



Australian Energy Market Commission

## **RULE DETERMINATION**

**NATIONAL ELECTRICITY AMENDMENT  
(IMPROVING CONSULTATION  
PROCEDURES IN THE RULES) RULE  
2022**

**NATIONAL GAS AMENDMENT  
(IMPROVING CONSULTATION  
PROCEDURES IN THE RULES) RULE  
2022**

**NATIONAL ENERGY RETAIL  
AMENDMENT (IMPROVING  
CONSULTATION PROCEDURES IN THE  
RULES) RULE 2022**

Australian Energy Market Operator

4 AUGUST 2022

**DETERMINATION**

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## ABOUT THE AEMC

The AEMC reports to the Energy Ministers' Meeting (formerly the Council of Australian Governments Energy Council). We have two functions. We make and amend the national electricity, gas and energy retail rules and conduct independent reviews for the Energy Ministers' Meeting.

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## SUMMARY

1 The Australian Energy Market Commission (AEMC or Commission) is making this final determination and final rules to make consultation procedures in the National Electricity Rules (NER) and National Gas Rules (NGR) streamlined and fit-for-purpose, in response to the rule change request submitted by the Australian Energy Market Operator (AEMO or the Proponent).<sup>1</sup>

### Why we changed the consultation procedures

2 Good consultation processes lead to the development and implementation of good policy. The Commission's goal in this rule change has been to make consultation processes for subordinate instruments transparent, predictable and appropriate to the matters at hand, so stakeholders and consulting parties can invest their limited resources productively. This is important because:

- there are nearly 100 instruments, such as guidelines and procedures, for which consulting parties must use the Rules consultation procedures in the NER, or the consultation procedures under the NGR
- fit-for-purpose consultation processes are needed to facilitate the scale of energy market reform in the coming years, and the likely increase in the use of subordinate instruments.

### The final rules

3 The Commission's final rule determination is to make a more preferable electricity rule and to make a gas rule that is the same as the proposed gas rule. The Commission is not making any changes to the Retail consultation procedures in the National Energy Retail Rules (NERR). The electricity and gas rules will commence **on 11 August 2022**. These changes to consultation procedures will not affect any consultations that began under the existing rules before this date.

4 The final rules will improve consultation under the NER and the NGR because they:

- **Give decision-makers process flexibility and allow for fit-for-purpose consultation:** The electricity rule introduces a new expedited consultation process that can be used for both new instruments and changes to existing instruments. A consulting party will be able to use this process if the new instrument or the changes to existing instruments are unlikely to have a significant impact on the NEM or on the activities of the registered participants to which the proposal relates. The final rule also establishes a simple consultation process for minor and administrative changes. These two new processes give decision-makers the flexibility to use different processes and consultation techniques depending on the impacts and complexity of the instrument change. The gas rule removes the Extended consultative procedure from the NGR; consulting parties will

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<sup>1</sup> AEMO submitted the rule change request on 7 January 2021, with a letter of support from the AER. AEMO submitted a rule change addendum containing a revised proposed rule in November 2021.

instead consult according to the Standard consultative procedure, which is a more flexible two-round process.

- **Support stable, transparent and predictable consultation for stakeholders:** The electricity rule supports good regulatory practice. It retains two rounds of consultation (with updated timelines) for significant matters, gives stakeholders a right to object to instrument changes running to an expedited time frame, and retains a provision for individual meetings between a stakeholder and the consulting party for complex, sensitive or confidential matters. The gas rule supports good regulatory practice because the Standard consultative procedure is a predictable and transparent two-stage process, with which stakeholders are already experienced.
- **Are a simple, low cost solution:** The final rules address the key issues raised in the rule change request with more targeted changes for each set of rules than some approaches that were contemplated in the rule change proposal or the consultation paper. The rules address issues with specific processes (amending the Rules consultation procedures in the NER and removing the Extended consultative procedure in the NGR), but the Commission has not made widespread changes to harmonise all the consultation procedures across the NER, NGR and NERR with the revised Rules consultation procedures. For example, in the electricity rule the Commission has opted not to remove the Distribution and Transmission consultation procedures. Similarly, no changes were made to the NERR because it was not clear that aligning the NERR process with the revised Rules consultation procedures in the NER would facilitate better regulatory practice or greater flexibility than the existing Retail consultation procedures.

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# 1 THE AUSTRALIAN ENERGY MARKET OPERATOR'S RULE CHANGE REQUEST

This chapter outlines the:

- existing consultation processes under the national energy rules
- AEMO's proposed changes to the NER and the NGR
- Commission's request for input on the Retail consultation procedure in the National Energy Retail Rules (NERR), and
- consultation undertaken on this rule change.

## 1.1 Consultation under the NER, NGR, and NERR

The NER, NGR, and NERR require many matters, such as technical information, forecasting processes, and service specifications, to be set out in regulatory instruments including guidelines, determinations, procedures, and reports. These "subordinate instruments" are issued by a range of parties, including but not limited to, AEMO, the Australian Energy Regulator (AER), the Reliability Panel, the Information Exchange Committee, and the National Competition Council.

In developing or amending these instruments, the responsible body is likely to have an obligation to undertake consultation following either:

- one of three consultation processes in the NER<sup>2</sup>
- one of five consultation processes in the NGR<sup>3</sup>, or
- the Retail consultation procedures in the NERR.

In addition to the processes listed above,<sup>4</sup> there are a variety of other bespoke processes for individual instruments, such as the Reliability Panel's review process.

## 1.2 AEMO's rule change request and rule change request addendum

On 7 January 2021, AEMO made a request to the AEMC to change the Rules consultation procedures in the NER and the Extended consultative procedure in the NGR. The rule change request contained a letter of support from the AER. AEMO provided an addendum to this rule change request in November 2021.

### 1.2.1 AEMO's rule change request- electricity (January 2021)

In relation to the NER, AEMO's rule change request proposed:

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2 These are the Rules consultation procedure, the Transmission consultation procedures, and the Distribution consultation procedures.

3 These are AEMO's ordinary process, AEMO's expedited process, the Standard consultative procedure, the Expedited consultative procedure, and the Extended consultative procedure.

4 Further information on these processes is set out in the appendices section in the consultation paper for this rule change, available on the [project page](#) on our website.

1. **A single consultation process.** Consolidating the three existing consultation procedures in the NER into one process, with the existing distribution and transmission procedures serving as precedent, but to be replaced by a new single procedure.
2. **One round of consultation as a default.** Commencing with consultation on a draft instrument. It was proposed that the decision-maker would have discretion as to whether it chose to hold a second round of consultation, in accordance with principles in the Rules.<sup>5</sup> A consulting party could undertake prior consultation on changes as it considered appropriate.
3. **Time frames.** A consultation period on the draft instrument of at least 30 business days and a final decision within 80 business days of publishing the draft instrument. An extension would be available for a material change in circumstances or if there were complex or difficult issues.
4. **Meetings.** The removal of specific provisions for individually requested meetings, to allow for more flexibility in the consultation approach (for example using forums instead).
5. **Initiation of Chapter 7 processes.** Clarifying that AEMO may initiate proposals to amend retail markets and metering procedures.
6. **Other matters.** A consistent consultation exemption for minor and administrative amendments, removing some notice requirements, and various other consequential amendments.<sup>6</sup>

### 1.2.2

#### **AEMO's rule change request addendum- electricity (November 2021)**

AEMO submitted a supplement to the original rule change on 22 November 2021 to clarify several issues in the original request, and provide a replacement proposed rule. Key elements of the supplement included:

- A set of consultation criteria to be used by a decision-maker to determine whether additional consultation steps are appropriate, and the timing and form of those steps.
- A requirement for the decision-maker to determine, publish and review (if necessary) a consultation plan using the consultation criteria at the outset.
- A requirement for the decision-maker to publish summaries of the issues and outcomes from additional consultation steps.
- Extending the scope of the process to the consultation processes used by the Reliability Panel.<sup>7</sup>

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5 AEMO, *Rules consultation procedures - ESB National electricity rules simplification project*, supplementary rule change request, 22 November 2021, Appendix A, updated proposed rule, clauses 8.9.2 and 8.9.3.

6 AEMO, *Rules consultation procedures - ESB National electricity rules simplification project*, rule change request, 7 January 2021, pp. 11-13.

7 AEMO, *Rules consultation procedures - ESB National electricity rules simplification project*, supplementary rule change request, 22 November 2021 p. 5.

### 1.2.3 **AEMO's rule change request and addendum - Gas**

AEMO clarified in its rule change addendum that its preferred change to the NGR is to remove references to the extended consultative procedure and replace them with references to the standard consultative procedure.<sup>8</sup>

### 1.2.4 **Consultation on potential changes to the National Energy Retail Rules**

In the consultation paper on AEMO's rule change request, the Commission sought stakeholder views on whether the consultation processes under the Retail consultation procedure could also benefit from amendments as part of this rule change project. The NERR consultation process applies to specific AER instruments.<sup>9</sup> Further information on the Retail consultation procedure was provided in Chapter three of the consultation paper (this can be viewed [here](#)).

## 1.3 **Responses to the consultation paper, and the draft determination and draft rule**

On 17 December 2021, the Commission published a notice advising of its commencement of the rule-making process and consultation in respect of this rule change request.<sup>10</sup> The Commission also published a consultation paper identifying specific issues for stakeholder comment. Submissions closed on 3 February 2022. The Commission considered all the issues raised in the 24 submissions received on the consultation paper and published a draft determination and draft rule on 14 April 2022.

The Commission has considered all the issues raised in the 15 submissions received on the draft determination in developing this final determination and final rule.<sup>11</sup> Issues that are not addressed in the body of this document are set out and addressed in Appendix B.

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8 AEMO, *Rules consultation procedures - ESB National electricity rules simplification project*, supplementary rule change request, 22 November 2021 p. 6.

9 The Retail consultation procedure is set out in rule 173 of the NERR.

10 This notice was published under s. 95 of the National Electricity Law (NEL), s. 308 of the National Gas Law (NGL) and s. 251 of the National Energy Retail Law (NERL).

11 Submissions to the consultation paper and draft determination can be found on the [project page](#) on our website. A supplementary submission was also received by Snowy Hydro.

