



Australian Energy Market Commission

DRAFT RULE DETERMINATION

National Electricity Amendment (Governance of retail market procedures) Rule 2014

Rule Proponent

Australian Energy Market Operator

8 May 2014

**RULE
CHANGE**

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About the AEMC

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

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Summary of the draft rule determination

The Australian Energy Market Commission (AEMC or Commission) has made a draft determination not to make a rule in relation to the *Governance of retail market procedures* rule change request. It is not satisfied that the proposal to amend the governance framework for the development and administration of business-to-business (B2B) procedures would better promote the National Electricity Objective (NEO), or that changes to the current arrangements are warranted at this time.

For the purposes of this rule change, Chapter 7 of the National Electricity Rules (NER or rules) requires the development of procedures that are referred to as 'retail market procedures.' These procedures are divided into B2B and non-B2B procedures, with the latter managed by the Australian Energy Market Operator (AEMO).

Conversely, B2B procedures are developed and administered under a standalone governance framework, which is managed by an industry committee made up of retailer, distributor and independent members, the Information Exchange Committee (IEC). AEMO provides administrative and secretariat services under this framework, and manages and maintains the B2B e-hub, the electronic information exchange platform that facilitates the B2B communications. AEMO is also obliged to make (that is, approve and publish) B2B procedures on the recommendation of the IEC.

The rule change request was submitted by AEMO (rule proponent). It expressed concerns that the dual arrangements for the making of retail market procedures are problematic because:

- there is uncertainty as to whether the IEC or AEMO has accountability for B2B procedures as both have a distinct role in the making of them;
- the duplication of process is both inefficient and impractical, leading to unnecessary costs and complexity for participants; and
- the detailed specification of the B2B arrangements in the rules mean that they are relatively inflexible and not well suited to responding to market and technological changes in a timely fashion.

The rule proponent sought to address these issues by proposing a rule that would rationalise these processes, integrating the management of all retail market procedures under a single framework to be specified outside of the rules. This new process would be managed by AEMO.

The Commission has determined not to make the rule as proposed. It is not satisfied that the proposed rule will, or is likely to, contribute to the achievement of the NEO. This is because the Commission is not satisfied that a case has been made to shift the control of B2B procedures to AEMO, or that shifting control would lead to better outcomes with respect to B2B decisions.

B2B procedures are related to communications between participants for the purpose of carrying out their day-to-day operations, and do not involve AEMO or otherwise directly affect the wholesale market or settlement processes. Such communications are an important back-office function and changes to these procedures can significantly affect business costs. The Commission is therefore satisfied that the interests and incentives on industry to make efficient decisions in this area are likely to be stronger than those of AEMO.

The Commission does not share the rule proponent's concerns regarding the accountability for making B2B procedures. The Commission notes that there is a high level of informal engagement between the IEC and AEMO, and that AEMO may object to the IEC's recommendations where they would be perceived to conflict with the Market Settlement and Transfer Solutions (MSATS) procedures. The Commission has not been persuaded that any additional safeguards are currently necessary.

The rule proponent suggests that further streamlining of these different procedural frameworks would be beneficial; however the Commission is not convinced that the benefits of improved administrative efficiency outweigh other considerations, such as appropriate decision making. The current stand-alone B2B arrangements represent an expedient way of giving effect to the IEC's independent functions.

The Commission further considers that specification of the B2B arrangements, and the level of prescription, in the rules is appropriate to provide regulatory certainty and transparency of process to industry.

Changes to the Chapter 7 rules may be required to meet the expected market developments recommended in the *Power of choice* review,¹ with the specific amendments still to be clarified through projects derived from that review. These include the *Expanding competition in metering and related services* rule change request,² and the supplementary implementation advice subsequent to the *Framework for open access and communication standards* review.³ These developments may impact both the scope of the B2B arrangements and the governance of them, for instance the composition of the IEC.

The Commission considers that the rules adequately provide for any modification to the existing B2B arrangements to be made through the rule change process. It would be premature to amend the rules in anticipation of changes when neither the nature, nor extent, of those changes has been explicitly explored or identified. The Commission also considers the rule change process to be the most appropriate mechanism for making decisions in relation to the B2B governance framework, given the conflicting interests of both AEMO and of current participants in this matter.

¹ Australian Energy Market Commission, *Power of choice - stage 3 DSP review*, Final Report, 30 November 2012.

² Australian Energy Market Commission, *Expanding competition in metering and related services*, Consultation Paper, 17 April 2014.

³ See: Australian Energy Market Commission, *Framework for open access and communication standards*, Final Report, 10 April 2014.

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1 Australian Energy Market Operator's rule change request

1.1 The rule change request

On 20 June 2013, the Australian Energy Market Operator (AEMO or rule proponent) made a request to the Australian Energy Market Commission (AEMC or Commission) to introduce a single governance framework for the making of retail market procedures under Chapter 7 of the National Electricity Rules (NER or rules) (rule change request).

1.2 Background

Chapter 7 of the NER contains rules that largely focus on metering and metrology and market settlement and transfer solutions (MSATS) processes, but also includes the introduction and use of evolving technologies and processes and business-to-business (B2B) communications.

B2B communications involve the routine exchange of large volumes of information that underpin competitive retail activities, in relation to end-use customers. Such communications currently include service orders, for example for the purpose of instructing connections, disconnections and special meter reads, as well as customer and site details. This information is transferred between market participants via the B2B e-hub, the electronic information exchange platform that was established to facilitate the B2B communications, and is managed by AEMO.

For the purposes of this rule change request, the procedures that are required under Chapter 7 are referred to collectively as 'retail market procedures', and are divided into B2B procedures and non-B2B procedures. The division of retail market procedures in this manner corresponds to the two distinct processes that exist in the NER for their development:

- **B2B procedures:** Rule 7.2A establishes an independent framework for the development and administration of B2B procedures, which are currently the responsibility of the Information Exchange Committee (IEC). Except for the requirement of two independent members, the IEC is primarily an electricity retail industry committee made up of, and representing, retailers and distribution network service providers (DNSPs).

Rule 7.2A prescribes the administration and operation of the IEC, as well as the procedure making process and time frame. It requires the election of two independent members, but otherwise strictly limits the membership of, and participation in the activities of, the IEC to retailers and DNSPs.⁴

⁴ Although the rules allow for AEMO to submit proposals for B2B procedures for the consideration of the IEC.

AEMO's role in this process, and in the activities of the IEC, is constrained under the NER. AEMO is not represented on this committee,⁵ but it has a limited, though essential, role in providing administrative and secretariat services, as well as the recovery of IEC costs through participant fees. Most importantly, the rules also require AEMO to make (that is, approve and publish) the B2B procedures that are recommended by the IEC.

- **Non-B2B procedures:** the remaining retail market procedures are developed and managed by AEMO as part of its broad statutory functions as the operator and administrator of the wholesale electricity market.

Other than for the requirement to follow the rules consultation procedures,⁶ the rules do not prescribe a process that AEMO must follow in developing non-B2B procedures. However, in respect of the non-B2B procedures required under Chapter 7, AEMO has established the Retail Market Executive Committee (RMEC) to provide it with non-binding technical advice in relation to the development and implementation of these procedures. In practice the membership and activities of the RMEC mirror that of the IEC.

1.3 Rationale for the rule change request

The rule proponent believes that the current arrangements for the making of retail market procedures have given rise to the following issues:⁷

- *The accountability and liability for the making of B2B procedures is unclear.*

The rule proponent is concerned that the AEMO Board retains responsibility under the rules for the making and amending of B2B procedures. This is despite the fact that AEMO is not a member of the IEC and is prohibited from making B2B procedures in the absence of a recommendation from that committee. There is also a potential that AEMO would be required to make (or not make) B2B procedures in circumstances that might be perceived to conflict with the due exercise of its statutory functions, or with the operation of other market procedures or processes.

The rule proponent considers that this accountability issue is exacerbated by the requirements under the rules that AEMO provide the IEC with secretariat services, recover costs for its operation through participant fees, establish and maintain the B2B e-hub, as well as approve and publish B2B procedures.

⁵ Although pursuant to clause 4.4 of the IEC's election procedures, a representative of AEMO is capable of nomination as an independent member of this committee but must then be elected by participants.

⁶ Set out in Part F of Chapter 8 the NER.

⁷ Australian Energy Market Operator, Rule change request, 20 June 2013 at pages 4-6.

- *The continued separation of processes for the development of retail market procedures is inefficient and impractical.*

The proponent considers that the duplication of committees and procedure making processes, combined with an increasing overlap between B2B and non-B2B procedural areas, is adding unnecessary complexity and cost to the making of retail market procedures.

- *The specification of the B2B governance arrangements in the rules means that they are not well suited to rapid change, and this may present a barrier to the evolution of the market.*

According to the rule proponent, the existing B2B rules are overly detailed and restrictive and it is therefore more appropriate that these matters are removed from the rules and prescribed in procedures managed by AEMO. This would provide the B2B arrangements with greater flexibility to accommodate changes to market or technological changes in a timely manner.

