



Australian Energy Market Commission

DRAFT RULE DETERMINATION

NATIONAL ELECTRICITY AMENDMENT
(IMPROVING CONSULTATION
PROCEDURES IN THE RULES) RULE
2022

NATIONAL GAS AMENDMENT
(IMPROVING CONSULTATION
PROCEDURES IN THE RULES) RULE
2022

NATIONAL ENERGY RETAIL
AMENDMENT (IMPROVING
CONSULTATION PROCEDURES IN THE
RULES) RULE 2022

DETERMINATION

Australian Energy Market Operator

14 APRIL 2022

INQUIRIES

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ABOUT THE AEMC

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

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SUMMARY

1 The Australian Energy Market Commission is making this draft determination and draft rules to streamline and make fit-for-purpose consultation procedures in the National Electricity Rules (NER) and National Gas Rules (NGR), in response to the rule change request submitted by the Australian Energy Market Operator (AEMO).¹

2 The Commission welcomes feedback on this draft determination **by 26 May 2022**.

The case for change

3 Good consultation processes lead to the development and implementation of good policy. The Commission's goal in this rule change is to make consultation processes for subordinate instruments transparent, predictable and appropriate to the matters at hand, so stakeholders and consulting parties can invest their limited resources productively.

4 This is important because there are nearly 100 instruments that require consultation according to either:

- the Rules consultation procedures in Chapter 8 of the NER, or
- the consultation procedures under the NGR.

5 Fit-for-purpose consultation processes are needed to facilitate the scale of energy market reform in the coming years, and the likely increase in the use of subordinate instruments.

6 With these factors in mind, the Commission is updating these consultation frameworks to:

- give consulting parties the flexibility to choose a consultation process that is fit-for-purpose
- support transparent and predictable consultation processes for stakeholders.

The draft rules

7 The Commission's draft rule determination is to make a more preferable draft electricity rule and to make AEMO's proposed NGR rule change. The Commission does not propose to make any changes to the Retail consultation procedures in the National Energy Retail Rules (NERR).

8 The key elements of the draft rules are:

- **Two new consultation processes in the NER - for non-material changes, and minor and administrative changes:** The draft rule introduces a new 10 week expedited process into the NER. This is for consulting on amendments to existing instruments that are unlikely to significantly impact on the national electricity market (NEM). The process involves four weeks of consultation on a draft instrument and a further six weeks for the consulting party to publish a final instrument. The draft rule also includes a new process modelled on the Retail consultation procedures that requires two

¹ AEMO submitted the rule change request on 7 January 2021, with a letter of support from the AER. AEMO submitted a rule change addendum containing a revised proposed rule in November 2021.

weeks' consultation on minor and administrative changes to instruments. These two new processes provide for consultation that is matched to the matters at hand, avoiding the over or under consultation that may occur under the current rules.²

- **Two rounds of consultation maintained for the standard process with updated timelines:** The draft rule maintains two rounds of consultation as a default for the standard Rules consultation procedures. This standard process is for consulting on new instruments and changes to existing instruments that do not meet the tests for either the expedited or minor processes outlined above. There are minimum four-week consultation periods for both the expedited and standard process. The rule also aligns the periods of time that a consulting party has to publish a draft and a final instrument under the standard process at ten weeks after the consultation period closes.³ However, a consulting party may publish a draft or final instrument earlier than ten weeks whenever it is able to.
- **Flexibility for when complex issues arise:** Consulting parties can choose, and stakeholders can request, to switch from the expedited to the standard process, if complex issues arise or stakeholders consider the proposed amendments may impact the NEM. Consulting parties can also extend the standard process if the matter is unusually complex or difficult or there has been a change in circumstances.
- **Revised provisions for individual meetings and summaries from consultation events:** The draft rule allows meetings to be requested and held earlier in the consultation process than currently allowed, without delaying the preparation of the draft or final report. Also, consulting parties will not be required to assess in advance whether a meeting would be necessary or desirable. If requested, a consulting party must hold the meeting within a reasonable time, where practicable, or explain why it is not reasonably practicable to hold the meeting. The draft rule extends meeting rights to the second round of consultation.⁴ Finally, the draft rule explicitly allows consulting parties to use additional consultation methods (such as working groups and forums), and requires them to include in their reports summaries of the matters discussed and outcomes.
- **In the National Gas Rules, consulting parties will use the Standard consultative procedure instead of the Extended consultative procedure:** The draft gas rule removes the Extended consultative procedure from the NGR. Where the NGR currently prescribe the use of the Extended consultative procedure, consulting parties will instead be directed to consult according to the Standard consultative procedure, which provides a flexible two-round process.

2 Currently, for the majority of subordinate instruments subject to the Rules consultation procedures in the NER, all changes require a full two rounds of consultation, however minor the proposed change. For some instruments, there is a complete exemption from consultation for minor or administrative changes.

3 Currently, the Rules consultation procedures do not set deadlines to publish draft or final reports.

4 Under the current rules, stakeholders request meetings in their submissions and must give reasons why a meeting is necessary or desirable. A consulting party is then required to use its best endeavours to hold any meetings that it concludes are desirable or necessary. This is only available for the first round of consultation and extends the process by up to five weeks. NER rules 8.9(e) and (f).

Why these changes will improve consultation under the rules

Expedited process provides flexibility with appropriate consultation

9 The Commission's view is that this new expedited process achieves at least as much speed and flexibility as AEMO's proposed rule change which involved broadly aligning the Rules consultation procedures with the Distribution and Transmission consultation procedures (i.e. having a single round of consultation as a default). Compared to the current Rules consultation procedures, having an expedited process available will reduce the length and burden of many consultations. The Commission also considers that the more preferable draft rule provides greater transparency, predictability and stability for stakeholders. It also concluded that the more preferable rule would involve low implementation costs as the changes are targeted and are well-supported by stakeholders.

New process for minor and administrative changes allows for quick fixes with stakeholder visibility

10 The Commission considers the new process for minor and administrative changes will provide more transparency than a consistent consultation exemption for such amendments (as initially proposed by AEMO), while also allowing consulting parties to easily update their documents. This process will be significantly shorter than the current requirement to use the full two-round process (where there is no specific exemption for minor changes). Any additional cost impacts could be minimised through consulting simultaneously on minor changes to several instruments. The process is flexible as it allows consulting parties to make a final decision as soon as it is reasonably practicable.

Updated timelines for the standard process improve transparency and predictability

11 Given the Commission's decision to add an expedited process to allow fit-for-purpose consultation, the Commission has considered improvements to the standard Rules consultation procedures.

12 The Commission is proposing new timelines for the standard process because:

- they provide predictability and transparency for stakeholders (compared to the current provisions, which do not contain deadlines to publish draft or final instruments)
- the extension provisions provide flexibility for consulting parties grappling with complex issues or material changes in circumstances, and will be familiar to stakeholders as they are based on the extension provisions in the NEL for Commission rule-making
- lengthening the consultation period on the draft instrument (from two weeks to four) recognises that stakeholders may need time to consider the details and the impacts of the proposed changes on their business operations.

Enhanced provision for meetings will promote stakeholder engagement without delaying draft or final decisions

13 The Commission has decided the enhanced meeting provisions in the draft electricity rule better address the assessment criteria than AEMO's proposal, which involved removing any express right to individual meetings. The rule changes aid transparency and add flexibility

(compared to the current rules) as meetings can be requested, and held earlier, so stakeholders can ask questions and raise confidential issues with the consulting party. This will strengthen submissions and help consulting parties identify material matters and integrate them into their analysis. A consulting party can opt to not hold a meeting if to do so would be impracticable, rather than the consulting party needing to consider in advance whether a meeting would be necessary or desirable as is currently the case.

14 As stakeholders can only request meetings during the consultation period, meetings would be held during or shortly after the end of the consultation period, and should not delay the preparation of the draft or final decision.

Removing the Extended consultative procedure in the NGR will streamline the rules

15 The Commission has decided to make a draft rule that gives effect to the NGR change AEMO requested, because:

- While it still has two rounds of consultation, allowing for robust consultation, the Standard consultative procedure is less prescriptive than the Extended consultative procedure and should allow consulting parties to undertake more flexible consultation.
- It is a predictable and transparent two-stage process that stakeholders have considerable experience with already. Further, stakeholders have not noted that it is overly complex or costly.

Changes to the Retail consultation procedures are not required

16 The Commission has decided not to make any draft changes to the Retail consultation procedures. This is because:

- the existing process already allows the AER to undertake innovative consultation
- it was not clear that the revised Rules consultation procedures would facilitate better regulatory practice than the existing Retail consultation procedures.

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1 THE AUSTRALIAN ENERGY MARKET OPERATOR'S RULE CHANGE REQUEST

This chapter explains:

- the existing consultation processes under the national energy rules
- the Australian Energy Market Operator's (AEMO or the Proponent) proposed changes to the National Electricity Rules (NER) and the National Gas Rules (NGR)
- the Commission's request for input on the Retail consultation procedure in the National Energy Retail Rules (NERR)
- the consultation process so far
- how to provide your views on this draft determination and associated draft rules.