## 2 HOW THE RULES WILL IMPROVE CONSULTATION

The Commission's final determination is to make a more preferable electricity rule and AEMO's gas rule, which are attached to and published with this final determination.<sup>12</sup> The Commission is not proposing to make changes to the consultation procedures in the NERR.

This chapter explains the outcomes for stakeholders and consulting parties, and the key changes to the current consultation procedures for subordinate instruments.

The Commission's reasons for making these rules are set out in Chapter 3. Information on the legal requirements for making the determination are set out in Appendix A.

### 2.1 Outcomes for stakeholders and consulting parties

Better consultation practices lead to better decisions. The Commission's goal in this rule change is to make consultation on subordinate instruments transparent, predictable and appropriate to the matters at hand, so stakeholders and decision-makers can invest their limited resources productively.

The final rules will improve consultation under the NER and the NGR because they:

- **Give decision-makers process flexibility and allow for fit-for-purpose consultation:** The electricity rule introduces a new expedited consultation process that will apply to both new instruments and changes to existing instruments. A consulting party will be able to use this test if the new instrument or the changes to existing instruments are unlikely to have a significant impact on the NEM or on the activities of the registered participants to which the proposal relates. It also establishes a simple consultation process for minor and administrative changes. These two new processes give decision-makers the flexibility to use different processes and consultation techniques depending on the impacts and complexity of the instrument change.
- **Support stable, transparent and predictable consultation for stakeholders:** The electricity rule supports good regulatory practice. It retains two rounds of consultation for significant matters, gives stakeholders a right to object to instrument changes running to an expedited time frame, and retains a provision for individual meetings between a stakeholder and the consulting party for complex, sensitive or confidential matters.
- **Are a simple, low cost solution:** The rules address the key issues raised in the rule change request with more targeted changes for each set of rules than some approaches that were contemplated in the rule change proposal or the consultation paper. The rules address issues with specific processes (amending the Rules consultation procedures in the NER and removing the Extended consultative procedure in the NGR), but the Commission does not propose to make widespread changes to harmonise all the consultation procedures across the NER, NGR and NERR with the revised Rules consultation procedures. For example, in the electricity rule the Commission has opted

<sup>12</sup> You can find the electricity and gas amending rules on our website here: <https://www.aemc.gov.au/rule-changes/improving-consultation-procedures-rules>.

not to remove the Distribution and Transmission consultation procedures, and the Commission has not made a retail rule.

## 2.2 How the electricity rule changes the consultation procedures in the NER

This section explains the key changes to NER consultation procedures in the more preferable electricity rule. These include:

1. **A new expedited consultation procedure** for non-material changes to existing NER subordinate instruments and new instruments.
2. A new abridged consultation **procedure for minor and administrative changes.**
3. **Updated timelines** for the standard consultation procedures (which will retain two rounds of consultation as the default).
4. **More transparent meeting provisions.**
5. **Consequential amendments** to other provisions in the NER as required to reflect the changes to rule 8.9.

### 2.2.1 A new expedited process to consult on non-material changes

Currently, the energy rules do not provide a specific consultation process for non-material changes to subordinate instruments. A consulting party undertakes the same consultation on non-material changes as it would for material changes, involving two rounds of consultation.

We are establishing a new expedited process for new instruments, or changes to existing instruments, that are unlikely to have a significant effect on the NEM or on the activities of the registered participants to which the proposal relates.<sup>13</sup> The aim of the expedited process is to reduce the resources that stakeholders and consulting parties invest in non-material changes to subordinate instruments. It is a one-stage consultation process starting with comments being sought on a draft instrument.

#### **When a consulting party can use the expedited process**

The “non-material” test for using the expedited process for subordinate instruments is wider than the definition of “non-controversial” for the Commission’s expedited rule-making process in the NEL.<sup>14</sup> In addition to considering the impact on the NEM as a whole (as in the NEL), it also includes whether the proposal is unlikely to have a significant effect on the activities of the registered participants to which the proposal relates. The Commission recognises that many subordinate instruments may not specifically impact the NEM but may have a material impact on particular groups of participants, and for that reason, the test was changed.

The Commission has built flexibility into the framework. If controversial issues emerge, stakeholders can request, and consulting parties can initiate, a reversion to the two-stage

<sup>13</sup> This process is set out in new clause 8.9.3 in the final electricity rule.

<sup>14</sup> “Non-controversial Rule” is defined in section 87 of the NEL. “Non-material Proposal” is defined in clause 8.9.1(a) in the final electricity rule.

standard rules consultation procedures for both new and existing instruments. How these triggers work is described below.

### Process steps and time frames

The expedited process will take no more than 10 weeks from draft to final instrument. It involves:<sup>15</sup>

- the consulting party publishing a draft instrument (with changes marked-up, if an existing instrument is being amended) and a short explanatory paper.
- a minimum four-week round of consultation.<sup>16</sup>
- the consulting party publishing a final decision within 10 weeks of the draft (see table).<sup>17</sup>

The ten-week time frame is built around the changes being non-material. It gives:

- stakeholders sufficient time to comment on the proposal, and
- a consulting party sufficient time to review submissions, hold meetings to clarify any matters raised in consultation, and to prepare and approve a final report.<sup>18</sup>

The consulting party may take as much time as it requires to prepare the draft report, as the time frames take effect only when that report is published.

**Table 2.1: Expedited process - time frames**

STAGE	TIME FRAME
Consultation time frame	Four weeks
Period to final decision	Six weeks
<b>Total time</b>	<b>Ten weeks</b>

### There is flexibility to switch to the standard process

Both stakeholders and the consulting party can trigger the expedited process reverting back to the longer, two-stage standard process.

Stakeholders can request a change to the standard process within two weeks of the draft instrument being published. The final rule clarifies that in a written request to switch from the expedited to the standard process, a stakeholder:

- must address the test to use the expedited process - that is, the stakeholder must explain why the proposed changes are not unlikely to have a significant effect on the NEM and/or the activities of relevant registered market participants, and

<sup>15</sup> This process is set out in new clause 8.9.3 in the electricity rule.

<sup>16</sup> The rule establishes time frames based on business days (here 20 business days) to accommodate public holidays. However, this determination refers to weeks for simplicity.

<sup>17</sup> If the consultation period is the minimum four-week period, this will mean the final decision is published six weeks after submissions are due. If a decision-maker chooses to have a longer consultation period, this will reduce the remaining period of time to publish the final decision, for instance if the decision-maker opted to consult for six weeks, it would need to publish a final decision within a further four weeks.

<sup>18</sup> Consulting parties may wish to review their internal approvals processes to allow for timely sign-offs on final reports, if they choose to use the expedited process.

- may include other reasons.<sup>19</sup>

The final rule gives a consulting party a degree of discretion about whether to switch to the standard process. If a stakeholder requests a switch to the standard process, a consulting party:<sup>20</sup>

- must consider the request in relation to the expedited process test and any other reasons provided by the stakeholder
- may continue with the expedited process if it still considers the proposal meets the expedited process test
- must switch to the standard process if it no longer considers the proposal meets the expedited process test
- may switch to the standard process (whether or not it still considers the proposal meets the expedited process test), and
- must publish reasons for its decision to switch or not.

In addition, consulting parties will be able to switch from the expedited process to the standard process at their discretion, even if stakeholders do not request a switch. For instance, if consultation on the draft instrument highlights complex issues that cannot be resolved in the remaining six-week period. To do this the consulting party would publish a notice at any time after the consultation closes and before the due date for publishing the final document under the expedited process.<sup>21</sup>

### **Process and time frames if the consulting party switches to the standard process**

If the consulting party decides to change to the standard process, whether at its own discretion or based on a stakeholder request, it must publish a second draft instrument within ten weeks of submissions closing on the initial draft. Stakeholders would have at least four weeks to comment on this second version of the instrument, and the consulting party would then publish a final instrument within a further ten weeks. This is consistent with the updated time frames for the standard process explained in section 2.2.3 (and the ten-week periods can be extended, as explained in that section).<sup>22</sup>

## **2.2.2**

### **A new two-week process to consult on minor and administrative changes**

The new process for minor and administrative changes to existing instruments is modelled on the Retail consultation procedure.<sup>23</sup> It involves:<sup>24</sup>

- the consulting party publishing a notice on its website, with a copy of the instrument marked up to indicate the proposed changes and reasons for the changes
- two weeks' consultation on the proposed changes, and

<sup>19</sup> Clause 8.9.3(b) in the final electricity rule.

<sup>20</sup> Clauses 8.9.3(c)-(f) in the final electricity rule.

<sup>21</sup> Clause 8.9.3(f) in the final electricity rule.

<sup>22</sup> Clause 8.9.3(g) and clause 8.9.2 in the final electricity rule.

<sup>23</sup> Rule 173 in the NERR.

<sup>24</sup> See clause 8.9.4 in the final electricity rule.

- the consulting party publishing a final instrument, any comments it has received, and a notice stating the reasons for making the final instrument, as soon as practicable after the close of the consultation.

The rule does not provide a consulting party the ability to extend time frames or formally switch to a different process, if a stakeholder raises complex issues, or if the decision-maker identifies complex issues, in the same way, that the standard or expedited processes do. However, if such issues arise, the decision-maker can effectively extend the process by completing the minor process and commencing an expedited or standard process to respond to the additional issues, depending on the complexity of the issues. This could be done by simultaneously publishing: the existing instrument without making any changes, a notice stating it is retaining the final instrument but commencing an alternative process, and the documents for the new process for comment.<sup>25</sup> In publication and transparency terms, this aligns with the steps in switching from expedited to standard process.

The existing Rules consultation procedures do not have an equivalent process. Currently, to make a minor or administrative change to a subordinate instrument a consulting party typically must conduct a total of seven weeks of consultation, with two rounds of consultation (five and two weeks, respectively) and publish draft and final reports.

The Commission recognises that some provisions in the NER contain a specific exemption to make a minor or administrative change to an instrument without consulting (but the majority do not contain this exemption). The final rule does not remove these existing exemptions (see Table 2.2 in the draft determination for a list of instruments with these exemptions).

