

3 February 2022



Ms Anna Collyer
Chair
Australian Energy Market Commission
GPO Box 2603
SYDNEY NSW 2000

Dear Ms Collyer

Consultation Paper: Improving consultation procedures in the Rules (ERC0323)

Energy Queensland Limited (Energy Queensland) welcomes the opportunity to provide comment to the Australian Energy Market Commission in response to the Australian Energy Market Operator's proposal to streamline the consultation framework for the procedures and guidelines in used in the energy sector.

The attached submission is provided by Energy Queensland, on behalf of its related entities, including:

- Distribution network service providers, Energex Limited and Ergon Energy Corporation Limited;
- Regional service delivery retailer, Ergon Energy Queensland Pty Ltd; and
- Contestable metering business, Yurika Metering (registered as Metering Coordinator and accredited to provide Metering Provider and Metering Data Provider services to business and residential customers in the National Electricity Market).

Should you require additional information or wish to discuss any aspect of this submission, please do not hesitate to contact me or Alena Christmas on 0429 394 855.

Yours sincerely

Sarah Williamson

Sarah Williamson
Acting Manager Regulation

Telephone: 0409 239 833
Email: sarah.williamson@energyq.com.au

Improving consultation procedures in the rules

STAKEHOLDER FEEDBACK TEMPLATE

Please use this template if you wish to provide your feedback on the questions posed in the consultation paper. Please don't feel obliged to answer each question, but address those of particular interest or concern. Further context for each question can be found in the consultation paper.

SUBMITTER DETAILS

ORGANISATION: Energy Queensland Limited (Energy Queensland)

CONTACT NAME: Alena Christmas

EMAIL: Alena.christmas@energyq.com.au

PHONE: 0429 394 855

DATE 3 February 2022

PROJECT DETAILS

NAME OF RULE CHANGE: Improving consultation procedures in the rules

PROJECT CODE: ERC0323

PROPONENT: The Australian Energy Market Commission (AEMO)

SUBMISSION DUE DATE: 3 February 2022

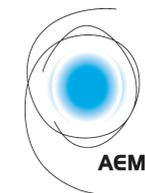
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CHAPTER 2 – VIEWS ON PROPOSED CHANGES - ELECTRICITY

<p>At a high level, the Commission is interested in your views on the following issues:</p> <ul style="list-style-type: none"> • do the changes promote flexibility that is appropriate in the circumstances? • what would assist with improving consultation transparency and understanding? • what are the benefits and risks of streamlining the consultation arrangements and how could risks be effectively managed? • what are the cost and complexity implications of implementing the changes? 	<p>In light of the anticipated changes in the transition period for the National Electricity Market (NEM), and the large number of procedural documents and other instruments managed by AEMO, Energy Queensland appreciates the underlying rationale given by AEMO for wanting to expedite many of its consultations. In light of this, we acknowledge that the proposed abbreviated approach may have some advantages including:</p> <ul style="list-style-type: none"> - Reducing the number of regulatory consultations market participants are required to review - Reducing the costs for market participants and AEMO/AER related to regulatory reform which flow through to market participants - Some proposals have been subject to discussion in industry working groups - Possibly enhancing the timeliness of decisions - Increasing the response time to the pace of change - Publication of consultation summaries by AEMO on material issues would assist participants and other stakeholders (provided the summaries are accurate). <p>However, the proposed approach raises the following concerns:</p> <ul style="list-style-type: none"> - Given these guidelines and instruments drive market participant costs and risks, proposals for amendments must be subject to transparency and market participants must be given sufficient opportunities to contribute - More complex reforms (e.g. Better Bills Guideline) requires at least two rounds of consultation to ensure market participant feedback is appropriately incorporated. We note that regulatory bodies do not necessarily appreciate the costs and risks of the changes to market participants and these can vary significantly between different categories of registration - Market participants often have opposing views – multiple rounds of consultation allow for these views to be aired, discussed, and a middle-ground to be negotiated and consulted on in a later stage of the consultation - A second round of consultation gives participants another opportunity to explain their position if initially overlooked or misunderstood by other parties - Some market participants’ views may evolve and change between consultation stages and another consultation stage allows for more fulsome consideration
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Stakeholder feedback