1.1 Consultation under the NER, NGR and NERR

The NER, NGR and NERR require many matters, such as technical information, forecasting processes and service specifications, to be set out in regulatory instruments including guidelines, determinations, procedures and reports. These "subordinate instruments" are issued by AEMO, the Australian Energy Regulator (AER), the Reliability Panel, the Information Exchange Committee and the National Competition Council, among others.

In developing or amending these instruments, the responsible body is likely to have an obligation to undertake consultation following either:

- one of three consultation processes in the NER,⁵
- one of five consultation processes in the NGR⁶ or
- the Retail consultation procedures in the NERR.

In addition to the processes listed above,⁷ there are a variety of other bespoke processes for individual instruments, such as the Reliability Panel's review process.

1.2 AEMO's rule change request and rule change request addendum

On 7 January 2021, AEMO made a request to the Australian Energy Market Commission (AEMC or Commission) to change the Rules consultation procedures in the NER and the Extended consultative procedure in the NGR. The rule change request contained a letter of support from the AER. AEMO provided an addendum to this rule change request in November 2021.

5 These are the Rules consultation procedure, the Transmission consultation procedures and the Distribution consultation procedures.

6 These are AEMO's ordinary process, AEMO's expedited process, the Standard consultative procedure, the Expedited consultative procedure and the Extended consultative procedure

7 Further information on these processes is set out in the appendices to the consultation paper for this rule change, available on the [project page](#) on our website.

1.2.1 AEMO's rule change request: electricity (January 2021)

In relation to the NER, AEMO's rule change request proposed:

1. **A single consultation process** - consolidating the three existing consultation procedures into one process, with the existing distribution and transmission procedures serving as precedent, but to be replaced by a new single procedure.
2. **One round of consultation as a default** - commencing with consultation on a draft instrument. It was proposed that the decision-maker would have discretion as to whether it chose to hold a second round of consultation, in accordance with principles in the Rules.⁸ A consulting party could undertake prior consultation on changes as it considered appropriate.
3. **Timeframes** - a consultation period on the draft instrument of at least 30 business days and a final decision within 80 business days of publishing the draft instrument. An extension would be available for a material change in circumstances or if there were complex or difficult issues.
4. **Meetings** - the removal of specific provisions for individually requested meetings, to allow for more flexibility in the consultation approach (for example using forums instead).
5. **Initiation of Chapter 7 processes** - clarifying that AEMO may initiate proposals to amend retail markets and metering procedures.
6. **Other matters** - a consistent consultation exemption for minor and administrative amendments; removing some notice requirements; and various other consequential amendments.⁹

1.2.2 AEMO's rule change request addendum: electricity (November 2021)

AEMO submitted a supplement to the original rule change on 22 November 2021 to clarify several issues in the original request, and provide a replacement proposed rule. Key elements of the supplement included:

- A set of consultation criteria to be used by a decision-maker to determine whether additional consultation steps are appropriate, and the timing and form of those steps.
- A requirement for the decision-maker to determine, publish and review (if necessary) a consultation plan using the consultation criteria at the outset.
- A requirement for the decision-maker to publish summaries of the issues and outcomes from additional consultation steps.
- Extending the scope of the process to the consultation processes used by the Reliability Panel.¹⁰

8 AEMO, *Rules consultation procedures - ESB National electricity rules simplification project*, supplementary rule change request, 22 November 2021, Appendix A, updated proposed rule, clauses 8.9.2 and 8.9.3.

9 AEMO, *Rules consultation procedures - ESB National electricity rules simplification project*, rule change request, 7 January 2021, pp. 11-13.

10 AEMO, *Rules consultation procedures - ESB National electricity rules simplification project*, supplementary rule change request, 22 November 2021 p. 5.

1.2.3 **AEMO's rule change request and addendum - Gas**

AEMO clarified in its rule change addendum that its preferred change to the NGR is to remove references to the extended consultative procedure and replace them with references to the standard consultative procedure.¹¹

1.2.4 **Consultation on potential changes to the National Energy Retail Rules**

In the consultation paper on AEMO's rule change request, the Commission sought stakeholder views on whether the consultation processes under the Retail consultation procedure could also benefit from amendments as part of this rule change project. The NERR consultation process applies to specific AER instruments.¹² Further information on the Retail consultation procedure was provided in Chapter 3 of the consultation paper.

1.3 **Responses to the consultation paper**

On 17 December 2021, the Commission published a notice advising of its commencement of the rule-making process and consultation in respect of this rule change request.¹³ The Commission also published a consultation paper identifying specific issues for stakeholder comment. Submissions closed on 3 February 2022.

The Commission has considered all the issues raised in the 24 submissions received.¹⁴ These matters are discussed and responded to throughout this draft rule determination. Issues that are not addressed in the body of this document are set out and addressed in Appendix B.

1.4 **Feedback invited on this draft rule determination**

The Commission invites written submissions on this draft rule determination by **26 May 2022**, including on the draft rules and the reasons for making the draft rules.

Any person or body may request that the Commission hold a hearing in relation to this draft rule determination. Any request for a hearing must be made in writing and be received by the Commission no later than **21 April 2022**.

Submissions and requests for a hearing should quote project number **ERC0323** or **GRC0060** or **RRC0043** and may be lodged online at www.aemc.gov.au.

11 AEMO, *Rules consultation procedures - ESB National electricity rules simplification project*, supplementary rule change request, 22 November 2021 p. 6.

12 The Retail consultation procedure is set out in rule 173 of the NERR.

13 This notice was published under s. 95 of the National Electricity Law (NEL), s. 308 of the National Gas Law (NGL) and s. 251 of the National Energy Retail Law (NERL).

14 You can find the submissions on the [project page](#) on our website.

2 HOW THE DRAFT RULES WILL IMPROVE CONSULTATION

The Commission's draft determination is to make a more preferable draft rule electricity rule and a draft gas rule, which are attached to and published with this draft determination.¹⁵ The Commission is not proposing to make changes to the consultation procedures in the NERR.

This chapter explains **what** will happen - the outcomes for stakeholders and consulting parties - and **how** it will happen - the key changes to the current consultation procedures for subordinate instruments - if the draft rules were to be made as final rules.

The Commission's reasons for making these draft rules are set out in chapter 3. Information on the legal requirements for making the determination is set out in Appendix A.

2.1 Outcomes for stakeholders and consulting parties

Better consultation practices lead to better decisions. The Commission's goal in this rule change is to make consultation on subordinate instruments transparent, predictable and appropriate to the matters at hand, so stakeholders and decision-makers can invest their limited resources productively.

The draft rules, if made as final rules, will improve consultation under the NER and the NGR because they:

- **Give decision-makers process flexibility and allow for fit-for-purpose consultation:** The draft electricity rule introduces a new expedited consultation process for changes to existing instruments that are unlikely to have a significant impact on the NEM. It also establishes a simple consultation process for minor and administrative changes. These two new processes give decision-makers flexibility to use different processes and consultation techniques depending on the impacts and complexity of the instrument change.
- **Support stable, transparent and predictable consultation for stakeholders:** The draft electricity rule supports good regulatory practice. It retains two rounds of consultation as a default for new matters and significant matters, gives stakeholders a right to object to instrument changes running to an expedited time-frame, and retains a provision for individual meetings between stakeholders and the consulting party.
- **Are a simple, low cost solution:** The draft rules address the key issues raised in the rule change request with more targeted changes for each set of rules than some approaches that were contemplated in the rule change proposal or the consultation paper. The draft rules address issues with specific processes (amending the Rules consultation procedures in the NER and removing the Extended consultative procedure in the NGR), but the Commission does not propose to make widespread changes to harmonise all the consultation procedures across the NER, NGR and NERR with the

¹⁵ You can find the draft electricity and gas amending rules on our website here: <https://www.aemc.gov.au/rule-changes/improving-consultation-procedures-rules>

revised Rules consultation procedures. For example, in the draft electricity rule the Commission has opted not to remove the Distribution and Transmission consultation procedures, and the Commission has not made a draft retail rule.

2.2 How the draft electricity rule changes the consultation procedures in the NER

This section explains the key changes to NER consultation procedures in the more preferable draft electricity rule. These include:

1. **a new expedited consultation procedure** for non-controversial changes to existing NER subordinate instruments
2. a new abridged consultation **procedure for minor and administrative changes**
3. **updated timelines** for the standard consultation procedures (which will retain two rounds of consultation as the default)
4. **improved meeting provisions**
5. **consequential amendments** to other provisions in the NER as required to reflect the changes to rule 8.9.

2.2.1 A new expedited process to consult on non-material changes

Currently, the energy Rules do not provide a specific consultation process for non-material changes to subordinate instruments. A consulting party undertakes the same consultation on non-material changes as it would for material changes, involving two rounds of consultation.