### 2.2.3

#### Updated timelines for the standard consultation process

The electricity rule also updates the time frames for the two-round standard consultation procedures.<sup>26</sup> These new timelines will provide greater transparency and certainty for stakeholders than the process under old rule 8.9, which did not require a consulting party to publish instruments within a defined period. The new time frames are detailed in the table below, compared to those that applied under old rule 8.9 of the NER.

**Table 2.2: Standard process - comparison of new and previous time frames**

<b>PROCESS STAGE</b>	<b>NEW TIME FRAMES</b>	<b>PREVIOUS TIME FRAMES</b>
<b>First round of consultation</b>	Four weeks	Five weeks
<b>Period to publish draft instrument after close of consultation</b>	Ten weeks	No deadline
<b>Second round of consultation</b>	Four weeks	Two weeks
<b>Period to publish final report and instrument after close of consultation</b>	Ten weeks	No deadline

<sup>25</sup> Energy Queensland commented that, where complex issues arise and the process needs to be altered, it would be better to extend the current process than start another one.

<sup>26</sup> Clause 8.9.2 in the final electricity rule.

<b>PROCESS STAGE</b>	<b>NEW TIME FRAMES</b>	<b>PREVIOUS TIME FRAMES</b>
<b>Total time frame</b>	<b>28 weeks</b>	<b>No deadline</b>

The key elements are as follows:

- The rule sets consistent minimum time frames for public consultation across the expedited process and both rounds of the standard process (a minimum of four weeks - expressed as 20 business days).
- For all processes, consulting parties can set longer public consultation periods if they consider it needed or helpful. It would be expected, for instance, that consulting parties would take into account periods such as summer holidays when setting the duration of any consultation.<sup>27</sup>
- The rule sets a typical maximum duration for the standard process of 28 weeks. The previous rules consultation procedures did not include deadlines for decision-makers to publish draft or final instruments, or end-to-end deadlines, so overall time frames varied in practice.<sup>28</sup> The new 28-week time frame recognises that this procedure is now reserved for more complex changes to existing and new instruments.
- While the process allows a consulting party ten weeks to publish both the draft and final report and instruments after the close of consultation, a consulting party can still choose to publish these documents before the end of the period if this is practical.
- Under the standard process, a consulting party may extend the draft or final instrument publication deadline if it involves issues that are complex or difficult, or where there is a material change in circumstances.<sup>29</sup> This is the same test the Commission uses when extending a process under s. 107 of the NEL. Extended time frames will no longer be contingent on stakeholders requesting a meeting.<sup>30</sup>

#### 2.2.4

##### **More transparency regarding individual meetings**

The final rule gives stakeholders a right to request a meeting with the consulting party, during consultation periods, for complex, sensitive or confidential matters relating to the proposal. The consulting party must:<sup>31</sup>

- hold the meeting within a reasonable period of time
- address the matter using a different mode of consultation, such as a workshop, or
- explain to the requesting party why it is not reasonably practicable to hold the meeting or other form of consultation.

<sup>27</sup> As Telstra noted in its submission to the draft determination, during these periods it is difficult for stakeholders to consult internally, engage with consulting parties and respond due to shut-down periods or staff leave.

<sup>28</sup> Old rule 8.9 of the NEL.

<sup>29</sup> Clause 8.9.2(d) in the final electricity rule.

<sup>30</sup> Old rule 8.9(f) of the NEL.

<sup>31</sup> Clause 8.9.1(k) of the final electricity rule.

This applies to all three consultation procedures: minor, expedited, and both rounds of the standard process.

Under the current rules, stakeholders request meetings in their submissions and must give reasons why a meeting is necessary or desirable.<sup>32</sup> A consulting party is then required to use its best endeavours to hold any meetings that it concludes are desirable or necessary, and has an additional five weeks to hold the meetings.<sup>33</sup> The current process does not provide for individual meetings for the second round of the process. AEMO's rule change request proposed removing specific provisions for individually requested meetings.<sup>34</sup>

### 2.2.5 Other minor elements of the rule

In addition to the elements listed above, the final electricity rule also:

- Requires that when consulting parties use consultation approaches such as forums and working groups, they publish a summary of the matters raised.<sup>35</sup>
- Requires consulting parties to publish marked-up versions of draft instruments at both draft and final stages so stakeholders can easily understand the changes.<sup>36</sup>
- Enables AEMO to self-initiate amendments to its instruments in Chapter 7 of the NER, using the Rules consultation procedures. Currently, changes to these procedures must be stakeholder-initiated.<sup>37</sup>
- Simplifies the drafting of provisions in other parts of the NER that provided for amendments to the Rules consultation procedures for specified instruments, where those changes mirror the new minor or expedited processes described above.<sup>38</sup>
- Makes consequential changes to other provisions in the NER as required for consistency with the changes to rule 8.9, including deleting provisions that duplicate requirements in the new processes.<sup>39</sup>

### 2.2.6 Changes made from the draft to the final electricity rule

The components of the final rule set out above differ from the draft electricity rule in the following ways:

- When the standard rather than the expedited process should be used:
  - The initial test for using the expedited process has been broadened in the final rule to include "unlikely to have a significant effect on the activities of the registered participants to which the proposal relates".<sup>40</sup>

<sup>32</sup> Old rule 8.9(e) of the NER.

<sup>33</sup> Old rule 8.9(f) of the NER.

<sup>34</sup> AEMO, *Rules consultation procedures - ESB National electricity rules simplification project*, rule change request, 7 January 2021, p. 11.

<sup>35</sup> Clause 8.9.1(f) in the final electricity rule.

<sup>36</sup> Clauses 8.9.2(b)(1), (c)(1), 8.9.3(a)(1), (h)(1), 8.9.4(a)(1), (b)(1) in the final electricity rule. The expectation is the marked-up versions would show the changes to the existing document, as highlighted in CS Energy's comments to the draft determination.

<sup>37</sup> Clause 7.16.7 of the NER, as amended by the final rule.

<sup>38</sup> For example, clauses 4.8.4A(e) and 7.16.7(e) of the NER.

<sup>39</sup> For example, clauses 7.16.3(b), 7.16.4(f), 7.16.7(d), 7.17.4(j)-(m) of the NER.

<sup>40</sup> Definition of "Non-material Proposal" in clause 8.9.1(a) in the final rule.

- The final rule clarifies that, in a written request to switch from the expedited to the standard process, a stakeholder must address the initial test and can also include other reasons.<sup>41</sup>
- The final rule removes the “misconceived or lacking in substance” test for rejecting a stakeholder’s request to switch to the standard process. Instead, the consulting party must consider the information the stakeholder provided, and switch to the standard process if it no longer considers the proposal meets the test for the expedited process.<sup>42</sup>
- New instruments can be subject to the expedited process, provided they meet the same process test as changes to existing instruments, rather than requiring the standard process be used for all new instruments as proposed in the draft rule.<sup>43</sup>
- The final rule clarifies that stakeholders may request an individual meeting to discuss complex, sensitive or confidential matters. Consulting parties have greater discretion when an individual meeting is requested to:<sup>44</sup>
  - hold the meeting; or
  - address the matter using another form of consultation; or
  - explain to the requesting party why the consulting party considers it is not reasonably practicable to hold the meeting or other form of consultation.
- The final rule includes a number of consequential changes and small drafting changes for clarity and consistency.

## 2.3 How the gas rule changes the consultation procedures in the NGR

As proposed by AEMO in the rule change request and addendum,<sup>45</sup> the gas rule removes the Extended consultative procedure from the NGR.<sup>46</sup> Where AEMO was previously required to consult on an instrument according to the Extended consultative procedure, it will now need to consult on that instrument according to the Standard consultative procedure.

The Extended procedures were similar in many respects to the previous Rules consultation procedures (old rule 8.9), while the Standard consultative procedure is a shorter and more flexible two-round process, that is closer in many respects to the time frames in the new Rules consultation procedures.<sup>47</sup>

This removal will only affect five instruments in the NGR, for which AEMO is responsible. Additional detail about these instruments can be found in Table A.3 of the consultation paper to this rule change.<sup>48</sup>

41 Clause 8.9.3(b)(2) in the final rule.

42 Clauses 8.9.3(d)-(e) in the final rule.

43 Definition of “Non-material Proposal” in clause 8.9.1(a) of the final rule, with consequential changes in clause 8.9.3.

44 Clause 8.9.1(k) in the final rule.

45 AEMO, *Rules consultation procedures - ESB National electricity rules simplification project*, rule change request, 7 January 2021, p. 10; AEMO, *Rules consultation procedures - ESB National electricity rules simplification project*, supplementary rule change request, 22 November 2021 p. 6.

46 This procedure was set out in NGR rule 9A, deleted by this final rule.

47 See rule 8 of the NGR and clause 8.9.2 in the final electricity rule.

48 See AEMC, Consultation paper: Improving consultation procedures in the rules, 17 December 2021, pp. 26-27.

## 2.4 Implementation date

The Commission has determined that the more preferable final electricity rule and final gas rule will commence on 11 August 2022.

The changes to the consultation procedures in the NER and NGR will not affect any consultations that had already begun under the existing rules by the effective date of the changes, under savings provisions in the NEL and NGL.<sup>49</sup> The new or revised processes will only apply to consultations where the first consultation document is published after 11 August 2022.<sup>50</sup>

## 2.5 Recommendations to improve the transparency of reviews of subordinate instruments

The more preferable final electricity rule does not give stakeholders a right to initiate reviews of subordinate instruments (for the reasons explained in Chapter 3). However, the Commission strongly supports easily accessible subordinate instruments, transparency of review time frames, and good regulatory practice in responding to stakeholder feedback and proposals.

