

7 January 2021

Ms Merryn York
Acting Chair, Australian Energy Market Commission

By electronic submission

Dear Ms York

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Rule change request – Electricity rules consultation procedures and Gas extended consultation procedure

AEMO submits the attached Rule change proposal under section 91 of the National Electricity Law and section 295 of the National Gas Law. The proposal is for a rule to simplify, streamline, and improve the efficiency of the 'Rules consultation procedures' in NER rule 8.9. For consistency, AEMO proposes corresponding changes for the 'extended consultation procedure' in NGR rule 9A.

If implemented, this proposal will support the implementation of the ESB's NEM 2025 program and other major reform initiatives that will require new procedures and guidelines. The proposed rule will also support a longer term review of the NER, potentially leading to detailed regulation being specified in ways that can be more readily adapted to meet the changing needs of the market and system, within the structure and principles set by the NER.

The market and power system are in a transformational phase. Innovative business models are developing to respond to that transformation, and regulatory approaches will need to change more frequently and potentially more radically to address market and operational needs. Given the increasing number and scope of procedures and guidelines in the NEM, it is critical to ensure that the process of consultation on those instruments is both robust and efficient.

AEMO's proposal presents a relatively straightforward but flexible consultation process that is capable of achieving these objectives. The proposal has been developed in collaboration with the AER and after discussion with the ESB steering committee working on the NER simplification initiatives. The AER has provided a letter of support for this rule change, which is also attached.

Any questions on this rule change request should be directed to Kevin Ly, Group Manager - Regulation on kevin.ly@aemo.com.au.

Yours sincerely



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Chief Strategy & Markets Officer

Attachments: 1. Rule change proposal 2. AER Letter of Support of AEMO rule change proposal



ELECTRICITY AND GAS RULE CHANGE PROPOSAL

RULES CONSULTATION PROCEDURES -
ESB NATIONAL ELECTRICITY RULES SIMPLIFICATION
PROJECT

December 2020



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1. SUMMARY

The Energy Security Board (ESB) has established a program of work to progress the implementation of recommendations from the 2017 Finkel Review¹ relating to the simplification of the National Electricity Rules (NER), and optimisation of the rule change process.

AEMO has submitted this rule change proposal as part of this program of work.

This proposal is for a rule that will simplify, streamline, and improve the efficiency of the 'Rules consultation procedures' in NER rule 8.9. If implemented, these changes will support the implementation of the many major rule change and reform initiatives under way that will require the market bodies to make new procedures and guidelines. They will also prepare the ground for a longer term review of the NER that may result in moving some of their detailed requirements into subordinate instruments where they can be more readily adapted to meet the changing needs of the market and system, within the structure and principles set in the NER. As the ESB noted in its 2019 Health of the NEM Report:

'... it is clear that the rules are barely manageable. They have grown to a point of incomprehension for most people and are far too prescriptive. A review in due course should change many rules to guidelines that can then be varied as technology changes.'²

The proposed rule will replace the Rules consultation procedures with a consultation process based largely on the existing requirements applicable to AER consultations on economic regulatory guidelines for transmission and distribution.

For reasons of consistency, AEMO proposes corresponding changes to the 'extended consultation procedure' in rule 9A of the National Gas Rules, which is modelled on the current Rules consultation procedures.

2. RELEVANT BACKGROUND

The Finkel Review's 2017 *Independent Review into the Future Security of the National Electricity Market: Blueprint for the Future* recommended 'a comprehensive review of the National Electricity Rules with a view to streamlining them in light of changing technologies and conditions.'

This is a broad and wide ranging recommendation. In 2019 the ESB commenced a work program that is initially targeting aspects of the NER that can be simplified where clearly warranted, and achievable without material changes to rights and obligations. Given the current transitional state of the market and the extensive reform programs already in progress, simplification of the NER will be an incremental process, over an extended period of time. This program has to date considered initiatives and rule changes covering:

- A [rule drafting philosophy](#) to guide the structure and drafting of new and revised rules going forward.
- [Simplification of NER definitions](#) and their usage.
- Removal of spent derogations and transitional provisions.
- Incremental initiatives to improve NER navigation.
- Enhancing rule change process efficiency and coordination on priority changes.

¹ *Independent Review into the Future Security of the National Electricity Market: Blueprint for the Future*, Commonwealth of Australia 2017. Available at: <https://www.energy.gov.au/sites/default/files/independent-review-future-nem-blueprint-for-the-future-2017.pdf>

² *The Health of the National Electricity Market 2019*, Energy Security Board, Volume 1 at page 43.



AEMO has developed this rule change proposal in collaboration with the AER and in discussion with the ESB steering committee working on the NER simplification initiatives. The AER has provided a letter of support for this rule change which is included at Appendix B.

The NER already provide for many detailed matters to be specified in other instruments or periodically reviewed. Depending on the nature of those matters, the body charged with determining them may be required to consult with registered participants and other stakeholders as part of its decision-making process. In some of those cases, the NER prescribe that consultation must follow regulated procedural steps referred to as the *Rules consultation procedures* or, for some economic regulatory decisions, the *transmission consultation procedures* or *distribution consultation procedures*.

The national electricity market and power system are in a transformational phase. Innovative business models are developing to respond to that transformation, and regulatory approaches, processes and systems will need to change more frequently and potentially more radically to address market and operational needs. The pace of regulatory reform will increase as implementation of the ESB's NEM 2025 program starts to advance. Increasingly, it is not feasible or appropriate for the NER to prescriptively regulate all activities and circumstances that may have to be accounted for in the operation of the market. This makes it more likely that many NEM reforms will, for practical purposes, require a principles-based approach to NER regulation, providing a framework within which market bodies or participants will then specify detailed requirements, methodologies, etc., in subordinate instruments. For example, the retailer reliability obligation rules (chapter 4A), provide for ten new guidelines or procedures.