We are establishing a new expedited process for changes to existing instruments that are unlikely to have a significant effect on the NEM.¹⁶ The aim of the expedited process is to reduce the resources that stakeholders and consulting parties invest in non-material changes to existing subordinate instruments. It is a one-stage consultation process starting with comments being sought on a draft instrument.

When a consulting party can use the expedited process

The test for using the expedited process is based on the definition of “non-controversial” for the Commission’s expedited rule-making process in the NEL.¹⁷ That is, this process is for consulting on changes to existing instruments (those on which the consulting party has previously consulted under rule 8.9) that are ‘unlikely to have a significant effect on the national electricity market.’

However, the Commission has built flexibility into the framework. If controversial issues emerge, either stakeholders or consulting parties can initiate a reversion to the two-stage standard consultation procedure (how these triggers work is described below).

Process steps and timeframes

¹⁶ This process is set out in new clause 8.9.3 in the draft electricity rule.

¹⁷ “Non-controversial Rule” is defined in NEL section 87.

The expedited process will take no more than 10 weeks from draft to final instrument. It involves:¹⁸

- the consulting party publishing a draft instrument (with changes marked-up) and a short explanatory paper
- a minimum four-week round of consultation¹⁹
- the consulting party publishing a final decision within 10 weeks of the draft (see table).²⁰

The ten-week time-frame is built around the changes being non-controversial. It gives:

- stakeholders sufficient time to comment on the proposal
- a consulting party sufficient time to review submissions, hold meetings to clarify any matters raised in consultation, and to prepare and approve a final report.²¹

The consulting party may take as much time as it requires to prepare the draft report, as the timeframes take effect only when that report is published.

Table 2.1: Expedited process - timeframes

STAGE	TIMEFRAME
Consultation timeframe	Four weeks
Period to final decision	Six weeks
Total time	Ten weeks

There is flexibility to switch to the standard process

Both stakeholders and the consulting party can trigger the expedited process reverting to the longer, two stage standard process.

Stakeholders can request a change to the standard process within two weeks of the draft instrument being published. A consulting party must revert to the standard process if a stakeholder's request gives reasons why the proposed changes may significantly impact on the NEM (reflecting the test to use the expedited process) and the consulting party considers those reasons are not misconceived or lacking in substance. This is based on the objections procedure for the Commission's expedited rule change process.²²

¹⁸ Draft electricity rule, new clause 8.9.3.

¹⁹ The draft rule establishes timeframes based on business days - here, 20 business days - to accommodate public holidays. However, this determination refers to weeks for simplicity.

²⁰ If the consultation period is the minimum four-week period, this will mean the final decision is published six weeks after submissions are due. If a decision-maker chooses to have a longer consultation period, this will reduce the remaining period of time to publish the final decision, for instance if the decision-maker opted to consult for six weeks, it would need to publish a final decision within a further four weeks.

²¹ Consulting parties may wish to review their internal approvals processes to allow for timely sign-offs on final reports, if they choose to use the expedited process.

²² NEL section 96.

The Commission invites feedback on when the standard rather than the expedited process should be used.²³ We welcome your input on the three governing elements and especially how they operate together. These are:

- **The initial test** for a consulting party to use the expedited process. The current test is changes that are “unlikely to have a significant impact on the NEM”. Is the test too broad and another or additional test required (for instance impact on a class of participant)?
- **The issues a stakeholder addresses** in a request to switch to the standard process. Should the issues stakeholders raise only challenge the initial test for the expedited process (outlined above)? Or is it appropriate that stakeholders may raise (and the consulting party consider) other reasons?
- **The grounds on which a consulting party** can reject a stakeholder request. Currently a consulting party can reject a request if it is “misconceived or lacking in substance”. But could grounds such as “if the consulting party still considers it appropriate to use the expedited process, and publishes reasons”, for instance, be appropriate?

In addition, consulting parties will be able to switch from the expedited process to the standard process at their discretion. For instance, if consultation on the draft instrument highlights complex issues that cannot be resolved in the remaining six-week period. To do this the consulting party would publish a notice at any time after the consultation closes and before the due date for publishing the final document under the expedited process.

Process and timeframes if the consulting party switches to the standard process

If the decision-maker decides to change to the standard process, whether at its own discretion or based on a stakeholder request, it would be required to publish a second draft instrument within ten weeks of submissions closing on the initial draft. Stakeholders would have at least four weeks to comment on this second version of the instrument, and the decision-maker would then publish a final instrument within a further ten weeks. This is consistent with the updated timeframes for the standard process explained in section 2.2.3 (and the ten-week periods can be extended, as explained in that section).

2.2.2

A new two-week process to consult on minor and administrative changes

The new process for minor and administrative changes to existing instruments is modelled on the Retail consultation procedure.²⁴ It involves:²⁵

- the consulting party publishing a notice on its website, with a copy of the instrument marked up to indicate the proposed changes and reasons for the changes
- two weeks’ consultation on the proposed changes
- the consulting party publishing a final instrument, any comments it has received, and a notice stating the reasons for making the final instrument, as soon as practicable after the close of the consultation.

²³ The Commission’s reasons for its approach in the draft rule, and a summary of stakeholder feedback on this issue to date, are set out in chapter 3.

²⁴ NERR rule 173.

²⁵ Draft electricity rule, new clause 8.9.4.

The draft rule does not provide a consulting party the ability to extend timeframes or change to a different process, if a stakeholder raises complex issues, or if the decision-maker identifies complex issues, in the same way that the standard or expedited processes do. However, if such issues arise, the decision-maker can complete this minor process (potentially without making any changes) and commence another change process to respond to the additional issues using either the expedited or the standard process, depending on the complexity of the issues.

The existing Rules consultation procedures do not have an equivalent process. Currently, to make a minor or administrative instrument change to a subordinate instrument a consulting party typically must conduct a total of seven weeks of consultation, with two rounds of consultation (five and two weeks respectively) and draft and final reports.

The Commission recognises that some provisions in the NER contain a specific exemption to make a minor or administrative change to an instrument without consulting (but the majority do not contain this exemption). The draft rule does not remove these existing exemptions.

We welcome stakeholder comments on whether and why it would be more appropriate to retain or remove these existing exemptions. If the exemptions are removed, AEMO and the AER would need to consult for two weeks on future minor or administrative changes to a number of instruments, listed below.

Table 2.2: Existing exemptions from consultation for minor changes

NER PROVISION	INSTRUMENT
AEMO	
3.3.8	Credit limit procedures
3.4.3	Changes to spot market timetable
3.7D	Demand side participation information guidelines
3.7E	DER register information guidelines
3.7F	Generation information guidelines
3.8.14A	Procedures that set out AEMO's approach to determining its choice of supply scarcity mechanism
3.9.3	The methodology AEMO will use, and any assumptions it may be required to make, to determine spot prices and ancillary service prices
3.10.1	Wholesale demand response guidelines
3.10.5	Abnormal baseline notice procedures
3.11.5	NSCAS tender guidelines
3.11.6	Guidelines for the dispatch of NSCAS
3.11.7	SRAS guidelines
3.14.5A	Market suspension compensation methodology
3.15.6A	Regional benefit ancillary services procedures
3.15.9A	POLR cost procedures

NER PROVISION	INSTRUMENT
3.15.11A	Reallocation procedures
3.20.4	Dispatch pricing methodology for unscheduled reserve contracts
4.4.2A	Primary Frequency Response Requirements
4.6.6	System strength impact assessment guidelines
4A.B.4	Reliability Forecast Guidelines
4A.D.12	AEMO Opt-In Procedures
4A.H.2	Book Build Procedures
5.20.2	NSCAS description and NSCAS quantity procedure
5.20.4	Inertia requirements methodology
5.20.6	System strength requirements methodology
S5.5.7	Power System Model Guidelines, Power System Design Data Sheet and Power System Setting Data Sheet
7.17.4	B2B Procedures
AER	
2.10.1	Guidelines on exemption from notice of closure provisions for generators
4A.B.5	Forecasting best practice guidelines
4A.C.12	Reliability instrument guidelines
4A.D.13	AER opt-in guidelines
4A.E.8	Contracts and firmness guidelines
4A.F.6	Reliability compliance procedures and guidelines
5.22.5	Cost benefit analysis guidelines

Source: NER version 179

2.2.3

Updated timelines for the standard consultation process

The draft electricity rule also updates the time-frames for the two-round standard consultation procedures.²⁶ These new timelines will provide greater transparency and certainty for stakeholders than the existing process, which does not require a consulting party to publish instruments within a defined period. The new timeframes are detailed in Table 2.3 below, and compared to those that currently apply under rule 8.9.

Table 2.3: Standard process - comparison of updated and existing timeframes

PROCESS STAGE	UPDATED TIME-FRAMES	EXISTING TIME-FRAMES
First round of consultation	Four weeks	Five weeks
Period to publish draft instrument after	Ten weeks	No deadline

²⁶ Draft electricity rule, new clause 8.9.2.