1.4 Solution proposed in the rule change request

The rule proponent seeks to resolve the issues identified above by proposing a rule to rationalise the existing arrangements for the development and management of retail market procedures by:

- creating a single, overarching process that would sit outside of the rules and apply to the development and management of all retail market procedures, including B2B procedures; and
- consolidating the control of this overarching process in a single decision making body, AEMO.

According to the rule proponent, the proposed changes would:

- clarify the accountability for the making of B2B procedures;
- improve efficiency in the making of retail market procedures by removing unnecessary duplication and complexity; and
- improve the flexibility of the rules to better accommodate changes in technology or in the market.

The rule change request included a proposed rule. The proposed rule incorporated a number of other proposed amendments sought by the rule proponent that were not specifically addressed in, or related to, the rule change request, and were included as matters that required 'tidying up'.

1.5 Rule proponent's stakeholder engagement

The rule proponent undertook stakeholder consultation in relation to this rule change request, both prior to lodging the original proposal and in preparing a supplementary submission.

The rule change request states that AEMO and the IEC/RMEC began examining options to establish a single governance structure for all retail market procedures in 2011, and indicated the IEC's support for the proposal.⁸ AEMO undertook more formal consultation in April 2013, with the feedback from that process being taken into account in the development of the final rule change request.

Following the publication of the AEMC's consultation paper in October 2013, the rule proponent held a further workshop with IEC members and other parties that had lodged submissions to the consultation paper. As a result of this additional consultation, the rule proponent developed a supplementary submission which included a number of amendments to the original proposal. This was submitted by the rule proponent in February 2014.

1.6 Commencement of rule making process

On 24 October 2013, the Commission published a notice under section 95 of the National Electricity Law (NEL) advising of its intention to commence the Rule making process and the first round of consultation in respect of the rule change request. A paper identifying specific issues or questions for consultation was also published with the rule change request. Submissions closed on 21 November 2013.

The Commission received 11 submissions on the rule change request as part of the first round of consultation. They are available on the AEMC website.⁹ The rule proponent subsequently submitted a late supplementary submission, and this is also available on the AEMC website. A summary of the issues that were raised in all of the submissions, and the Commission's response to each issue, is contained in Appendix A.

1.7 Extension of time

On 30 January 2014, the AEMC published a notice under section 107 of the NEL extending the period of time in which it must make a draft rule determination on this rule change request. This extension of time was necessary as it had become apparent that:

- the rule change request raised issues of greater complexity and difficulty than had initially been anticipated, as evidenced by the submissions received from stakeholders that responded to the AEMC's consultation paper. These reflected a lack of industry consensus and support for the proposal; and

⁸ Australian Energy Market Operator, Rule change request, 20 June 2013 at page 4.

⁹ www.aemc.gov.au

- a material change in circumstances occurred following the publication of the consultation paper, arising from the lodgement of the late supplementary submission by the rule proponent that discussed a number of potential modifications to the original proposal.

These circumstances meant that it was not possible to assess all the issues in the usual rule change time frame.

1.8 Consultation on draft rule determination

In accordance with the notice published under section 99 of the NEL, the Commission invites submissions on this draft rule determination, by the close of business on 19 June 2014.

In accordance with section 101(1a) of the NEL, any person or body may request that the Commission hold a hearing in relation to the draft rule determination. Any request for a hearing must be made in writing and must be received by the Commission no later than the close of business on 15 May 2014.

Submissions and requests for a hearing should quote project number “ERC0162” and may be lodged online at www.aemc.gov.au or by mail to:

Australian Energy Market Commission
PO Box A2449
SYDNEY SOUTH NSW 1235

2 Draft rule determination

2.1 Commission's draft determination

In accordance with section 99 of the NEL the Commission has made a draft rule determination in relation to this rule change request not to make the proposed rule.

The Commission's reasons for making this draft rule determination are set out in section 2.4.

The rule change request, and the supplementary submission, included a number of additional matters that the rule proponent considered could be amended either as consequential amendments, or as minor items to be 'tidied up.' In view of the decision made by the Commission, it has also determined not to make these additional amendments at this time.

2.2 Commission's considerations

In assessing the rule change request the Commission considered:

- the Commission's powers under the NEL to make the rule;
- the rule change request;
- submissions received during first round consultation, including the late supplementary submission from the rule proponent; and
- the Commission's analysis as to the ways in which the proposed rule will or is likely to, contribute to the National Electricity Objective (NEO).

The COAG Energy Council has not issued a statement of policy principles which is relevant to this rule change request.¹⁰

2.3 Commission's power to make the rule

The Commission is satisfied that the draft rule falls within the subject matter about which the Commission may make rules. The draft rule falls within section 34 of the NEL as it relates to:

¹⁰ Under section 33 of the NEL the AEMC must have regard to any relevant Ministerial Council on Energy (MCE) Statement of Policy Principles in making a rule. The MCE is referenced in the AEMC's governing legislation and is a legally enduring body, comprising the Federal, State and Territory Ministers responsible for Energy. On 1 July 2011 the MCE was amalgamated with the Ministerial Council on Mineral and Petroleum Resources. The amalgamated Council is now called the COAG Energy Council.

- the activities of persons (including registered participants) participating in the national electricity market or involved in the operation of the national electricity system (s.34(1)(a)(iii)), and
- facilitating and supporting the provision of services to retail customers (s.34(1)(aa)).

Further, the draft rule falls within the matters set out in item 32 of schedule 1 to the NEL. This states that the AEMC may make rules with respect to procedures and related systems for the electronic exchange or transfer of information that relate to consumers of electricity, the provision of metering services and connection to the national electricity system, and requiring compliance with such procedures and use of such related systems.

2.4 Rule making test

Under section 88(1) of the NEL the Commission may only make a rule if it is satisfied that the rule will, or is likely to, contribute to the achievement of the NEO. This is the decision making framework that the Commission must apply.

The NEO is set out in section 7 of the NEL as follows:

“The objective of this Law is 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.”

For the rule change request the Commission considers that the relevant aspects of the NEO are the efficient investment in, and the efficient operation of, electricity services with respect to price in the supply of electricity.¹¹

The price of electricity is relevant because it is based generally on the sum of the various component costs, including the costs incurred by the retailers and DNSPs in delivering the supply of electricity to the consumer.

The aim of this rule change request is to amend the rules by seeking to rationalise the making of all retail market procedures, including B2B procedures, under a single governance framework which would sit outside of the rules, and would be subject to the decision making of a single body, AEMO.

¹¹ Under section 88(2), for the purposes of section 88(1) the AEMC may give such weight to any aspect of the NEO as it considers appropriate in all the circumstances, having regard to any relevant MCE Statement of Policy Principles.

The Commission is not satisfied that the proposed rule will, or is likely to, contribute to the achievement of the NEO. This is because the Commission is not convinced that the alternative arrangement proposed under the rule change request would better meet the NEO than the current arrangements.

The Commission considers that continued industry led decision making of B2B procedures is appropriate in the context of the current state of market development. B2B communications flow between retailers and distributors for the purpose of facilitating the delivery of services to customers, and do not involve AEMO or otherwise directly affect the wholesale market or settlement processes. They are an important back office function and changes to these procedures can significantly affect business costs. The Commission is therefore satisfied that the interests and incentives on industry to make efficient decisions in this area are currently likely to be stronger than those of AEMO.

Furthermore, despite the concern expressed by the rule proponent about the current arrangements, there is insufficient evidence that the arrangements have resulted in major issues or conflict, such that the making of B2B procedures has been impaired. Neither the rule proponent nor stakeholders have identified any serious disagreements between the IEC and AEMO, and it has been suggested that any issues that have arisen have been managed through informal discussion.

The Commission notes that amendments to the Chapter 7 rules are likely to be required to implement forthcoming market developments, particularly to facilitate the widespread deployment of smart meters. These changes may impact both the scope of the B2B arrangements and the governance of them, for instance the composition of the IEC.

However, the Commission also notes that the rules adequately provide for any modification to the existing B2B arrangements to be made through the rule change process. It would be premature to amend the rules in anticipation of expected market developments when neither the nature, nor extent, of those changes has been explicitly explored or identified. There is an additional risk that amending the rules in a piecemeal fashion to account for possible market development before it has been finalised might itself lead to inefficiencies, necessitating further changes later on.

3 Commission's assessment approach

This chapter describes the Commission's approach to assessing the rule change request in accordance with the requirements set out in the NEL (and explained in Chapter 2).

The Commission has considered the arrangements that have been proposed against the counterfactual, which is retention of the current arrangements. This has included consideration of the likely costs, benefits and efficiency impacts of:

- *not making the proposed rule and continuing with the status quo*: this would mean that any future changes to the B2B arrangements would be subject to the rule change process;
- *making the proposed rule as requested by the rule proponent with little or no adjustment*: this would remove the entire process for making B2B procedures from the rules and from industry control; and
- *making a more preferred rule*: this would involve amending the rules to provide for greater flexibility and clarity in accountability, while retaining some regulatory certainty in the arrangements for industry.