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18 November 2021

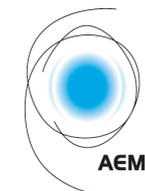


	<ul style="list-style-type: none">- A consultation plan introduces new red tape for regulatory agencies and could further complicate progress of initiatives if the consultation plan is not followed- Market participants should be able to request an individual meeting with regulatory agencies to discuss commercially sensitive feedback that is not appropriate for a public submission- Stakeholders who are not well resourced may be disadvantaged by any changes for the sake of expediency- Changes to reliability panel consultations can have significant financial repercussions for all market participants.
<p>Do stakeholders consider having a default of one round of consultation (rather than two) is a more efficient, effective, and appropriate approach for the instruments currently subject to the RCP?</p>	<p>YES or NO</p> <p>In our view, the existing consultation process was designed to promote discussion among a range of stakeholders. This would ensure that changes were not pushed through without robust consideration and scrutiny. While we note that it is possible that some amendment proposals may not require the standard consultation process as required under the National Electricity Rules, others do require a comprehensive consultation process and often benefit from it. As such, Energy Queensland considers that a blanket approach to abbreviate the standard consultation process for subordinate instruments from two stages to one is not appropriate, as the risks of having only one round of consultation are greater than the costs of having a second round of consultation. However, we expect it is possible to find a balance between existing and proposed approaches.</p> <p>Energy Queensland notes that the AEMC is permitted to employ two accelerated consultation processes for rule changes, expedited and fast-tracked. However, we are confused as to why neither of these processes are being considered in the consultation paper as they offer a number of useful features which could be adapted for consultation on subordinate instruments, including:</p> <ul style="list-style-type: none">- Extent to which the issues under consultation are controversial- Urgency- Extent of previous public consultation on a proposal by an energy regulatory body <p>It is also important to highlight that the Australian Government's Office of Best Practice Regulation has published a Guidance Note¹ on best practice consultation. Although specifically related to Regulatory Impact Assessment, it contains several useful and relevant statements that the AEMC should consider, including:</p>

¹ Australian Government, 2016, *Guidance Note - Best practice consultation*, <https://www.pmc.gov.au/sites/default/files/publications/best-practice-consultation.pdf>

Stakeholder feedback

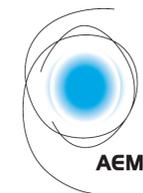
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18 November 2021



	<ul style="list-style-type: none"> • <i>".....full public consultation is the appropriate level of consultation for all proposals unless you are making a compelling case for a limited form of consultation (e.g. confidential consultation because of market sensitivity)";</i> • <i>"Consultation with key stakeholders should be continuous and should start as early as possible. It should continue through all stages of the regulatory cycle, including when detailed design features are being finalised. This will help you to identify and understand potential problems."; and</i> • <i>"You should consider a range of strategies to assist stakeholders who are expected to be significantly affected, but who do not have the resources or capability to participate in the consultation process."</i> <p>Notwithstanding that the purpose of this initiative is to speed up the process, it should not reduce the amount of scrutiny and robustness of a review. Therefore, Energy Queensland suggests that the AEMC consider the following:</p> <ul style="list-style-type: none"> - Similar to AEMC rule changes, instruments should be subject to two rounds of consultation unless the proposed changes are uncontroversial and follow an accelerated approach based on the AEMC's expedited and/or fast-track rule change processes. - Make a distinction between existing and new instruments, where all new subordinate instruments should be subject to two rounds of consultation and amendments may only require one round; or - If one round of consultation is preferred, a party other than the Guideline owner must sign off on the change, e.g. AEMC to sign off on the Guideline change in the interests of transparency (i.e. non self-serving); or - One round of public consultation requires a mandatory public workshop after the initial consultation but prior to the final determination; and/or - All one round consultations must enable stakeholders to request an individual meeting whereas for two round consultations this could be made optional.
<p>Do you agree with AEMO's proposed principles for determining if an additional round of consultation is required? If so, why? If not, what changes are needed to the:</p> <ul style="list-style-type: none"> • overall approach of using consultation criteria, and the consultation criteria that AEMO propose? 	<p>YES or NO</p> <p>No. Energy Queensland notes that the "principles" proposed by AEMO are not principles or criteria, but rather issues or matters of concern without providing the impacted parties due process and procedural fairness to respond. However, we note that they highlight important issues for this consultation and every stakeholder, as such, should have the right to address. We also suggest that the list include a requirement to actively consider the extent to which there is any disagreement or dissent among stakeholders.</p> <p>A consultation plan is a useful feature and should be published as soon as possible, preferably at the initiation of the project. If revised, the consulting party should publish the revised consultation plan and communicate directly with affected/interested stakeholders</p>

Stakeholder feedback

Protecting customers affected by family violence
18 November 2021

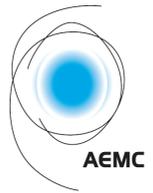


<ul style="list-style-type: none"> proposals about when a decision maker would apply the criteria proposed public communication on decisions relating to the consultation approach to be used? 	
<p>Do you consider the form of the required consultation in the proposed rule is likely to result in fit for purpose consultation?</p> <p>If not, what changes are needed, and why? For example, are the proposed time periods appropriate, and is it appropriate to remove the current provisions on requesting meetings?</p>	<p>YES or NO</p> <p>Energy Queensland notes the following:</p> <ul style="list-style-type: none"> In some cases, it may be appropriate to commence a consultation process with a draft document, but the consulting party will need to demonstrate transparency in how it has developed the draft document. They should also demonstrate a genuine willingness to revise the draft in line with stakeholders' views. In some existing consultation processes, the draft document is often a looked at as a "fait accompli" and stakeholders have little opportunity to influence the final document once the draft is published. It remains to be seen whether this approach can be applied appropriately to all consultation processes for subordinate instruments. It is not appropriate to remove the ability for stakeholders to request meetings. This is an important feature that should be retained to demonstrate transparency and respect for stakeholders' views.
<p>Do you agree with AEMO's proposal regarding the form and transparency of additional consultation?</p> <p>If not, what changes are needed and why?</p>	<p>YES or NO</p> <p>Energy Queensland acknowledges the benefit of greater flexibility. However, stakeholders' views must be thoroughly considered and managed appropriately. For stakeholders to be satisfied that the process is appropriately transparent and fully informed, they need to be confident that the summaries accurately reflect the materiality of issues raised.</p>
<p>Should proposed changes to the RCP also be applied to the Reliability Panel's consultation process under clause 8.8.3, and if so, are any modifications required to reflect the nature of the Reliability Panel and its involvement with the Commission?</p>	<p>YES or NO</p> <p>The changes to reliability panel consultations can have significant financial repercussions and, therefore, participants need to be confident that any changes proposed are informed through an appropriate, transparent, and genuine process, including discussions and assessments.</p>

