

3 February 2022

Improving consultation procedures in the Rules  
Australian Energy Market Commission  
Ms Anna Collyer  
[www.aemc.gov.au](http://www.aemc.gov.au)  
Electronic submission: via “lodge a submission” function.

Attention: Edward Orum.

Dear Ms Collyer,

## Consultation Paper – ERC0303 - Improving consultation procedures in the Rules.

Thank you for the opportunity to make a submission to the Australian Energy Market Commission’s (AEMC’s) on the above Consultation Paper. We agree that robust consultation is critical to the development and successful implementation of good policy.

The current National Energy Rules (the Rules) include two types of consultation, one which mandates one round of consultation<sup>1</sup> and the other two rounds of consultation<sup>2</sup>. As highlighted by the AEMC, the current pace of change in energy is driving the need for streamlined consultation that is robust, flexible and has the potential to facilitate better regulatory practice. We see merit in having a single consultation process under the rules but that single process must not be a mechanism to inhibit robust consultation, which is critical to the development and successful implementation of good policy. Therefore, while we do not support the proposal to reduce the required consultation from typically two mandatory rounds to one mandatory round as the default, we do propose alternate amendments to streamline the consultation processes.

The Australian Energy Market Operator (AEMO) has proposed a new consultation framework for subordinate instruments established under the National Electricity Rules (NER), with one round of consultation as the default, rather than two, but with principles that indicate when further consultation may be appropriate. AEMO considers that, as the default, mandating two rounds of consultation is unnecessary, particularly when a draft instrument can be provided at the start of the consultation.

We agree with the AEMC that the potential application of the rule change proposal is significant – as highlighted in the Consultation Paper, a new consultation framework may impact over 100 subordinate instruments in the NER, with more than 70 of those currently subject to two rounds of consultation. Further, many of the subordinate instruments are legally binding on participants.

Last year in the retail, metering and metrology space, AEMO conducted 16 consultations with 10 having one round of consultation and six having two rounds of consultation, and some involving multiple instruments. We would be concerned if AEMO were to only have employed one round of

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<sup>1</sup> Transmission consultation procedures (Rule 6A.20 and the distribution consultation procedures (Rule 6.16)

<sup>2</sup> Rules consultation procedures (Rule 8.9) and modified version of the rules consultation procedures under Chapter 7.

consultation on any of the six consultations, that were subject to the mandatory two rounds of consultation. The proposed Rule would permit AEMO to only use one round of consultation for those six consultations, when we consider that two rounds are required for those matters.

If the rule change is made, there is the risk that it may lead to poor regulatory outcomes from reduced consultation. However, we recognise that for less controversial or administrative changes to subordinate instruments two rounds of consultation should not be mandated.

Therefore, SA Power Networks supports an improved consultation framework for subordinate instruments to be established under the NER with two rounds of consultation as the default (not one as default as proposed by AEMO) but allows for more or less consultation when certain principles (to be developed) support this approach.

AEMO has proposed that the Rules include a set of consultation criteria<sup>3</sup>, that decision-makers would be required to have regard to when determining when additional consultation steps are appropriate. We consider that similar criteria could be used to determine the necessary rounds of consultation. The criteria we propose are:

1. complexity of the associated issues and the potential for alternative options to address them
2. nature of the proposal and its impact on persons likely to be affected by it
3. regulatory requirements and interdependencies applicable to the proposal
4. extent of any prior consultation undertaken with affected persons by the consulting party or in another regulatory process (such as a Rule change)
5. nature of the change is administrative in nature (ie one round of consultation)
6. whether the result of the proposal be legally binding (ie minimum of two rounds).

We do not consider that AEMO's "urgency of resolving the issues to be addressed by the proposal" criterion is inappropriate as urgency in itself is not a reason for not having robust consultation. Urgency should only reduce the mandatory rounds in exceptional circumstances, for example, if security of the energy system would be placed at risk in the absence of immediate action.

If you have any question or wish to discuss this submission in more detail, please contact Mr Grant Cox 0403 582 024 or email [Grant.Cox@sapowernetworks.com.au](mailto:Grant.Cox@sapowernetworks.com.au).

Yours sincerely



Mark Vincent  
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<sup>3</sup> AEMO, Rules consultation procedures - ESB National electricity rules simplification project, supplementary rule change request, 22 November 2021, Appendix A, updated proposed rule, clause 8.9.2.

