement decisions under the national electricity and gas laws and rules. It has now released a consultation paper. Submissions are due by November 3, 2017.</p>	All	News Consultation Paper	October 6, 2017

State/Territory Regulators

Independent Pricing and Regulatory Tribunal NSW (IPART)	Sector	More information	Date
<p>Draft Report: Retail Energy Market Monitoring 2017 IPART has found that NSW consumers are paying around the same prices for electricity today as they did prior to retail price deregulation in 2014. It is reviewing the performance and competitiveness of the retail electricity market in NSW during 2016-17. Submissions are due by November 7, 2017</p>	Retail	News Draft Report	October 17, 2017
Essential Services Commission Victoria (ESC)	Sector	More information	Date
<p>Draft guidance note: Payment difficulty and disconnection The ESC has released its draft guidance note. The purpose is to outline the commission’s approach to promoting and enforcing compliance with Part 3 of the Energy Retail Code (Code). It provides guidance on the minimum standards of conduct that the commission considers are required to comply with provisions of the Code that relate to customers anticipating or facing payment difficulty</p>	Retail	News Draft Guidance	October 10, 2017

Essential Services Commission Victoria (ESC)	Sector	More information	Date
<p>Final Decision: Payment difficulty framework</p> <p>This final decision sets out the new framework for promoting protections for energy customers facing payment difficulty. The focus is on the payment difficulty framework which aims to deliver better outcomes for customers who may be struggling to pay their electricity or gas bills.</p>		<p>News</p> <p>Final decision</p>	October 10, 2017
Essential Services Commission of South Australia (ESCOSA)	Sector	More information	Date
<p>Final Report: Inquiry into reliability and quality of electricity supply on the Eyre Peninsula</p> <p>The Minister for Mineral Resources and Energy has released the ESCOSA's final report on the Inquiry into the reliability and quality of electricity supply on the Eyre Peninsula. The Inquiry has identified various technical options that could be implemented in the short, medium and long term that would improve the reliability of supply on the Eyre Peninsula.</p>	Generation	<p>News</p> <p>Final Report</p>	October 27, 2017
Economic Regulation Authority Western Australia (ERAWA)	Sector	More information	Date
[No relevant news this month*]			
Queensland Competition Authority (QCA)	Sector	More information	Date
[No relevant news this month*]			
Office of the Tasmanian Economic Regulator	Sector	More information	Date
[No relevant news this month*]			
Utilities Commission of Northern Territory (UCNT)	Sector	More information	Date
<p>2017 EIP Code (Standards of Service and Guaranteed Service Levels)</p> <p>The UCNT approved the 2017 Electricity Industry Performance Code (Standards of Service and Guaranteed Service Levels) (EIP code). The EIP Code commenced on 25 October 2017 and replaces the Electricity Standards of Service Code and the Guaranteed Service Level Code.</p>		<p>News</p>	October 25, 2017

Gas

Federal Regulators

Australian Energy Market Commission (AEMC)	Sector	More information	Date
<p>Final rule: Change to timing of periodic review of gas Short Term Trading Market parameters</p> <p>The increased interconnection of gas and electricity markets has driven the AEMC to make this final rule that aligns AEMO's periodic review of market parameters for the gas short term trading market with the Reliability Panel's review of the reliability standard and settings in the national electricity market.</p>		<p>News</p> <p>Final Rule</p>	October 10, 2017

Australian Energy Regulator (AER)	Sector	More information	Date
[No relevant news this month*]			
Australian Energy Regulator (AEMO)	Sector	More information	Date
[No relevant news this month*]			
Clean Energy Regulator	Sector	More information	Date
[No relevant news this month*]			
Australian Competition and Consumer Commission	Sector	More information	Date
Future reporting on the Gas inquiry 2017-2020 The Prime Minister and the east coast LNG exporters signed a heads of agreement in order to maintain a secure and affordable supply of gas to the domestic market. The heads of agreement states that the ACCC will be monitoring the LNG exporters' compliance with the heads of agreement, as well as the sales, offers to sell and bids declined of the other suppliers. The ACCC will also periodically report on LNG spot and contract netbacks; and invoiced gas price series.	All	News	October 3, 2017
Extensive changes to competition law become effective Extensive changes to the Competition and Consumer Act became effective on 6 November 2017. Businesses need to be aware of these changes, particularly the broadening of the prohibition against misuse of market power and the introduction of a prohibition against more tacit forms of collusion, known as "concerted practices".	All	Norton Rose Fulbright updates	November 6, 2017
COAG Energy Council	Sector	More information	Date
[No relevant news this month*]			

State/Territory Regulators

Independent Pricing and Regulator Tribunal NSW (IPART)	Sector	More information	Date
[No relevant news this month*]			
Essential Services Commission Victoria (ESC)	Sector	More information	Date
Review of Unaccounted for Gas Benchmarks (UAFG)	Distribution	News	October 2, 2017
Unaccounted for Gas is the difference between the measured quantity of gas entering the gas distribution system from various supply points and the gas delivered to customers. This is part of the ESC's second stage review of the UAFG benchmarks involving consultation on the calculation of the UAFG benchmarks		Draft Decision	
Essential Services Commission of South Australia (ESCOSA)	Sector	More information	Date
[No relevant news this month*]			
Economic Regulation Authority Western Australia (ERAWA)	Sector	More information	Date
[No relevant news this month*]			
Queensland Competition Authority (QCA)	Sector	More information	Date
[No relevant news this month*]			
Office of the Tasmanian Economic Regulator	Sector	More information	Date
[No relevant news this month*]			
Utilities Commission of Northern Territory	Sector	More information	Date
[No relevant news this month*]			

Many thanks to Chris Goutama for his assistance in preparing this update.

Contacts

If you would like further information please contact:



Claire Forster
Special Counsel
Tel + 61 2 9330 8168
claire.forster@nortonrosefulbright.com

Norton Rose Fulbright

Norton Rose Fulbright is a global law firm. We provide the world's preeminent corporations and financial institutions with a full business law service. We have more than 4000 lawyers and other legal staff based in more than 50 cities across Europe, the United States, Canada, Latin America, Asia, Australia, Africa and the Middle East.

Recognized for our industry focus, we are strong across all the key industry sectors: financial institutions; energy; infrastructure, mining and commodities; transport; technology and innovation; and life sciences and healthcare. Through our global risk advisory group, we leverage our industry experience with our knowledge of legal, regulatory, compliance and governance issues to provide our clients with practical solutions to the legal and regulatory risks facing their businesses.

Wherever we are, we operate in accordance with our global business principles of quality, unity and integrity. We aim to provide the highest possible standard of legal service in each of our offices and to maintain that level of quality at every point of contact.

Norton Rose Fulbright Verein, a Swiss verein, helps coordinate the activities of Norton Rose Fulbright members but does not itself provide legal services to clients. Norton Rose Fulbright has offices in more than 50 cities worldwide, including London, Houston, New York, Toronto, Mexico City, Hong Kong, Sydney and Johannesburg. For more information, see nortonrosefulbright.com/legal-notices.

The purpose of this communication is to provide information as to developments in the law. It does not contain a full analysis of the law nor does it constitute an opinion of any Norton Rose Fulbright entity on the points of law discussed. You must take specific legal advice on any particular matter which concerns you. If you require any advice or further information, please speak to your usual contact at Norton Rose Fulbright.