### **Improving accessibility of subordinate instruments**

To provide greater transparency and accessibility of subordinate instruments, the Commission has introduced in the online NER hyperlinks to all the subordinate instruments that it is responsible for developing or publishing, and proposes to do the same for AEMO and AER instruments when this becomes practicable.<sup>51</sup>

The Commission sees merit in the AER and AEMO also having easily accessible and searchable online collections of the subordinate instruments they administer.<sup>52</sup> The increased transparency and lower transaction costs for stakeholders would represent good regulatory practice. These collections or registers could include information such as:

- the clause of the rules under which the instrument is made
- whether the instrument is mandatory or not
- a static link to the current version of the instrument
- whether and how stakeholders can request amendments to the instrument<sup>53</sup>
- when the instrument was last reviewed by the decision-maker, and the next anticipated review date for the instrument

49 Schedule 2 clause 33(1)(b) of the NEL and Schedule 2 clause 43(1)(b) of the NGL.

50 The Commission notes Energy Queensland's comment in its submission to the draft determination (p. 2.) that consulting parties need to provide industry with sufficient time to implement changes to subordinate instruments before they come into effect. The final electricity rule provides that the draft, as well as final, reports in a consultation process must set out the proposed implementation date, allowing for stakeholder engagement on the appropriateness of the proposed date (clauses 8.9.2(b)(4) and 8.9.3(a)(4)). The length of the implementation period is a matter for discussion with the consulting party in the context of a particular consultation, rather than something that can be specified in the rules.

51 The AEMC and Reliability Panel instruments are also available here: [www.aemc.gov.au/regulation/electricity-guidelines-and-standards](http://www.aemc.gov.au/regulation/electricity-guidelines-and-standards).

52 Suggested by Powerlink in its submission to the consultation paper, p. 3.

53 Under the NER, this is already possible for a limited number of instruments; the final electricity rule adds to this, as outlined above.

- details of an appropriate contact team for the instrument.

The Commission recognises that both AEMO and AER have developed forms of online access to the procedures and guidelines they administer, which provide useful information.<sup>54</sup> These collections could be further developed, at a convenient time, to provide additional information of the types listed above. In particular, stakeholders may benefit from more information on anticipated review dates.

### **Good regulatory practice in responding to stakeholder proposals to amend instruments**

Currently, stakeholders can (of their own accord) send feedback and proposals to consulting parties asking them to make, review or amend subordinate instruments. The Commission sees this input as part of a broader continuous feedback process that helps keep subordinate instruments fit-for-purpose.

The Commission considers that good regulatory practice in responding to stakeholder proposals about subordinate instruments would include (in addition to the register discussed above):

- considering reasonable stakeholder requests for the review of existing instruments, or the making of new instruments, while retaining discretion to act or not,
- responding to stakeholder requests, explaining what the consulting party proposes to do, and
- publishing any stakeholder requests on their website.

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<sup>54</sup> AEMO's collection can be found here <http://aemo.com.au/en/library/procedures>, and some of the AER's collection can be found here <https://www.aer.gov.au/wholesale-markets/guidelines-reviews>.

## 3 WHY THE RULES CONTRIBUTE TO ACHIEVING THE ENERGY OBJECTIVES

This chapter outlines:

- the tests that the Commission applies in deciding whether and how to change the NER, NGR and the NERR
- why the Commission considers the final electricity and gas rules will improve consultation on subordinate instruments, and contribute to achieving the NEO and the NGO, and
- why the Commission has not included certain changes in the rules.

### 3.1 The Commission's rule making tests

This section of the paper outlines the:

- rule-making tests the Commission applies in deciding whether to make a rule change in the NER, NGR or the NERR
- ability of the Commission to make a more preferable rule in certain circumstances, and
- ability to make a differential electricity rule to apply in the Northern Territory in certain circumstances.

#### 3.1.1 Rule changes must contribute to achieving the NEO, NGO or the NERO

The Commission may only make a rule if it is satisfied the rule will, or is likely to, contribute to the achievement of:

- the NEO, with respect to any changes to the NER
- the NGO, with respect to any changes to the NGR, and
- the NERO, with respect to any changes to the NERR.<sup>55</sup>

The NEO is:<sup>56</sup>

to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to:

- (a) price, quality, safety, reliability and security of supply of electricity; and
- (b) the reliability, safety and security of the national electricity system.

The NGO is:<sup>57</sup>

to promote efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers of natural gas with respect to price, safety, reliability and security of supply of natural gas.

<sup>55</sup> See Section 88 of the NEL, Section 291(1) of the NGL and Section 13 of the NERL.

<sup>56</sup> Section 7 of the NER.

<sup>57</sup> Section 23 of the NGL.

The NERO is:<sup>58</sup>

to promote efficient investment in, and efficient operation and use of, energy services for the long term interests of consumers of energy with respect to price, quality, safety, reliability and security of supply of energy.

In making rules relating to the NERR, the Commission must also, where relevant, satisfy itself that the rule is “compatible with the development and application of consumer protections for small customers, including (but not limited to) protections relating to hardship customers” (the “consumer protections test”).<sup>59</sup> Where the consumer protections test is relevant in the making of a rule, the Commission must be satisfied that both the NERO test and the consumer protections test have been met.<sup>60</sup> If the Commission is satisfied that one test, but not the other, has been met, the rule cannot be made. There may be some overlap in the application of the two tests. For example, a rule that provides a new protection for small customers may also, but will not necessarily, promote the NERO.

### 3.1.2 Making a more preferable rule

Under s. 91A of the NEL, s. 296 of the NGL and s. 244 of the NERL, the Commission may make a rule that is different (including materially different) to a proposed rule (a more preferable rule) if it is satisfied that, having regard to the issue or issues raised in the rule change request, the more preferable rule will or is likely to better contribute to the achievement of the NEO, NGO or the NERO.

For this rule change proposal, the Commission has made a more preferable electricity rule and the proposed gas rule. The reasons are summarised in sections 3.3 and 3.4 below.

### 3.1.3 Making electricity rules in the Northern Territory

The NER, as amended from time to time, apply in the Northern Territory, subject to modifications set out in regulations made under the Northern Territory legislation adopting the NEL.<sup>61</sup>

The electricity rule relates to parts of the NER that apply in the Northern Territory,<sup>62</sup> and the Commission has therefore assessed the rule against additional elements required by the Northern Territory legislation:

- *Should the NEO test include the Northern Territory electricity systems?* Yes. For this rule change request, the Commission has determined that the reference to the “national electricity system” in the NEO includes the local electricity systems in the Northern Territory, as well as the national electricity system.

58 Section 13 of the NERL.

59 Section 236(2)(b) of the NERL.

60 That is, the legal tests set out in section. 236(1) and (2)(b) of the NERL.

61 *National Electricity (Northern Territory) (National Uniform Legislation) Act 2015 (NT Act)*. The regulations under the NT Act are the National Electricity (Northern Territory) (National Uniform Legislation) (Modification) Regulations 2016.

62 Under the NT Act and its regulations, only certain parts of the NER have been adopted in the Northern Territory. The version of the NER that applies in the Northern Territory is available on the AEMC website at [www.aemc.gov.au/regulation/energy-rules/northern-territory-electricity-market-rules/current](http://www.aemc.gov.au/regulation/energy-rules/northern-territory-electricity-market-rules/current).

- *Should the rule be different in the Northern Territory?* No. In making the electricity rule, the Commission has considered whether a uniform or differential rule should apply to the Northern Territory. The rule determination is to make a uniform rule because the different physical characteristics of the Northern Territory's network would not affect the operation of the rule in such a way that a differential rule would better achieve the NEO in this instance.

See Appendix A for further information on these determinations.

## 3.2 Assessment framework for this rule change

To assess the extent to which the rules, and the rules proposed in the rule change request, are likely to contribute to achieving the relevant energy objective and address the issues raised in the rule change request, the Commission considered the following assessment criteria:

- **Innovation - flexible, fit-for-purpose consultation:**
  - In the rule change request, AEMO raised concerns that the current Rules consultation procedures do not give the consulting party sufficient flexibility to tailor consultation to the issue under consideration. Some regulatory issues may have relatively straightforward solutions with limited options, and need to be implemented quickly, while others will have deeper or broader impacts or options that need to be consulted on in more depth.<sup>63</sup> Additionally, AEMO considered the current Rules consultation procedures do not encourage innovative consultation or incremental improvement.<sup>64</sup>
  - Therefore, the Commission's assessment criteria included considering whether the rules facilitated better quality subordinate instruments by promoting flexible engagement that can be adapted to the nature of the specific instrument being introduced or amended, and also any material issues uncovered during the consultation process. The Commission examined the extent to which the rule promoted fit-for-purpose consultation, allowed for innovative methods of engagement, and made it easier to regularly update instruments.
- **Principles of good regulatory practice - predictability and stability, simplicity, efficacy and transparency:**
  - AEMO considered that the existing Rules consultation procedures discouraged transparency and were uncertain and unnecessarily complex.<sup>65</sup> AEMO also stated there was a need to simplify, streamline, and improve the efficiency of the Rules consultation procedures and other consultation processes across the rules, so they better supported the implementation of reform initiatives.<sup>66</sup>

<sup>63</sup> AEMO, *Rules consultation procedures - ESB national electricity rules simplification project*, rule change addendum, 22 November 2021, p.2.

<sup>64</sup> AEMO *Rules consultation procedures - ESB National electricity rules simplification project*, rule change request, 7 January 2021, p.8.

<sup>65</sup> AEMO, *Rules consultation procedures - ESB National electricity rules simplification project*, rule change request, 7 January 2021, p. 8.

<sup>66</sup> AEMO, *Rules consultation procedures - ESB National electricity rules simplification project*, rule change request, 7 January 2021, p. 2.

- To address these challenges, the Commission’s assessment criteria looked to develop consultation processes that promoted transparency. It also considered if these processes provided predictability for stakeholders and appropriate accountability for the consulting party while avoiding unnecessary delay and overly burdensome processes. The rule change has also sought to facilitate appropriate consultation relative to a project’s complexity and the degree of potential information asymmetry between stakeholders and the consulting party. Further, the Commission considered if the process provided opportunities for stakeholders to engage with the consulting party, and provided sufficient checks and balances<sup>67</sup>
- **Implementation considerations - cost and complexity:**
  - While AEMO did not consider that the implementation of its proposed rule would have obvious material costs,<sup>68</sup> the Commission has considered the regulatory and administrative benefits and costs associated with implementing the rule change. Particularly, it examined if the cost of implementing the proposed solution for market participants and market bodies was proportional to the benefits of managing the issues to be resolved?