Given the likely increase in both the number of subordinate instruments and the potential for them to change more frequently, it is becoming more critical to ensure that the process of consultation on those instruments is both robust and efficient. The NER should prescribe a relatively straightforward but flexible consultation process that is capable of simultaneously achieving these outcomes:

- Allows stakeholders an adequate opportunity to have their views heard and considered on changes that affect them.
- Allows a decision-maker appropriate time to consider complex issues without making premature decisions.
- Does not require market bodies or participants to waste time and resources on unnecessary or extended procedural steps for decisions that are straightforward and uncontroversial.

Naturally, any decision-maker is expected to consult on a matter that affects any person's substantive rights and obligations, in accordance with principles of procedural fairness.

3. STATEMENT OF ISSUE

3.1 Current Rules

3.1.1 The Rules consultation procedures

Rule 8.9 describes a two-stage consultation process defined as the 'Rules consultation procedures'. Wherever the rules specify that the Rules consultation procedures apply to a document, decision or review, the relevant decision-maker (or 'consulting party') must follow them before making its final determination or conclusions. In summary, the Rules consultation procedures provide for:

- Notice giving particulars of the matter under consultation is published on the website of AEMO, the AEMC or AER as applicable, inviting written submissions within a period of not less than 25 business days.



- Consulted persons may request a meeting with the consulting party, but must give reasons why a meeting is necessary or desirable.
- The consulting party must consider all valid submissions within 20 business days, with a further 25 business days allowed to hold any requested meetings if considered necessary or desirable.
- Following its consideration of submissions and any meetings, the consulting party publishes its draft report via the relevant website. The rule prescribes the matters to be covered in the draft report in some detail, including a notice at the front of the report inviting written submissions within a period of not less than 10 business days.
- The consulting party must consider all valid submissions within 30 business days. Following that consideration, it publishes its final report via the relevant website, covering the content prescribed in the rule.

This prescribed set of steps is mandatory for over 90 documents and decisions in the NER³, covering the development or amendment of procedures, guidelines, methodologies, standards and similar documents, as well as reviews processes, etc. Of those, about 70 are AEMO decisions and about 15 are AER decisions. The remainder include decisions by the Reliability Panel, the Information Exchange Committee and Transmission Network Service Providers.

3.1.2 Special purpose consultation procedures

In addition to the Rules consultation procedures, the NER set out separate 'distribution consultation procedures' in rule 6.16, which apply to certain AER determinations under chapters 5, 5A and 6, and 'transmission consultation procedures' in rule 6A.20, for certain AER and AEMC determinations under chapters 3, 5 and 6A. Both processes are essentially the same, involving:

- Publication of a draft of the proposed document or decision, with a statement of the regulatory context and the reasons for the proposal set out in the draft, for consultation.
- A period for written submissions to be open for at least 30 business days.
- A final decision to be made within 80 business days of publishing the draft, which must consider and respond to all material issues raised in submissions.
- Flexibility within (or indeed before) the formal consultation and decision-making period to publish issues papers, hold information sessions, forums, etc.
- Ability to extend the 80 business day period for limited reasons, namely:
 - there are issues of unusual complexity or difficulty; or
 - delay is necessary due to circumstances beyond the control of the consulting party.

These consultation procedures first appeared in the NER when chapter 6A was introduced to reform the economic regulation of network services and separate transmission from distribution.⁴ The rationale for introducing bespoke consultation procedures for AER guidelines on these matters, rather than relying on the Rules consultation procedures, is not readily evident from the AEMC's consultation documents. Before the 2006 rule change, chapter 6 of the NER required AER consultation on transmission and distribution guidelines to be 'at least as extensive as the consultation prescribed by the Rules consultation procedures'.⁵ The AEMC report initiating the 2006 rule change indicated that 'this [transmission consultation procedure] will help increase the predictability and certainty of the regulatory regime, without excessively hampering the AER when it considers that a change to a Guideline is required.'⁶

³ Excluding consultation requirements under the chapter 11 transitional provisions

⁴ *National Electricity Amendment (Economic Regulation of Transmission Services) Rule 2006*

⁵ NER versions 1 to 9, clause 6.20.2(e). This provision remained in clause 6.12.2(d) for distribution ring-fencing guidelines from versions 10 to 17.

⁶ AEMC, Review of the Electricity Transmission Revenue and Pricing Rules, Transmission Revenue: Rule Proposal Report, February 2006



3.1.3 Modified process for chapter 7 consultations

Retail market and metering procedures under chapter 7 of the NER are subject to the Rules consultation procedures, to be followed by AEMO or, for B2B procedures, the Information Exchange Committee (IEC). The key differences are:

- In all cases, the requirement for a change proposal to be submitted to the decision-maker to commence the process, which the decision maker decides whether to take forward.
- For the IEC only, a requirement for its reports to specifically address how it has applied the specific B2B considerations in the NER.
- For B2B procedure amendments only, a requirement for them to be published at least 10 business days before they take effect.
- For minor or administrative amendments to chapter 7 procedures different prescribed steps for AEMO and the IEC respectively – described in the next section.

3.1.4 Minor or administrative amendments

In some instances where the NER specify that the Rules consultation procedures apply to the amendment of a document, there is an exclusion for amendments of a minor or administrative nature. There are about 34 of these exclusions in the NER,⁷ covering around half of the decisions subject to the Rules consultation procedures. In each case, the exclusion is specified in an additional paragraph in the rule that establishes the application of the procedures.

Similarly, where the transmission or distribution consultation procedures apply, clauses 5.14B.1(d), 6.2.8(f) and 6A.2.3(f) specify that the AER may make 'administrative or minor' amendments to the relevant guidelines without following the applicable consultation procedures.

The NER do not indicate what constitutes a minor or administrative amendment. AEMO and the AER would generally regard a proposed change as minor or administrative if it would not alter the substantive rights or obligations of participants, does not require changes to participant systems, and is not expected to involve material cost. Such matters would include error corrections, minor clarifications, updates to interpretative provisions, NER consistency, etc. For B2B procedure changes, clause 7.17.4(d) expressly adds correction of manifest errors to the 'minor or administrative' change category.