In assessing the rule change request against the NEO, the Commission has considered the factors set out below. It is noted that the conclusions drawn on the first, while not determinative, may significantly influence the conclusions on the remaining factors.

Identifying the appropriate governance framework for B2B procedures

Efficiency is likely to be enhanced by decision making processes in which decisions are made by those best placed to make them. In the context of managing electricity market procedures there may, in some circumstances, be reasons for considering a decision maker other than AEMO.

In particular, an alternative approach to promoting robust and transparent decision making is to use financial incentives. Efficient outcomes can be promoted by aligning such commercial incentives with the interests of consumers.

The Commission notes that it was this principle that underpinned the development of the existing B2B governance arrangements. Retailers are exposed to the running costs of the B2B e-hub through participant fees, and changes to the B2B procedures can significantly impact on retailers' and distributors' costs. It is in the interests of both businesses and consumers that the benefits of B2B communications outweigh the costs.

The Commission considers that, to justify a move away from the existing B2B governance arrangements, a compelling case would need to be made as to why they were no longer appropriate. For example it would need to be clearly demonstrated that the interests of businesses and consumers were no longer aligned, or that the benefits resulting from this decision making process were outweighed by costs associated with the practicalities of its implementation.

Improving administrative efficiency

The productive efficiency of the market can be enhanced by the minimisation of costs to achieve a given outcome. An issue raised by this rule change is whether it is efficient to have two sets of decision making processes for electricity retail market procedures.

While it might be possible to reduce administrative costs by formally combining the two processes, the Commission has had to consider whether this would be appropriate and whether these savings would be likely to be material enough to outweigh any drawbacks associated with such a change.

Striking an appropriate balance between regulatory certainty and flexibility of process

An appropriate balance of certainty and flexibility would enhance the dynamic efficiency of the market by allowing participants to make long term investments with confidence. All legal processes, whether contained in the rules or procedures, need to be sufficiently certain with clear and objective processes for change. This is because participants base much of the planning of their operations and activities on their knowledge and understanding of current requirements. At the same time, processes need to be flexible enough to accommodate change.

The rule change is, in large part, driven by a view that the current provisions of Chapter 7 of the NER are not well suited to the timely establishment and maintenance of procedures to support new services, such as those that will be facilitated by the widespread deployment of smart meters.

In particular, there may not be suitable heads of power in Chapter 7 for either AEMO or the IEC to develop procedures relating to these new services. In addition, the existing governance and participation arrangements for the IEC specified in the NER may not reflect parties that it may subsequently be appropriate to include on that committee.

The Commission has therefore had to consider whether it is appropriate to give greater discretion to AEMO and/or the IEC to establish and maintain new categories of procedures or whether a better balance of certainty and flexibility would be provided by undertaking a rule change when a new category of procedure was required. In this regard, the Commission has noted the current and likely reviews and rule changes that may potentially impact on Chapter 7.

It has also been necessary to consider the governance arrangements for the IEC, and whether there are any suitable alternatives to retaining these in the rules. The Commission has been conscious that conflicts of interest should be avoided. These could result under certain options, such as giving the IEC itself control over its governance or by specifying the IEC governance arrangements in an AEMO procedure, in circumstances where AEMO is required to implement decisions made by the IEC.

4 Existing governance arrangements and clarity of accountability

This chapter examines the efficacy and appropriateness of the existing governance arrangements and the impact of these arrangements on the accountability of the IEC and AEMO with respect to B2B procedures.

4.1 Rule proponent's view

Under the current arrangements, the accountability of both the AEMO Board and the IEC for the making of B2B procedures is unclear.

The rule proponent states that, although the IEC develops and consults on B2B procedures, it does not *make* the final procedures.¹² The rules require that AEMO must make the procedures, but they also specifically prohibit AEMO from making them except on recommendation from the IEC.

The rules set out that the IEC must make a binding recommendation to AEMO and, except in very limited circumstances, AEMO is obliged to make (that is, approve and publish) the recommended procedure without further amendment.

The rule proponent considers that the lack of clarity in accountability is a result of the distinct but interdependent roles of the IEC and AEMO in the B2B process.

The uncertainty is exacerbated by the fact that the operations of the IEC are highly dependent on AEMO. As well as formally making the B2B procedures, AEMO is also required to provide administrative and secretariat services to the IEC, recover costs for its operation through participant fees, and establish and maintain the B2B e-hub.¹³

Given the explicit restrictions on AEMO's role in the B2B process under clause 7.2A.3, the AEMO Board is concerned that:

- there is a potential for it to be obliged to make a procedure that it perceives might conflict with the due exercise of its statutory powers, or with the operation of other market procedures or processes;¹⁴ and
- it could also be drawn in to any dispute about B2B procedures, even though it has no control over the development of them, because it is required to make them under the rules.

The solution proposed by the rule proponent would be to remove the IEC as the decision making body for B2B procedures, and replace it with AEMO as the decision maker for all retail market procedures under an integrated governance framework.

¹² Australian Energy Market Operator, Rule change request, at page 5; Submission to consultation paper, at page 2.

¹³ Australian Energy Market Operator, Submission to consultation paper, at page 2.

¹⁴ Australian Energy Market Operator, Rule change request, at page 5.

According to the rule proponent, this proposed arrangement would be appropriate for B2B matters, and would also fit within AEMO's statutory role and responsibility for developing and managing market procedures generally in both the national electricity and gas markets.¹⁵

4.2 Stakeholder views

Energex acknowledged the rule proponent's concern regarding, amongst other things, a lack of clear accountability under the current arrangements and suggested that this was largely due to the fact that in practice the processes for B2B and non-B2B procedures have converged. It supported the rule proponent's proposal for a single framework, although also for industry to continue to have a prominent and influential role.¹⁶

Ergon Energy considered that the accountability issue arises from the IEC's ability to effectively force change on AEMO without necessarily having an understanding of the impacts of the decision. In addition the IEC, being made up of select industry representatives, is not considered by Ergon to be a balanced representation of all market participants. By comparison, Ergon considered that AEMO is an independent body, able to represent all market participants and is therefore best placed to make decisions on B2B matters, albeit following a robust consultation process.¹⁷

While agreeing that the concept of a single governance structure is sensible, AGL also considered that the resulting committee structure and operational detail needed to remain consistent with the current IEC arrangements. This is because industry must inevitably make the capital investment in systems and resources to support the procedures.¹⁸ Both Origin and EnergyAustralia agreed that industry should continue to make the decisions for B2B matters.¹⁹

Red Energy and Lumo Energy favoured the existing framework which facilitated procedural changes of high value to industry participants, rather than those of importance to the market operator.²⁰

4.3 Rule proponent's supplementary submission

To address the concern of industry to preserve certainty of involvement in, and influence over, the process of making B2B procedures, AEMO's supplementary submission suggested the retention of some key requirements in the rules. These

¹⁵ Australian Energy Market Operator, Submission to consultation paper, at page 2.

¹⁶ Energex, Submission to consultation paper, at pages 1, 3.

¹⁷ Ergon Energy, Submission to consultation paper, at page 4.

¹⁸ AGL, Submission to consultation paper, at pages 3, 4.

¹⁹ EnergyAustralia, Submission to consultation paper, at page 4; Origin, Submission to consultation paper, at page 4.

²⁰ Red Energy, Submission to the consultation paper, at page 1; Lumo Energy, Submission to the consultation paper, at page 1.

would relate to the establishment, membership and operation of a stakeholder committee to advise and make recommendations to AEMO on the development and operation of retail market procedures.²¹

Further, the supplementary submission proposed that AEMO would be prohibited from making B2B procedures except on the recommendation of the stakeholder committee. By contrast, AEMO would not be required to follow recommendations of the committee in respect of *non*-B2B procedures, although it would be required to consider them.²²

AEMO would be able to refer a B2B recommendation back to the committee for reconsideration on broader grounds than those specified for objecting to a recommendation under the current rules. According to the rule proponent, this outcome is considered to be less intrusive on the fiduciary responsibilities of the AEMO Board.²³

4.4 Conclusion

What is the issue to be addressed?

The rule proponent's concern regarding the lack of clarity of accountability in relation to B2B procedures is founded on the requirement in the rules for AEMO to approve procedures made by an independent body over which it has no formal influence or control.

In its original proposal the rule proponent considered that an integrated framework/process for the development and management of all retail market procedures as proposed would, amongst other things, provide clearer accountability for making procedures and consulting with stakeholders.²⁴

In response to stakeholder views, the rule proponent reconsidered its original position in its supplementary submission. In particular, while many stakeholders did not disagree that the existing processes would benefit from some streamlining, several expressed a strong view that B2B should remain within industry control, rather than under the control of AEMO.

In its supplementary submission the rule proponent proposed to retain an arrangement similar to the current arrangements, whereby decisions in relation to B2B procedures would be made by an industry committee, albeit potentially a differently constituted committee from the IEC. Under this proposal AEMO would continue to be prohibited from making B2B procedures without a recommendation from this committee.