### 3.3 Why the electricity rule is likely to contribute to the NEO

This section analyses how the more preferable electricity rule meets the assessment criteria and therefore is likely to contribute to the achievement of the NEO, taking into consideration the proposed rule, the issues raised by AEMO in the rule change request and matters stakeholders raised in submissions.

#### 3.3.1 Flexibility on the number of rounds of consultation allows for fit-for-purpose processes

The Commission considers the more preferable electricity rule balances flexibility for the consulting party with good regulatory practices, including transparency and predictability. The amendments the Commission has made from the draft to final rule make the consultation process clearer for stakeholders, more flexible for the consulting party and more closely aligned to the impacts of the proposal regarding the subordinate instruments. This accords with stakeholder support for flexible and pragmatic consultation processes, where certainty, transparency, and the ability to provide meaningful input are not compromised.<sup>69</sup>

#### **Allowing the consulting party to choose one round of consultation in certain circumstances supports fit-for-purpose consultation and efficacy**

The new expedited process for non-material changes to existing instruments, and new instruments, allows consulting parties to use a simpler and quicker process where one round

<sup>67</sup> The Commission revised the criteria on good regulatory practice in response to submissions on the consultation paper, by adding references to information asymmetry, opportunity for engagement with the consulting party, and sufficient checks and balances.

<sup>68</sup> AEMO, Rules consultation procedures - ESB National electricity rules simplification project, rule change request, 7 January 2021, pp. 13-14.

<sup>69</sup> Submissions to the consultation paper, APGA p. 2, Plus ES p. 1, Vector p. 1 EnergyAustralia p. 3, Energy Queensland p. 3. The rule approach has similarities to the three tiered framework proposed by EnergyAustralia, p. 4. Submissions to the draft determination, Origin p.1, CitiPower, Powercor and United Energy p. 1, CS Energy p.1, EnergyAustralia p.1, Energy Queensland p. 1, Powerlink Queensland p.1, AGL p. 1, Australian Energy Council p. 1, AusNet p.1, EUAA p. 1, Snowy Hydro p.1-2, AEMO p. 1 - 2 and AER p.1.

of consultation is appropriate, encouraging more frequent, incremental improvements to instruments.

Introducing an expedited process alongside a standard two-round process provides flexibility at least equivalent to AEMO's proposal, as both approaches allow a consulting party to use one round of consultation for non-material matters and two rounds at other times. There was strong stakeholder support for this approach.<sup>70</sup>

Flexibility is also provided via the ability to revert to the standard process from an expedited process and to extend the time frames for the standard process when an issue requires greater analysis or deliberation.

### **Using the expedited process for new instruments where appropriate fosters fit-for-purpose consultation**

The Commission's final rule provides that new instruments will be subject to the same consultation framework as existing instruments. This allows for the expedited process to be used for low-impact new instruments (rather than the standard consultation process being used for all new instruments as was proposed in the draft rule).

The experience of the recent *AER Reporting on market outcomes* rule change has highlighted that it is appropriate for some new instruments to be subject to the expedited process. The Commission recently determined that the AER could use one round of consultation in developing this new guideline on the basis that:

- The AER conducted informal consultation with stakeholders on the content and consultation process for its guideline. It received low levels of stakeholder interest which mirrored the low levels of stakeholder interest received for the rule change.
- The guideline is unlikely to materially impact the functioning of the wholesale electricity market, market participants or consumers, nor will it introduce material costs for industry.
- The contents of the new guideline relate to an existing arrangement that amends the current reporting requirements on significant price outcomes as opposed to introducing new arrangements which stakeholders are unfamiliar with.<sup>71</sup>

The Commission notes some stakeholder support for the standard process applying to all new instruments.<sup>72</sup> However, it considers that allowing the expedited process to be used where appropriate for new instruments fosters fit-for-purpose consultation and good regulatory practice, without compromising the quality of subordinate instruments.<sup>73</sup> The Commission considers it simpler and appropriate for the same process to apply to both new and existing instruments, rather than having a different test for consultation on new instruments. As with existing instruments, stakeholders will have a right to ask a consulting party to switch from the expedited to the standard process for new instruments.

<sup>70</sup> Submissions to the consultation paper supporting the expedited process: AGL, Enel X, Origin Energy, Shell Energy, Snowy group, Stanwell, APA, AusNet Services, Energy Queensland, Jemena, EUAA, PIAC, AEC, APGA, ENA. Submissions to the draft rule supporting an expedited process included: Origin, Powerlink, AGL, AEC, AusNet, CitiPower, Powercor and United Energy, CS Energy, EnergyAustralia, Energy Queensland, Plus ES, EUAA, Snowy Hydro, AEMO and the AER.

<sup>71</sup> This can be viewed [here](#), AEMC, AER Reporting on market outcomes - Final determination, 19 May 2022, p. 10

<sup>72</sup> For example in response to the draft determination, CitiPower, Powercor and United Energy.

<sup>73</sup> This approach is consistent with the views expressed by AEMO and the AER in their submissions to the draft determination.

## **Clarifying the test for using two rounds of consultation supports predictability and transparency**

The introduction of a test to determine whether a new instrument or amendment to an existing instrument is “non-material” (and therefore when one or two rounds of consultation is appropriate) will provide transparency and predictability.

In the draft rule, the test was (in simple terms) whether the change would likely have a significant impact on the NEM. The Commission proposed that, if a change to an existing instrument would likely have a significant impact on the NEM, then the standard process with two rounds of consultation should be used.

The Commission has now determined to broaden the initial test. Two rounds of consultation will apply for changes to instruments, or new instruments, that are likely to have a significant effect on the NEM, or on the activities of the registered participants to which the proposal relates. The Commission’s decision takes into account stakeholder comments on the draft rule.<sup>74</sup>

The Commission recognises that some stakeholders consider the term ‘significant effect on the NEM’ to be imprecise.<sup>75</sup> As indicated in the draft determination, the Commission considers that in-depth consultation is warranted on regulatory proposals that are likely to significantly impact on:

- investment or operational decisions in the market (e.g. arising from information provision requirements on industry, including information quantity, nature, detail, timing, etc); and
- the costs of participating in the market or complying with the market requirements (e.g. arising from changes in how participants are required to provide their services or operate or the availability of information).<sup>76</sup>

In relation to both of these impacts, the Commission considers that a significant impact on the participants in the market will involve an impact on a group, class or category of participant.<sup>77</sup> It notes that subordinate instruments by their nature “tend to focus more narrowly on a particular aspect of the NEM” than the rules.<sup>78</sup> This view supports the application of a different threshold for consultation on subordinate instruments to that which applies under the energy laws to the Commission’s rule making.<sup>79</sup>

The Commission has chosen outcome measures (impact on NEM or participants) for assessing when the standard process should be used, rather than measures such as the extent of previous consultation or the number of alternative options, which do not necessarily relate to outcomes.

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74 EUAA, AEC, Telstra, Energy Queensland, Plus ES, AusNet and CS Energy for example argued the initial test needed to be broader to include the potential impact on classes of participants.

75 The AEC commented that this term could be clarified. AEC, Submission to the draft determination, p. 1.

76 Improving consultation procedures in the rules, Draft determination, 14 April 2022, p. 18.

77 That is, the consulting party, should not focus just on the impact on an individual participant and its business.

78 EUAA submission to the draft determination, p. 1.

79 NEL section 87 defines a “non-controversial Rule” as one that is unlikely to have a significant effect on the NEM.

### **Providing stakeholders with the ability to request two rounds of consultation - on any grounds - is good regulatory practice**

Allowing stakeholders to object to the use of an expedited process if they view the test has not been applied appropriately, or for other reasons, aligns with principles of good regulatory practice. The draft rule required a stakeholder's written request to address the initial test. To promote certainty, the Commission has made it clear in the final rule that, as well as addressing the initial test, a stakeholder may also include additional reasons for requesting a switch to the standard consultation process.<sup>80</sup> Such reasons could include:

- the volume of regulatory change underway which may prevent stakeholders from reviewing and responding to an expedited consultation within the 2-week objection period
- a change in circumstances since the publication of the draft instrument.

This will also foster fit-for-purpose consultation as it increases the information a consulting party has when deciding when two consultation rounds (or longer time frames and one round for instance) are warranted.

### **Giving the consulting party discretion on requests to switch consultation procedures supports good regulatory practice, given the broader initial test and greater transparency**

The Commission has considered the three aspects of the "switching" process as a whole. The broadening of the initial test for the standard process will result in more changes/new instruments being subject to the standard process than would have been the case under the draft rule. On this basis, the Commission considers it good regulatory practice for the consulting party to have discretion regarding requests to switch from expedited to a standard process after considering all the reasons/information provided by the stakeholder requesting the standard process. To foster transparency and accountability, the consulting party must publish reasons for a decision not to switch.<sup>81</sup>

The Commission notes that the "misconceived or lacking in substance" test (the NEL test that the Commission uses) was supported by some stakeholders,<sup>82</sup> and not supported by others (on the basis it draws focus away from the proposal's impact, adds complexity and cost, and creates delays).<sup>83</sup> The Commission considers the approach in the final rule is likely to result in consulting parties taking a conservative approach to rejecting requests to switch and discussing issues with the party requesting the switch.<sup>84</sup> The Commission does not consider further accountability mechanisms on consulting parties, such as a formal dispute resolution mechanism as proposed by the EUAA, is an appropriate governance arrangement.<sup>85</sup> The requirement on a consulting party to publish its reasons not to switch should sufficiently incentivise effective and transparent consultation, if such an incentive is needed.

80 Final electricity rule, clause 8.9.3(b)(2). See submissions by Telstra, CS Energy, AEMO, and Plus ES to the draft determination.

81 Final electricity rule, clause 8.9.3(c).

82 For instance, Telstra.

83 AEMO and AER submissions to the draft determination.

84 Comments made in submissions to the draft determination by the AEC, Ausnet, Citipower and Plus ES.

85 EUAA submission to the draft determination p. 2

### 3.3.2

#### **Updated timelines for standard consultations increase flexibility and support good regulatory practice**

The updated time frames for the standard process support good regulatory practice compared to the current rule and the proposed rule, as they provide more time for public consultation overall, and balance certainty for stakeholders and flexibility for consulting parties.