The 'minor or administrative' exclusion almost always applies without conditions. However, for procedures made by AEMO under chapter 7 (retail markets and metering), clause 7.16.7(e) sets out the steps to be taken before making amendments that AEMO considers to be minor or administrative. These steps include (in addition to the requirement for AEMO to act on a proposal submitted by another person):

- Publish the proposed amendments, reasons and issue a notice to registered participants and other relevant interested parties.
- Invite submissions on the proposal, allowing at least 10 business days and reasonable extensions of time if requested by a relevant participant.
- Publish submissions received.
- Consider the submissions before publishing the final amended procedure with reasons.

The process for minor or administrative amendments or manifest error correction of the B2B procedures is different again. It does not include a requirement to consult, but a report is still required addressing the B2B considerations.

⁷ Excluding chapter 11. Excluded amendments are variously described as 'minor or administrative' and 'minor and administrative'.



3.2 Issues with the current Rules

3.2.1 Multiple consultation processes

The NER currently contain three separately articulated sets of consultation procedures,⁸ applicable to subsets of the same broad range of decision-making requirements. Most (but not all) of the decisions subject to these procedures relate to various market bodies making or amending subordinate instruments like procedures, guidelines and similar documents.

The subject matter of these decisions and the underlying instruments spans the full range of matters regulated by the rules – technical, economic, operational and administrative. In relation to any individual decision, the scope of the matter for consultation might range from establishing an initial set of procedures with material cost or market implications, to non-controversial amendments for error correction, clarification or to bring documents into line with NER amendments.

The existence of multiple consultation procedures in the NER is inefficient for both stakeholders engaging in these processes and the bodies charged with decision-making. More generally, it is unnecessary for different processes to apply to instruments of a fundamentally similar type and regulatory function.

3.2.2 Issues specific to Rules consultation procedures

Key issue – lack of flexibility

The Rules consultation procedures are not suitable as a ‘one size fits (almost) all’ approach to consultation, primarily because they provide no flexibility. The number of carve-outs for minor or administrative amendments to various guidelines and procedures throughout the NER is an indication of this lack of flexibility. Across the broad spectrum of documents and the diverse nature of matters for consultation under the NER, good regulatory outcomes require fit-for-purpose consultation. Any standardised consultation procedures must therefore incorporate enough flexibility to be tailored to fit the circumstances and relative complexity of any consultation.

A similar sentiment was expressed by the AEMC in its July 2006 draft determination on the *National Electricity Amendment (Economic Regulation of Transmission Services) Rule*, in the context of the AER’s consideration of revenue proposals:

The main aim of the Commission is to ensure that the regulatory process is efficient and timely. However, the Commission does not believe that good regulatory outcomes should be limited unduly by overly prescriptive timeframes. For each particular determination some components may require slightly longer times to reach a robust decision while other issues might allow for shorter decision times. The Commission considers that sufficient time should be made available for the AER to undertake formal consultation processes such as providing issues papers, predetermination conferences and publishing information and for stakeholders to have an adequate length of time to respond to issues. However, the Commission is of the view that the specific timeframes for these should be left to the discretion of the AER, bearing in mind the overall timeframe.⁹

Practical issues

Two formal consultation rounds not always necessary: In AEMO’s experience when consulting on subordinate instruments, drafting of the instrument can often be provided at the initial stage of consultation. This typically assists stakeholders to understand the scope of the proposed document or amendment, and to provide relevant and targeted feedback. If a draft can be provided at the start of the consultation, the initial round of consultation will sometimes be unnecessary. An initial scoping stage

⁸ Disregarding special purpose consultation requirements prescribed for individual decisions.

⁹ At page 113 of the draft determination



(issues paper) is useful for the decision-maker and stakeholders when the matter for consultation could be addressed by a range of feasible options, and more information is needed to assess the relative benefits and costs of different solutions before drafting.

Timeframes too long or too short for many consultations: For consequential or uncontroversial changes, the minimum time period for consultation in the first stage is too long. Conversely, for complex new instruments or major reforms where multiple approaches are feasible, the maximum timeframe for the decision-maker to consider submissions can be too short. Not infrequently, new material issues can emerge from the final set of stakeholder submissions, warranting further substantive consultation that is not easily accommodated within the current framework.

Stakeholder briefing and discussion forums not accommodated in decision time: Meetings with consulted persons are provided for only if requested in their written submission. In AEMO's experience, individual meetings are rarely requested in this way, and for transparency reasons are not ideal unless the participant wishes to discuss confidential information. For more complex consultations, information sessions or discussion forums are generally more efficient and informative for the decision maker and stakeholders, sometimes in smaller groups (e.g. regional or participant categories) to facilitate discussion of issues and concerns. The Rules consultation procedures specify that consulted persons may request a meeting in submissions, and extend the decision timeframe by 25 business days to hold any such meetings. However, there is no allowance for meetings or information sessions held at the decision-maker's own initiative. Undertaking this type of informal consultation requires time, but frequently improves the quality of regulatory outcomes. The Rules consultation procedures can work to discourage decision-makers from taking these steps.

Timing for decision making is uncertain: The current Rules consultation process does not expressly prescribe a time within which a draft or final decision is to be made or published. Instead, the timeframe applies to the period within which the decision maker must 'consider all valid submissions'. This provides no transparency to consulted persons and no clarity for decision-makers on their regulatory obligations.

Initiation of chapter 7 procedure amendments relies on participant proposal: The chapter 7 process requires a proposal to be submitted to AEMO or the IEC before initiating a change. In the case of the B2B procedures it is logical that a proposal would be submitted by any of the IEC's members or the participants they represent, or AEMO, rather than by the IEC as a separate body. For other chapter 7 procedures, the NER should be clear that AEMO can formulate its own amendment proposals to initiate the process, as it will sometimes be more efficient to do so.

