



Improving consultation procedures in the rules

Flexible and fit-for-purpose consultation procedures

The Australian Energy Market Commission has updated consultation procedures under the National Electricity Rules (NER) and National Gas Rules (NGR) giving consulting parties greater process flexibility while providing market participants transparent and predictable processes.

Overview of the rule

The Commission has published a final determination and final electricity and gas rules to make the consultation on subordinate instruments more flexible, transparent, and predictable, so stakeholders and consulting parties can invest their limited resources productively.

Key elements of the final electricity rule are:

- **A new expedited process in the NER - for non-material changes.** The rule introduces a shorter 10-week consultation process for new and existing subordinate instruments that are unlikely to significantly impact on the national electricity market or have a significant effect on the activities of the registered participants (a broader test than the non-controversial test for the AEMC's expedited rule-making process).
- **A short new process for minor and administrative instrument changes.** A new quicker and simpler process for minor and administrative instrument changes that requires two weeks of consultation and the publication of a final instrument, any received comments, and reasons for making the final instrument, as soon as practicable after the consultation closes.
- **Two rounds of consultation and revised timelines.** Consultation on all material instrument changes will be according to the standard rules consultation procedure, which requires two rounds of consultation. This will require a minimum of four weeks for each round of consultation and then after the consultation has closed on each round, a maximum ten-week period at the draft and final stages to finalise and publish the instruments.
- **Flexibility for when complex issues arise.** Consulting parties can choose, and stakeholders can request, to switch from the expedited process to the standard process, if stakeholders consider the proposed amendments may impact the NEM, or complex issues arise. Consulting parties can also extend publication deadlines for the standard process if the matter involves issues that are unusually complex or difficult or there has been a material change in circumstances.
- **Revised provisions for individual meetings.** Stakeholders can request meetings at anytime within a consultation period, to discuss complex, sensitive or confidential matters. If a meeting is requested, the consulting party must either: meet with the stakeholder within a reasonable time, address the matter using a different method of consultation (such as a workshop), or explain why it is not reasonably practicable to hold the meeting or another mode of consultation.

The Standard consultative procedures will replace the Extended consultative procedures in the NGR. Where the NGR currently prescribes the use of the Extended consultative procedures, consulting parties will instead be directed to consult according to the Standard consultative procedures, which provide a flexible two-round process.

No changes were required to the Retail consultation procedures in the National Energy Retail Rules (NERR).

Benefits of the more preferable draft rule in electricity and the rule in gas

The more preferable electricity rule will improve consultation for the following reasons:

- The new expedited process provides fit-for-purpose, flexible consultation, whilst maintaining transparency, predictability and stability for stakeholders with low implementation costs. The new process for minor and administrative processes also provides for a fit-for-purpose and transparent process.
- Updated timelines promote predictability and transparency compared to the existing process,¹ while a consulting party has the flexibility to extend a process when it is necessary.
- The enhanced meeting provisions will allow more timely, productive meetings to be held as these discussions can inform submissions. They also support transparency for stakeholders and flexibility for consulting parties.

The changes to the NGR provide stakeholders with a robust consultation process based on a well-known and tested two-round process, whilst allowing the decision-maker greater flexibility to undertake fit-for-purpose consultation.

Background on the rule change

AEMO submitted the rule change request (with a letter of support from the AER) on 7 January 2021 and then provided a rule change addendum on 22 November 2021, to change the Rules consultation procedures in the NER and the Extended consultative procedure in the NGR.

The Commission also asked stakeholders whether corresponding changes were also needed to the Retail consultation procedures to ensure consistency across the NER, NGR and NERR. We received 15 submissions in response to the draft determination (plus a supplementary submission from Snowy Hydro). We received 24 submissions in response to the consultation paper.

Implementation

The rules will commence on 11 August 2022. The changes to the consultation procedures in the NER and NGR will not affect any consultations that have already begun under the existing rules by the effective date of the changes.

For information contact:

Advisor, **Edward Orum** (02) 8296 7852

Director, **Jackie Biro** (02) 8296 0606

Media enquiries: media@aemc.gov.au

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¹ Which did not have deadlines for documents.