

3 February 2022

Mr Edward Orum
Adviser
Australian Energy Market Commission

Submitted online

Improving consultation procedures in the Rules: AEMC Consultation Paper [ERC0323]

Dear Mr. Orum,

Energy Networks Australia (ENA) appreciates the opportunity to make a submission to the Australian Energy Market Commission's (AEMC) consultation on possible amendments to the consultation procedures under the electricity, gas and retail rules following a rule change request from the Australian Energy Market Operator (AEMO).¹

ENA is the national industry body representing Australia's electricity transmission and distribution and gas distribution networks. Our members provide more than 16 million electricity and gas connections to almost every home and business across Australia.

As highlighted by the AEMC, the pace of change in energy is driving the need for consultation that is robust, flexible and has the potential to facilitate better regulatory practice.

ENA supports the need for amendments to the current consultation processes to allow for flexibility and greater efficiency in regulatory processes where appropriate. Any changes should also, however, be considered against the need for robust consultation, which is critical to the development and successful implementation of good policy. Therefore, while ENA does not support AEMO's proposal to reduce the required consultation as default, we do propose alternate amendments to help streamline consultation processes when supported by stakeholders.

NER consultation procedures

A new consultation framework for subordinate instruments established under the National Electricity Rules (NER) is proposed by AEMO, with one round of consultation as the default, rather than two, but with principles that indicate when further consultation may be appropriate. AEMO considers that, as the default, mandating two rounds of consultation is unnecessary, particularly when a draft instrument can be provided at the start of the consultation.

In addition to a reduction in the proposed consultation, AEMO is also proposing to remove specific provisions for individually requested meetings, with the decision-maker instead deciding the type/s of consultation approaches used beyond written submissions.

¹ AEMC, Improving consultation procedures in the Rules, Consultation paper, 16 December 2021.

ENA agrees with the AEMC that the potential application of the rule change proposal is significant – as highlighted in the Consultation Paper, a new consultation framework may impact over 100 subordinate instruments in the NER, some of which are legally binding on stakeholders.

Two rounds of consultation enable robust consultation – consultations can commence by scoping the issues and allowing stakeholders to raise issues before market bodies have narrowed their focus towards developed positions, and then stakeholders are offered the opportunity to comment again on the proposed positions put forward by a market body. This process allows for decisions to be informed and supported by evidence and reasoning that is transparent and subject to appropriate levels of consultation with stakeholders.

If the rule change is made, there is the risk that it may lead to poor regulatory outcomes as a result of reduced consultation. Complex issues can arise that were not foreshadowed at the commencement and one round of consultation may not be sufficient to reveal these.

While ENA do not support the proposed amendments in their current form, we do recognise that there may be the need for flexibility and greater efficiency in regulatory processes for less controversial changes. Therefore, ENA recommends the development of:

- » a new consultation framework (an updated Rules Consultation Procedure) for subordinate instruments to be established under the NER with *two* rounds of consultation as the default (rather than one as proposed by AEMO)², and
- » defined principles to guide market bodies when only one round of consultation may be needed (i.e., the development of expedited consultation principles), with stakeholders offered the opportunity to reasonably object to its application and request two rounds of consultation. If the reasons set out in that request are not misconceived or lacking in substance, then two rounds of consultation must be adopted.

The expedited consultation principles should be implemented such that if the first round of consultation decides a preferential determination that is substantially different to the proposed change, or if the consultation includes changes to obligations that result in material changes to systems, then there must be at least a second round on consultation.

Removing the current provisions on requesting meetings will not contribute to the development of good policy, and ENA therefore does not support consulted parties no longer being given an explicit ability to request an individual meeting during the consultation process.

NGR consultation procedures

AEMO is proposing, as its preferred solution, to remove the National Gas Rules (NGR) extended consultative procedures and proposes that instruments which previously required consultation according to the extended consultative procedures would instead be consulted on according to the standard consultative procedure.

ENA supports AEMO's preferred solution to streamlining the NGR consultation processes, noting that the standard consultative procedure allows for a two-stage consultation with stakeholders. ENA does not,

² The NER should also be drafted to allow for additional (i.e., more than two) rounds of consultation if required.

however, support any changes to the NGR's standard consultative procedures that seek to align these procedures with the updated Rules Consultation Procedure proposed for the NER in this rule change.

The combination of the NGR's standard consultative procedures and expedited consultative procedures, along with the ordinary consultation process and expedited consultation process, allows for streamlined consultation that is sufficiently robust and flexible for gas related matters.

If you wish to discuss any of the matters raised in this letter further, please contact Lucy Moon, Head of Regulation, on lmooon@energynetworks.com.au.

Yours sincerely,



Garth Crawford
General Manager, Economic Regulation