



APA submission

Improving consultation procedures rule change

February 2022





Mr Edward Orum
Australian Energy Market Commission

Lodged online

3 February 2022

RE: APA Submission to the Improving Consultation Procedures rule change consultation paper

Dear Mr Orum,

Thank you for the opportunity to comment on the Consultation Paper looking at options to improve consultation procedures in the National Electricity Rules and National Gas Rules.

APA is an ASX listed owner, operator, and developer of energy infrastructure assets across Australia. Through a diverse portfolio of assets, we provide energy to customers in every state and territory on mainland Australia. As well as an extensive network of natural gas pipelines, we own or have interests in gas storage and generation facilities, electricity transmission networks, and over \$750 million in renewable generation.

APA fully supports fit for purpose consultation. Our own stakeholder engagement experience has shown that genuine engagement between businesses and stakeholders results in outcomes that better reflect what is valued by customers and other stakeholders.

The quality of engagement on a particular issue is influenced by a range of factors, including the time and resources available and the experience of the team or individual conducting the consultation. It is for this reason that we are concerned by the proposal to remove a formal consultation step in the Rules Consultation Procedure. This could negatively impact the quality of engagement and result in poor regulatory outcomes. In our submission below we outline an alternative option that will help facilitate more efficient consultation while maintaining stakeholder confidence in the stakeholder engagement process.

If you wish to discuss our submission in further detail, please contact John Skinner on 02 9693 0009 or john.skinner2@apa.com.au.

Regards,

A handwritten signature in black ink, appearing to read 'P. Bolding', written in a cursive style.

Peter Bolding
General Manager
Economic Regulation & Policy

1 Submission

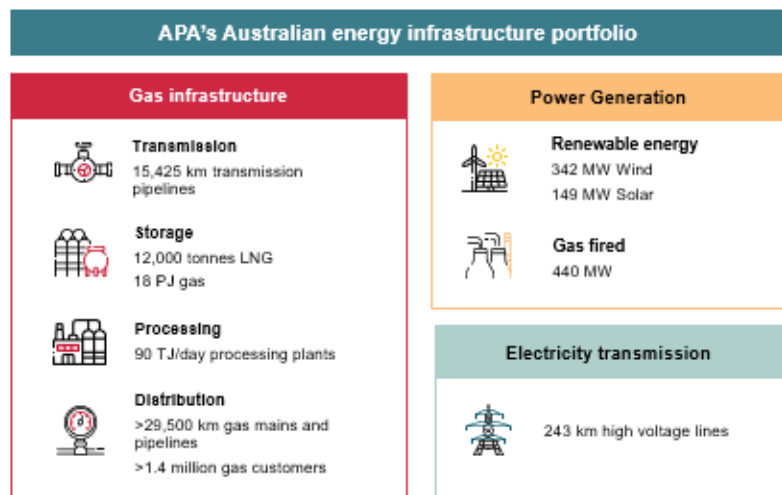
Key points

- The quality of stakeholder engagement is influenced by a range of matters, including timing and resourcing.
- Removing a formal consultation step in the Rules Consultation Procedure undermines stakeholder confidence in the consultation practices of decision makers and could lead to poor regulatory outcomes.
- Our submission proposes an alternative approach that better meets the AEMC's assessment criteria:
 - A consultation approach where two consultation rounds remains the default option
 - The decision maker can propose a one step consultation process, but must follow a two step process if it receives a reasonable written request from a stakeholder (similar to the expedited rule change process in s. 96 of the National Electricity Law (NEL))
- The National Gas Rules (NGR) already contain an expedited consultative procedure and so don't need any amendment.

APA is a leading Australian Securities Exchange (ASX) listed energy infrastructure business. Consistent with our purpose to strengthen communities through responsible energy, our diverse portfolio of energy infrastructure delivers energy to customers in every state and territory on mainland Australia.

Our 15,000 kilometres of natural gas pipelines connect sources of supply and markets across mainland Australia. We operate and maintain networks connecting 1.4 million Australian homes and businesses to the benefits of natural gas. And we own or have interests in gas storage facilities, gas-fired power stations.