²¹ Australian Energy Market Operator, Supplementary submission to consultation paper, at page 2.

²² This proposed requirement on AEMO to consider non-B2B recommendations would go further than requirements under the current rules.

²³ Australian Energy Market Operator, Supplementary submission to consultation paper, at page 3.

²⁴ Australian Energy Market Operator, Rule change request, at page 6.

Background

The historical proposal to move B2B communications to a more transparent, standardised and automated process was designed to address the perceived inefficiencies of the previous largely state based, manual processes for these business communications. These separate state based processes were also perceived to present an obstacle to achieving full retail competition.

The B2B arrangements were drafted as a tightly bound package. Not only were the scope and function of the IEC strictly contained, but the structure of its membership, participation in its activities and voting were also drafted in such a way as to protect the committee from being dominated by any one category of participant.²⁵ These provisions remain largely unchanged in the current rules.

Generally the arrangements both bind and provide for the input of only those parties that use, or are affected by, these defined communications, that is, DNSPs and retailers.

By contrast, the function of the market operator within the B2B framework has been deliberately restricted. The report of the Code Change Panel on business to business governance noted explicitly that:²⁶

“As NEMMCO's participation is not essential, as it is in the wholesale spot market, it is appropriate that NEMMCO's role be restricted to that of a service provider rather than a market maker.”

B2B procedures

B2B communications involve the routine exchange of large volumes of information between retailers and DNSPs in relation to end-use customers, which underpin retail competition activities. They are an important back office function and changes to these procedures can add significantly to business costs.

Therefore, in the context of the current market, the Commission is of the opinion that, where possible, B2B procedures should continue to be treated separately from other retail market procedures. This is because in general, they do not directly involve AEMO or otherwise directly affect the wholesale market or settlement processes.

Responsibility for B2B decision making

Similarly, the Commission considers that, at the current stage of market development, an industry body is the most appropriate body to be administering and developing B2B procedures. The Commission is not satisfied that any case has been made to shift the control of these procedures to AEMO. In particular, the rule proponent has not made clear why it requires governance over an area which is strictly related to

²⁵ National Electricity Market Management Company Limited, Submission to the National Electricity Code Authority on proposed code changes: B2B Governance, 1 October 2004, Attachment B, Table of Code Changes.

²⁶ National Electricity Code Administrator, Code Change panel, *Report on business to business governance*, February 2005, at page 4.

inter-business communications, and how it would be likely to make better decisions on these matters.

Given the potential for changes to these procedures to have large cost ramifications for industry participants, the Commission is satisfied that the interests and incentives on industry to make responsible decisions in this area are likely to be stronger than those of AEMO.

While its role in relation to B2B procedures may be characterised as a service provider to the IEC, AEMO nevertheless undertakes important and necessary administrative and secretariat functions in the development of B2B procedures. This statutory arrangement has been set up as part of the underlying framework as an expedient way of administering the IEC's independent functions.

Accountability for B2B procedures under existing arrangements

The Commission does not consider that a case has been made that there is a lack of clarity regarding the responsibility and accountability for the B2B procedures.

The Commission notes that although AEMO has accountability for its role in relation to the IEC's processes and B2B procedures, this accountability is likely to be limited given the restricted nature of AEMO's role under the rules. As the IEC's recommendations are of a binding nature, the Commission considers that AEMO's accountability is likely to extend only to the proper exercise of its power in relation to those matters over which it has some discretion. In this case it would be the very limited grounds on which it can object to a recommended procedure.

The drafting of the B2B arrangements deliberately recognise the overlap, and the potential for these procedures to conflict, with MSATS procedures. Therefore they are drafted to give AEMO the option not to approve a recommendation from the IEC where it considers that such conflict exists.²⁷ The Commission is not convinced that there is a need to broaden the range of reasons for AEMO not to approve a recommendation at this time.

In practice, in part due to the linkage between B2B and MSATS, the need to preserve a strong working relationship drives a high level of interaction between the IEC and AEMO, with regards to B2B procedures. The rules do not preclude informal consultation and the Commission views this as appropriate as between these two bodies, but does not consider that this implies any need to make changes to the existing arrangements.

²⁷ Rule 7.2A(3)(k)(2).

5 Duplication and administrative efficiency

This chapter examines the issue of duplication presented by the existing dual governance arrangements, and whether the benefits of these arrangements outweigh the potential efficiencies that might be gained in streamlining them into a single framework.

5.1 Rule proponent's view

The current arrangements for retail market procedures have become problematic and are no longer fit for purpose.

The rule proponent considers that governance and consultation, in respect of retail market procedures generally, have evolved for reasons of efficiency and practicality, such that B2B no longer operates with the separation from other procedures as originally contemplated.²⁸

The intersection of B2B procedures with other procedural areas, such as MSATS, means that care needs to be taken that they remain aligned and not in conflict with one another. With new categories of procedures likely to be required to meet the anticipated changes in market and technological conditions, this overlap is expected to increase. According to the rule proponent, the existence of multiple governance streams will be neither practical nor efficient in supporting these changes, and will lead to even greater administrative complexity.²⁹

Nevertheless the operation of the rules ensures that a formal separation of processes is maintained in practice. This extends to the use of multiple objectives by the different bodies in the exercise of their respective functions. Under the rules the IEC is required to have regard to the B2B objective and B2B principles in its decision making process, while AEMO is directed under statute to consider the NEO. The rule proponent considers that the retention of these different objectives is inappropriate and unlikely to enhance certainty and may even have the contrary effect if conflicts arise.³⁰

The solution proposed by the rule proponent would see a rationalisation of the existing arrangements and the establishment of an integrated framework and process for the development of all retail market procedures, including B2B. This process would be managed by AEMO as part of its management of retail market procedures generally, in accordance with the requirements of the approved process and the rules consultation procedure.

According to the rule proponent, this would be in line with AEMO's current statutory function overseeing the development and administration of all other gas and electricity market procedures. It would also ensure the application of a single procedure making

²⁸ Australian Energy Market Operator, Submission to consultation paper, at page 4.

²⁹ Australian Energy Market Operator, Rule change request, 20 June 2013 at page 5.

³⁰ Australian Energy Market Operator, Submission to consultation paper, at pages 4, 5.

process, including the application of a single objective (the NEO), further streamlining the process, and would facilitate the alignment of B2B procedures with other procedures where necessary.

The rule proponent also considered that a uniform process would address one of the issues which led to the suspension of the National Smart Metering Program in 2011, pending further policy direction. This was the lack of identification of an appropriate head of power in the rules for the establishment and maintenance of smart meter procedures, some of which did not fall clearly within either the B2B or non-B2B procedural areas.³¹ The rule proponent considered that any new procedures required to support this technology could be developed through the single decision making process.

5.2 Stakeholder views

A number of stakeholders agreed that the shared membership and activities of the IEC and RMEC had emerged over time for practical reasons.³² Stakeholders were also generally in agreement that the operation of these arrangements had been satisfactory, although could be streamlined, and had not given rise to any issues to date.³³

Many of the stakeholders shared the expectation of an increasing cross-over of procedural areas in the future.³⁴ However, EnergyAustralia was of the opinion that such cross-over is not currently evident and that, if it did occur, it would be the result of a deliberate and agreed initiative of market participants.³⁵

Ergon Energy considered that the significant interplay between procedures provided justification for uniform management.³⁶ Neither Energex nor Ergon Energy saw any justification for B2B to be treated separately, or for industry to maintain greater control over B2B procedures than other retail market procedures.³⁷

On the other hand, AGL, EnergyAustralia and Origin strongly considered that B2B procedures needed to remain distinct from other retail market procedures, and that industry needed to retain control over them. Origin suggested that B2B procedures should remain distinct as they determine the interactions between participants. In addition, the wide ranging impacts of B2B processes on business operations provided

31 Australian Energy Market Operator, Rule change request, at pages 3, 5.

32 Energex, Submission to consultation paper, at page 1; United Energy, Submission to consultation paper, at page 1; EnergyAustralia, Submission to consultation paper, at page 2.

33 United Energy, Submission to consultation paper, at page 1, EnergyAustralia, Submission to consultation paper, at page 2; Origin, Submission to consultation paper, at page 3.

34 Energex, Submission to consultation paper, at page 2; Ergon Energy, Submission to consultation paper, at page 4; AGL, Submission to consultation paper, at page 4; Origin, Submission to consultation paper, at page 4.

35 EnergyAustralia, Submission to consultation paper, at page 3.

36 Ergon Energy, Submission to consultation paper, at page 4.

37 Energex, Submission to consultation paper, at page 3; Ergon Energy, Submission to consultation paper, at page 4.

justification for industry influence over these procedures.³⁸ AGL also suggested that there should be a greater industry committee with which AEMO could discuss all procedures.³⁹

5.3 Rule proponent's supplementary submission

In its supplementary submission the rule proponent has sought to maintain, for the most part, its original proposal for a uniform process for the management of all retail market procedures.