PROCESS STAGE	UPDATED TIME-FRAMES	EXISTING TIME-FRAMES
close of consultation		
Second round of consultation	Four weeks	Two weeks
Period to publish final report and instrument after close of consultation	Ten weeks	No deadline
Total timeframe	28 weeks	No deadline

The key elements are as follows:

- The draft rule sets consistent minimum time-frames for public consultation across the expedited process and both rounds of the standard process (a minimum of four weeks - expressed as 20 business days).
- For all processes, consulting parties can set longer public consultation periods if they consider it needed or helpful.
- The draft rule sets a typical maximum duration for the standard process of 28 weeks. The existing rules do not include deadlines for decision makers to publish draft or final instruments, or end-to-end deadlines, so overall timeframes vary in practice.²⁷ The new 28-week time frame recognises that this procedure is now reserved for new instruments and more complex changes to existing instruments.
- While the process allows a consulting party ten weeks to publish both the draft and final report and instruments after the close of consultation, a consulting party can still choose to publish these documents before the end of the period if this is practical.
- Under the standard process, a consulting party may extend the draft or final instrument publication deadline if it involves issues that are complex or difficult, or where there is a material change in circumstances.²⁸ This is the same test the Commission uses when extending a process under s. 107 of the NEL. Extended time-frames will no longer be contingent on stakeholders requesting a meeting.²⁹

2.2.4 Enhanced provisions for individual meetings

The draft rule requires stakeholders to request a meeting with a consulting party during a consultation period. If a meeting is requested, the consulting party must hold the meeting within a reasonable time or explain why it is not reasonably practicable to hold the meeting. This applies to all three consultation procedures: minor, expedited, and both rounds of the standard process.

Under the current rules, stakeholders request meetings in their submissions and must give reasons why a meeting is necessary or desirable.³⁰ A consulting party is then required to use its best endeavours to hold any meetings that it concludes are desirable or necessary, and

²⁷ Rule 8.9 of the NEL.

²⁸ Draft electricity rule, new clause 8.9.2(d).

²⁹ Current NEL rule 8.9(f).

³⁰ Rule 8.9(e).

has an additional five weeks to hold the meetings.³¹ The current process does not provide for individual meetings for the second round of the process. AEMO's rule change request proposed removing specific provisions for individually requested meetings.³²

The new provisions seek to improve meeting processes and reduce potential burdens for both consulting parties and stakeholders by enabling meetings to be held before stakeholders lodge their submissions and removing the requirement on stakeholders and the consulting party to justify (before the meeting) if it is desirable or necessary.

The Commission wants to strike an appropriate balance in this provision: to provide a process that supports timely and useful meetings for stakeholders and consulting parties, without imposing undue regulatory burdens on consulting parties. As such, we are seeking stakeholder views on whether the proposed provisions achieve this balance or whether a different rule would better achieve these goals.

2.2.5

Other minor elements of the draft rule

In addition to the elements listed above, the draft electricity rule also:

- Requires that when consulting parties use consultation approaches such as forums and working groups, they publish a summary of the matters raised.³³
- Requires consulting parties to publish marked-up versions of draft instruments at both draft and final stages so stakeholders can easily understand the changes.³⁴
- Enables AEMO to self-initiate amendments to its instruments in Chapter 7 of the NER, using the Rules consultation procedures. Currently, changes to these procedures must be stakeholder-initiated.³⁵
- Simplifies the drafting of provisions in other parts of the NER that provided for amendments to the Rules consultation procedures for specified instruments, where those changes mirror the new minor or expedited processes described above.³⁶
- Makes consequential changes to other provisions in the NER as required for consistency with the changes to rule 8.9, including deleting provisions that duplicate requirements in the new processes.³⁷

³¹ Rule 8.9(f).

³² AEMO, *Rules consultation procedures - ESB National electricity rules simplification project*, rule change request, 7 January 2021, p. 11.

³³ Draft electricity rule, new clause 8.9.1(f).

³⁴ Draft electricity rule, new clauses 8.9.2(b)(1), (c)(1), 8.9.3(a)(1), (e)(1), 8.9.4(a)(1), (b)(1).

³⁵ NER clause 7.16.7.

³⁶ For example, NER clauses 4.8.4A(e) and 7.16.7(e).

³⁷ For example, NER clauses 7.16.3(b), 7.16.4(f), 7.16.7(d), 7.17.4(j)-(m)

2.3 How the draft gas rule changes the consultation procedures in the NGR

As proposed by AEMO in the rule change request and addendum³⁸ the draft gas rule removes the Extended consultative procedure from the NGR. Instruments that currently require AEMO to consult according to the Extended consultative procedure, would under the draft rule require consultation according to the Standard consultative procedure.

The Extended procedures are similar in many respects to the current Rules consultation procedures, while the Standard consultative procedure is a shorter and more flexible two-round process, that is closer, in many respects, to what the Commission has proposed for timeframes in the Rules consultation procedures.³⁹

This removal will only affect five instruments in the NGR, for which AEMO is responsible. Additional detail about these instruments can be found in Table A.3 of the consultation paper to this rule change.⁴⁰

2.4 Proposed implementation dates

The Commission proposes that the electricity and gas amending rules, if made as final, would commence on 14 July 2022, shortly after the final determination and final rules are published. We would welcome your views on whether the commencement date should be delayed to allow time for consulting parties to develop new internal processes to allow them to use the new expedited and minor processes, and to accommodate the new timeframes for the standard process.

The changes to the consultation procedures in the NER and NGR would not affect any consultations that had already begun under the existing rules by the effective date of the changes, under savings provisions in the NEL and NGL.⁴¹ The new or revised processes would only apply to consultations where the first consultation document is published after 14 July 2022.

2.5 Recommendations to improve transparency of review timelines

The Commission has not introduced a right for stakeholders to initiate reviews of subordinate instruments (see Chapter 3 for details). However, the Commission sees merit in the AER and AEMO having easily accessible and searchable online collections of subordinate instruments they administer. The increased transparency and lower transaction costs for stakeholders would represent good regulatory practice. These collections or registers could include information such as:

- the clause of the rules under which the instrument is made

38 AEMO, *Rules consultation procedures - ESB National electricity rules simplification project*, rule change request, 7 January 2021, pp. 10.; AEMO, *Rules consultation procedures - ESB National electricity rules simplification project*, supplementary rule change request, 22 November 2021 p. 6

39 See Rules 8 and 9A of the NGR.

40 See AEMC, Consultation paper: Improving consultation procedures in the rules, 17 December 2021, pp. 26 and 27.

41 NEL schedule 2 clause 33(1)(b); NGL schedule 2 clause 43(1)(b).

- whether the instrument is mandatory or not
- a link to the current version of the instrument
- whether and how stakeholders can request amendments to the instrument⁴²
- when the instrument was last reviewed by the decision-maker, and the next anticipated review date for the instrument
- details of an appropriate contact team for the instrument.

Powerlink suggested a register such as this in its submission to the consultation paper.⁴³ The Commission recognises that both AEMO and AER have developed forms of online access to the procedures and guidelines they administer, which provide useful information.⁴⁴ These collections could be further developed, at a convenient time, to provide additional information of the types listed above. In particular, stakeholders may benefit from more direct links between the rules and the relevant guideline or procedure, and more information on anticipated review dates (given that in most cases, only the decision-maker can initiate reviews of guidelines or procedures).

42 Under the NER, this is possible for a limited number of instruments.

43 Powerlink, submission to the consultation paper, p. 3.

44 AEMO's collection can be found here <http://aemo.com.au/en/library/procedures> and some of the AER's collection can be found here <https://www.aer.gov.au/wholesale-markets/guidelines-reviews>.

3 WHY THE DRAFT RULES CONTRIBUTE TO ACHIEVING THE ENERGY OBJECTIVES

This chapter explains:

- the tests that the Commission applies in deciding whether and how to change the NER, NGR and the NERR
- why the Commission considers the draft rules will improve consultation on subordinate instruments, and contribute to achieving the NEO and the NGO
- why the Commission has not included certain changes in the draft rules.

3.1 The Commission's rule making tests

This section of the paper outlines the:

- rule-making tests the Commission applies in deciding whether to make a rule change in the NER, NGR or the NERR
- ability of the Commission to make a more preferable rule in certain circumstances
- ability to make a differential electricity rule to apply in the Northern Territory, in certain circumstances.

3.1.1 The rule change must contribute to achieving the NEO, NGO or the NERO

The Commission may only make a rule if it is satisfied the rule will, or is likely to, contribute to the achievement of:

- the NEO, with respect to any changes to the NER
- the NGO, with respect to any changes to the NGR, and
- the NERO, with respect to any changes to the NERR.⁴⁵

The NEO is:⁴⁶

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.

The NGO is:⁴⁷

to promote efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers of natural gas with respect to price, safety, reliability and security of supply of natural gas.

⁴⁵ See Section 88 of the NEL, Section 291(1) of the NGL and Section 13 of the NERL.

⁴⁶ Section 7 of the NER.

⁴⁷ Section 23 of the NGL.