Full process for minor amendments discourages improvement: The absence of a generally applicable exemption from the Rules consultation procedures for minor or administrative changes discourages incremental improvements to subordinate instruments. Where no exemption is specifically provided for, decision-makers may be reluctant to undertake a long and time consuming consultation for changes that would help to improve the interpretation or application of the instrument, for example to correct obvious errors or update it to be consistent with changes to the NER.

Special requirements for minor chapter 7 procedures inconsistent and impractical: When minor or administrative exemptions do apply, there are generally no specified consultation steps, allowing the decision-maker to determine whether and what prior consultation is appropriate. The notable exceptions apply to retail market and metering procedures under clause 7.16.7 and, to a lesser extent, B2B procedures under clause 7.17.4. Clause 7.16.7 prescribes a unique process that, although shortened, is not straightforward and introduces a requirement for the provision of notices to certain consulted persons apparently in addition to publication on the website. This is not required by the full Rules consultation procedures. In practice, it is unlikely that a decision-maker will have up to date contact details to serve a notice on all relevant parties.



Drafting inefficiencies

Outside chapter 11, there are about 37 separate paragraphs of the rules providing that a decision-maker need not comply with the applicable consultation procedures when making minor or administrative amendments to subordinate instruments. These could all be deleted (also removing the need for further such clauses in subsequent rule changes) by dealing with exceptions for amendments of this nature within the consultation procedures themselves.

The Rules consultation procedures are unnecessarily lengthy and repetitive. Clauses 8.9(c), (h) and (l) repeat the publication requirements for each of the initial issues paper, draft report and final report. Clauses 8.9(g) and (k) repeat the list of matters to be contained in each of the draft and final reports.

3.2.3 Case studies

The following case studies provide examples of instances where the Rules consultation procedures were unsuitable because either:

- a shorter process would have sufficed for both the decision-maker and the consulted stakeholders; or
- an extended process would have been desirable because of the complexity of changes, or interdependencies with other regulatory or system initiatives.

PoLR cost procedures

AEMO recently made the PoLR cost procedures under NER clause 3.15.9A. Their content is heavily prescribed by the rules, with very little room for optionality. AEMO was required to make these new procedures in accordance with the Rules consultation procedures, and commenced the consultation with a fully drafted version of the procedures. AEMO held informal discussions with the AER on the interaction between the PoLR cost procedures and relevant AER guidelines, which resulted in minor amendments to the drafted procedures. There was only one late submission to the first stage consultation, which raised policy issues beyond the scope of the procedures, and no submissions to the second stage. No drafting amendments were made as a result of the formal submission.

5MS and global settlement procedure changes

The transitional provisions for the five minute settlement and global settlement rules required AEMO to review and amend several specified procedures to reflect the relevant rule. Many of those procedures only required consequential changes, for example to update provisions or calculations based on a 30-minute trading interval. While AEMO was able to take advantage of 'minor or administrative' exceptions for some procedures in this category, AEMO had to follow the full two-stage consultation process for others.

MSATS standing data review

In 2020, AEMO consulted on amendments to the standing data provisions of the Market Settlement and Transfer Solution (MSATS) Procedures. AEMO had to extend the time for publication of its draft determination and then add a third stage to this consultation. This was required to assess several complex issues arising from stakeholder submissions, consult appropriately on new proposals emerging from submissions on the (first) draft determination, and work through interdependencies with other regulatory initiatives or implementation projects in progress, including Five Minute and Global Settlement and the energy sector Consumer Data Right. As a result AEMO issued two draft determinations in this consultation.

A more flexible consultation procedure would have allowed AEMO to accommodate these developments more efficiently without having to work around the current Rules consultation procedures.



Causer pays procedure review

In late 2016 AEMO commenced consultation on a broad range of potential improvements to what was then called the Causer Pays Procedure (now the Regulation FCAS Contribution Factor Procedure). Submissions to the issues paper raised some fundamental concerns relating to the potential impact of the procedure's operation on the degradation of frequency control. This led AEMO to form a stakeholder technical advisory group to investigate these issues and appoint an independent consultant to conduct a review. As a result, although AEMO had 'considered' all first stage submissions within the period allowed by the Rules consultation procedures, the formal consultation could not progress within expected timeframes.

A consultation procedure that formally commences only with a draft decision would better set expectations, allowing issues to be identified and comprehensively explored where necessary in the most appropriate consultative forums before starting a prescribed process.

3.3 Comparison with other energy rules

For comparative purposes, AEMO has considered the consultation procedures that apply to decisions and procedures under the National Gas Rules (NGR) and National Energy Retail Rules (NERR). While elements of those procedures could address some of the issues identified in relation to the Rules consultation procedures, AEMO does not consider that any of those consultation procedures could readily be applied to NER decisions.

3.3.1 National Gas Rules

The NGR provide for a single, but two-speed, consultation process applicable to making or amending all AEMO procedures authorised under the National Gas Law for each of the gas markets. The consultation process is set out in Part 15B of the NGR. In summary, that process provides for:

- AEMO to publish the procedure proposal and AEMO's impact and implementation report on the proposed procedures (or change to the procedures). The proposal and impact and information report must first be consulted on under AEMO's 'approved process', made under NGR rule 135EC; this consultation is conducted through the gas consultative forums established by AEMO.
- An 'ordinary' consultation process to be followed unless AEMO considers the procedures are urgently necessary or will have a non-material impact – which case an 'expedited' process applies.
- Under the ordinary process, at least 20 business days must be allowed for submissions on the proposal and report, with AEMO publishing its final decision and reasons (including its consideration of valid submissions) within a further 20 business days. AEMO may, but need not, consider submissions received after the closing date.
- Under the expedited process, AEMO must nominate a proposed effective date for the proposed procedures and allow at least 15 business days for submissions. AEMO may then either confirm, amend, withdraw or defer the effective date, and may conduct a further stage of consultation.
- Whichever process applies:
 - AEMO may extend any timeframe for making a decision (with reasons), if justified by the complexity of the proposal or by a material change of circumstances.
 - Procedures (or amended procedures) must normally be published at least 15 business days before they take effect.