However, to address stakeholder concerns to preserve industry control of B2B procedures, the supplementary submission suggests the retention of a distinct decision making process for B2B procedures, in the rules. Under this proposal AEMO would be prohibited from making B2B procedures, and also any changes to the proposed retail consultation process, other than in accordance with the recommendation of the stakeholder committee.⁴⁰

5.4 Conclusion

What is the issue to be addressed?

The original concern for the rule proponent was in relation to the existence of two procedure making processes for retail market procedures, one of which is independent but for which AEMO must provide support services.

It suggested that processes have evolved to such an extent that formal separation between the processes of making B2B and non-B2B procedures is no longer tenable,⁴¹ and that an integrated framework/process for the development and management of all retail market procedures as proposed would, amongst other things, reduce the unnecessary costs and complexity of duplicate governance structures.⁴²

The Commission notes however that the proponent's concern appears less pronounced in its supplementary submission, to the extent that it suggests a discrete decision making process in respect of B2B procedures.

In particular the proposition to retain a decision making process for B2B procedures that is distinct from the process for other retail market procedures appears to suggest that B2B procedures are, and would continue to be, distinguishable from other retail market procedures. It also suggests that any overlap with other procedural areas would be able to be addressed.

38 Origin, Submission to consultation paper, at page 4.

39 AGL, Submission to consultation paper, at page 4.

40 Australian Energy Market Operator, Supplementary submission at page 4.

41 Australian Energy Market Operator, Submission to consultation paper, at page 4.

42 Australian Energy Market Operator, Rule change request, at page 6.

The Commission also considers that while the existence of the RMEC is likely to add to a perception of duplication, the sharing of the membership and activities with the IEC, conversely, minimises any actual duplication and also provides relevant parties with opportunities for access and engagement.

The trade-off with decision making

The fact that the B2B process was established separately to AEMO's procedure making process indicates that the duplication of process was seen as a subordinate consideration to appropriate decision making.

B2B communications were not considered to be matters of direct concern to wholesale market settlement. They are, however, essential to the efficient transfer of large volumes of information that flow between retailers and distributors, which is necessary for the execution of day-to-day commercial operations in a competitive retail environment.

As set out in Chapter 4, that Commission considers that it remains appropriate at this time for B2B procedures to be managed separately from non-B2B procedures, and for the process of developing these procedures to be managed by an industry committee rather than by AEMO. Some duplication of process is an unavoidable consequence of this conclusion, but the Commission does not consider that there is any compelling evidence to suggest that the trade-off between administrative efficiency and decision making has changed significantly since the introduction of B2B arrangements.

In addition, while it is arguable that costs to participants could be reduced by streamlining these processes, there is strong industry concern regarding its continuing influence over B2B matters should the process be integrated into a more general retail market process. As the costs for the IEC are met by industry through the recovery of participant fees it would be a reasonable assumption that this is not an overriding concern for industry. Any duplication is also likely to be outweighed by a comparatively superior decision making process, in terms of the decisions made being acceptable to affected stakeholders.

In relation to the continued rollout of the smart meter program, the Commission notes that the earlier process has now been superseded by the various reviews and rule changes being undertaken by the AEMC, following the *Power of Choice* review.⁴³ Any issues regarding specific heads of power for making new procedures can be addressed, and allocated to the relevant decision making body, through these processes. This issue is discussed further in the next chapter.

⁴³ Australian Energy Market Commission, *Power of choice - stage 3 DSP review*, final report, 30 November 2012.

6 Flexibility for change and certainty of process

This chapter considers the ongoing need of industry for regulatory certainty against the potential need for greater flexibility and responsiveness of arrangements to respond to developments in the market. In particular it addresses the most appropriate way of managing ongoing changes to the composition of the IEC membership, and the corresponding election and voting arrangements.

6.1 Rule proponent's view

The current rules are overly restrictive, with the composition of the IEC, and the right of market participants to be involved in its processes, strictly prescribed to include specific classes of participants only.

The rule proponent questioned whether the currently prescribed membership of the IEC was sufficiently representative of the range of industry and stakeholder interests,⁴⁴ and expressed the view that, as the market and technologies develop, B2B procedures will no longer only be a matter of interest for distributors and retailers. It considered that the level of prescription around B2B in the existing rules presents a potential barrier to those arrangements evolving in a timely manner to provide effective and timely support to new service providers that may also be affected by the B2B requirements.⁴⁵

The rule proponent considered that the B2B rules contain a level of administrative detail which makes it more appropriate for them to be located in procedures. The proposed solution therefore includes the removal of the entire B2B framework from the rules, and replacing both the existing B2B and non-B2B procedure making processes with a single 'approved process' to be established and managed by AEMO.

Under this model, the rules should only need to identify that AEMO would make and manage the development of retail market procedures. The detail relating to the process that would be followed by AEMO in developing these procedures, including industry involvement in this process, would be removed from the rules.

Placement of this process in the procedures rather than the rules would provide greater flexibility for the underlying consultative and advisory processes to adapt and accommodate future industry development. It would allow the framework to be reviewed on an ongoing basis, and amended by AEMO as necessary in accordance with the approved process, in response to changing market and technological requirements.⁴⁶ This would allow the change process to progress in a timely and orderly manner, and would also allow AEMO and other market stakeholders to assign

⁴⁴ Australian Energy Market Operator, Submission to consultation paper, at page 3.

⁴⁵ Australian Energy Market Operator, Rule change request, at pages 5, 6.

⁴⁶ Australian Energy Market Operator, Rule change request, at pages 6, 7.

appropriate priority and resources to the development and implementation of procedures.⁴⁷

6.2 Stakeholder views

Stakeholder submissions indicate that many consider that the existing arrangements have been satisfactory to date. However, Energex and Ergon Energy also expressed concern that, notwithstanding the adequacy of arrangements to date, more flexibility might need to be introduced to meet future requirements.⁴⁸

Energex acknowledged that moving the framework from the rules to the procedures might lead to less certainty for participants, although it did not expect any adverse impacts on participants to result from this change. While it supported AEMO having the ability to determine and change its own process, it also supported the introduction of guiding principles to which AEMO would have regard in making decisions.⁴⁹

Conversely, Origin considered that it would be inappropriate for AEMO to be able to determine and change its own process for making retail market procedures.⁵⁰

United Energy shared the view that greater flexibility in the process might lead to less certainty for stakeholders in the governance framework, but considered that it was appropriate for a broader range of parties to be involved in the decision making process.⁵¹

Ergon Energy suggested that should the governance framework be moved to the procedures, it would expect there to be a full review of the rules consultation process to ensure that robust issues analysis and resolution processes are in place.⁵²

EnergyAustralia and Origin considered that greater flexibility could be introduced through the rules.⁵³ In particular, EnergyAustralia was of the opinion that the framework for B2B should be retained in the rules for continued certainty, but considered that a better option to provide membership flexibility might be to allow the IEC to review its own membership.⁵⁴

⁴⁷ Australian Energy Market Operator, Submission to consultation paper, at page 2.

⁴⁸ Energex, Submission to consultation paper, at page 2; Ergon Energy, Submission to consultation paper, at page 3.

⁴⁹ Energex, Submission to consultation paper, at pages 3,4.

⁵⁰ Origin, Submission to consultation paper, at page 4.

⁵¹ United Energy, Submission to consultation paper, at page 2.

⁵² Ergon Energy, Submission to consultation paper, at pages 4, 5.

⁵³ EnergyAustralia, Submission to consultation paper, at page 4.

⁵⁴ EnergyAustralia, Submission to consultation paper, at page 4; Origin, Submission to consultation paper, at page 4.

United Energy and Energex considered that the current arrangements excluded some impacted parties from direct representation.⁵⁵ However, AGL and EnergyAustralia identified a number of examples to illustrate the flexibility of current B2B arrangements, such as the election process to the B2B committee itself, open access to working groups for all participants and the distribution of working group correspondence and papers.⁵⁶

6.3 Rule proponent's supplementary submission

The rule proponent's supplementary submission suggested potential revisions to its original proposal for an approved process, distinguishing the two models by renaming the revised process as the 'retail consultation process'. Under the retail consultation process, rather than removing the entire framework from the rules, some high level principles around establishment, membership and operation of a stakeholder committee, and consideration of the committee's recommendations by AEMO, would be retained in the rules.

While the retention of these key principles in the rules would provide stakeholders with some certainty as to their continued participation and influence on the development of procedures, a high degree flexibility would be retained through the detail of those principles being addressed in procedures. This would include the details of membership and participation, election and voting procedures.

The principles would, for example, include provision for the balanced representation of parties affected by the procedures, but in order to preserve the ability for new participants to be represented as the market develops the rules would not specify or prescribe any particular participant membership, except for AEMO itself.⁵⁷

6.4 Conclusion

What is the issue to be addressed?