The NERO is:⁴⁸

to promote efficient investment in, and efficient operation and use of, energy services for the long term interests of consumers of energy with respect to price, quality, safety, reliability and security of supply of energy.

In making rules relating to the NERR, the Commission must also, where relevant, satisfy itself that the rule is “compatible with the development and application of consumer protections for small customers, including (but not limited to) protections relating to hardship customers” (the “consumer protections test”).⁴⁹

Where the consumer protections test is relevant in the making of a rule, the Commission must be satisfied that both the NERO test and the consumer protections test have been met.⁵⁰ If the Commission is satisfied that one test, but not the other, has been met, the rule cannot be made. There may be some overlap in the application of the two tests. For example, a rule that provides a new protection for small customers may also, but will not necessarily, promote the NERO.

3.1.2 Making a more preferable rule

Under s. 91A of the NEL, s. 296 of the NGL and s. 244 of the NERL, the Commission may make a rule that is different (including materially different) to a proposed rule (a more preferable rule) if it is satisfied that, having regard to the issue or issues raised in the rule change request, the more preferable rule will or is likely to better contribute to the achievement of the NEO, NGO or the NERO.

For this rule change proposal, in relation to the NER, the Commission has made a more preferable draft rule. The reasons are summarised in section 3.3 below.

3.1.3 Making electricity rules in the Northern Territory

The NER, as amended from time to time, apply in the Northern Territory, subject to modifications set out in regulations made under the Northern Territory legislation adopting the NEL.⁵¹

The draft electricity rule relates to parts of the NER that apply in the Northern Territory,⁵² and the Commission has therefore assessed the draft rule against additional elements required by the Northern Territory legislation:

- *Should the NEO test include the Northern Territory electricity systems?* Yes. For this rule change request, the Commission proposes to determine that the reference to the

48 Section 13 of the NERL.

49 Section 236(2)(b) of the NERL.

50 That is, the legal tests set out in ss. 236(1) and (2)(b) of the NERL.

51 *National Electricity (Northern Territory) (National Uniform Legislation) Act 2015 (NT Act)*. The regulations under the NT Act are the National Electricity (Northern Territory) (National Uniform Legislation) (Modification) Regulations 2016.

52 Under the NT Act and its regulations, only certain parts of the NER have been adopted in the Northern Territory. The version of the NER that applies in the Northern Territory is available on the AEMC website at www.aemc.gov.au/regulation/energy-rules/northern-territory-electricity-market-rules/current.

“national electricity system” in the NEO includes the local electricity systems in the Northern Territory, as well as the national electricity system.

- *Should the draft rule be different in the Northern Territory?* No. In making the draft electricity rule, the Commission has considered whether a uniform or differential rule should apply to the Northern Territory. The draft rule determination is to make a uniform rule because the different physical characteristics of the Northern Territory’s network would not affect the operation of the draft rule in such a way that a differential rule would better achieve the NEO in this instance.

See Appendix A for further information on these draft determinations.

3.2 Assessment framework for this rule change

To assess the extent to which the draft rules and the rules proposed in the rule change request are likely to contribute to achieving the relevant energy objective and address the issues raised in the rule change request, the Commission considered the following assessment criteria:

- **Innovation - flexible, fit-for-purpose consultation:**
 - In the rule change request, AEMO raised concerns that the current rules consultation procedures do not give the consulting party sufficient flexibility to tailor consultation to the issue under consideration. Some regulatory issues may have relatively straightforward solutions with limited options, and need to be implemented quickly, while others will have deeper or broader impacts or options that need to be consulted on in more depth.⁵³ Additionally, AEMO considered the current rules consultation procedures do not encourage innovative consultation or incremental improvement.^{54,55}
 - Therefore, the Commission’s assessment criteria include considering whether the draft rules will facilitate better quality subordinate instruments by promoting flexible engagement that can be adapted to the nature of the specific instrument being introduced or amended, and also any material issues uncovered during the consultation process. The Commission will examine the extent to which the rule promotes fit-for-purpose consultation, allows for innovative methods of engagement, and makes it easier to regularly update instruments.
- **Principles of good regulatory practice - predictability and stability, simplicity, efficacy and transparency:**
 - AEMO considered that the current rules consultation procedures can discourage transparency, are uncertain and unnecessarily complex.⁵⁶ AEMO also stated there is a need to simplify, streamline, and improve the efficiency of the Rules consultation

53 AEMO, *Rules consultation procedures - ESB national electricity rules simplification project*, rule change addendum, 22 November 2021, p.2.

54 AEMO, *Rules*

55 *consultation procedures - ESB National electricity rules simplification project*, rule change request, 7 January 2021, p.8.

56 AEMO, *Rules consultation procedures - ESB National electricity rules simplification project*, rule change request, 7 January 2021, p. 8.

procedures and other consultation processes across the rules, so they better support the implementation of reform initiatives.⁵⁷

- To address these challenges, the Commission’s assessment criteria look at whether the consultation processes promote transparency. Do they provide predictability for stakeholders and appropriate accountability for the consulting party, while avoiding unnecessary delay and overly burdensome processes? Would the rule change facilitate appropriate consultation relative to a project’s complexity and the degree of potential information asymmetry between stakeholders and the consulting party? Does the process provide opportunities for stakeholders to engage with the consulting party, and provide sufficient checks and balances?⁵⁸
- **Implementation considerations - cost and complexity:**
 - While AEMO did not consider implementation of its proposed rule would have obvious material costs,⁵⁹ the Commission has considered the regulatory and administrative benefits and costs associated with implementing the rule change. Is the cost of implementing the proposed solution for market participants and market bodies proportional to the benefits of managing the issues to be resolved?

3.3 Why the draft electricity rule is likely to contribute to the NEO

This section analyses how the more preferable draft electricity rule meets the assessment criteria, and therefore is likely to contribute to the achievement of the NEO, taking into consideration the proposed rule and the issues raised by AEMO in the rule change request and by stakeholders in submissions on the consultation paper.

3.3.1 Flexibility on the number of rounds of consultation allows for fit-for-purpose processes

The Commission considers the more preferable draft rule balances flexibility for the consulting party with good regulatory practices, including transparency and predictability. This aligns with stakeholder support for flexible and pragmatic consultation processes, where certainty, transparency, and the ability to provide meaningful input are not compromised.⁶⁰

Allowing the consulting party to choose one round of consultation in certain circumstances supports fit-for-purpose consultation and efficacy

The new expedited process for non-material changes to existing instruments allows consulting parties to use a simpler and quicker process where one is appropriate, encouraging more frequent incremental improvements to instruments.

Introducing an expedited one-round process alongside a standard two-round process provides flexibility at least equivalent to AEMO’s proposal, as both approaches allow a

⁵⁷ AEMO, *Rules consultation procedures - ESB National electricity rules simplification project*, rule change request, 7 January 2021, p. 2.

⁵⁸ We revised the criteria on good regulatory practice in response to submissions on the consultation paper, by adding references to information asymmetry, opportunity for engagement with the consulting party, and sufficient checks and balances.

⁵⁹ AEMO, *Rules consultation procedures - ESB National electricity rules simplification project*, rule change request, 7 January 2021, pp. 13-14.

⁶⁰ Submissions to the consultation paper, APGA, p. 2, Plus ES, p. 1, Vector, p. 1 EnergyAustralia, p. 3., Energy Queensland, p. 3. The draft rule approach has similarities to the three tiered framework proposed by EnergyAustralia, p. 4.

consulting party to use one round of consultation for non-controversial matters and two rounds at other times. There was strong stakeholder support for the approach set out in the draft rule.⁶¹

Flexibility is also provided via the ability to revert to the standard process from an expedited process, and to extend the timeframes for the standard process, when an issue requires greater analysis or deliberation.

Establishing a clear test for the use of one round of consultation supports predictability and transparency

The introduction of a test based on the NEL test to determine if a change is “non-material” (and therefore when one round of consultation is appropriate) provides transparency and predictability. The test in the draft rule is whether the change is likely to have a significant impact on the NEM. If a change to an existing instrument is likely to have a significant impact, or if a new instrument is being proposed (on which the consulting party has not previously consulted under rule 8.9), then the standard process with two rounds of consultation should be used. This is in line with stakeholder support for the NEL “non-controversial” criterion for using an expedited process⁶² and giving consulting parties defined reasons for using an expedited process.⁶³

On the specific test chosen for the draft rule, the Commission considered the feedback on the rule change request. We came to the view that a consulting party should consider the extent to which a change to an instrument is likely to impact:

- investment or operational decisions in the market (e.g. arising from information provision requirements on industry including information quantity, nature, detail, timing etc); and
- the costs of participating in the market or complying with the market requirements (eg arising from changes in how participants are required to provide their services or operate, or the availability of information).

The Commission considers these elements have the potential to significantly impact on the NEM. We therefore concluded that the test currently used for the Commission’s expedited rule-making process in the NEL was appropriate.