In addition to Part 15B, a separate set of consultation procedures (respectively defined as standard, expedited and extended) are set out in rules 8, 8A and 9 of the NGR:



- The standard consultative procedure involves a two-stage consultation. The decision-maker is required to invite submissions on the proposal (the matter to be determined), and the draft determination.
- The expedited consultative procedure commences with the draft decision and requires only one round of consultation, but recognises that the decision-maker may decide to conduct initial consultation on the proposal.
- The extended consultative procedure closely resembles the Rules consultation procedures in the NER. Compared with the standard procedure, it has extended consultation periods and provides for meetings to be held if requested during the first stage of consultation. Like the NER Rules consultation procedures, it also lacks clarity of timeframes and reference points for decision-making.

Various NGR decisions are expressed to be subject to one of these three procedures, including applications relating to pipeline coverage, access arrangement proposals, and some market reviews, parameters, fees, and guidelines. A comparison of the decisions to which each of those procedures applies does not yield any insight into the criteria or rationale for the selection of standard, expedited or extended. Because the rules must specify which of the three procedures applies to a regulated decision, this framework is not particularly efficient for decisions on the amendment of instruments, which can be of varying complexity, urgency and impact (and for which any of the three consultation processes might be appropriate depending on the circumstances).

Proposed NGR amendment – extended consultation procedures

Given the existing NER Rules Consultation Procedures are substantially replicated in the NGR's extended consultative procedure, AEMO is also proposing a rule change to remove the extended consultation procedure from the NGR, and to replace it with a procedure that aligns with the proposed amended NER procedures.

AEMO notes that possible alternative NGR changes to address the extended consultative procedure's shortcomings include substituting it with the standard consultative procedure, or replacing both the standard and extended procedures with an equivalent to the proposed amended NER procedures.

3.3.2 National Energy Retail Rules

The NERR have a single 'retail consultation procedure', set out in rule 173, applicable to six AER determinations or documents that require consultation under the NERR.

Structurally, the retail consultation procedure is broadly similar to the transmission and distribution consultation procedures in the NER. The key differences are:

- The minimum timeframe for submissions on the draft instrument is 20 business days, rather than 30.
- There is no express provision allowing for steps like issues papers and information sessions (but those things are not precluded).
- There is no specific timeframe for considering submissions and making a final decision. Rather, this is to be completed 'as soon as reasonably practicable'.

There are no exceptions prescribed in the NERR for minor or administrative amendments to consulted documents.



4. HOW THE PROPOSAL WILL ADDRESS THE ISSUES

4.1 NER changes

AEMO's rule change proposal will assist in reducing unnecessary content in the NER and substantially increase the efficiency of consultation by providing an adaptable, fit-for-purpose consultation framework. This would be achieved by:

- Consolidating three consultation procedures in the current NER into one, largely consistent with the existing transmission and distribution consultation procedures.
- Eliminating unnecessary consultation steps and the associated time and costs involved for decision-makers and market participants, by providing for a minimum process that broadly aligns with the draft and final determinations of the current Rules consultation process.
- Remove specific provisions for individually requested meetings, instead providing flexibility for the decision-maker to take additional consultation steps within an overall (longer) maximum timeframe, allowing fit-for-purpose consultation where warranted for complex or extensive matters.
- Expressly recognising that an earlier issues paper or another informal consultation stage may be undertaken to inform the draft decision that commences the formal consultation.
- Providing for clear overall decision timeframes with definitive points of reference (eliminating the existing uncertainty caused by the distinction between considering submissions and making a determination or publishing a report.
- Permitting time for decisions to be extended on limited defined grounds to ensure that adherence to process does not take priority over good decision-making.
- Removing individual exceptions and including a consistent exemption for minor or administrative amendments and manifest error correction of existing instruments. The decision-maker would determine the appropriate level of consultation, if any. The process would require the publication of the amended procedure on or before its effective date, together with reasons for the decision. This will ensure transparency for stakeholders where currently the rules make no provision in most instances.
- Clarifying that AEMO may initiate proposals to amend retail market and metering procedures.
- Removing impractical requirements for general consultation notices to be given to individual participants of other parties other than by publication on the AEMO, AER or AEMC website (as applicable).

4.2 NGR changes

The same issues that arise under the NER Rules consultation procedures also apply to the NGR's extended consultation procedure. These would be addressed by substituting current rule 9A with a process that is consistent with the proposed amendments to NER rule 8.9.

4.3 Changes to procedures and guidelines

AEMO is aware of one subordinate instrument - the AER's Forecasting Best Practice Guidelines - incorporating one set of consultation requirements (of two)¹⁰ that substantially mirror the Rules

¹⁰ NER clause 5.22.5(i), the Guidelines are to include consultation requirements for ISP updates. Refer to Appendix A of the Forecasting Best Practice Guidelines. Appendix B contains an alternative, one-stage consultation process which applies in certain circumstances.



consultation procedures. If AEMO's proposed rule is adopted, AEMO and the AER agree that those consultation requirements in the guidelines should be amended to generally align with the rule.

At this stage, AEMO and the AER consider that this change can be addressed at an appropriate time through the applicable amendment process for the guidelines, without transitional provisions in the NER. AEMO and the AER will reconsider any need for transitional rules once the AEMC's timing for determination of this proposal is known, having regard to AEMO's schedule for consultations to be conducted under the Forecasting Best Practice Guidelines.

5. DESCRIPTION OF PROPOSED RULE

A draft of AEMO's proposed rule to amend the NER is provided in the Appendix, and described below. AEMO has not suggested specific drafting for the proposed NGR amendments described in section 4.2 above.

5.1 Revised Rules consultation procedures

Rule 8.9 would be replaced with a new standard set of Rules consultation procedures with substantially the same steps as the transmission and distribution consultation procedures for all standard consultations. It would, however, be expressed in more straightforward terms that can be applied to all consulted decisions.