Both the original proposal and the supplementary submission seek to introduce flexibility into the arrangements by taking a significant portion, if not the whole, of the B2B arrangements out of the rules and placing them into the procedures that are managed by AEMO. Both approaches assume the establishment of an industry committee for consultation purposes, but while the original proposal leaves this as a matter to be dealt with entirely within the procedures, the supplementary submission preserves some high level principles in the rules which apply to the establishment and operation of the committee.

⁵⁵ United Energy, Submission to consultation paper, at page 2; Energex, Submission to consultation paper, at page 2.

⁵⁶ AGL, Submission to consultation paper, at pages 3, 4; EnergyAustralia, Submission to consultation paper, at pages 2, 3.

⁵⁷ Australian Energy Market Operator, Supplementary submission, at page 3.

The Commission considers that while the retention of some key requirements in the rules might go some way to providing certainty, it would also be likely to raise other issues, such as how decision making on B2B matters by a broad based stakeholder group might proceed. If the stakeholder committee was to be broadened to incorporate new participants, it would need to be determined whether all committee members would vote on B2B matters, or whether decisions on B2B matters would be limited to those parties that were affected by B2B, in line with current principles. Under this model, there may therefore be less certainty than under the current arrangements.

Proposed solutions and potential conflicts of interest

In both the original proposal and the supplementary submission, the rule proponent has proposed that AEMO would manage the establishment of the stakeholder committees, albeit in accordance with the rules consultation procedure as a minimum. In particular, in the supplementary submission it was suggested that the right of the industry committee to recommend changes to the B2B procedures should be embedded in the rules, but the governance arrangements for the committee would be contained in procedures.

As an alternative solution, EnergyAustralia proposed that the IEC should be given the power to manage its own membership.⁵⁸

The Commission considers that there are potential conflict of interest issues with both of these alternatives. In the first place, there would appear to be a conflict in a model which provided for AEMO to establish and manage a committee, the key function of which was to make binding recommendations to AEMO on B2B decisions. Secondly, in the context of a competitive market and on a matter which is crucial to retail market processes, there may equally be a conflict in an industry committee being able to determine its own governance arrangements. This might be of particular importance given the concerns already raised by current participants as to representation.

It is not clear to the Commission therefore that either of these options presents a better alternative than the current arrangements.

Providing for new classes of participants to be represented

The Commission agrees that it is problematic that, while it is recognised that new classes of participant may need to be incorporated into the B2B process, it is not yet clear who those participants are, or what their roles will be. The rule proponent concurred with this conclusion in its original proposal. It reasoned that the continuation of a consultative or advisory committee would be based, initially, on the IEC/RMEC membership since early expansion of membership beyond the current participants was problematic due to difficulty in identifying the appropriate alternative representatives.⁵⁹

⁵⁸ EnergyAustralia, Submission to consultation paper at page 4.

⁵⁹ Australian Energy Market Operator, Rule change request, at page 6.

The current B2B rules were established to cover a very defined group of market arrangements and technologies, and the drafting does not appear to have contemplated that there might be a need to deal with changes to this structure or to the requirements generally.

The careful and inter-related construction of rule 7.2A is such that simple changes cannot be made in isolation. In particular, the B2B membership and voting arrangements were clearly structured so that no one industry could dominate the decision making. Therefore membership of the IEC cannot simply be altered in the rules without careful consideration being given to the corresponding election and voting arrangements.

For this reason, the Commission has concluded that it would not be possible to draft the rules in such a way as to allow for the membership structure to alter over time, without further changes to the rules then being required. In addition drafting open rules in this manner would itself create regulatory uncertainty, which would be an equally undesirable outcome.

Location of B2B arrangements in the NER

As set out in Chapter 4, the Commission has concluded that the existing B2B decision making process, managed by the IEC, continues to be appropriate at this time. Given the difficulties outlined above in providing more flexible governance arrangements for the IEC, the Commission has also concluded that the location of the IEC governance arrangements in the rules continues to be appropriate, and notes the regulatory certainty that this provides.

The rule proponent considers that retention of the arrangements in the rules may not allow for timely changes to be made. However, the Commission does not consider that frequent changes to the IEC's governance arrangements are likely to be necessary, noting that none have been required or requested since their introduction in 2005. Further, the rule change process allows for any required developments to be assessed and implemented in a transparent and independent manner.

Changes to the Chapter 7 rules may be required to meet the expected market developments recommended in the *Power of choice* review,⁶⁰ with the specific amendments still to be clarified through projects derived from that review. These include the *Expanding competition in metering and related services* rule change request,⁶¹ and the supplementary implementation advice subsequent to the *Framework for open access and communication standards* review.⁶² These developments may impact both the scope of the B2B arrangements and the governance of them. In particular, the potential

⁶⁰ Australian Energy Market Commission, *Power of choice - stage 3 DSP review*, Final Report, 30 November 2012. A summary of the recommendations from this review, and the status of the further work resulting from the review, is available on the AEMC's website, www.aemc.gov.au.

⁶¹ Australian Energy Market Commission, *Expanding competition in metering and related services*, Consultation Paper, 17 April 2014.

⁶² See: Australian Energy Market Commission, *Framework for open access and communication standards*, Final Report, 10 April 2014.

creation of a separate metering coordinator rule may necessitate changes to the membership of the IEC.

The Commission considers that the rules adequately provide for any modification to the existing B2B arrangements to be made through the rule change process. It would be premature to amend the rules in anticipation of changes when neither the nature, nor extent, of those changes has been explicitly explored or identified. Rather, the rule changes through which developments such as those noted above are progressed would provide an appropriate opportunity to consider and implement any consequential changes to the arrangements for retail market procedures.

The Commission also considers the rule change process to be the most appropriate mechanism for making decisions in relation to the B2B governance framework, given the conflicting interests of both AEMO and of current participants in this matter.

Abbreviations

AEMC	See Commission
AEMO	See rule proponent
B2B	business-to-business
Commission	Australian Energy Market Commission
DNSPs	distribution network service providers
IEC	Information Exchange Committee
MCE	Ministerial Council on Energy
MSATS	metrology and market settlement and transfer solutions
NEL	National Electricity Law
NEO	National Electricity Objective
NER	National Electricity Rules
RMEC	Retail Market Executive Committee
rule proponent	Australian Energy Market Operator
rules	See NER

A Summary of issues raised in submissions

This table lists the issues raised in the submissions that were received in response to the AEMC's consultation paper.

Stakeholder	Issue	AEMC Response
General comments: is there a problem?		
AGL (pages 1, 2)	The existing problem is neither a structural nor a governance problem, but is due to an inadequately resourced and inefficient change process. These issues need to be addressed by AEMO.	These comments have been noted.
Australian Energy Market Operator (submission, pages 1, 2, 4)	<p>The rule change request is not being driven by unsatisfactory historical outcomes. It is acknowledged that the development of B2B and non-B2B procedures has been characterised by a high level of collaboration and cooperation between the IEC, industry participants and AEMO. Rather, it was developed in consultation with the IEC and stakeholders more broadly, in recognition that the arrangements need to evolve to meet current and future requirements.</p> <p>The proposal is not to make substantial changes to the current processes: the key change is that AEMO would be the party responsible for undertaking consultation for all retail market procedures, including B2B procedures. This fits within AEMO's established function as the manager of procedures under both the NER and the National Gas Rules, and is also appropriate for the subject matter.</p>	These comments have been noted. The Commission considers however such change is not required at this time.
Energex (page 1)	Generally supportive of the proposal.	These comments have been noted.
EnergyAustralia (page 1)	Generally supportive of improvements being made to current process for development of a more efficient and inclusive process for the development of retail market procedures. However it will require more than this rule change for these improvements to be realised.	These comments have been noted.

Stakeholder	Issue	AEMC Response
Ergon Energy (pages 2, 3)	<p>Generally supportive of the proposal: recognise that maintaining the concurrent, though related, frameworks in the rules is inefficient and impractical, and does not facilitate certainty in the market.</p> <p>Development of a uniform governance framework for all retail market procedures will resolve these issues.</p>	<p>These comments have been noted. The Commission however considers that the current benefits of retaining these concurrent arrangements outweighs the costs to industry generally, and therefore to customers.</p> <p>See section 5.4 (page 19) for further discussion on this matter.</p>
Origin (page 1)	<p>Generally supportive of the current framework. While some of the objectives aimed at improving the effectiveness of the B2B governance model are supported, the rule change request is not believed to serve the NEO. The problems that it seeks to address can be managed in other ways, i.e. through existing processes without the need for changing the rules.</p>	<p>These comments have been noted.</p>
Red Energy (page 1) Lumo Energy (page 1)	<p>The existing framework has worked to efficiently progress issues of high value to industry participants rather than the market operator.</p>	<p>These comments have been noted.</p>

