

3 February 2022

Australian Energy Market Commission
Level 15
60 Castlereagh Street
Sydney NSW 2000

Vector Limited
101 Carlton Gore Rd
PO BOX 99882
Auckland 1149
New Zealand
+64 9 978 7788 / vector.co.nz

Reference: ERC0323

Submission on Improving Consultation Procedures in the Rules

Introduction

1. This is Vector Limited's (Vector)¹ submission on the Australian Energy Market Commission's (AEMC) consultation paper on *Improving consultation procedures in the Rules*, dated 16 December 2021.
2. Vector supports a consultation framework for the development and amendment of subordinate instruments² in the energy sector that is flexible, with meaningful input from stakeholders, and does not increase the regulatory burden. Promoting greater flexibility and responsiveness to change through robust consultation processes is paramount, as the energy sector undergoes transformational change.
3. Overall, we are satisfied with the *current* consultation processes for subordinate documents and believe that the Australian Energy Market Operator's (AEMO) rule change proposal has not made a robust argument for change. We would support the AEMC not making a rule change in this instance.
4. In our view, AEMO's rule change proposal to mandate a single consultation round for subordinate instruments would limit, rather than promote, flexibility and meaningful stakeholder input. It would not meet, in full, the criteria proposed by the AEMC to assess AEMO's proposal for the reasons we discuss in this submission. As such, we do not support a single consultation round as the starting point or default arrangement for consultations on subordinate instruments.
5. We set out below our responses to questions in the consultation paper that are of interest and relevance to our operations as a provider of smart metering services in the National Electricity Market (NEM). We do not express any views on the proposed changes to the *National Gas Rules*, the *Transmission consultation procedures*, and the *Distribution consultation procedures*.

Responses to selected consultation questions

6. This submission responds broadly to most of the questions in the consultation paper, and responds in more detail to Questions 1 - 2, Question 6, and Question 9.

¹ Vector's Australian and New Zealand advanced metering business – Vector Metering – is an accredited Metering Provider and Metering Data Provider, and a registered Metering Coordinator, in Australia's National Electricity Market, and the equivalent in New Zealand. Vector Metering provides a cost-effective end-to-end suite of energy metering and control services to energy retailers, distributors and consumers.

² These include procedures, guidelines, methodologies and reports.

QUESTION 1: WHAT WOULD STREAMLINED CONSULTATION INVOLVE?

At a high level, the Commission is interested in your views on the following issues:

- 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 efficiently managed?
- what are the cost and complexity implications of implementing the changes?

QUESTION 2: MOVING TO ONE ROUND OF CONSULTATION

Do stakeholders consider the default being one round of consultation (rather than two) is a more efficient, effective and appropriate approach for the instruments that currently fall under the RCP (subject to the principles for additional consultation discussed below)? Please provide reasons and examples.

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:

- overall approach of using consultation criteria (is a different safeguard more appropriate)?
- consultation criteria that AEMO propose?
- proposals about when a decision maker would apply the criteria?
- proposed public communication on decisions relating to the consultation approach to be used?

Please explain the reason for your views.

7. AEMO proposes to make the consultation on subordinate documents more effective and efficient for decision makers³ and stakeholders "by making the standard consultation process shorter and more adaptable to differing circumstances".⁴ To achieve this, AEMO proposes a new consultation framework for electricity subordinate instruments with one round of consultation as the standard approach, rather than two, but with a set of criteria that would guide when further consultation is required. The intent is to minimise the burden on decision-making bodies, which are facing a high volume of consultation activities to support ongoing reforms.
8. We agree with the AEMC, in its initial consideration of AEMO's proposal, that:
 - a. It is important to promote flexibility in the consultation framework and ensure stakeholders have the authority and ability to provide meaningful input into proposed changes that are likely to affect them.
 - b. Simplification of the consultation framework may be able to improve efficiency, while maintaining appropriate effectiveness and transparency of consultation.
 - c. The framework should create incentives for decision makers to regularly update subordinate instruments to respond to the need for change.
9. We agree in principle with AEMO's proposed consultation criteria that decision makers consulting on subordinate instruments should have regard to, which include the following:
 - a. nature of the proposal and its impact on persons likely to be affected by it;
 - b. regulatory requirements and interdependencies applicable to the proposal;
 - c. urgency of resolving the issues to be addressed by the proposal;

³ These refer to AEMO, the Australian Energy Regulator, the Reliability Panel, and the Information Exchange Committee.