Some stakeholders also proposed additional factors that should be taken into account:

- impact on individual participants in the NEM;
- the extent of previous consultation;
- the extent of the departure from the existing/draft instrument;
- the number of alternative options; or
- urgency.

61 Submissions supporting the expedited process: AGL, Enel X, Origin Energy, Shell Energy, Snowy group, Stanwell, APA, AusNet Services, Energy Queensland, Jemena, EUAA, PIAC, AEC, APGA, ENA.

62 Submissions to consultation paper: AGL p. 2, p. 2., Shell Energy, p. 2., Stanwell p.1., Energy Queensland, p. 5., EUAA, p. 1., AEC, p. 4.

63 Submissions to consultation paper: AGL p. 2, Origin, p. 2., Shell Energy, p. 2., Stanwell p.1., Energy Queensland, p. 5., EUAA, p. 1., AEC, p. 4.

As such, we are seeking stakeholders' views on the appropriate test for use of the expedited and standard processes, as discussed in chapter 2.

Providing stakeholders with the ability to object to one round of consultation is good regulatory practice

Allowing stakeholders to object to the use of an expedited process if they view the test has not been applied appropriately aligns with principles of good regulatory practice, creating more accountability than in the proposed rule.

This also addresses stakeholder support for providing a robust objections mechanism and having the ability to influence how much consultation is conducted.⁶⁴ The Commission invites feedback on the appropriate basis for a consulting party to accept or reject a request to move to the standard process, as discussed in chapter 2.

Using two rounds of consultation for new documents and complex changes is transparent

The more preferable rule's retention of a standard process with two rounds of consultation will allow consulting parties to undertake detailed consultation where it is required. This supports fit-for-purpose consultation and greater transparency, and will result in instruments that are robust and well-considered.

This decision is also consistent with the majority of stakeholder feedback.⁶⁵ Stakeholders considered two consultation rounds appropriate because:

- individual stages of consultation serve different purposes and the first stage is important to propose solutions;⁶⁶
- it is not always initially clear how complex an issue is or what the impact of amendments to policy and regulation may be on different businesses⁶⁷ and stakeholders' views may change or evolve over time;⁶⁸
- stakeholders often rely on the views of other stakeholders to form their own views;⁶⁹ and
- it can be common for material issues to be uncovered after the publication of the draft decision, given stakeholders' submissions, at which point stakeholders can consider all the issues raised.⁷⁰

64 Submissions to consultation paper: APA, p. 6., APGA, p. 2., ENA, p. 2., Snowy Group, p.3., Shell Energy, p. 2. Stanwell, The AEC, p. 4. The Commission also notes that having a robust objections mechanism will achieve similar outcomes to allowing stakeholders to request that a process runs over two stages, see submissions to the consultation paper: Shell, p. 1, APA p. 6, the AEC, p. 3.

65 Submissions to consultation paper: AGL, CS Energy, Enel X, EnergyAustralia, Origin Energy, Shell Energy, Snowy group, Stanwell, APA, AusNet Services, Citipower, Powercor and United Energy, Jemena, PowerLink, SAPN, EUAA, PIAC, AEC, APGA, ENA, Plus ES and Vector. This decision is consistent with the views of several stakeholders that suggested a decision-maker should also consider if an instrument was a new instrument, when assessing if two rounds of consultation should be used. See submissions to the consultation paper: EnergyAustralia, p. 4, Stanwell, p. 2, AEC, p. 3. and Energy Queensland, p. 5.

66 Submissions to consultation paper: Snowy Group, p. 2., The AEC, p. 2.

67 Citipower, Powercor and United Energy, submission to the consultation paper, p. 1.

68 Energy Queensland, submission to the consultation paper.

69 EUAA, submission to the consultation paper, p. 1.

70 Vector, submission to the consultation paper, p. 3.

3.3.2 **Updated timelines for standard consultations increase flexibility and support good regulatory practice**

The updated timeframes for the standard process support good regulatory practice compared to the current rule and the proposed rule, as they provide more time for public consultation overall, and balance certainty for stakeholders and flexibility for consulting parties.

Setting a deadline for the consulting party to prepare documents creates predictability and increases transparency

The introduction of clearly defined minimum and maximum durations (with extensions only available for limited reasons) supports simplicity, predictability and transparency, particularly in comparison to the current rule that does not include publication deadlines. This is also consistent with AEMO's and stakeholder views on the need for maximum timeframes for the overall amendment and development process.⁷¹

The Commission considers the ten-week maximum decision-making period for consulting parties at both the draft and final stages will (except in complex matters - see below) give sufficient time for due consideration of feedback and internal approvals, and recognises resourcing pressures on consulting parties. Also, these are maximum durations. A consulting party may publish its draft or final report earlier, for example if a matter is straightforward.

Giving the consulting party the option to extend timelines increases flexibility

Giving a consulting party the ability to extend consultation and publication timeframes provides flexibility and fosters fit-for-purpose consultation. It allows for sufficient consideration of complex questions, including those raised by stakeholders. It also provides time, should it be needed, for consideration of material changes in circumstances.

The extension provision in the draft rule is consistent with stakeholder support for extensions for unforeseen circumstances or complexity⁷² and an appropriate amount of flexibility in timeframes.⁷³

3.3.3 **The new process for minor and administrative changes is fit-for-purpose and simple**

The draft rule will allow consulting parties to use a simpler and quicker process for minor and administrative amendments, allowing fit-for-purpose consultation. This will facilitate more frequent and efficient minor corrections to procedures and guidelines than would be possible under the current rules (which in many cases require two full rounds of consultation for all types of amendments).⁷⁴

The more preferable rule requires a limited amount of consultation on minor changes to foster transparency and support better regulatory decisions. For example, stakeholders will

71 AEMO noted that the current arrangements, with no publication deadlines, provide no transparency to consulted persons and no clarity for consulting parties. AEMO, *Rules consultation procedures - ESB National electricity rules simplification project*, rule change request, 7 January 2021, p. 7. See also Shell Energy, submission to the consultation paper, p. 2.

72 Submissions to the consultation paper: EnergyAustralia, p. 5 and Plus ES, p. 2.

73 Submissions to the consultation paper: AEC, p. 3. and Plus ES, p. 3.

74 AEMO noted in its rule change request that requiring a full consultation process for minor amendments discourages improvements. AEMO, *Rules consultation procedures - ESB National electricity rules simplification project*, rule change request, 7 January 2021, p. 7.

be able to identify cases where a proposed minor change will have unintended consequences. The rule change proposal did not require any consultation on minor and administrative changes.

The implementation costs of the draft minor process should be minimal as it only involves a ten-day consultation period. Any additional regulatory burden can be minimised on the basis that a consulting party can:

- consult simultaneously on minor changes to several instruments (similar to the way in which the Commission often consults on changes to more than one rule set in its minor rule change processes)
- make a final decision as soon as it is reasonably practicable (rather than having a set timeframe).

3.3.4

The revised meeting provisions add flexibility and provide greater transparency than the proposed rule

The more preferable rule maintains the ability for stakeholders to request a meeting but seeks to make meetings more timely and useful.

Currently, a consulting party is only required to use its best endeavours to meet with a stakeholder if the consulting party considers the meeting is necessary or desirable.⁷⁵ The Commission considers that often it would be difficult for a consulting party to ascertain before a meeting whether the meeting is needed or desirable. The draft rule, therefore, provides that if a meeting is requested during the consultation period the consulting party should hold the meeting (within a reasonable period) unless it is not reasonably practicable to do so.

The draft rule is consistent with the views of several stakeholders concerned with or opposed to the proposal to remove industry rights to request a meeting.⁷⁶ Stakeholders supported retaining individual meetings on the basis that they:

- allow for sharing confidential private or commercially sensitive information⁷⁷
- allow for in-depth analysis and deliberation⁷⁸
- demonstrate transparency and respect for stakeholder views.⁷⁹

Also, under the draft rule stakeholders will be able to ask during a consultation period to meet with the consulting party. Currently, stakeholders can only request a meeting in their written submission. This will give consulting parties earlier notice of meeting requests. It also means that meetings can occur during a consultation period and thereby inform stakeholders' submissions.

75 NER rule 8.9(f).

76 Submissions to the consultation paper: Citipower, Powercor and United Energy, p. 1., ENA, p. 2. Enel X p. 2., EnergyAustralia, p. 5., Plus ES, p. 3., Origin Energy, p. 2., Energy Queensland, p. 5.

77 Submissions to the consultation paper: EnergyAustralia, p. 5., Plus ES, p. 3.

78 Submissions to the consultation paper: EnergyAustralia, p. 5., Origin Energy, p. 2.

79 Submissions to the consultation paper: Energy Queensland, p. 5., Plus ES, p. 3.

3.3.5 **AEMO's new ability to initiate changes to certain instruments creates consistency and supports flexibility**

In the rule change request, AEMO requested the ability to initiate changes to some instruments where it is currently not able to do so.⁸⁰ Adopting this proposal in Chapter 7 of the NER creates consistency across different types of instruments, as currently AEMO can self-initiate amendments to most, but not all, instruments. It also increases flexibility and reduces regulatory burden, as it does not require a stakeholder to propose these changes. Currently, changes to these processes must be stakeholder-initiated.

