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Improving consultation procedures in the Rules, rule change – ERC0323

Submission via AEMC website

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AGL Response to AEMC Improving consultation procedures in the Rules, rule change consultation paper

AGL Energy (**AGL**) welcomes the opportunity to comment on the AEMC Improving consultation procedures in the Rules, rule change consultation paper (**consultation paper**).

AGL is one of Australia's largest integrated energy companies and the largest ASX listed owner, operator, and developer of renewable generation. AGL is also a significant retailer of energy and telecommunications, providing solutions to around 4.2 million across Australia.

AEMO have proposed the consolidation of the National Electricity Rules (NER) consultation requirements into a single procedure. The new rule consultation procedure would only require one round of consultation. The decision-making body would also have the discretion to extend to an additional round of consultation where necessary.

AEMO contend that this rule change is required because there are increasing instances where a two-stage consultation process is unnecessary. AEMO also contend that as the transformational phase of the NEM requires rapid adjustments to the regulatory framework, the pace of reform will therefore require more flexibility in the consultation process.

We support AEMO's objective of improving the rules consultation process by identifying opportunities to streamline the consultation process when appropriate. We acknowledge there are historical instances where the NER chapter 8 Rules consultation procedure (rules consultation procedure) was likely unnecessary given the changes proposed. However, these instances are limited and do not demonstrate a requirement to significantly alter the rules consultation procedures.

We note that currently the AEMC, or rule making authority, considers whether a legal instrument should be subject to the current rules consultation procedures. It is at this stage that the AEMC will consider the industry importance of the consultation requirements and as a matter of policy, rather than efficiency, whether the strict rules consultation procedures apply. Delegating this decision on whether a two-stage consultation process is necessary would undermine AEMC's role as policy maker.

Further, we consider the shift in additional decision maker discretion requires strong consultation procedures rather than AEMO's proposed reduction in consultation requirements. Additional discretion in determining a legal instrument must accompany equivalent consultation requirements that reflect the industry importance of the subject matter being considered. Without this, the AEMC affords the statutory authority additional powers with no additional accountability. As noted above, we consider it is the role of the AEMC to consider the consultation requirements as a matter of policy during the rule making process.



Whilst we do not agree with AEMO's proposal of a single stage consultation with the discretion to extend the consultation process, we do think there is merit in exploring how AEMO can shorten the consultation process in strictly limited circumstances.

We propose one option is for the decision maker to propose a one stage consultation process if it meets strict criteria. Such as, previous industry consultation (through another public forum) or if the changes are non-controversial. The decision maker would then issue a public notice proposing the streamlined consultation process on the basis of it meeting the criteria. However, should an industry participant object on reasonable grounds to this notice the streamlined process cannot occur. In essence, so long as the objection is not frivolous or vexatious, the objection would revert the decision maker back to the two-stage process.

The key feature of this alternative option is that the decision to proceed with a single staged consultation process is a joint decision between industry and the decision-making body. The right to object also provides the decision maker with an additional layer of accountability to ensure the proposal to streamline the consultation process is clearly explained to the industry to ensure no objections are raised unnecessarily.

As AEMO contends in the anecdotal examples of minimal industry engagement on some consultation processes subject to the rules consultation procedures, if industry participants are evidently comfortable with single staged consultation processes by virtue of no submissions being made, we can be confident objections to a streamlined consultation process wouldn't have been raised in these historic instances if this proposed framework were in place.

Consistency of consultation procedure to the Gas and Energy Retail Rules

Ultimately the rules consultation requirements should be appropriate for the type of legal instruments that are being created or amended. For this reason, as set out below, we do not consider it is relevant to consider the principle that the National Energy Retail Rules (NERR) or National Gas Rules (NGR) consultation rules are consistent with the NER framework.

In the case of the NGR, consultations under the NGR can vary from minor amendments to substantial changes impacting complex wholesale and retail processes. The extended consultation requirement often relates to these complex changes. Given the subject matter and the careful consideration of system impacts both for AEMO and industry participants, the extended process is often appropriate. The AEMC should only consider aligning the NGR consultation process where the subject matter and issues considered are likely to be similar in nature to those legal instruments under the NER consultation procedure.

With regard to the consultation requirements under the NERR, whilst we consider there is merit in strengthening the consultation requirements under cl 173 of the NERR it is important to again consider the context of these instruments within the broader framework and how they impact the industry.

In the case of the six legal instruments under the NERR, these are significantly differences in their application to the industry and how they affect business operations and retailer's interactions with customers compared to the NER legal instruments. Our key concern with the development and amendment of these NERR instruments is both the limited consultation process and the lack of obligation of the decision maker to thoroughly consider the costs of any proposed changes, and in turn weigh these costs against the proposed benefits of the amendments to the instrument.



Whilst we accept these issues may be outside of the scope of this rule change, we consider the NERR consultation process will require a focused review on the effectiveness of the development and amendment of these NERR instruments.

If you have any queries about this submission, please contact Kyle Auret on (03) 8633 6854 or KAuret@agl.com.au.

Yours sincerely,

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