Amended rule 8.9 would include the following additional or changed provisions from the current transmission and distribution consultation procedures:

- Express recognition of the possibility of earlier, informal consultation (similar to NGR rule 9).
- A requirement to publish valid submissions received on the draft determination.
- No requirement to publish a notice of the making of a final determination, in addition to publishing the determination itself.
- An exception for proposed minor or administrative amendments to existing instruments, or correction of manifest errors. Consultation may be undertaken as the decision-maker thinks fit, but reasons must be published with the amended instrument, on or before its effective date.
- An ability to extend the overall timeframe is possible for the same reasons specified in the current transmission and distribution consultation procedures, but the extension notice must be published and a change in circumstances need not necessarily be beyond the consulting party's control.

5.2 Removal of transmission and distribution consultation procedures

Rules 6.16 and 6A.20 would be deleted, and all references to the *distribution consultation procedures* or *transmission consultation procedures* in chapters 5, 6 and 6A would be replaced with the *Rules consultation procedures*. The definitions of *distribution consultation procedures* and *transmission consultation procedures* would be deleted.

5.3 Chapter 7 procedure change proposals

Clause 7.16.7(a) would be amended to state that either AEMO or any other person may make a proposal to amend a relevant chapter 7 procedure. Consequential adjustments would be made to paragraphs (b) and (c) to clarify that the initial decision on whether to proceed with the proposal only applies where the proponent is another party.



5.4 Removing references to minor and administrative amendments

All NER clauses providing that minor or administrative changes or manifest errors are not subject to the Rules consultation procedures (or the transmission or distribution consultation procedures) would be deleted. The exception within the revised Rules consultation procedures will apply instead. Clause 7.16.7(e), which currently provides a separate minor or administrative amendment process for retail and metering procedures, would also be deleted. References to the deleted clauses would be revised as required.

5.5 Other consequential amendments

Consequential amendments are proposed to remove or consolidate unnecessary provisions in rules 7.16 and 7.17 and correct minor errors. These cover:

- Correction of a referencing error in the definition of *Rules consultation procedures* in chapter 10.
- Amending the requirements in clause 7.16.4 to notify Ministers of the outcome of consultations on jurisdictional metrology material, to be consistent with the revised consultation procedures.
- Amending clause 7.17.4 to specify the consulted persons consistently with the revised consultation procedures, to clarify that individual notices are not required.
- Consolidating the B2B-specific requirements to be addressed in consultation documents into clause 7.17.4(j) and deleting unnecessary provisions.

6. HOW THE PROPOSED RULE CONTRIBUTES TO THE NATIONAL ELECTRICITY/GAS OBJECTIVE

The proposed rule would streamline and simplify the rules relating to consultation procedures. The proposed consultation procedure would be applicable to all relevant NER determinations that require a formal consultation process, but would incorporate alternative and flexible processes that can be applied to individual decisions in a fit-for-purpose manner.

The same improvements and efficiencies would be gained in respect of decisions under the NGR that are currently required to be made in accordance with the extended consultative procedure.

This will ultimately benefit both decision-makers and registered participants and other consulted parties by eliminating unnecessary consultation and allowing more time for deeper consultation and analysis of the most important new developments and reviews. This will make for better regulatory outcomes on those matters, while removing the barriers to incremental improvements that can be achieved by keeping documents up to date, or correcting errors and inconsistencies as they are identified.

Simplifying the application of the NER consultation procedures and the NGR extended consultation procedure can be expected to contribute to the more efficient operation of electricity and natural gas services respectively.

7. EXPECTED BENEFITS AND COSTS OF THE PROPOSED RULE

The benefits of the proposed rule are summarised in section 6. There are no obvious material costs associated with the implementation of the proposed rule other than the costs of the rule change process



itself. Decision-makers may incur some costs in updating their internal or external guidance for the conduct of relevant NER and NGR consultations.



APPENDIX A. PROPOSED RULE

This draft is based on NER version 155.

A.1 Replaced rule 8.9

8.9 Rules Consultation Procedures

8.9.1 Application

- (a) This rule 8.9 applies wherever in the *Rules* any person (the *consulting party*) is required to comply with the *Rules consultation procedures*. For the avoidance of doubt, the *Rules consultation procedures* are separate from, and do not apply to, the process for changing the *Rules* under Part 7 of the *National Electricity Law*.
- (b) The *consulting party* must comply with the consultation procedures in clause 8.9.2 unless paragraph (c) applies.
- (c) If the *consulting party* is:
 - (1) the *AEMC*, *AEMO*, the *AER*, the *Reliability Panel* or the *Information Exchange Committee*; and
 - (2) consulting on a proposed amendment to an existing document that the *consulting party* considers to be of a minor or administrative nature, or to correct a manifest error in the document,the *consulting party* need not comply with clause 8.9.2 but must comply with clause 8.9.3.
- (d) For a *consulting party* other than the *AEMC*, *AEMO*, the *AER* the *Reliability Panel* or the *Information Exchange Committee*, a requirement under this rule 8.9 to publish a document on its website is not met until the *consulting party* also gives a copy of the document to *AEMO*. *AEMO* must publish the notice on its website within 3 *business days* of receipt.
- (e) If the *consulting party* is the *Reliability Panel*, a requirement under this rule 8.9 to publish a document on its website is met by publication of that document on the *AEMC's* website.
- (e) If the *consulting party* is the *Information Exchange Committee*, a requirement under this rule 8.9 to publish a document on its website is met by publication of that document on *AEMO's* website.