#### **Setting a deadline for the consulting party to prepare documents creates predictability and increases transparency**

The introduction of clearly defined minimum and maximum durations (with extensions only available for limited reasons) supports simplicity, predictability and transparency, particularly in comparison to the current rule that does not include publication deadlines. This is also consistent with AEMO's and stakeholder views on the need for maximum time frames for the overall amendment and development process.<sup>86</sup>

The Commission considers the ten-week maximum decision-making period for consulting parties at both the draft and final stages will (except in complex matters - see below) give sufficient time for due consideration of feedback and internal approvals, and recognises resourcing pressures on consulting parties. Also, these are maximum durations. A consulting party may publish its draft or final report earlier, for example if a matter is straightforward.

#### **Giving the consulting party the option to extend timelines increases flexibility**

Giving a consulting party the ability to extend consultation and publication time frames provides flexibility and fosters fit-for-purpose consultation. It allows for sufficient consideration of complex questions, including those raised by stakeholders.<sup>87</sup> It also provides time, should it be needed, for consideration of material changes in circumstances. For stakeholders, the Commission considers four weeks is a sufficient minimum period as the standard duration. Providing a six-week minimum consultation period for both the expedited process and first round of the standard process as the baseline<sup>88</sup> would cause unnecessary delays to consultations on less material matters or initial issue-based consultation.

The extension provision in the final rule is consistent with stakeholder support for extensions for unforeseen circumstances or complexity<sup>89</sup> and an appropriate amount of flexibility in time frames.<sup>90</sup>

#### **Ten business days to lodge objections to the expedited process avoids delays**

The Commission considers that giving stakeholders 15 business days to object to the use of the expedited process is not consistent with the rules approach set out in the NEL for AEMC

<sup>86</sup> AEMO noted that the current arrangements, with no publication deadlines, provide no transparency to consulted persons and no clarity for consulting parties. AEMO, *Rules consultation procedures - ESB National electricity rules simplification project*, rule change request, 7 January 2021, p. 7. See also Shell Energy, submission to the consultation paper, p. 2.

<sup>87</sup> Complexity would often encompass matters on which there is an absence of consensus, Plus ES submission to the draft determination.

<sup>88</sup> Origin submission to the draft determination

<sup>89</sup> Submissions to the consultation paper: EnergyAustralia, p. 5 and Plus ES, p. 2.

<sup>90</sup> Submissions to the consultation paper: AEC, p. 3. and Plus ES, p. 3.

rule making that has worked to date on rule changes, and could impact the broader consultation occurring on the issue given the minimum consultation period is four weeks.

### 3.3.3 **The new process for minor and administrative changes is fit-for-purpose and simple**

The final rule will allow consulting parties to use a simpler and quicker process for minor and administrative amendments, allowing fit-for-purpose consultation.<sup>91</sup> This will facilitate more frequent and efficient minor corrections to procedures and guidelines than would be possible under the current rules (which in many cases require two full rounds of consultation for all types of amendments).<sup>92</sup>

The Commission notes differing stakeholder views,<sup>93</sup> but maintains that requiring a limited amount of consultation on most minor changes will foster transparency and support better regulatory decisions. For example, stakeholders will be able to identify cases where a proposed minor change will have unintended consequences, and consulting parties must publish reasons for their amendments.

The costs of conducting a minor process should be minimal as it only involves a ten-day consultation period.<sup>94</sup> Any additional regulatory burden can be minimised on the basis that a consulting party can:

- consult simultaneously on minor changes to several instruments (similar to the way in which the Commission often consults on changes to more than one rule set in its minor rule change processes)
- make a final decision as soon as it is reasonably practicable (rather than having a set time frame).

The Commission encourages consulting parties to compile minor and administrative amendments across instruments and consult on these in batches as outlined above.<sup>95</sup> However, we do not consider it appropriate to mandate this in the rules.

### 3.3.4 **The revised meeting provisions add flexibility and provide greater transparency than the proposed rule**

The more preferable rule maintains the ability for stakeholders to request a meeting but seeks to make meetings more timely and useful. The final rule has made the grounds for an individual meeting clearer, requires a consulting party explain to a stakeholder when no consultation is to occur, and retains a consulting party's discretion. The Commission considers

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91 The terms "minor and administrative", or equivalent, are currently used in the NEL and NER, without being defined, and the Commission considers these terms are understood in light of the dictionary meanings of those words. For clarity, in response to the submission on the draft determination from CS Energy (p. 3), the Commission considers such changes would include correcting minor errors such as incorrect cross-references, and updating the form or structure of an instrument, but would not include changes with any significant impacts on regulated parties.

92 AEMO noted in its rule change request that requiring a full consultation process for minor amendments discourages improvements. AEMO, *Rules consultation procedures - ESB National electricity rules simplification project*, rule change request, 7 January 2021, p. 7.

93 The AER did not support a new process and supported maintaining existing exemptions while Telstra stated it could not see a case for maintaining existing exemptions, submissions to the draft determination pps 1-2 and pps2-3 respectively

94 The Commission notes Energy Queensland's request for a 15 day period of consultation but considers that a ten-day consultation period is appropriate to the nature of the matters being consulted on.

95 CS Energy suggested this in its submission to the draft determination.

this provides transparency, efficacy and appropriate checks and balances, while fostering fit-for-purpose consultation.

The Commission has considered a range of options regarding meeting provisions:

- **Current rules.** A consulting party is only required to meet individually with a stakeholder when it considers the meeting is “desirable or necessary”.
- **Rule change proposal.** Stakeholders were concerned with or opposed to the proposal to remove industry rights to request a meeting.<sup>96</sup>
- **Draft rule.** This put the onus on consulting parties to hold a meeting on request, unless it was “not reasonably practicable”. Stakeholders had argued that the necessity or desirability of a meeting is difficult to assess until after the parties have examined the confidential matter and/or issues in detail in the meeting. Also, some commented that securing meetings with consulting parties was becoming increasingly difficult<sup>97</sup> while others did not but supported the meeting provision being retained.<sup>98</sup> The draft rule was welcomed by industry, that noted they are resource constrained and unlikely to request meetings unnecessarily. It was not supported by AEMO and the AER, on the basis that: individual meetings are only necessary or desirable to communicate complex, in-depth or sensitive information, and a consulting party should have the discretion over whether the meeting is “desirable or necessary” or another form of consultation is more appropriate.

The Commission considers it achieves:

- industry certainty by indicating in the rules the grounds for an individual meeting: when there is complex, sensitive or confidential information to discuss. These factors are consistent with those provided to the Commission in submissions to the consultation paper and draft determination<sup>99</sup>
- Good regulatory practice, and furthers fit-for-purpose consultation, to allow consulting parties to use alternate consultation methods when issues can be appropriately and effectively examined in discussion-based formats with stakeholders (e.g. working groups).<sup>100</sup>
- Good regulatory practice for consulting parties to respond to requests for further consultation that they do not meet, with an explanation.

Under the final rule, stakeholders will be able to ask during any consultation period to meet with the consulting party. Currently, stakeholders can only request a meeting in their written submission, during the initial round of consultation. This will give consulting parties earlier notice of meeting requests. It also means that meetings can occur during a consultation period and thereby inform stakeholders’ submissions.

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96 Submissions to the consultation paper: Citipower, Powercor and United Energy, p. 1., ENA, p. 2. Enel X p. 2., EnergyAustralia, p. 5., Plus ES, p. 3., Origin Energy, p. 2., Energy Queensland, p. 5.

97 Citipower, Powercor and United Energy submission to the consultation paper.

98 EnelX submission to the draft determination.

99 Submissions to the consultation paper EnergyAustralia, Plus ES and Origin and submissions to the draft determination, AEMO p.3. The Commission considers complexity would incorporate examining issues “in depth”.

100 The Commission notes that large forums are useful for information dissemination but typically do not lend themselves to problem-solving and in-depth discussion.

### 3.3.5 **AEMO's new ability to initiate changes to certain instruments creates consistency and supports flexibility**

In the rule change request, AEMO requested the ability to initiate changes to some instruments where it is currently not able to do so.<sup>101</sup> The Commission considers adopting this proposal in Chapter 7 of the NER creates consistency across different types of instruments, as currently AEMO can self-initiate amendments to most, but not all, instruments.<sup>102</sup> It also increases flexibility and reduces regulatory burden, as it does not require a stakeholder to propose these changes. (Currently, changes to these processes must be stakeholder-initiated.)

## 3.4 **Why the gas rule is likely to contribute to the NGO**

This section of the final determination explains why the Commission considers that the proposed gas rule meets the assessment criteria, and therefore is likely to contribute to the achievement of the NGO, taking into consideration the issues raised by AEMO in the rule change request and by stakeholders in submissions on the consultation paper and draft determination.

### 3.4.1 **The rule allows for flexible, fit-for-purpose consultation**

The gas rule, which is consistent with AEMO's preferred position in its addendum to its rule change request,<sup>103</sup> removes the Extended consultative procedure. The consulting party would use the Standard consultative procedure instead. The rule simplifies the consultation framework overall by reducing the number of consultation procedures in the NGR.

Many stakeholders and AEMO supported removing the Extended consultative procedure.<sup>104</sup> Only AusNet Services and AGL opposed the changes.<sup>105</sup>

### 3.4.2 **The rule supports good regulatory practice**

The Standard consultative procedure provides a good consultation framework, with a transparent two-stage process. It is an existing, simple and predictable process that requires a consulting party to publish reasons for any decision. Stakeholders did not raise concerns about the quality and transparency of consultation under the Standard consultative procedure.

### 3.4.3 **Implementation considerations favour the rule**

The Commission considered the option (raised in the rule change request) of replacing the Extended consultative procedure with a process consistent with the new Rules consultation

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101 AEMO, *Rules consultation procedures - ESB National electricity rules simplification project*, rule change request, 7 January 2021, p. 7.

102 See for instance clause 7.17.4 - Changing B2B procedures.

103 AEMO, *Supplementary electricity and gas rule change proposal, Rules consultation procedures - ESB National electricity rules simplification project*, 22 November 2021, p. 6.