Stakeholder	Issue	AEMC Response
Governance, accountability and control		
AGL (pages 1, 4)	<p>AGL is concerned that the proposal removes industry control over the management of key industry processes. B2B procedures, and retail operating procedures generally, are important to retail and distribution businesses as they impact on both efficiency and costs, which ultimately impact on customers.</p> <p>Industry needs to retain control over B2B processes as they need to be completed in appropriate time frames and to industry specification. It is industry that is ultimately making the capital investment in systems and resources to support customer products and services.</p> <p>Rather than remove industry control, all procedures should be combined under an industry committee with the AEMC having the ability to discuss implementation. Combining them all in this way would bring administrative simplicity.</p>	<p>This submission appears to suggest an alternative to the existing and proposed arrangements. However the Commission considers that, at the current stage of market development, it is appropriate for the existing arrangements to remain in place.</p> <p>See section 4.4 (pages 14 and 15) for further discussion on these matters.</p>

Stakeholder	Issue	AEMC Response
<p>Australian Energy Market Operator (submission, pages 1, 3)</p>	<p>It is important to clearly distinguish between the role of the IEC and that of AEMO in the making of B2B procedures. The IEC does not 'make' B2B procedures: it develops, consults and makes a recommendation on AEMO which effectively binds AEMO, except on very narrow grounds, to formalise and publish these procedures.</p> <p>It is these concurrent roles that make the accountabilities for B2B procedures unclear between the IEC and AEMO. This lack of clarity is further exacerbated by AEMO's secretariat role, recovery of IEC costs through market fees and the increasing overlap between B2B and non-B2B procedures.</p> <p>The lack of clarity is not the result of poor definition of the roles in the NER, but the artificial separation of the roles in relation to B2B procedures. Neither is it the result of the merger between the IEC and the RMEC. This merger occurred over time and is accepted as a rational and efficient approach to managing the development of all retail market procedures.</p>	<p>The Commission is not persuaded that there is a lack of clarity in accountability for B2B procedures.</p> <p>See section 4.4 (page 15) for further discussion on this matter.</p>

Stakeholder	Issue	AEMC Response
Energex (appendix, pages 1, 3)	<p>B2B systems and processes are fundamental to retail market operations and are currently the exclusive province of retailers and distributors. These parties are the primary stakeholders and must continue to play a prominent role in the development of B2B procedures.</p> <p>While there was clear rationale for establishment of the IEC, there is no justification for maintaining greater control of these procedures by industry than other procedures.</p> <p>Agree that accountability for B2B procedures has become unclear largely due to the fact that in practice the processes for developing B2B and non-B2B procedures have converged.</p> <p>Support proposal for a single body to manage the process for all retail market procedures with clear lines of accountability, although important for industry to continue to play a prominent and influential role.</p>	<p>The Commission considers that there is no strong case to make fundamental changes to the governance arrangements for developing procedures required under Chapter 7, at this time. Further, the Commission does not agree that there is any lack of clarity in accountability for B2B procedures.</p> <p>See section 4.4 (pages 14 and 15) for further discussion on these matters.</p>
EnergyAustralia (page 4)	<p>It is inappropriate that AEMO should have procedure making responsibility for making all chapter 7 procedures.</p> <p>B2B procedures are about business to business communications rather than business to market communications. Industry participants make significant investments in the systems that support B2B and therefore there remains a vital role for industry to play in the decision making and development of these procedures.</p> <p>Given the procedures impact market participants only, to lose control of the procedure development process is unacceptable.</p>	<p>The Commission agrees that B2B procedures should continue to be treated separately from other retail market procedures, and also that a strong industry influence on decision making in respect of these procedures should be retained at this time.</p> <p>See section 4.4 (pages 14 and 15) for further discussion on these matters.</p>

Stakeholder	Issue	AEMC Response
Ergon Energy (pages 4, 5)	<p>There is a potential for the IEC to effectively force change on AEMO without necessarily having an understanding of the impacts of the decision, which may disadvantage market participants.</p> <p>There is no justification for a continuation of greater industry control over B2B procedures than other retail market procedures: there is significant interplay between the procedures and uniform management of them is important.</p>	<p>The Commission considers that there would be incentives on industry to avoid this type of situation from arising. The fact that, to date, no conflicts or issues of this nature have arisen indicates that this has not been, and is unlikely to be, a problem in practice.</p> <p>The Commission also considers that it is appropriate for the existing arrangements to remain in place at this time.</p> <p>See section 4.4 (pages 14 and 15) for further discussion on these matters.</p>
Origin (pages 2, 4)	<p>AEMO should not make B2B decisions alone: the IEC should continue to make these decisions with input from AEMO.</p> <p>A process which would allow AEMO to determine and change retail market procedures, particularly B2B procedures, is not appropriate given the impact such changes can have on market participants.</p>	<p>The Commission considers that it is appropriate for the existing arrangements to be retained in the current circumstances.</p> <p>See section 4.4 (pages 14 and 15) for further discussion on these matters.</p>
United Energy (page 2)	<p>There is a substantive body of work to be managed and coordinated in relation to metering standards and competition. This is best managed by the AEMC and AEMO rather than a body such as RMEC or IEC.</p>	<p>Much of the work in relation to the roll out of smart meters will be managed through the AEMC's processes following the Power of Choice.</p>

Stakeholder	Issue	AEMC Response
Duplication		
AGL (pages 3, 4)	<p>The governance framework is adequate except for the parallel committees. Merging the committees makes sense and should proceed, but the resulting committee structure and relevant operational detail needs to remain in the rules consistent with the approach taken for the IEC now.</p> <p>If the Chapter 7 procedures cannot be combined under industry management then there are valid reasons for preserving the distinction between the two types.</p>	<p>The Commission notes that these comments appear to suggest a potentially different outcome altogether from the current arrangements and those proposed. However it considers that, at the current stage of market development, it is appropriate for the existing arrangements to remain in place.</p> <p>See section 5.4 (page 19) for further discussion on this matter.</p>
Australian Energy Market Operator (submission, page 4)	<p>The rule change proposal includes a suggestion to delete the B2B objective and principles from the rules, on the basis that they are a legacy from the National Electricity Code. In the context of the NER the only appropriate guiding principle is the NEO, which is already built into AEMO's decision making.</p> <p>The retention of multiple objectives in the NER is unlikely to enhance certainty and may have the contrary effect if conflict arises.</p>	<p>The Commission is satisfied that, given the potential cost impact on businesses from changes to B2B procedures, there are currently strong incentives for industry to make efficient decisions with respect to B2B procedures.</p> <p>See section 5.4 (pages 18 and 19) for further discussion on this matter.</p>
Energex (appendix, page 2)	<p>Despite formal arrangements, the operations of the IEC and RMEC have converged over time reflecting practices that have evolved to deal with the inefficiencies inherent in the current arrangements.</p> <p>There is a likelihood that ongoing market development and the emergence of new technologies and initiatives will result in an increase in the cross-over of procedural areas.</p>	<p>The rules do not preclude the merging of membership and activities undertaken by the IEC and RMEC. To the extent that this has occurred in practice, the Commission considers that this may provide an opportunity for engagement and also help to minimise any actual duplication of resources and process.</p> <p>See section 5.4 (page 19) for further discussion on this matter.</p>

Stakeholder	Issue	AEMC Response
Ergon Energy (page 4)	There is likely to be an increase in the cross-over in different procedural areas as the effects of energy market reforms are realised. To support this evolution, B2B procedures should not be treated separately from other retail market procedures.	<p>These comments have been noted however the Commission considers that it is appropriate for the existing arrangements to remain in place at this time.</p> <p>See sections 4.4 (pages 14 and 15) and 5.4 (page 19) for further discussion on this matter.</p>
EnergyAustralia (page 3)	When a crossover in procedural areas occurs, working groups currently refer matters for consideration to other working groups with the appropriate expertise to provide advice. Should broader participation be required, membership of working groups is not limited to retailers and distributors but can be widened to allow for broader input.	The opportunity for other participants to informally participate in the development of procedures generally, is noted.
Origin (page 4)	<p>The likelihood of cross-over between procedural areas will increase in the future, but this does not justify the removal of B2B from the rules.</p> <p>B2B procedures are important and distinct processes as they determine the interactions between market participants. AEMO's has an important role as the provider of the B2B e-hub, which facilitates these communications.</p>	<p>The Commission considers that it is appropriate for the existing arrangements to remain in place and specified within the rules, at this time.</p> <p>See sections 4.4 (pages 14 and 15) and 5.4 (page 19) for further discussion on this matter.</p>
Flexibility		
AGL (page 4)	<p>The existing processes are sufficiently flexible; the real issues that need to be addressed are related to the change and project management processes and resources internally within AEMO. These need to be addressed regardless of the rule change proposal.</p> <p>Agree that there is increasing crossover, or likelihood of crossover in different procedural areas, but rather than remove industry control over all areas there should be an industry committee to with which AEMO can discuss all procedures.</p>	These comments have been noted however the Commission has determined that it is appropriate for the existing governance arrangements to be retained at this time.

