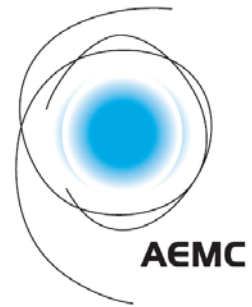


Australian Energy Market Commission



Guidelines for making written submissions on Rule change proposals

January 2008

1 Objective of the Guidelines

The Australian Energy Market Commission (AEMC) has prepared these guidelines to assist those who wish to make a written submission to the AEMC as part of the consultation processes for Rule change proposals being considered under the National Electricity Law (NEL). The AEMC has also published separate guidelines on how to submit a Rule change proposal.

2 Submissions as part of consultation process for Rule making

The AEMC is responsible for the National Electricity Rules (referred to as 'the Rules') and where a person (a proponent) requests changes to the Rules, the AEMC conducts a Rule making process which includes two stages of public consultation.

At the first stage, the AEMC publishes notice of a Rule change proposal put forward by a proponent and invites written submissions or comments from any person or body. The notice is published:

- in the Australian Newspaper and in the South Australian Government Gazette; and
- on the AEMC's website - www.aemc.gov.au.

This part of the process is known as "first round consultation" and there is a minimum period of 4 weeks to make written submissions in relation to a proposed Rule change. The notice sets a closing date for lodging submissions. After close of first round consultation, the AEMC then considers all written submissions and other relevant considerations, and makes a draft decision (a draft Rule determination and a draft Rule).

The AEMC then publishes notice of the draft decision and again invites any person who wishes to do so to make written submissions or comments on that draft decision. There is a minimum period of 6 weeks to make written submissions in relation to a draft decision. This is known as "second round consultation", and enables the AEMC to hear the views of NEM participants and other interested persons on the draft decision on the Rule change proposal. After close of second round consultation, the AEMC considers all submissions made and any matters relevant in applying the Rule making test (see section 3 below), and then makes a final decision whether or not to make the change to the National Electricity Rules.

3 AEMC's consideration of written submissions as part of Rule making

In deciding whether or not to change the National Electricity Rules, the AEMC must apply a Rule making "test"¹. This means that the AEMC must be satisfied that the change is likely to contribute to the achievement of the National Electricity Objective² (NEO), which states the object of the NEL 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, reliability and security of supply of electricity; and
- (b) the reliability, safety and security of the national electricity system."

In applying the Rule making test to the preparation of a draft decision (after first round consultation), the AEMC takes into consideration all written submissions that it has received. Similarly, in making a final decision after second round consultation, the AEMC applies the Rule making test in the preparation of that final decision, and takes into consideration the written submissions from second round consultation.

The AEMC adheres to principles of procedural fairness in carrying out its Rule making role and endeavours to facilitate the widest possible opportunity for participants and other interested parties to be heard. Stakeholders are invited to present their views and comments as an important input into the AEMC's decision making in relation to changes to the National Electricity Rules.

However, the AEMC's commitment to procedural fairness will be subject to the statutory requirements in the NEL. There are three key requirements:

- **Timeliness:**

The AEMC is obliged by law to take into account submissions lodged within the statutory timeframe as part of its decision making. Where submissions are received by the AEMC after the closing date, the AEMC endeavours to have regard to these late submissions, but is not legally bound to do so. The AEMC is itself subject to statutory time constraints for its decision making, and must properly consider submissions lodged within the specified time period. Late submissions may not therefore receive the same level of consideration, and the AEMC would therefore urge persons making submissions to lodge within the specified time period.

- **Relevance to the particular Rule change proposal:**

In considering a Rule change proposal, the AEMC may only have regard to matters that are relevant to the particular proposal that is under consideration. Persons making a submission should be mindful to ensure that the submission is relevant and that it raises issues about or makes comments upon, the particular Rule change proposal that is the subject of the AEMC's decision making and process.

¹ The Rule making test is at s.88 of the NEL.

² The National Electricity Objective is set out in s.7 of the NEL.

While the AEMC recognises there are overlapping and interlinking issues in the NEM, it is nevertheless important for stakeholders to ensure the relevance of their submission to the particular proposal under consideration.

- **Role of AEMC discretion**

The Rule making test in the NEL allows the AEMC to give weight to any aspect of the NEO “as it considers appropriate in all the circumstances”³ When information, opinions and views are presented to the AEMC in written submissions, the relative weight to be given to the content of those submissions is a discretion given to the AEMC. This discretion must be properly and reasonably exercised, consistently with any statutory requirements under the NEL.