104 Submissions to the consultation paper: Enel X, p.1, EnergyAustralia, p. 6. Shell Energy, p. 2. Snowy Group, p.1, Stanwell, p. 1. APGA, p. 2. ENA, p. 1, APA, p. 7., Jemena, p. 2. and AEMO, p. 1.

105 Submissions to the consultation paper: AusNet Services, AGL.

procedures in the NER.<sup>106</sup> However, recognising that the gas industry already has familiarity with gas procedures, we did not consider that the benefits of this change would outweigh the costs.

It is unlikely that the rule change will increase cost or complexity relative to adopting a process similar to the revised NER consultation procedures or retaining the status quo. The Commission notes that:

- Stakeholders that have experience with the Standard consultative procedure have not pointed out any specific cost or complexity issues.
- The Standard consultative procedure is less prescriptive than the Extended consultation procedure, which should reduce the regulatory burden for the consulting party in undertaking consultation.

### 3.5 Why the Commission has not made broader changes in the final rules

Potential broader changes to consultation procedures across the NER, NGR and NERR were raised in the consultation paper and in submissions to the consultation paper and draft determination, but were not included in the final rules. The issues and feedback included:

- aligning other consultation processes in the NER (such as the transmission and distribution consultation procedures, and the Reliability Panel's process) with the revised Rules consultation procedures<sup>107</sup>
- aligning the set of consultation processes in the NGR, and the retail consultation procedure in the NERR, with the revised Rules consultation procedures.<sup>108</sup>
- as an alternative to full alignment across rule sets, including some elements of the new electricity consultation procedures in the NGR, such as the expedited and minor/administrative processes and the stakeholder meeting provisions<sup>109</sup>
- giving stakeholders the right to request changes to instruments.<sup>110</sup>

The Commission did not include these changes in the final rules. The following sections discuss why the Commission does not consider that these changes are likely to meet the assessment criteria, and therefore are not likely to contribute to the achievement of the relevant energy objectives, taking into consideration the current rules, issues raised in the

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106 AEMO, *Rules consultation procedures - ESB National electricity rules simplification project*, rule change request, 7 January 2021, p. 10.

107 Several submissions to the consultation paper supported aligning the Reliability Panel's process with the revised Rules consultation procedures, see: Enel X, p.1, EnergyAustralia, p. 6. Shell Energy, p. 2. Snowy Group, p.1, Stanwell, p. 1.

108 The same stakeholders that supported aligning the Reliability Panel's process with the revised Rules consultation procedures also supported aligning the NGR and NERR with the revised Rules consultation procedures. See submissions to the consultation paper: Enel X, p.1, EnergyAustralia, p. 6. Shell Energy, p. 2. Snowy Group, p.1, Stanwell, p. 1

109 Origin Energy's submission to the draft determination (p. 2) recommended that the new expedited and minor/administrative processes proposed for the electricity rules should also be applied in the NGR. Snowy Hydro's submission to the draft determination requested the standard consultative procedure in the NGR include stakeholder meeting provisions.

110 The following stakeholders supported giving stakeholders the right to request changes to instruments in submissions to the draft determination: CS Energy, EnergyAustralia, EUAA and Energy Queensland, and in submissions to the consultation paper: CS Energy p. 8., Enel X, p. 2., Energy Australia, p. 2., Snowy Group, p. 5, Energy Queensland, p. 6., PIAC, p. 2. and Vector p. 5.

rule change request, and issues raised in submissions on the consultation paper and draft determination.

### **3.5.1 Aligning the consultation procedures across the NER, NGR and NERR would not necessarily support more flexible or fit-for-purpose consultation**

The other existing consultation procedures in the NER, NGR and NERR already provide a consulting party with a reasonable degree of flexibility.

In relation to the NERR, the AER, which is the consulting party for all the instruments that are required to consult according to the Retail consultation procedures, noted that these procedures are already proportionate and provide appropriate flexibility in how it can consult.<sup>111</sup>

It is not clear that applying the updated Rules consultation procedures would be more flexible or fit-for-purpose than the existing processes under the NERR or NGR, or the other consultation processes in the NER.

### **3.5.2 Alignment would not necessarily support better regulatory practice**

Several stakeholders supported harmonising processes for the NER, NGR and NERR. While the Commission acknowledges there may be value in harmonising different consultation processes, in terms of simplifying the rules, this needs to be appropriately considered against the fact that certain consultation processes may be more appropriate for different instruments. This may be because a particular process is more complex or because it may have a greater market impact.<sup>112</sup> Seeking harmonisation for its own sake should be a secondary objective to recognising what good regulatory practice is in relation to individual instruments.<sup>113</sup>

### **3.5.3 Alignment is unlikely to reduce implementation complexity or lower costs**

A broad rule change that harmonised consultation processes across the three rule sets may give rise to substantial implementation costs, given the number of processes in question and the number of parties that use those processes. Energy Queensland expressed concerns that making changes to existing processes risked increased costs to stakeholders.<sup>114</sup> On the other hand, in the longer term cost savings could arise from only having to deal with three consultation processes (minor, expedited and standard) across all the rules. On balance, the Commission's view is that the benefits from harmonising the consultation procedures across the rule sets are unlikely to outweigh the added cost of implementing the changes.

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<sup>111</sup> AER, submission to the consultation paper, p. 2.

<sup>112</sup> AGL noted that compared to the NER procedures, there were significant differences in the application of the Retail consultation procedures to the industry and how it affected business operations and a retailer's interactions with customers. AGL, Submission to the consultation paper, p. 3.

<sup>113</sup> Energy Queensland, Submission to the consultation paper, p. 9. AGL, submission to the consultation paper, p. 2.

<sup>114</sup> Energy Queensland, Submission to the consultation paper, p. 9.

### 3.5.4 **Further changes to the NGR procedures may not be needed for fit-for-purpose consultation**

A limited number of stakeholders requested specific changes to the consultation processes in the NGR (falling short of full harmonisation with the new NER consultation processes). Specifically, including the expedited and minor/ administrative processes in the NGR, and including meeting provisions in the standard consultative procedures.<sup>115</sup>

However, the Commission is not aware of evidence that these changes are necessary in order to allow fit-for-purpose consultation to occur under the NGR. For example, parties using the standard consultative procedure in the NGR are currently able to hold stakeholder meetings and would be expected to do so where this would be good regulatory practice in the circumstances.

Further, as discussed above, the Commission has sought through this rule change to deliver a simple, low-cost solution. The Commission has focused on addressing the key issues raised in the rule change request with targeted changes and has determined not to make any wider changes in this rule change.

Consistently with the approach to the NERR outlined below, any specific concerns with existing NGR consultation processes may be best considered in a separate process.

### 3.5.5 **NERR-specific issues may be better addressed in a separate process**

AGL and Snowy expressed concern with the Retail consultation procedures, noting that they involve limited consultation and lack an obligation on the AER to consider the costs of changes against the benefits. However, neither suggested that harmonising the Rules and Retail consultation procedures would resolve these issues.<sup>116</sup> AGL noted that there was a need for a more focused review of the effectiveness of the development and amendment of NERR instruments, but acknowledged that this may be outside the scope of this rule change.<sup>117</sup> The Commission notes AGL's concerns regarding the Retail consultation procedures and agrees that a separate investigation focusing on the NERR may be a better avenue to explore these issues, given the significant differences in the nature and impact of NER and NERR instruments.

### 3.5.6 **Responding appropriately to stakeholder requests can be addressed through good regulatory practice**

The final electricity rule does not give stakeholders a right to trigger a review of an instrument or determination. In their submissions to the draft determination, CS Energy, Energy Australia, EUAA and Energy Queensland argued strongly for a stakeholder right to trigger a review on the basis that:

- currently the process is not transparent and predictable - stakeholders have no opportunity to request changes they see as benefiting the market and better meeting the NEO

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<sup>115</sup> These changes were proposed by Origin Energy and Snowy Hydro, respectively, as noted above.

<sup>116</sup> Submissions to the consultation paper: AGL p. 2, Snowy Group pp. 4-5.

<sup>117</sup> AGL, Submission to the consultation paper, p. 2.

- stakeholders face the same resource constraints and have the same incentive to reduce regulatory burden as regulators, so would not unnecessarily request a review
- industry is well positioned to understand the need for change and market bodies need to be responsive to market interests
- including such a right would be in the interests of consumers.

The Commission has noted these views and considered a range of policy responses, including:

- enshrining a right in the rules for stakeholders to initiate a review of an instrument (as exists in Chapter 7) or a formal dispute process when there is no action by the consulting party<sup>118</sup>
- establishing in the rules requirements to provide certainty and transparency (e.g. time frames within which a consulting party needs to respond to a request to change an instrument)
- no change to the draft rule on this point.

The Commission agrees that industry feedback outside established consultation processes can improve the quality of subordinate instruments. However, it does not consider that giving stakeholders a right in the NER to trigger changes for all instruments subject to the Rules consultation procedure is aligned with good regulatory practice, as doing so could impose significant resource commitments on consulting parties irrespective of their other statutory obligations, commitments and priorities.<sup>119</sup> While stakeholders can request the Commission to make a rule, the Commission's role is to make and amend the rules. The other market bodies have different primary functions. Finally, consulting parties are required to review some instruments periodically under the NER, and will also review instruments where there are material changes in circumstances, as a matter of good practice.

The Commission also considered establishing time frames in the rules within which a consulting party would have to respond to a stakeholder's proposed change to an instrument (or proposal for the consulting party to make a new instrument) and explain whether it will or will not commence consultation on the proposal. The Commission has not adopted this approach in the final rule, because AEMO staff informed it that a requirement for a consulting party to respond to a stakeholder proposal on an instrument would impose a material additional resource burden on the consulting party, as the consulting party would be required to make a reviewable decision under the NEL.<sup>120</sup>

In this rule change, the Commission has aimed to balance the obligations on the consulting party and the interests of the responding parties. In this instance, the Commission has determined not to address this matter through a rules-based approach. Chapter 2 sets out what the Commission considers to be good regulatory practice for a consulting party when it

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118 Proposed by Energy Queensland.

119 For the same reason, the Commission does not support the introduction of a formal dispute resolution process where there is no action by a consulting party.

