



## Improving consultation procedures in the Rules

### Submissions encouraged on rule change looking at consultation procedures in the energy sector

The Australian Energy Market Commission (the Commission) is seeking input on a new rule change that is focused on streamlining and making fit for purpose consultation procedures under the National Electricity Rules (NER), National Gas Rules (NGL) and the National Energy Retail Rules (NERR). The Australian Energy Market Operator (AEMO) submitted the rule change request and the need for adaptable consultation is also further supported by the Australian Energy Regulator (AER).

#### Context

Robust consultation is critical to the development and successful implementation of reforms. However, the volume of reform activities currently occurring and the corresponding high volume of consultation activities market participants and interested parties are subject to, can make it challenging for key stakeholders to be actively involved in all relevant processes. Because of the pace of change in the market, it is important that the regulatory framework is flexible while still ensuring participants have the right and ability to provide input into changes that affect them.

#### What are subordinate instruments and why is consultation on them important

The NER, NGR and NERR require matters to be specified in subordinate instruments. The AER, AEMO, the Reliability Panel and the Information Exchange Committee, amongst others, are responsible for developing and amending these. In many cases, once these instruments are made industry participants are required to comply with these. There are over 100 subordinate instruments in the electricity sector alone, around 30 instruments in the gas sector and six in the retail sector.

AEMO's rule change request proposes:

- a new consultation framework for most electricity instruments (i.e subordinate instruments established in the NER)
- the removal of one of the existing consultation processes for gas instruments (i.e. removal of the extended consultation procedure, set out in the National Gas Rules) <sup>1</sup>

AEMO highlighted in its rule change request that the National Electricity Market (NEM) and the power system are in a transformational phase and the pace of change is quickening. New business models are developing to respond to this change. However, regulatory approaches, processes and systems will also need to change to address market and operational needs.<sup>2</sup>

AEMO considers that a key part of any regulatory response will be the adoption of more principles-based regulation in the NER and the increased use of subordinate instruments. It therefore considers it will be important that required consultation is straightforward, flexible and robust.<sup>3</sup>

<sup>1</sup> AEMO, *Rules consultation procedures - ESB National electricity rules simplification project*, rule change request, 7 January 2021, p.2

<sup>2</sup> AEMO, *Rules consultation procedures - ESB National electricity rules simplification project*, rule change request, 7 January 2021, p. 3.

<sup>3</sup> AEMO, *Rules consultation procedures - ESB National electricity rules simplification project*, rule change request, 7 January 2021, p. 3.

## **We would like your feedback on AEMO's rule change request**

AEMO's proposal aims to make consultation on instruments, such as guidelines, determinations, procedures and reports, more efficient for stakeholders and decision-makers, by making consultation more adaptable to different circumstances and different levels of complexity.<sup>4</sup> AEMO has proposed changes to both gas and electricity consultation frameworks.

In addition, the Commission is also interested in stakeholder views on whether corresponding changes should be made to the Retail consultation procedures to ensure consistency across the National electricity rules (NER), National gas rules (NGR) and National energy retail rules (NERR).

### **Submissions**

We welcome stakeholder views on the challenges that exist with the current consultation frameworks for subordinate instruments, if any, and how the rules could deliver more effective, efficient and transparent consultation processes.

Please lodge your written submission via the Commission's website, [www.aemc.gov.au/](http://www.aemc.gov.au/) using the 'lodge a submission' function and selecting the project reference codes **ERC0323** or **GRC0060**. Written submissions on the rule change request must be lodged with Commission by **3 February 2022**.

The Commission publishes all submissions on its website, subject to confidentiality requirements and certain other exceptions as noted on our submissions webpage. Please clearly mark any sections of your submission which you consider contain confidential material.

### **Background on the existing consultation processes under the NER, the NGR and the NERR**

The four main processes under the NER are the Rules consultation procedures (RCP), the Distribution consultation procedures and Transmission consultation procedures and there are modified versions of the RCP under Chapter 7. There are other processes in the NER, these include the Reliability Panel's process and ad hoc processes that are set out in individual clauses and other requirements to consult that do not prescribe a process.

- The **Rules consultation procedures** is the most common process under the NER. This process is set out under Rule 8.9 of the NER. The RCP involves two rounds of consultation.
- The **Transmission consultation procedures**, and
- The **Distribution consultation procedures**, are procedurally identical to each other, and are set out under Rules 6A.20 (Transmission) and 6.16 (Distribution). These involve one round of consultation.
- The **modified versions of the Rules consultation procedures** that apply under Chapter 7 of the NER allow a change proposal to be submitted to the decision-maker and the decision-maker decides whether to take it forward.

The NGR have five consultation procedures:

- The **Standard Consultative Procedure** is set out under Rule 8 of the NGR and it involves a two-stage consultation.
- The **Expedited Consultative Procedure** is set out under Rule 9 of the NGR and involves one round of consultation, commencing with the draft decision.
- The **Extended Consultative Procedure** is set out under Rule 9A and it involves a two stage process that is similar to the Rules consultation procedures in the NER.
- Part 15B is relied upon to make or amend AEMO procedures authorised under the NGR. It involves two processes:
  - the ordinary process and
  - the expedited process.

Both processes involve one round of consultation, however the expedited process has a shorter overall time period. The ordinary process applies in most instances, unless AEMO

<sup>4</sup> Supplementary submission, p. 2 - 3. The AEMO proposal referred to in this paper refers to both the original AEMO rule change proposal (8 January 2021) and AEMO's Supplementary proposal 22 November 2021.

considers the procedures are urgently necessary, or will have a non-material impact, in which the 'expedited' process applies.

The NERR have a single consultation procedure, the **Retail consultation procedures**, this is similar to the distribution and transmission consultation procedures and involves a single round of consultation.

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