Our investments include over \$750 million in renewable generation, making APA the 8th largest renewables investor in Australia. Our high voltage electricity transmission connects Victoria with South Australia and New South Wales with Queensland.



APA is supporting the transition to a lower carbon future. Our ambition is to achieve net zero operations emissions by 2050. Through our Pathfinder Program, we are investigating how hydrogen and other technologies such as batteries and microgrids, can support a lower carbon future.

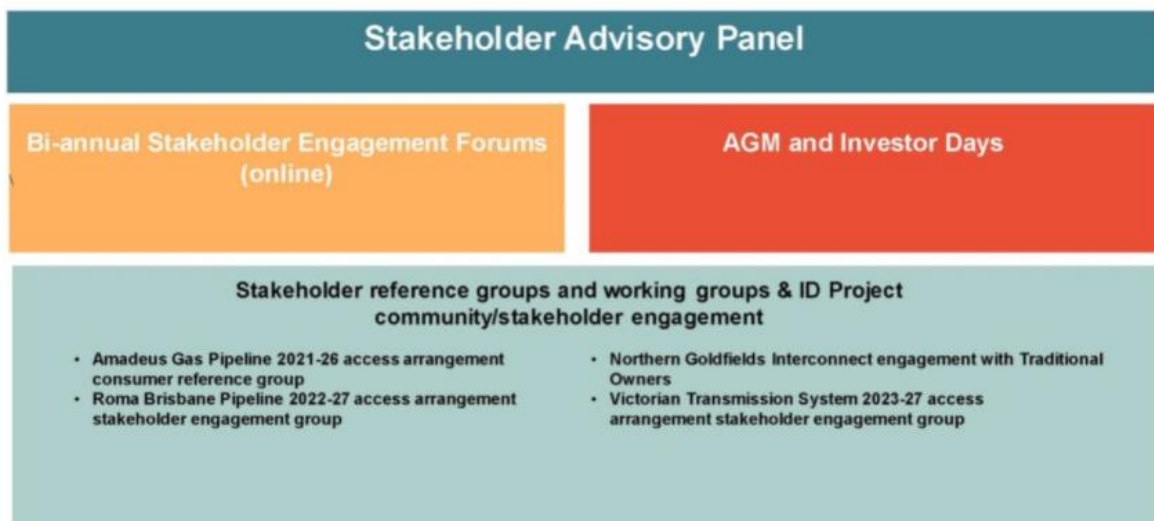
1.1 Why is good consultation important?

IAP2 Australia, the peak body for community and stakeholder engagement in Australia, aims to increase awareness of authentic engagement and its benefits. IAP2 Australia points out that engagement, when done well, improves social, environmental and economic outcomes.

APA continues to take steps to help improve the way we engage with our stakeholders. In 2021, we expanded our Stakeholder Engagement Framework (Figure 1) to ensure we are better able to 'bring the outside in' when it comes to the ways we make decisions and execute on our business strategy.

We established a Stakeholder Advisory Panel to enable APA to act as a sounding board to APA on policy matters, strategic programmes and plans as well as identifying additional matters that Panel members consider of importance to their stakeholders. The inaugural Panel comprises senior representatives from a range of high-profile and diverse Australian organisations. Our first forum was in June 2021.

Figure 1 APA's stakeholder engagement framework



When it comes to stakeholder engagement, we are always looking to do things better. We also recognise that we still have a lot to learn from our peers and stakeholders.

The market bodies have also been reviewing the way they consult with stakeholders to ensure their engagement is efficient and fit for purpose. AEMO, for example, has recently reviewed its engagement model following feedback from stakeholders.¹

1.2 Concerns with the proposed rule change

We agree with AEMO that the existing Rules Consultation Procedure set out in rule 8.9 of the National Electricity Rules (NER) may not be appropriate for minor or administrative amendments to regulatory instruments.² However, several aspects of AEMO's proposed rule change raise concerns:

- Moving to a default position of one round of consultation (rather than two), with the decision maker having the discretion to undertake further consultation, may not result in the best regulatory outcomes. This is because there are fewer formal steps for stakeholder views to be heard, and practical issues such as resourcing and timing limitations may mean that important stakeholder views are inadvertently missed.
- The proposal to remove a formal round of consultation sends a poor signal to stakeholders given the increased focus on stakeholder engagement. This has the potential to undermine stakeholder confidence in the engagement practices of market bodies. AEMO's proposed consultation criteria, which will be used by the decision maker to determine if other consultation steps are required, still leave the decision about any further engagement in the hands of the decision maker.³
- AEMO's proposed rule change may not actually speed up the consultation process. The existing rule 8.9 has 110 business days of steps in the prescribed consultation process, while AEMO's proposed replacement also has 110 business days of possible steps (30 business days consultation on the draft instrument and 80 business days to publish a final decision). While the 80 business days timeframe can be compressed, in our experience, regulatory processes often take as long as the time allows.
- The AEMC's proposed assessment framework includes principles of good regulatory practice. That is, regulatory processes should display the principles of predictability and stability, simplicity, efficacy and transparency.⁴ In our view, the proposed rule does not meet the principles of predictability, stability

¹ AEMO, *Reviewing AEMO's engagement model*, January 2021, <https://aemo.com.au/en/consultations/current-and-closed-consultations/renewing-aemos-engagement-model>

² AEMO, *Electricity and gas rule change proposal*, December 2020, p6

³ AEMO, *Supplementary Electricity and Gas Rule Change Proposal*, November 2021, p7

⁴ AEMC, *Improving consultation procedures in the Rules*, Consultation Paper, December 2021, p.19

or transparency. With the predictable second round of consultation removed, further consultation will depend on the plans and resourcing of the decision maker, may vary from process to process, and will be less transparent than under current arrangements.

1.3 **Alternative proposal that will better promote genuine consultation**

In our view, there is an alternative approach to that proposed by AEMO that better meets the AEMC's proposed assessment framework and is likely to result in more fit for purpose consultation.

To ensure that stakeholder confidence in the Rules Consultation Procedure is not undermined, two rounds of consultation should remain the default position (rather than the one round of consultation as proposed by AEMO).

However, we recognise that there may be occasions where a one step process is the more efficient outcome, particularly for non-controversial changes. In these circumstances, a model similar to the AEMC's expedited rule making power for non-controversial or urgent rule changes (set out in s. 96 of the NEL) should be adopted:

- If a decision maker considers that a shorter consultation process is warranted (with one formal consultation step) the decision maker can indicate in its initial notice that it intends to undertake a one step process.
- However, if the decision maker receives a written stakeholder request for a two step process, and the reasons set out in that request are not misconceived or lacking in substance, then a two step process must be adopted.

In our view, this approach better meets the objectives of the rule change:

- it allows for an 'expedited' consultation approach for non-controversial changes to instruments. Assuming an initial consultation of 30 business days and no objections to a one round process, this option could shorten the overall timeframe from 110 business days to around 60 business days.
- it maintains predictability and transparency in the process and draws on an existing approach in s. 96 of the NEL that is understood by stakeholders.
- stakeholder confidence in the process is maintained, given stakeholders have a say in how the consultation process is to be conducted.

A set of consultation principles, along the lines of those recommended by AEMO, could be developed to guide decision makers on when only one round of consultation may be appropriate. However, given a two step process remains the default position under the Rules Consultation Procedures, these consultation procedures may not be needed.

Similarly, if two rounds of consultation are the default position, then the other proposals in AEMO's rule change addendum (i.e., a separate consultation plan or consultation outcomes document) may also not be needed, given the information proposed for these documents should be included in the first and second consultation documents.