As part of its decision making, the AEMC may make judgments about the relative weight to be given to submissions, having regard to the AEMC’s own analysis in applying the Rule making test to a Rule change proposal. While the AEMC is not obliged to adopt suggestions, comments or recommended alternative solutions to the issue identified in the Rule change proposal, such comments form an important part of the decision making, and in many instances, may result in changes being incorporated in a Rule that is to be made or in a decision not to make a Rule.

4 How does the AEMC deal with confidential, personal or defamatory material contained in a written submission

4.1 Claim for confidentiality of information included in written submissions

The AEMC’s usual practice is to publish all written submissions on its website. However, in certain circumstances, those who make a submission may make a claim that it contains confidential information. Such a claim should clearly identify the part or parts of the submission that the claim for confidentiality relates to, and give reasons why the AEMC should accept the claim that the material be treated as confidential.

Where the AEMC forms the view that the claim to confidentiality is justified, it may decide⁴ to publish the submission, but omitting the confidential information. In such a case, the AEMC is required to include a note to the effect that confidential information has been omitted at each place in the submission where this has occurred.

Where the AEMC decides that it does not accept the claim for particular submissions (or parts of a submission) to be treated as confidential, the AEMC’s practice is to notify the person who has made the submission of this decision, and that the AEMC intends to publish the submission on its website. If the person presses its claim to confidentiality in relation to the submission, AEMC will make a decision whether to publish or not to have regard to the material. This provides the person with the opportunity to withdraw the submission (in whole or in part) if they choose to do so.

³ See s.88(2) of the NEL.

⁴ See section 108 of the NEL.

It should also be noted that the AEMC considers that where submissions (or parts of submissions) are treated as confidential, they cannot be tested and subjected to the full scrutiny that the public consultation process allows. The AEMC therefore takes this lack of full public scrutiny into account in the appropriate weight to be attributed to confidential information contained in a submission.

4.2 Personal information disclosed in a written submission

The AEMC has adopted a policy of not disclosing personal information of individuals (such as personal (home) addresses, telephone numbers) in written submissions that are posted on the AEMC website.

Those preparing submissions are requested to review the submission to ensure that no such material has been inadvertently incorporated into the submission.

4.3 Defamatory or otherwise inappropriate material

The AEMC will not publish defamatory or otherwise inappropriate comments or statements as part of a submission, and requests that persons making submissions refrain from the use of personally directed criticisms or comments about named individuals or the use of unacceptable language.

5 What should be kept in mind when preparing a written submission?

In light of the previous discussion about the process of consultation and the role of submissions in the AEMC's consideration of a Rule change proposal, the AEMC provides the following guidance by way of a checklist of questions to assist those preparing a submission.

- Does the written submission reflect that the person making the submission has a correct understanding about the nature, scope and context of the particular Rule change proposal under consideration?
- Does the submission link comments and discussion to the issues raised by the Rule change proposal?
- Does the submission appropriately respond given the *particular stage* of the Rule making decision process? If the submission is for first round consultation, the submission is providing comment and views on the proponent's Rule change proposal. If the submission is in the context of second round consultation, submissions are commenting on and presenting views about, the draft decision of the AEMC on the proponent's Rule change proposal.
- Does the submission clearly identify the issue or issues for comment and discussion, (including where the person agrees or disagrees with the proponent or the AEMC)?
- Does the submission succinctly outline the comments that the person wishes to make on some or all of the issues, and where appropriate, put forward

any suggestions or recommendations for addressing issues that the person wishes to make?

- Does the submission contain confidential material that is clearly identified to the AEMC and reasons given as to why it should be treated as confidential by the AEMC?
- Has the submission been reviewed to ensure no personal information relating to an individual has been inappropriately disclosed or comments made that are not suitable to be published on the AEMC's website?

6 How to lodge a submission with the AEMC

Notice for first and second round consultation specify the closing date by which submissions must be lodged with the AEMC. Submissions should be lodged by close of business on that date, or as soon as practicable thereafter on that date.

A submission may be lodged with the AEMC electronically (via email) or in hard copy (via ordinary mail).

Lodging a submission via email:

- The submission must be sent to submissions@aemc.gov.au
- The submission must be on letterhead (if an organisation), signed and dated by the proponent.
- The submission must be in PDF format.
- Upon receipt of the submission, the AEMC will issue a confirmation email. If this confirmation email is not received within 3 business days, it is the proponent's responsibility to ensure successful delivery of the submission has occurred.
- The submission should also be forwarded to the AEMC via ordinary mail.

Lodging a submission via ordinary mail:

- The submission must be on letterhead (if an organisation), signed and dated by the proponent.
 - The submission should be sent to:
Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235
 - Upon receipt of the submission, the AEMC will issue a confirmation letter. If this confirmation letter is not received within 3 business days, it is the proponent's responsibility to ensure successful delivery of the submission has occurred.
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