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By electronic submission

Dear Mr Orum

ERC0323 - Consultation on Electricity rules consultation procedures and Gas extended consultation procedures

AEMO welcomes the opportunity to make this submission to the AEMC's consultation paper on this proposed rule.

The rule change request was submitted by AEMO in January 2021, with the AER's support, to improve the consultation procedures in rule 8.9 of the National Electricity Rules (NER) and rule 9A of the National Gas Rules (NGR).

AEMO's rationale for replacing these procedures is set out in detail in its original and supplementary rule change requests. The original proposal was developed in connection with the Energy Security Board's initiative to simplify the NER and streamline its change processes¹, over an extended period prior to its submission. Recognising the magnitude of regulatory change over the next few years in the NEM in particular, it was considered timely to replace the rules consultation procedures with a process that facilitates fit-for-purpose consultation. The proposed replacement is a pre-existing, robust process that can be tailored appropriately to consult both effectively and efficiently on the very broad spectrum of documents, decisions and circumstances that are currently subject to the rules consultation procedures.

The rule change requests provide AEMO's consideration and views on most of the issues presented by the AEMC in its consultation paper. We have not sought to revisit them here, except to emphasise that the proposed change should not be considered in terms of 'rounds' of consultation. AEMO sees a need to evolve energy market consultation to more effectively engage with diverse subject matter and gain targeted insight and expertise from affected participants who may not otherwise participate in traditional consultations.

¹ Arising from recommendations in the Finkel review: *Independent Review into the Future Security of the National Electricity Market: Blueprint for the Future*, Commonwealth of Australia 2017

Our attached detailed submission focuses on three aspects of the AEMC consultation paper that were not part of AEMO's rule change request:

- Broadening the application of the rules consultation procedures to instruments and decisions beyond those identified in the rule change proposal.
- Right of stakeholders to request a change.
- Procedure consultation processes in the NGR (part 15B).

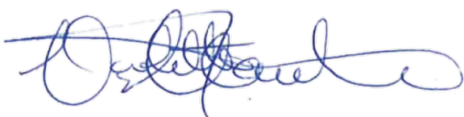
Consideration of rule changes in any one of these areas shifts the scope and scale of the changes AEMO proposed. Each involves significant complexity and a need for extensive analysis of all potential implications and costs of any change. For the reasons explained in this submission, any material expansion of the proposed rule could negate both the intended simplicity of this rule change and the key objectives to be achieved in proposing the change.

A more open and flexible, principles-based consultation process will allow designated decision-makers to gather informed views in adaptable ways, maintains transparency, and promotes better and more timely regulation. From AEMO's perspective, engaging our stakeholders is one of the four strategic priorities underpinning our corporate plan. This proposed rule change will unlock more ways to deliver on that commitment and build essential trust in the industry.

In circumstances where national electricity market bodies and participants themselves are already struggling under the weight of consultation and in view of what is to come, AEMO urges the AEMC to proceed with the changes before it.

Any questions on this submission should be directed to Kevin Ly, at kevin.ly@aemo.com.au.

Yours sincerely



Violette Mouchaileh
Executive General Manager Reform Delivery

Attachment: Detailed submission

Detailed Submission to AEMC Consultation Paper: ERC0323 Improving consultation procedures in the rules

AEMO proposal overview and benefits

On 7 January 2021, AEMO submitted a rule change request to simplify, streamline and improve the efficiency of the 'Rules consultation procedures' (RCP) in NER rule 8.9. The proposal was to replace NER 8.9 with a consultation process essentially reflecting the existing 'distribution consultation procedures' and 'transmission consultation procedures'. These currently apply to:

- the development and amendment of AER economic regulatory guidelines, schemes, models and investment tests for transmission and distribution under NER chapters 5, 6 and 6A; and
- the AEMC's compensation guidelines for administered pricing events under NER clause 3.14.6.

For consistency, AEMO also proposed to either remove or replace the 'extended consultative procedure' in rule 9A of the NGR, which is substantially the same as NER rule 8.9.

AEMO considers its proposed replacement rule 8.9 will deliver significant benefits over the existing RCP, by providing for:

- Flexibility to conduct fit-for-purpose consultation on any decision, while ensuring a robust level of transparent public consultation - critically with an extended minimum period (four more weeks) for affected parties to review and comment on draft documents.
- Explicit recognition of the valuable role of consultation methods other than written proposals and responses.
- A set of consultation criteria to guide decision-makers and provide comfort to affected parties on appropriate consultation, together with a requirement to develop and publish a consultation plan.
- An overall maximum period of 80 business days in which to make a final determination, in addition to preparatory consultation that could be undertaken by the decision-maker to canvass issues and opinions before producing a draft.
- Extension of the overall time limit if necessary to consider issues of unusual complexity or difficulty, or due to a material change in circumstances.
- Retention of existing transparency of non-confidential submissions.
- Transparency of minor or administrative amendments that can be made without consultation.