⁴ Executive Summary of the consultation paper, page C

- d. extent of any prior consultation undertaken with affected persons by the consulting party or in another regulatory process; and
 - e. complexity of the associated issues and the potential for alternative options to address those issues.
10. However, we do not agree that a single consultation round, as a minimum, should be mandated for the following reasons:

a. *Identifying the key issues and appropriate solutions is a discovery process*

In our experience in the NEM, it is rare for all issues arising from a proposed procedural change to be identified (by AEMO and stakeholders) during the first round of consultation. It is more common for material issues to be uncovered after the publication of the draft decision, along with stakeholders' submissions, whereupon stakeholders can consider all the issues raised by submitters. Having a second round of consultation (as is currently the case) allows stakeholders to comment and provide input on issues that they and/or the decision maker have not previously considered. Reducing the consultation process to a single round will not provide this opportunity to stakeholders.

To further promote flexibility, we suggest that the consultation framework allow decision makers to hold consultations beyond the second round, if necessary.

b. *A single consultation round at the discretion of the decision maker creates the risk of creating a perception of outcomes being pre-determined*

Meaningful consultations are a core element of stakeholder engagement. Any perception, prior to a consultation, that outcomes are pre-determined to some extent would diminish the value of stakeholder input. This is likely to erode stakeholder confidence in the consultation process, and in market arrangements more generally.

c. *A single round of consultation approach limits, rather than promotes, flexibility*

The rule change proposal requires the decision maker to determine, publish and review (if necessary) a consultation plan based on the above consultation criteria at the outset of the consultation process. As indicated in the consultation paper, “[i]t would be at the discretion of the decision maker as to whether it chooses to hold a second round of consultation...”⁵

We agree with the AEMC that “the optimal level of consultation may vary depending on the issues involved or the instrument that is being consulted on”.⁶ And that the development of a flexible framework “should accommodate the various levels of consultation that may be required, with accompanying guidance to ensure the level of consultation reflects the importance and complexity of the issue or instrument”.⁷

Flexibility is promoted where optionality is preserved. Having a single consultation round as the default arrangement risks consideration of only part or half of the picture. While it improves flexibility on decision makers' part (because of the shorter consultation timeframe), it reduces stakeholders' ability to provide feedback on the complexity of the proposal and therefore on an appropriate consultation timeframe.

d. *'Procedural' changes may have material implications for one or more stakeholders*

What the decision maker may consider to be 'procedural only' changes that require a single round of consultation could, in fact, have material implications for one or more

⁵ Pages 2-3 of the consultation paper

⁶ Executive Summary of the consultation paper, page D

⁷ *Ibid.*

stakeholders. Material implications may not be immediately apparent to, or accepted by, the decision maker. These can only be discovered through robust consultation, which is likely to require an iterative process. Mandating a single consultation round could prematurely halt the discovery process.

We agree with the AEMC that “[r]obust consultation is critical to the development and successful implementation of good policy.”⁸ Consultation should continue until the key issues are identified and addressed.

e. *Robust consultations promote stakeholders’ understanding of the market*

The consultation process plays an important function of educating market participants on the issues and problems that may require regulatory solutions. Moving to a single consultation round as the default will diminish the effectiveness of this function, especially as more and more ‘non-traditional’ service providers enter the electricity market.

f. *The consultation process is not the cause of implementation delays*

While we wish to see reforms implemented in a timely manner, we do not consider the length of the consultation process to be the cause (or main cause) of implementation delays. Delays are influenced more often by the timing of the commencement date or the length of any transition period. Other factors that could contribute to implementation delays include resourcing issues (e.g. the re-assignment of the decision maker’s staff to a higher priority project), the immaturity of the market to accommodate significant process or business system changes, or a pandemic, etc.