3.4 **Why the draft gas rule is likely to contribute to the NGO**

This section of the draft determination explains why the Commission considers the draft gas rule meets the assessment criteria, and therefore is likely to contribute to the achievement of the NGO, taking into consideration the issues raised by AEMO in the rule change request and by stakeholders in submissions on the consultation paper.

3.4.1 **The draft rule allows for flexible, fit-for-purpose consultation**

The draft gas rule, which is consistent with AEMO's preferred position in its addendum to its rule change request,⁸¹ removes the extended consultative procedure. The consulting party would use the standard consultative procedure instead. The draft rule simplifies the consultation framework overall by reducing the number of consultation procedures in the NGR.

Nine stakeholders and AEMO supported removing the extended consultative procedure.⁸² Only AusNet Services and AGL opposed the changes⁸³.

3.4.2 **The draft rule supports good regulatory practice**

The Standard consultative procedure provides a good consultation framework, with a transparent two-stage process. It is an existing, simple and predictable process that requires a consulting party to publish reasons for any decision. Stakeholders did not raise concerns about the quality and transparency of consultation under the Standard consultative procedure.

3.4.3 **Implementation considerations favour the draft rule**

The Commission considered the option (raised in the rule change request) of replacing the extended consultative procedure with a process consistent with the new NER Rules consultation procedures.⁸⁴ However, recognising that the gas industry already has familiarity

80 AEMO, *Rules consultation procedures - ESB National electricity rules simplification project*, rule change request, 7 January 2021, p. 7.

81 AEMO, *Supplementary electricity and gas rule change proposal, Rules consultation procedures - ESB National electricity rules simplification project*, 22 November 2021, p. 6.

82 Submissions to the consultation paper: Enel X, p.1, EnergyAustralia, p. 6. Shell Energy, p. 2. Snowy Group, p. .1, Stanwell, p. 1. APGA, p. 2. ENA, p. 1, APA, p. 7., Jemena, p. 2. and AEMO, p. 1.

83 Submissions to the consultation paper: AusNet Services, AGL.

84 AEMO, *Rules consultation procedures - ESB National electricity rules simplification project*, rule change request, 7 January 2021, p. 10.

with gas procedures, we did not consider that the benefits of this change would outweigh the costs.

It is unlikely that the rule change will increase cost or complexity relative to adopting a process similar to the revised NER consultation procedures or retaining the status quo. The Commission notes that:

- Stakeholders that have experience with the Standard consultative procedure have not pointed out any specific cost or complexity issues.
- The Standard consultative procedure is less prescriptive than the Extended consultation procedure, which should reduce the regulatory burden for the consulting party in undertaking consultation.

3.5 Why the Commission has not made broader changes in the draft rules

The consultation paper asked for stakeholder feedback on potential broader changes to consultation procedures across the NER, NGR and NERR. The issues and feedback included:

- aligning other consultation processes in the NER (such as the transmission and distribution consultation procedures, and the Reliability Panel's process) with the revised Rules consultation procedures⁸⁵
- aligning the set of consultation processes in the NGR, and the retail consultation procedure in the NERR, with the revised Rules consultation procedures⁸⁶
- giving stakeholders the right to request changes to instruments.⁸⁷

The Commission did not include these changes in the draft rules. The following sections discuss why the Commission does not consider that these changes are likely to meet the assessment criteria, and therefore are not likely to contribute to the achievement of the relevant energy objectives, taking into consideration the current rules, issues raised in the rule change request, and issues raised in submissions on the consultation paper.

3.5.1 **Aligning the consultation procedures across the NER, NGR and NERR would not necessarily support more flexible or fit-for-purpose consultation**

The other existing consultation procedures in the NER, NGR and NERR already provide a consulting party with a reasonable degree of flexibility.

In relation to the NERR, the AER, which is the consulting party for all the instruments that are required to consult according to the Retail consultation procedures, noted that these

85 Several submissions to the consultation paper supported aligning the Reliability Panel's process with the revised Rules consultation procedures, see: Enel X, p.1, EnergyAustralia, p. 6. Shell Energy, p. 2. Snowy Group, p. 1, Stanwell, p. 1.

86 The same stakeholders that supported aligning the Reliability Panel's process with the revised Rules consultation procedures also supported aligning the NGR and NERR with the revised Rules consultation procedures. See submissions to the consultation paper: Enel X, p.1, EnergyAustralia, p. 6. Shell Energy, p. 2. Snowy Group, p. 1, Stanwell, p. 1

87 The following stakeholders supported giving stakeholders the right to request changes to instruments, CS Energy p. 8., Enel X, p. 2., Energy Australia, p. 2., Snowy Group, p. 5, Energy Queensland, p. 6., PIAC, p. 2. and Vector p. 5.

procedures are already proportionate and provide appropriate flexibility in how it can consult.⁸⁸

It is not clear that applying the updated Rules consultation procedures would be more flexible or fit-for-purpose than the existing processes under the NERR or NGR, or the other consultation processes in the NER.

3.5.2 Alignment would not necessarily support better regulatory practice

Several stakeholders supported harmonising processes for the NER, NGR and NERR. However, none have clearly demonstrated that the Rules consultation procedures would lead to better regulatory outcomes than the existing consultation procedures.

While the Commission acknowledges there may be value in harmonising different consultation processes, in terms of simplifying the rules, this needs to be appropriately considered against the fact that certain consultation processes may be more appropriate for different instruments. This may be because a particular process is more complex or because it may have greater market impact.⁸⁹ Seeking harmonisation for its own sake should be a secondary objective to recognising what good regulatory practice is in relation to individual instruments.⁹⁰

3.5.3 Alignment is unlikely to reduce implementation complexity or lower costs

A broad rule change that harmonised consultation processes across the three rule sets may give rise to substantial implementation costs, given the number of processes in question and the number of parties that use those processes. Energy Queensland expressed concerns that making changes to existing processes risked increased costs to stakeholders.⁹¹ On the other hand, in the longer term cost savings could arise from only having to deal with three consultation processes (minor, expedited and standard) across all the rules.

On balance, the Commission's view is that the benefits from harmonising the consultation procedures across the rule sets is unlikely to out-weigh the added cost of implementing the changes.

3.5.4 NERR-specific issues may be better addressed in a separate process

AGL and Snowy expressed concern with the Retail consultation procedures, noting that they involve limited consultation and lack an obligation on the AER to consider the costs of changes against the benefits. However, neither suggested that harmonising the Rules and Retail consultation procedures would resolve these issues.⁹²

88 AER, submission to consultation paper, p. 2.

89 AGL noted that compared to the NER procedures, there were significant differences in the application of the Retail consultation procedures to the industry and how it affected business operations and a retailer's interactions with customers. AGL, Submission to consultation paper, p. 3.

90 Energy Queensland, Submission to consultation paper, p. 9. AGL, submission to consultation paper, p. 2.

91 Energy Queensland, Submission to consultation paper, p. 9.

92 Submissions to consultation paper: AGL p. 2, Snowy Group pp. 4-5.

AGL noted that there was a need for a more focused review of the effectiveness of the development and amendment of NERR instruments, but acknowledged that this may be outside the scope of this rule change.⁹³

The Commission notes AGL's concerns regarding the Retail consultation procedures, and agrees that a separate investigation focusing on the NERR may be a better avenue to explore these issues, given the significant differences in the nature and impact of NER and NERR instruments.

3.5.5 **Providing stakeholders with a right to trigger a review could impose unnecessary regulatory burden and costs on consulting parties**

The consultation paper asked for stakeholders' views on whether stakeholders should be allowed to request a change to instruments or procedures (as is currently the case for certain instruments under chapter 7 of the NER), noting the potential benefits and drawbacks of such a change.⁹⁴ Stakeholders' views were mixed.

The more preferable draft electricity rule does not give stakeholders the ability to trigger a review of an instrument or determination. Currently, stakeholders can raise concerns about instruments and determinations with consulting parties. A consulting party will consider these requests in the context of its organisational priorities. Further, consulting parties are required to review some instruments periodically, under the NER, and will also review instruments where there are material changes in circumstances.

The Commission considers that going further than this by *requiring* a consulting party to act within a certain timeframe on requests for a review of instruments and/or determinations is not, on balance, aligned with good regulatory practice. While it may aid predictability and transparency, it could require that the consulting party invest significant resources in a review, limiting its ability to allocate resources to and deliver on priority areas and to efficiently group together related areas of work.

93 AGL, Submission to consultation paper, p. 2.

94 AEMC, Consultation paper, Improving consultation procedures in the Rules, 16 December 2021, section 2.7.

ABBREVIATIONS

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
Commission	See AEMC
MCE	Ministerial Council on Energy
NEL	National Electricity Law
NEO	National electricity objective
NER	National electricity rules
NERL	National Energy Retail Law
NERO	National energy retail objective
NERR	National energy retail rules
NGL	National Gas Law
NGO	National gas objective
NGR	National gas rules

A LEGAL REQUIREMENTS UNDER THE NEL AND NGL

This appendix sets out the relevant legal requirements under the NEL and NGL for the Commission to make this draft rule determination.