Overall, these changes can be expected to result in more constructive and targeted engagement, better outcomes, and shorter timeframes to deliver 'quick fixes' (therefore more of them delivered).

The rest of this submission focuses on three aspects of the AEMC's consultation paper that were not covered by AEMO's rule change proposal. AEMO is concerned that, by incorporating consideration of these additional matters, the intended efficiencies and benefits of AEMO's proposal may not be realised in a timely way, or potentially at all.

1. Broadening the application of the RCP

The rule change request and supplementary request proposed that the improved RCP should also apply to NER decisions that are currently subject to:

- the transmission and distribution consultation procedures (being substantially the same as the replacement process); and
- the Reliability Panel consultation process in clause 8.8.3(d) to (f), which has some similarities with the RCP but prescribes a combination of written submissions and a public meeting.

The AEMC identifies that the NER specify other consultation requirements for different decisions, or require consultation without specific guidance on how that should be done. The consultation paper invites feedback on whether instruments that have bespoke or non-specified consultation requirements should be covered by the updated RCP.

This is a complex question that requires extensive analysis of all the context of each relevant instrument, its purpose and application.

AEMO maintains a number of NEM wholesale market and system instruments within this category, many of which have been referenced in the NER and predecessor instruments since market start. There are reasons why the RCP were, and will likely still be, unsuitable for several of those instruments:

- Many specify highly technical requirements and operational imperatives that are central to AEMO performing its core functions as the independent market and system operator. Some describe how AEMO undertakes the power system responsibilities conferred on it by the NER, or the operation of the systems that support continuous secure and reliable operation of critical infrastructure and the wholesale market. In some instances, the subject matter will be confidential or sensitive.
- These instruments (or changes to them) are often not suitable for general consultation; rather targeted consultation and information exchange on matters that are time-critical, or relate to specific participants (or types of participants) and jurisdictional authorities.
- There are established forum and working group structures for potentially impacted participants to be informed of reviews and upcoming changes, and which are regularly used for efficient consultation and technical review purposes.

In addition, expanding the number of instruments subject to broad public consultation will increase the regulatory burden and costs for decision-makers and the broader industry, at a time of rising costs to implement key industry reforms. In each case, any benefits of changing or

expanding the regulated consultation requirements would therefore need to be identified and carefully evaluated.

2. Right of stakeholders to request a change (NER)

The AEMC's consultation paper invites feedback on whether stakeholders should be allowed to request a change to instruments or procedures in the NEM (in addition to the retail and metering procedures under chapter 7). Of course, participants can (and do) identify issues and request changes or additional guidance at any time. However, the introduction of a regulated right to propose procedure changes would not meet this rule change's intended objective of simplicity and efficiency. For example:

- A right to propose changes cannot exist without a supporting regulatory framework around the receiving decision-maker's obligations and powers to deal with proposals. The work of the decision-maker would be substantially extended in terms of having to manage stakeholder change requests which would require additional resources and costs. This will also impact the time required to update instruments and divert subject matter experts from critical operational and reform work.
- This would introduce more change processes and further complexity for industry. In the NEM retail and gas markets, for example, stakeholder forum processes are typically used to test change proposals before they proceed. AEMO understands there is already a level of change fatigue across industry.

Energy retail market and gas wholesale market change frameworks have always incorporated a process by which participants can propose changes. This is because most of the procedures in those markets exist to support underlying contractual arrangements between businesses, or between businesses and their customers, as well as interfaces with market systems that need to facilitate and be consistent with those relationships. Industry participants therefore have a need to identify and lead changes in those markets. The NEM wholesale market, system operation and access regime are very different, having replaced previous regimes.

3. Procedure consultation processes in the NGR and NERR

AEMO's rule change requests limited the scope of proposed changes to the NGR to the extended consultative procedure because it is substantially the same as the current RCP in the NER, with the same issues and inefficiencies. It should be noted that all five NGR decisions subject to the extended consultative procedure are made by AEMO².

The rule change requests considered the NGR (part 15B) and NERR (rule 173) consultation rules only for comparative purposes, to assess whether they could readily be adapted and applied to NER decisions – not to suggest that any changes to those rules is warranted at this time.

² Under rules 135CA, 135CB, 135EC, 479 and 494. There appears to be an error in the AEMC's consultation paper (at page 15). Neither the AER nor the NCC are required to follow this extended process under the NGR