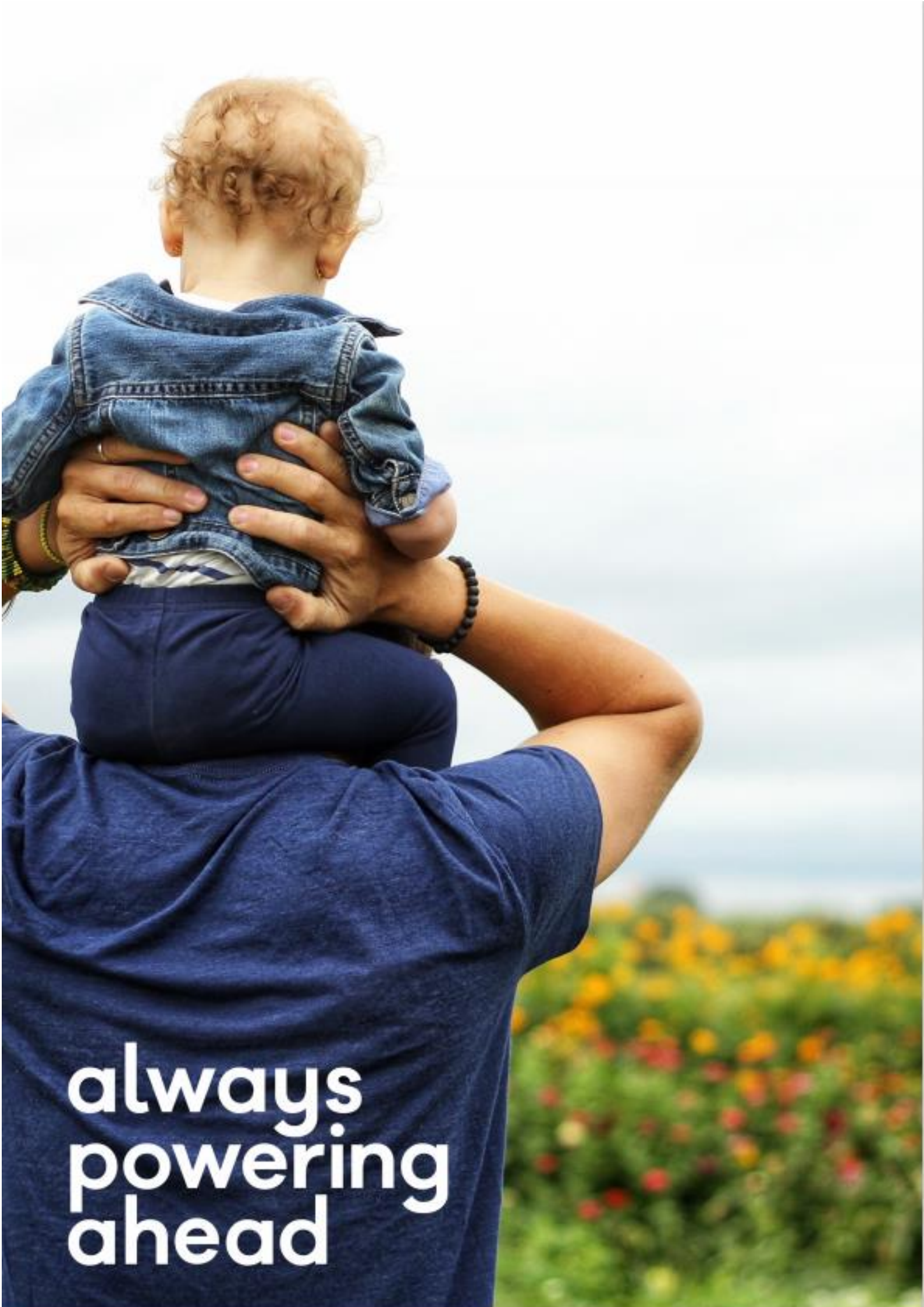
1.4 Changes to gas consultation procedures are unnecessary

The AEMC's Consultation Paper is also seeking views on whether changes to the consultation procedures in the NGR are necessary or desirable.

In our view, changes to the NGR are unnecessary, given that the NGR already contains an expedited consultative procedure (rule 9 of the NGR) which has one consultation step. This procedure sits alongside a standard consultative procedure (rule 8 of the NGR) which has two consultation rounds, and an extended consultative procedure (rule 9A of the NGR) which has two consultation rounds and is similar in form to the Rules Consultative Procedure in the NER.

The extended consultative procedure only apply to five rules in the NGL.⁵ If these instruments require greater flexibility in consultation arrangements, a potential solution is to have these five instruments being subject to the standard consultative procedure, which provides the decision maker with greater discretion as to the timing of the two consultation steps.

⁵ AEMC, Improving consultation procedures in the Rules, Consultation Paper, December 2021, p.19



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