AEMO’s rule change proposal argues that “[t]imeframes [are] too long or too short for many consultations”⁹ and proposes more flexibility regarding the consultation period at the discretion of the decision maker. This implies that the decision maker could reduce the amount of time available for stakeholders to respond to any consultation. On the part of stakeholders, while it would not take the entire submission period to respond to a consultation document, many face multiple consultations at the same time. It is often the same team or staff within participant organisations who prepare responses to consultations. Allowing the decision maker to vary the response time to a consultation will compromise participants’ ability to respond, and is likely to erode the effectiveness of the consultation process.

g. *Rationalising the current consultation framework may not deliver significant net benefits*

The *National Electricity Rules* (NER) currently contain multiple clauses across different chapters and sections describing the consultation process for subordinate instruments. While these are repetitive and could be removed if a single consultation procedure was adopted, given that they already exist and are unlikely to be subject to change, any benefit from rationalising these clauses would be marginal at best.

11. We do not agree with AEMO’s proposal allowing changes to procedures of a minor or administrative nature to be made without consultation. Rather, we believe that existing clause 7.16.7 of the NER is sufficient and appropriate for changes of this nature.
12. Should AEMO consider minor or administrative changes to be onerous, it could consider undertaking a review of subordinate instruments (or a set of related subordinate instruments) for the purpose of enhancing clarity and consistency (i.e. ‘tidying up’ these instruments) on

⁸ Executive Summary of the consultation paper, page C

⁹ https://www.aemc.gov.au/sites/default/files/2021-01/ERC0323%20Rule%20change%20request%20pending_0.pdf, page 7

an annual basis. This approach is akin to the New Zealand Electricity Authority's annual omnibus review of New Zealand's *Electricity Industry Participation Code* (the Code) – which is still subject to consultation despite the changes being technical and non-controversial.

QUESTION 6: RIGHT TO REQUEST A CHANGE TO AN INSTRUMENT

Would it be beneficial if stakeholders were able to request a change to a particular instrument or procedure? If stakeholders were allowed to request changes to subordinate instruments:

- should this apply to all subordinate instruments and procedures, or only to some?
- if only some, which instruments/procedures (or categories of instruments/procedures) should it apply to?
- what additional safeguards would be necessary to ensure that decision makers were not unduly burdened?

13. In Vector's view, stakeholders should be allowed to request a change to any subordinate instrument or procedure, as is currently the case (under Chapter 7 of the NER). If participants have had issues in requesting changes to a subordinate instrument under current arrangements, then the relevant provisions in the NER should be aligned. We are not aware of this being an issue for participants.
14. To ensure that decision makers are not unduly burdened from considering multiple rule change requests at the same time, decision makers can compile potential proposals (e.g. in an internal register) for immediate or future consideration. In the case of minor and administrative changes, which are unlikely to be of an urgent nature, the AEMC could consider adopting an approach similar to the New Zealand Electricity Authority's annual omnibus review that covers technical and non-controversial Code changes (mentioned in our response to Questions 1 – 2).

QUESTION 9: ASSESSMENT FRAMEWORK

Is the proposed assessment framework appropriate for considering the proposed rule? If not, what amendments or additions would you suggest, and why?

15. Vector considers the AEMC's proposed assessment framework, comprising the following criteria, to be generally appropriate for considering AEMO's rule change proposal:
 - a. Innovation – flexible consultation;
 - b. Principles of good regulatory practice – predictability and stability, simplicity, efficacy and transparency; and
 - c. Implementation considerations – cost and complexity.
16. We do not believe AEMO's proposal to move to one round of consultation for subordinate instruments (as the default) meets the "Innovation – flexible consultation" criterion. On the contrary, and for the reasons indicated in our response to Questions 1 - 2, the lack of optionality around the number of consultations diminishes flexibility at the outset.
17. Furthermore, we do not believe the same proposal meets the above principles of good regulatory practice, particularly transparency. Reducing the number of opportunities for stakeholders to provide feedback on a proposal to a single consultation round weakens stakeholders' voice in decision making. This could undermine confidence in the consultation process and/or the resultant subordinate instruments.
18. As such, we suggest that the AEMC not pursue the proposal to mandate a single round of consultation any further, and consider the options we propose in this submission.

Concluding comments

19. We are happy to discuss this submission with the AEMC. Please contact Paul Greenwood (Industry Development Australia - Vector Metering) at 0404 046 613 or at Paul.Greenwood@vectormetering.com in the first instance.
20. No part of this submission is confidential, and we are happy for the AEMC to publish it in its entirety.

Yours sincerely



Dr James Tipping
GM Market Strategy/Regulation