Stakeholder	Issue	AEMC Response
Australian Energy Market Operator (submission, page 3)	Having a governance framework with flexibility to adapt to changing technologies and stakeholders is not reactionary but can facilitate an orderly and timely response to these changes. The change process should be capable of moving as quickly as is required but be governed by appropriate consultation and decision making criteria and process that safeguard against ill-considered changes.	<p>Given the Commission's position that B2B decision making should remain with industry currently, it considers that the existing governance frameworks are appropriate and that there is adequate provision under the rules for changes to be made when requested.</p> <p>See section 6.4 (page 24) for further discussion on this matter.</p>
Energex (appendix, pages 2 - 4)	<p>Current arrangements may not be sufficiently flexible in meeting changing market and technological conditions in a timely manner. There may be a need for a broader range of participants in the consultation process as a result of future market developments.</p> <p>Support the introduction of more flexibility in the B2B governance framework by moving it into AEMO's procedures, although also understand that this may lead to greater uncertainty for market participants. Therefore would also support the introduction of guiding principles to which AEMO must have regard in exercising its decision making powers.</p>	See the AEMC's response to comments made by the Australian Energy Market Operator on this issue, above.

Stakeholder	Issue	AEMC Response
Ergon Energy (pages 3, 5)	<p>In a reasonably static market, the Chapter 7 procedures were adequate but there will be a need for more flexible governance arrangements in a rapidly evolving market.</p> <p>Inflexible or inappropriately designed governance arrangements will potentially hamper or interfere with the ability of new market participants to enter and integrate into the market, and enable it to evolve quickly.</p> <p>No firm views on the appropriate place for a governance framework, however should it be transferred to AEMO, would expect a full review of the rules consultation process to ensure robust issues analysis and resolution processes are in place.</p>	See the AEMC's response to comments made by the Australian Energy Market Operator on this issue, above.
EnergyAustralia (pages 2 - 4)	<p>Current framework for development of B2B and other Chapter 7 procedures has been appropriate and sufficiently flexible to date.</p> <p>However it is also acknowledged that while B2B is currently of importance only to retailers and distributors, this may change.</p> <p>For the purposes of continued certainty, the framework should be retained in the rules, however to address the issue of flexibility it is proposed that 7.2A.(g) should be amended to allow the IEC to review its own membership to accommodate market developments.</p>	See the AEMC's response to comments made by the Australian Energy Market Operator on this issue, above.
Origin (pages 3, 4)	<p>Existing arrangements have proven flexible to date.</p> <p>In terms of representation, market participants currently have access to IEC consultations, decisions and papers. Membership could be broadened to accommodate other participants if necessary.</p> <p>Locating the B2B governance framework outside of the rules would increase the uncertainty around the future B2B work program and decrease industry influence on proposed changes.</p>	See the AEMC's response to comments made by the Australian Energy Market Operator on this issue, above.

Stakeholder	Issue	AEMC Response
United Energy (page 2)	Concur with the view that greater flexibility in the process will reduce overall certainty for stakeholders, but it is appropriate that a broader range of parties that are impacted by future changes are involved in the development, consultation and decision making processes.	See the AEMC's response to comments made by the Australian Energy Market Operator on this issue, above.
New technology		
AGL (page 5)	The existing governance arrangements provide for evolving technologies and therefore additional power and control is not generally necessary. Based on recent experience in relation to the demand response mechanism, there is potential for the proposed approach to stifle innovation as any procedures would be developed based upon AEMO's system limitations.	These comments have been noted, however in light of the Commission's draft decision not to make a rule, it is not necessary to address this matter at this time.
Australian Energy Market Operator (submission, page 5)	<p>Much of the existing Rule 7.13 of the NER is considered to be unnecessary or redundant in 'allowing' the use of new technologies or the establishment of procedures to accommodate them. This is because the definition of 'retail market procedures' in the NER is broad enough to incorporate the application of new technologies without the need for specific enabling provisions.</p> <p>However this is a secondary issue and the proposal only suggests minor amendments to this clause to improve its drafting.</p>	
Energex (appendix, page 5)	The ability for AEMO to authorise new and evolving technologies is necessary in order that it can respond to changes in a timely manner.	
Ergon Energy (page 6)	Consider that it may be desirable and necessary for AEMO to be able to authorise new and evolving technologies, provided participants are able to negotiate appropriate time-frames for introducing them, since they require opportunities to take measured approaches to introducing technological change in conjunction with ongoing systems, business and process changes.	

Stakeholder	Issue	AEMC Response
EnergyAustralia (page 5)	Current governance framework provides for the development of procedures for new and evolving technologies. Amending the rules to allow for the IEC to review its membership will address future issues of broader participation.	
Origin (page 5)	The authorisation of new technologies through AEMO is not considered to be supportive of the NEO and believes that the inclusion of proposed clause 7.13(b1) is premature. Market participants, third parties and consumers are best placed to put forward technologies for authorisation via procedures.	
United Energy (page 3)	Drafting is not necessary as the head of power to make retail market procedures is extremely broad.	
IEC member representation		
AGL (page 4)	The existing consultation and membership process is not exclusive. Participants must be nominated and elected to IEC but must be able to demonstrate that they can contribute to the group. Access to the working groups is open to all participants. Working groups are structured to address specific issues, although in some cases, exclusion is appropriate. The structure and running of these groups can, however, be improved.	The Commission considers that this matter of appropriate representation and participation amongst current participants is one of the IEC's internal governance and, as such, would be more appropriately addressed by the IEC and its members.
Energex (appendix, page 2)	It is understood that concerns regarding the current breadth of representation in the IEC and access to meetings have been raised.	
EnergyAustralia (page 4)	Members of the IEC are industry representatives and are therefore expected to represent those that do not have direct representation. Project working groups also provide a forum for broader industry input, as these are not limited to retailers and DNSPs.	

Stakeholder	Issue	AEMC Response
Ergon Energy (page 4)	The IEC is made up of select industry representatives, and is therefore not a balanced representation of all market participants. As AEMO is independent, it is best placed to make decisions on B2B matters, in order to represent the interests of all market participants on a fair and equitable basis. However the decision making process should include a robust consultation process.	
Red Energy (page 1) Lumo Energy (page 1)	Change should focus on improved representation, especially for second tier retailers, and the opportunity for open consultation.	
Simply Energy (page 1)	<p>Have concern about current limits on access to forums such as IEC/RMEC and other consultative forums: representation by long standing first tier retailers that may not be familiar with operations of second tier retailers means that the concerns specific to specific sub categories of retailers may not be raised or adequately represented. Business models, resourcing and operational requirements vary greatly across different retailers and as a result, the impacts of new procedures can also vary significantly.</p> <p>Attendance at all such meetings should be open to any representative of a registered participant who may wish to attend - this would allow for diversity of attendees - all retailers would become better informed and openly contribute to discussions.</p>	

Stakeholder	Issue	AEMC Response
Opt out provision		
AGL (page 4)	Support retention of opt out provisions as this does not prohibit small participants entering the market.	These comments have been noted, however in light of the Commission's draft decision not to make a rule, it is not necessary to address this matter at this time.
Energex (appendix, page 5)	Opt out provisions should be retained to allow for flexibility, provided the alternative arrangements do not impact on other participants.	
EnergyAustralia (page 4)	Support the opt-out provision being retained in the B2B procedures as it removes barriers to entry, but it is also essential that the requirement for a bi-lateral agreement between impacted participants be retained. If there is no bi-lateral agreement then compliance with the procedures should be mandatory.	
Ergon Energy (page 6)	Opt out provisions should be retained, but should be tightened to include time-frames and disclosure rules in relation to the agreements. New requirements for disclosure, defined duration equitable terms that do not disadvantage other participants and approval by AEMO or other governing body would also be supported.	
Origin (page 5)	Opt-out provisions should be retained to allow continued flexibility.	
United Energy (page 3)	Support retention of the opt-out provisions.	

Stakeholder	Issue	AEMC Response
Civil penalties		
Australian Energy Regulator (page 2)	<p>MSATS procedures are an important regulatory instrument for facilitating the market and retail contestability. The proposal to remove the civil liability provision from rule 7.2.8 would diminish the ability of the AER to enforce compliance with these procedures. This is of concern given that transfers in error appear to be on the rise in the NEM.</p> <p>Without the civil penalty attached to these provisions the deterrence to non-compliance, and meaningful consequences for businesses that adversely affect consumers or create risks to the efficient operation of the market, is significantly limited.</p>	<p>The Commission notes these comments and, in particular, the importance of this provision to the enforcement of MSATS procedures. Consistent with the Commission's overall determination, it does not consider that changes to this provision are warranted at this time.</p>
AGL (page 4)	A full review of compliance with these sections and the correct application of civil penalties is required, but this should be separate from this rule change request.	
EnergyAustralia (page 4)	Civil penalties should only apply to rules or the law but not to procedures. It is appropriate for instances of non-compliance of procedures to be referred to AEMO for investigation.	
Ergon Energy (page 5)	Current penalty regime represents a reasonable balance between freedom to make decisions and consequences for bad behaviour, and would not expect it to expand in its scope.	
Origin (page 5)	Civil penalties should not apply to breaches of procedures.	
United Energy (page 3)	Where there is a potential for detrimental customer impact then there is an argument for civil penalties to apply, but they should not apply to B2B transactions.	