8.9.2 Standard consultation procedures

(see clause 8.9.1(b))

- (a) After such prior consultation on a proposal (if any) as the *consulting party* considers appropriate, the *consulting party* must publish a notice of consultation on its website with:
 - (1) a draft of the proposed determination or document for consultation;
 - (2) an explanatory statement that sets out the provision of the *Rules* under which the determination or document is proposed to be made, produced or amended, and the *consulting party's* reasons for the draft determination or document; and
 - (3) an invitation for written submissions on the draft determination or document from all persons nominated by the relevant provision as those with whom



- consultation is required or, if no persons are nominated, from all interested persons.
- (b) The invitation must specify a period of no less than 30 *business days* for submissions, and the *consulting party* is not required to consider any submission made after the specified period has expired.
 - (c) The *consulting party* must publish on its website any submissions received within the specified period, other than *confidential information*.
 - (d) The *consulting party* may, as it considers appropriate, publish issues, consultation and discussion papers, and hold conferences, meetings and information sessions in relation to the draft determination or document.
 - (e) Within 80 *business days* of publishing the notice referred to in paragraph (a), the *consulting party* must publish on its website:
 - (i) the final determination or document;
 - (ii) a summary of each issue raised in submissions made in accordance with paragraph (b) that the *consulting party* reasonably considers to be material, and its response to those issues; and
 - (iii) the reasons for its decision to make the final determination or document.
 - (f) The *consulting party* may, by publishing a notice on its website, extend the time limit fixed in paragraph (e) if:
 - (1) the consultation involves issues of unusual complexity or difficulty; or
 - (2) the extension of time has become necessary because of a material change in circumstances.

8.9.3 Minimum requirements for minor or administrative amendments and corrections

(see clause 8.9.1(c))

- (a) The *consulting party* may conduct such consultation (if any) as it considers appropriate prior to determining a relevant amendment.
- (b) If the *consulting party* decides to amend a document, it must publish on its website, on or before the effective date of the amended document:
 - (1) a notice that sets out the provision of the *Rules* under which the relevant document is amended, the *consulting party's* reasons for the proposed amendments, and why it considers them to be minor or administrative in nature or (as applicable) to correct a manifest error in the document; and
 - (2) the amendments made to the document and their effective date.

A.2 Replacement of transmission and distribution consultation procedures

- In chapter 6, delete clause 6.1.2 and Part G.
- In chapter 6A, delete clause 6A.1.1(g) and Part H
- In chapter 10, delete the definitions of *distribution consultation procedures* and *transmission consultation procedures*.



- Replace '*transmission consultation procedures*' with '*Rules consultation procedures*' each time the term appears in chapters 3, 5, and 6A.
- Replace '*distribution consultation procedures*' with '*Rules consultation procedures*' each time the term appears in chapters 5, 5A and 6.

A.3 Chapter 7 procedure change proposals

7.16.7 Amendment of procedures in the Metering Chapter

- (a) ~~AEMO or any other~~ Any person (the '**proponent**') may ~~make submit to AEMO~~ a proposal (the '**proposal**') to amend any procedure in this Chapter 7 including the *metrology procedure* except:
- (1) in relation to the *jurisdictional metrology material* which is contained within the *metrology procedure*; and
 - (2) procedures specified in rule 7.17,
- and a proposal by a person other than AEMO must be submitted to AEMO with include reasons for the proposed change.
- (b) For proposals submitted to it under paragraph (a), AEMO must:
- (1) give notice of receipt of the proposal to the proponent; and
 - (2) advise the proponent of the action that AEMO proposes to undertake under paragraphs (c) or (e).
- (c) Where AEMO:
- (1) makes or accepts the proposal, AEMO must conduct the *Rules consultation procedures* in relation to that proposal;
 - (2) requests further information from the proponent in relation to a proposal, on receiving that information AEMO must either accept, or reject the proposal; or
 - (3) rejects a proposal, AEMO must advise the proponent of its decision and reasons for the decision in writing.

A.4 Minor or administrative amendments

- In chapter 2, delete clause 2.10.1(c6).
- In chapter 3, delete the following clauses (and, where applicable, the 'subject to' reference in a preceding paragraph):
3.3.8(h), 3.4.3(b1), 3.7D(g), 3.7E(i), 3.7F(f), 3.8.14A(b)(3), 3.9.3(g), 3.11.5(d), 3.11.6(f), 3.11.7(g), 3.14.5A (second sentence only), 3.15.6A(c6), 3.15.9A(m), 3.15.11A(c), 3.20.4(c).
- In chapter 4, delete the following clauses (and, where applicable, the 'subject to' reference in a preceding paragraph):
4.4.2A(e), 4.6.6(d), 4.8.4A(e) (everything after '*Rules consultation procedures*').
- In chapter 4A, delete the following clauses (and, where applicable, the 'subject to' reference in a preceding paragraph):
4A.B.4(f), 4A.B.5(c), 4A.C.12(c), 4A.D.12(c), 4A.D.13(c), (note paragraph (a) requires amendment to specify compliance with the *Rules consultation procedures*), 4A.E.8(d), 4A.F.6(b), 4A.H.2(c).



- In chapter 5, delete the following clauses (and, where applicable, the 'subject to' reference in a preceding paragraph):
 - 5.14B.1(d), 5.20.2(d), 5.20.4(d), 5.20.6(d), 5.22.5(f), S5.5.7(g) and (h).
- Also in chapter 5, amend clause S5.5.7(d) by adding 'in accordance with the *Rules consultation procedures*' at the end of the paragraph.
- In chapter 6, delete clause 6.2.8(f) and the words 'Subject to paragraph (f),' in the preceding paragraph.
- In chapter 6A, delete clause 6A.2.3(f) and the words 'Subject to paragraph (f),' in the preceding paragraph.
- In chapter 7, amend clause 7.16.3(b) as follows:
 - (b) ~~Except in the case of a minor or administrative amendment or an amendment to correct a manifest error, the effective date of the~~ The metrology procedure must not be earlier than include a minimum period of 3 months after between the date when the metrology procedure is published and the date the metrology procedure commences unless the change is made under clause 7.16.7(e) in which case the effective date may be the same date as the date of publication.
- Also in chapter 7, delete clauses 7.16.7(e), 7.17.4(d) and (e) and the heading: 'Minor and administrative changes to the B2B Procedures'.
- In chapter 8, delete clause 8.12(c).