120 AEMO is the consulting party for most of the matters determined under the Rules consultation process.

receives a stakeholder request to review an instrument (or if a stakeholder proposes the making of a subordinate instrument).<sup>121</sup>

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<sup>121</sup> Under this good practice approach, stakeholders will still be able to request an instrument review, but the consulting party will retain discretion in relation to that request and there is no formal requirement to respond to the requester. Despite this, the Commission considers it to be good regulatory practice to respond to stakeholder requests.

## ABBREVIATIONS

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
Commission	See AEMC
MCE	Ministerial Council on Energy
NEL	National Electricity Law
NEO	National electricity objective
NER	National electricity rules
NERL	National Energy Retail Law
NERO	National energy retail objective
NERR	National energy retail rules
NGL	National Gas Law
NGO	National gas objective
NGR	National gas rules

## A LEGAL REQUIREMENTS UNDER THE NEL AND NGL

This appendix sets out the relevant legal requirements under the NEL and NGL for the Commission to make this final rule determination.

### A.1 Final rule determination

In accordance with ss. 102 and 102A of the NEL and s. 311 of the NGL, the Commission has made this final rule determination for a more preferable final electricity rule and final gas rule, in relation to the rule proposed by AEMO. The Commission has determined to make no retail rule.

The Commission's reasons for making this final rule determination are set out in chapter 3.

Copies of the more preferable final electricity rule and final gas rule are attached to, and published with, this final rule determination. Their key features are described in chapter 2.

### A.2 Power to make the rules

The Commission is satisfied that the more preferable final electricity rule and final gas rule fall within the subject matter about which the Commission may make rules. The more preferable final electricity rule falls within s. 34 of the NEL and the final gas rule falls within s. 74 of the NGL as those rules relate to:

- regulating the operation of the national electricity market and the operation of a regulated retail gas market, and
- regulating the activities of persons participating in the national electricity market and in a regulated gas market.<sup>122</sup>

### A.3 Commission's considerations

In accordance with s. 103 of the NEL and s. 313 of the NGL, the Commission has made a rule.

In assessing the rule change request the Commission considered:

- its powers under the NEL and NGL to make the final rules
- the rule change request
- submissions received during consultations for the rule change request
- the Commission's analysis as to the ways in which the final rules will or are likely to contribute to the NEO and NGO.

There is no relevant Ministerial Council on Energy (MCE) statement of policy principles for this rule change request.<sup>123</sup>

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<sup>122</sup> Sections 34(1)(a)(i) and (iii) of the NEL, sections 74(1)(a)(iv) and (vi) of the NGL.

<sup>123</sup> Under section 33 of the NEL and section 73 of the NGL the AEMC must have regard to any relevant MCE statement of policy principles in making a rule. The MCE is referenced in the AEMC's governing legislation and is a group of Ministers responsible for energy matters at a national level, sitting as the MCE.

The Commission may only make a rule that has effect with respect to an adoptive jurisdiction if satisfied that the proposed rule is compatible with the proper performance of AEMO's declared network or system functions.<sup>124</sup> The more preferable final electricity rule and final gas rule are compatible with AEMO's declared network and system functions because they would not affect those functions.

## A.4 Making electricity rules in the Northern Territory

### Test for scope of "national electricity system" in the NEO

Under the NT Act, the Commission must regard the reference in the NEO to the "national electricity system" as a reference to whichever of the following the Commission considers appropriate in the circumstances having regard to the nature, scope or operation of the proposed rule:<sup>125</sup>

- (a) the national electricity system
- (b) one or more, or all, of the local electricity systems<sup>126</sup>
- (c) all of the electricity systems referred to above.

### Test for differential rule

Under the NT Act, the Commission may make a differential rule if, having regard to any relevant MCE statement of policy principles, a different rule will, or is likely to, better contribute to the achievement of the NEO than a uniform rule.<sup>127</sup> A differential rule is a rule that:

- varies in its term as between:
  - the national electricity system, and
  - one or more, or all, of the local electricity systems, or
- does not have effect with respect to one or more of those systems

but is not a jurisdictional derogation, participant derogation or rule that has effect with respect to an adoptive jurisdiction for the purpose of s. 91(8) of the NEL.

A uniform rule is a rule that does not vary in its terms between the national electricity system and one or more, or all, of the local electricity systems, and has effect with respect to all of those systems.<sup>128</sup>

The Commission's final determinations in relation to the meaning of the "national electricity system" and whether to make a uniform or differential rule are set out in chapter 3.

124 Section 91(8) of the NEL and section 295(4) of the NGL.

125 Clause 14A of Schedule 1 to the NT Act, inserting section 88(2a) into the NEL as it applies in the Northern Territory.

126 These are specified Northern Territory systems, listed in schedule 2 of the NT Act.

127 Clause 14B of Schedule 1 to the NT Act, inserting section 88AA into the NEL as it applies in the Northern Territory.

128 Clause 14 of Schedule 1 to the NT Act, inserting the definitions of "differential Rule" and "uniform Rule" into section 87 of the NEL as it applies in the Northern Territory.

## A.5 Making gas rules in Western Australia

The versions of the NGL and NGR that apply in Western Australia (WA) differ from the NGL and NGR as they apply in other participating jurisdictions.<sup>129</sup> The final gas rule is amending limited parts of the NGR that do not apply in the WA version of the NGR. Accordingly, the final gas rule will not apply in WA.

## A.6 Civil penalty provisions and conduct provisions

The Commission cannot create new civil penalty provisions or conduct provisions. However, it may recommend to the Energy Ministers Meeting that new or existing provisions of the NER and NGR be classified as civil penalty provisions or conduct provisions.

The more preferable final electricity rule and final gas rule do not amend any clauses that are currently classified as civil penalty provisions or conduct provisions under the National Electricity (South Australia) Regulations or National Gas (South Australia) Regulations. The Commission does not propose to recommend to the Energy Ministers Meeting that any of the proposed amendments made by the more preferable final electricity rule or final gas rule be classified as civil penalty provisions or conduct provisions.

## A.7 Review of operation of final rules

The more preferable final electricity rule and final gas rule do not require the Commission to conduct a formal review of the operation of the rules. The Commission may however self-initiate a review of the operation of the rules at any time if it considers such a review would be appropriate, pursuant to s. 45 of the NEL and s. 83 of the NGL.

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<sup>129</sup> Under the National Gas Access (WA) Act 2009 (WA Gas Act), a modified version of the NGL, known as the National Gas Access (Western Australia) Law (WA Gas Law) was adopted. Under the WA Gas Law, the NGR applying in Western Australia are version 1 of the uniform NGR as amended by the SA Minister under an adoption of amendments order made by the WA Minister for Energy and by the AEMC in accordance with its rule making power under section 74 of the WA Gas Law. See the AEMC website for further information at <https://www.aemc.gov.au/regulation/energy-rules/national-gas-rules/western-australia>.

## B SUMMARY OF OTHER ISSUES RAISED IN SUBMISSIONS

This appendix sets out the issues raised in the second round of consultation on this rule change request, and the Commission’s response to each issue. If we discussed an issue raised in a submission in the main body of this document, it is not included in this table.

**Table B.1: Summary of other issues raised in submissions**

STAKEHOLDER	ISSUE	COMMISSION RESPONSE
Snowy Hydro	Regarding jurisdictional metrology material, concern that removing “in accordance with rule 8.9(k)” will remove the obligation on AEMO to publish the report it provides to jurisdictions.	AEMO is required to publish the report under clause 7.16.4(e), as part of the rules consultation procedure itself.
Snowy Hydro	For Chapter 7 procedures, if AEMO proposes a change to a procedure it should adequately advise of the reasons for the proposed change.	The final rules require that, if AEMO were the proponent of a change to a procedure, then their reasons for proposing the change would be set out in the initial consultation documents. For the expedited process, clause 8.9.3(a)(2) refers to a consulting party’s reasons for the proposal. Clause 8.9.2(a)(1) in the standard process requires a consulting party to explain the particulars of proposal, issues involved and options to address them. This would cover reasons for the proposal.
Snowy Hydro	Retain the 3-day publication timeline that currently applies to AEMO to publish a document where the consulting party is the Information Exchange Committee. Requests that the obligation on AEMO mirrors that of a Transmission Network Service Provider.	This is included in the final rule in clause 8.9.1(j).
Snowy Hydro	Retain the existing requirement on the IEC to consider each valid written submission.	The rule requires a consulting party to detail in its published reports how it has applied the NEO and B2B factors to material

STAKEHOLDER	ISSUE	COMMISSION RESPONSE
		issues. This is a minimum requirement, the IEC may wish to publish its consideration of all issues. In addition, stakeholders can raise any issues they wish and the IEC can, and should, still consider all the issues stakeholders raise.
Snowy Hydro	A consulting party should be required to publish a summary of all issues raised — not just material issues raised — and its responses to all issues.	The use of the term “material” in the rule relates to matters which a consulting party must publish a summary and their responses to those matters. The Commission considers that this is an appropriate minimum requirement. The consulting party can, and should, still consider all issues raised in submissions.
Plus ES and Telstra	The rules should require a consulting party to email stakeholders or the affected parties notifying them of consultation, so that stakeholders do not need to self-monitor websites to stay up to date on consultation on subordinate instruments. For instance, consulting parties could maintain a stakeholder list.	The Commission considers that good regulatory practice would include proactively notifying stakeholders of any consultation and be part of the consultation process. For instance, AEMO and the AER have regular newsletters and communication notices which stakeholders can subscribe to and become notified of upcoming or current consultations. While these stakeholders’ submissions’ raised a notification requirement these submissions did not provide reasons to support prescribing this in the rules.
Snowy Hydro	Consulting parties be required to specify how they had regard to the NEO in making draft and final instruments under any of the rules consultation procedures, noting that the Information Exchange Committee is required to do this in relation to changes to the B2B procedures.	No change made given: <ul style="list-style-type: none"> <li>• two key consulting parties (AEMO and the AER) already have obligations to act in a way that is consistent with the NEO</li> <li>• some rules already contain a requirement for a consulting party to have regard to the NEO in making a specific decision, while for others this may have been purposefully omitted or otherwise less relevant.</li> </ul>