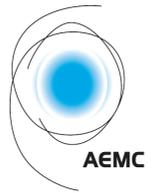
Stakeholder feedback

Protecting customers affected by family violence

18 November 2021



<p>Are there any other clauses in the NER with bespoke consultation requirements that stakeholders believe would benefit from requiring consultation consistent with an updated RCP, or are there reasons to maintain separate processes?</p>	
<p>Would instruments benefit from stakeholders being able to request a change in process? If stakeholders were allowed to request process changes:</p> <ul style="list-style-type: none">• should this apply to all processes, or only some,• if only some processes, which processes, or categories of processes should it apply to and• what additional safeguards would be necessary to ensure that decision-makers were not unduly burdened?	<p>YES or NO</p> <hr/> <p>There is value in enabling stakeholders to initiate changes to instruments and procedures given they are the users of these procedures and through use may be able to identify improvements which benefit the market and other stakeholders. While a less onerous change process may enable more change proposals, it may also inadvertently create issues for some stakeholders who are not well-resourced and increase the regulatory burden on participants.</p> <p>It is not clear why this principle should not be applied more broadly. However, consideration should be given as to the whether a set of criteria should be developed, including restrictions on how often requests can be made or changes consulted on.</p>



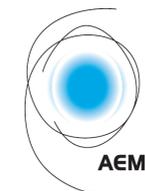
CHAPTER 3 – VIEWS ON THE PROPOSED CHANGES – GAS AND RETAIL

QUESTION 2 – ADDITIONAL MATTERS

Are changes to the consultation procedures under the NGR necessary or desirable?	YES or NO
If so, what should these changes involve? We welcome your views on whether: <ul style="list-style-type: none">• instruments that currently require consultation according to the extended consultation procedures should instead be subject to the standard consultation procedures• instruments that currently require consultation according to the extended consultation procedures or the standard consultation procedures should be required to comply with a new procedure that has the same requirements as the updated Rules Consultation Procedure proposed for the NER in this rule change• it would be helpful to have the same consultation processes under the NER and NGR, or whether there are reasons for having different consultation procedures under the NGR.	No comments.

Stakeholder feedback

Protecting customers affected by family violence
18 November 2021



<ul style="list-style-type: none">Please explain the reasons for your views.	
<p>Would it be beneficial for the consultation process used by the AER under the NERR to be consistent with the consultation processes in the NER (and NGR)? If so, would the process set out in the proposed rule likely result in robust and efficient consultations under the NERR? Please explain the reasons for your views.</p> <p>Are there any additional considerations relating to compatibility of the changes with the development and application of consumer protections for small customers?</p>	<p>YES or NO</p> <p>While Energy Queensland acknowledges the potential benefits of having consistency among consultation processes, we do, however, consider it important to limit the potential for the regulatory agencies to progress consultations with less opportunity for stakeholder input. This approach may allow regulatory agencies to ignore or discount stakeholder views on issues which may involve an increase in the cost to serve. Instead, Energy Queensland suggests that the AEMC should analyse why different consultation processes apply to the variety of instruments, and publish this analysis, before seeking stakeholder views on any harmonisation.</p>

CHAPTER 4 – OUR RULE-MAKING REQUIREMENTS AND PROPOSED ASSESSMENT FRAMEWORK FOR THIS RULE CHANGE

QUESTION 4 - ASSESSMENT FRAMEWORK

<p>Is the proposed assessment framework appropriate for considering the proposed rule? What amendments or additions would you suggest, and why?</p>	<p>YES or NO</p> <p>While the three criteria for assessment appear reasonable, we query whether they are being applied proportionately for this proposal. In relation to flexibility, the proposal appears to conflate abbreviation with flexibility. We consider that flexibility should enable a full consultation process wherever required, and an abbreviated process when a full process is not required. Energy Queensland has offered several suggestions in our earlier comments.</p> <p>In relation to good regulatory practice, we are concerned that a push for simplicity and expediency is preferred over transparency and the need for affected parties to be afforded the opportunity to engage with regulatory agencies. As such, we are concerned that the proposal may not appropriately reflect principles of good regulatory practice.</p>
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