A.5 Consequential amendments – general

- In the definition of *Rules consultation procedures* in chapter 10, replace 'clause 8.9' with 'rule 8.9'.
- Amend the initial paragraph of clause 7.16.4(f) as follows:
 - (f) At the conclusion of the *Rules consultation procedures* under paragraph (e), AEMO must provide a copy of the documents published under clause 8.9.2(e) final report to the Ministers of the MCE in accordance with rule 8.9(k) of the outcome of that procedure and:
- Amend clause 7.17.4(j) as follows:
 - (j) The *Information Exchange Committee* must ~~comply with the *Rules consultation procedures* in relation to~~ consult on the B2B Proposal with. ~~For the purposes of rule 8.9(b), the nominated persons to whom notice must be given are B2B Parties,~~ relevant *B2B Change Parties*, AEMO and such other persons who identify themselves to the *Information Exchange Committee* as interested in the *B2B Procedures*, in accordance with the *Rules consultation procedures*. For the purposes of the *Rules consultation procedures*:
 - (1) a notice of the B2B Proposal under clause 8.9.2(a) must be accompanied by, the particulars of the matters under consultation must include a copy of the *B2B Procedures Change Pack*; and
 - (2) an explanatory statement under clause 8.9.2(a) and the reasons for a final decision on the B2B Proposal under clause 8.9.2(e) must include details of how the *Information Exchange Committee* has had regard to the national electricity objective and the B2B factors, and sought to give effect to the B2B Principles.
- Delete clause 7.16.6A
- Delete clause 7.17.4(k), (l), (m) and (p):
 - (k) ~~[Deleted] AEMO must publish the notice of consultation within 3 business days of its receipt and must notify all persons referred to in paragraph (j) of the consultation.~~



- (l) ~~[Deleted] In addition to the matters which rule 8.9(g) requires be included in the draft report, the draft report must contain details of how the Information Exchange Committee has:
 - (1) had regard to the national electricity objective and the B2B factors; and
 - (2) sought to give effect to the B2B Principles, when considering the B2B Proposal and each valid written submission.~~
- (m) ~~[Deleted] In addition to the matters which rule 8.9(k) requires be included in the final report, the final report must contain details of how the Information Exchange Committee has:
 - (1) had regard to the national electricity objective and the B2B factors; and
 - (2) sought to give effect to the B2B Principles, when considering the B2B Proposal and each valid written submission.~~
- (p) ~~[Deleted] The Information Exchange Committee's decision under paragraph (n) must be included in the final report required under rule 8.9(k).~~



APPENDIX B. AER LETTER OF SUPPORT

See separate document

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Our Ref: 11776448
Your Ref:
Contact Officer: Angela Bourke
Contact Phone: 03 9290 1910

Mr Nino Ficca
Interim CEO
AEMO
GPO Box 2008
MELBOURNE VIC 3001

Dear Mr Ficca

Re: AER support for AEMO's rule change proposal on consultation procedures

The AER is pleased to have worked collaboratively with AEMO on developing this rule change proposal and to provide this letter of support for the proposal.

The AER supports simplifying and streamlining the requirements around consultation processes prescribed in the National Electricity Rules (NER). We consider these proposed changes will help to eliminate unnecessary consultation steps for stakeholders and decision-makers whilst providing appropriate flexibility to tailor consultation processes to the issue under consideration. This will help to improve the efficiency and effectiveness of consultation processes for all stakeholders whilst providing clarity and transparency on a minimum standard consultation process.

The changes proposed will also create a more consistent and fit-for-purpose approach to consultation on minor and administrative amendments to various guidelines and instruments that are made under the consultation procedures. We consider this will also help to eliminate unnecessary consultation steps. For example, such an approach would have enabled the AER to streamline its consultation process when updating the Rebidding and Technical Parameters Guideline in 2019 to account for the commencement of five minute settlement.

Stakeholder consultation is a vital part of our work. Engaging with those affected by our work helps us make better decisions, provides greater transparency and predictability, and builds trust and confidence in the regulatory regime. We first developed our Stakeholder Engagement Framework¹ in 2013 and updated it in 2017. It sets out the principles that guide our engagement with consumers, energy businesses and other stakeholders affected by our activities:

- To communicate in a clear, accurate and timely way
- To be accessible, proactive and inclusive

¹ <https://www.aer.gov.au/system/files/AER%20%20Stakeholder%20Engagement%20Framework.pdf>

- Consider the time and resources needed by stakeholders to engage effectively
- To be transparent and accountable
- To measure and evaluate the effectiveness of our engagement

This framework provides a structure that allows stakeholders' needs and interests to be consistently, transparently and meaningfully considered in our activities.

This rule change proposal has been developed as part of the ESB's wider program of work to simplify the NER and optimise the rule change process, following the 2017 Finkel Review.² As part of this work the AEMC has also developed a Rule drafting philosophy³ to guide the structure and drafting of new and revised rules going forward. Under this drafting philosophy the AEMC will consider whether a principles-based approach or a prescriptive approach is appropriate. We consider that the principles in the AER's Stakeholder Engagement Framework provide helpful context for the AEMC when considering how consultation requirements can be set out in the NER moving forward.

Finally, we note that the AER's Forecasting Best Practice Guidelines includes a set of tailored consultation requirements (see Appendix A⁴) that apply to AEMO which are based on the Rules consultation procedures. We intend to revisit the consultation requirements in this Guideline, following consideration of this rule change proposal, to consider the alignment of any consultation requirements.

We welcome AEMO's efforts in developing this rule change proposal and look forward to continuing to work with AEMO and the AEMC on this important matter.

Yours sincerely

A handwritten signature in black ink that reads "James Cox". The signature is written in a cursive, slightly slanted style.

Mr James Cox
Deputy Chair
Australian Energy Regulator

Sent by email on: 16.12.2020

² <https://www.energy.gov.au/sites/default/files/independent-review-future-nem-blueprint-for-the-future-2017.pdf>

³ https://www.aemc.gov.au/sites/default/files/2020-11/Rule%20drafting%20philosophy_20201102_0.PDF

⁴ <https://www.aer.gov.au/system/files/AER%20-%20Forecasting%20best%20practice%20guidelines%20-%2025%20August%202020.pdf>