A.1 Draft rule determination

In accordance with section 99 of the NEL and section 308 of the NGL, the Commission has made this draft rule determination in relation to the rule proposed by AEMO.

The Commission's reasons for making this draft rule determination are set out in chapter 3.

Copies of the more preferable draft electricity rule and draft gas rule are attached to and published with this draft rule determination. Their key features are described in chapter 2.

A.2 Power to make the rule

The Commission is satisfied that the more preferable draft electricity rule and draft gas rule fall within the subject matter about which the Commission may make rules. The more preferable draft electricity rule falls within s. 34 of the NEL and the draft gas rule falls within s. 74 of the NGL as those rules relate to:

- regulating the operation of the national electricity market and the operation of a regulated retail gas market, and
- regulating the activities of persons participating in the national electricity market and in a regulated gas market.⁹⁵

A.3 Commission's considerations

In assessing the rule change request the Commission considered:

- its powers under the NEL and NGL to make the draft rules
- the rule change request
- submissions received during first round consultation for the rule change request
- the Commission's analysis as to the ways in which the draft rules will or are likely to contribute to the NEO and NGO.

There is no relevant Ministerial Council on Energy (MCE) statement of policy principles for this rule change request.⁹⁶

The Commission may only make a rule that has effect with respect to an adoptive jurisdiction if satisfied that the proposed rule is compatible with the proper performance of AEMO's declared network or system functions.⁹⁷ The more preferable draft electricity rule and draft

⁹⁵ Sections 34(1)(a)(i) and (iii) of the NEL, sections 74(1)(a)(iv) and (vi) of the NGL.

⁹⁶ Under s. 33 of the NEL and s. 73 of the NGL the AEMC must have regard to any relevant MCE statement of policy principles in making a rule. The MCE is referenced in the AEMC's governing legislation and is a group of Ministers responsible for energy matters at a national level, sitting as the MCE.

⁹⁷ Section 91(8) of the NEL and section 295(4) of the NGL.

gas rule are compatible with AEMO's declared network and system functions because they would not affect those functions.

A.4 Making electricity rules in the Northern Territory

Test for scope of "national electricity system" in the NEO

Under the NT Act, the Commission must regard the reference in the NEO to the "national electricity system" as a reference to whichever of the following the Commission considers appropriate in the circumstances having regard to the nature, scope or operation of the proposed rule.⁹⁸

- (a) the national electricity system
- (b) one or more, or all, of the local electricity systems⁹⁹
- (c) all of the electricity systems referred to above.

Test for differential rule

Under the NT Act, the Commission may make a differential rule if, having regard to any relevant MCE statement of policy principles, a different rule will, or is likely to, better contribute to the achievement of the NEO than a uniform rule.¹⁰⁰ A differential rule is a rule that:

- varies in its term as between:
 - the national electricity system, and
 - one or more, or all, of the local electricity systems, or
- does not have effect with respect to one or more of those systems

but is not a jurisdictional derogation, participant derogation or rule that has effect with respect to an adoptive jurisdiction for the purpose of s. 91(8) of the NEL.

A uniform rule is a rule that does not vary in its terms between the national electricity system and one or more, or all, of the local electricity systems, and has effect with respect to all of those systems.¹⁰¹

The Commission's draft determinations in relation to the meaning of the "national electricity system" and whether to make a uniform or differential rule are set out in chapter 3.

A.5 Civil penalty provisions and conduct provisions

The Commission cannot create new civil penalty provisions or conduct provisions. However, it may recommend to the Energy Ministers Meeting that new or existing provisions of the NER and NGR be classified as civil penalty provisions or conduct provisions.

98 Clause 14A of Schedule 1 to the NT Act, inserting section 88(2a) into the NEL as it applies in the Northern Territory.

99 These are specified Northern Territory systems, listed in schedule 2 of the NT Act.

100 Clause 14B of Schedule 1 to the NT Act, inserting section 88AA into the NEL as it applies in the Northern Territory.

101 Clause 14 of Schedule 1 to the NT Act, inserting the definitions of "differential Rule" and "uniform Rule" into section 87 of the NEL as it applies in the Northern Territory.

The more preferable draft electricity rule and draft gas rule do not amend any clauses that are currently classified as civil penalty provisions or conduct provisions under the National Electricity (South Australia) Regulations or National Gas (South Australia) Regulations. The Commission does not propose to recommend to the Energy Ministers Meeting that any of the proposed amendments made by the more preferable draft electricity rule or draft gas rule be classified as civil penalty provisions or conduct provisions.

B SUMMARY OF OTHER ISSUES RAISED IN SUBMISSIONS

This appendix sets out the issues raised in the first round of consultation on this rule change request and the Commission’s response to each issue. If we discussed an issue raised in a submission in the main body of this document, it is not included in this table.

Table B.1: Summary of other issues raised in submissions

STAKEHOLDER	ISSUE	COMMISSION RESPONSE
EnergyAustralia, Snowy Group, AEC, Vector	Principles for an additional round of consultation - where there is likely to be increased regulatory burden or if it was likely to have a disproportionate impact on a business or business to business operations	The issue was not directly relevant as the Commission has retained two rounds of consultation as a default and so principles to move to two rounds were not required. However, the issues raised have been considered in determining the basis for using the standard process.
EnergyAustralia, Snowy Group, Stanwell, AEC	Principles for an additional round of consultation - where a change would impact competition or the competitive landscape.	The issue was not directly relevant as the Commission has retained two rounds of consultation as a default and so principles to move to two rounds were not required. However, the issues raised have been considered in determining the basis for using the standard process. Impacts on competition or the competitive landscape may be considered to be impacts on the NEM, and therefore covered under the test in the draft rule.
EnergyAustralia, Snowy Group, Stanwell, AEC	Principles for an additional round of consultation - two rounds if it leads to a material change to earnings	The issue was not directly relevant as the Commission has retained two rounds of consultation as a default and so principles to move to two rounds were not required. However, the issues raised have been considered in determining the basis for using the standard process. In some circumstances, a material change to earnings may result in impacts on the NEM, in which case it would be covered under the test in the draft rule.
EnergyAustralia, Snowy	Principles for an additional round of consultation	The issue was not directly relevant as the Commission has retained

STAKEHOLDER	ISSUE	COMMISSION RESPONSE
Group, AEC	- where the decision-maker transparency would be reduced	two rounds of consultation as a default and so principles to move to two rounds were not required. However, the issues raised have been considered in determining the basis for using the standard process, and transparency has been considered as an assessment criterion for the rule change as a whole.
EnergyAustralia, AusNet Services, ENA	Principles for an additional round of consultation - the new decision is a significant departure from an earlier decision.	The issue was not directly relevant as the Commission has retained two rounds of consultation as a default and so principles to move to two rounds were not required. However, the issues raised have been considered in determining the basis for using the standard process.
AusNet services, ENA	Principles for an additional round of consultation - Procedure consultations that include changes to obligations that result in updates to systems	The issue was not directly relevant as the Commission has retained two rounds of consultation as a default and so principles to move to two rounds were not required. However, the issues raised have been considered in determining the basis for using the standard process.
Plus ES	Principles for an additional round of consultation - in addition to a defined set of principles or criteria, industry participants should provide input when determining if additional consultation steps are required	The issue was not directly relevant as the Commission has retained two rounds of consultation as a default and so principles to move to two rounds were not required. However, the draft rule provides a right for stakeholders to request the consulting party to shift from the expedited to standard process (with reasons, based on the test for using the expedited process).
AEC	The AEMC should entrench an obligation on a subordinate decision maker to ensure that any change proposed is in line with the National Electricity Objective and its equivalents. In particular this would make clear that	<p>The Commission did not believe it was necessary to include an over-arching obligation like this for several reasons:</p> <ul style="list-style-type: none"> • The AER and AEMO both already have some obligations to act in a way that is consistent with the NEO. •

STAKEHOLDER	ISSUE	COMMISSION RESPONSE
	<p>subordinate decisions contribute to the long-term interests of consumers, as is required in decisions of the AEMC.</p>	<ul style="list-style-type: none"> Some rules already contain a requirement for a consulting party to have regard to the NEO in making a specific decision, while for others this may have been purposefully omitted or otherwise be less relevant In introducing a requirement for a subordinate instrument in the NER, the Commission will already have shown that its introduction is consistent with the NEO.
<p>Snowy Group</p>	<p>In addition to a stakeholder right to introduce instrument changes, instruments could be subject to regular formal reviews or automatic sunseting clauses.</p>	<p>While formal reviews and sunseting clauses can help to make sure consulting parties keep instruments fit for purpose, these can create unnecessary burden on a consulting party and may not be necessary, if for instance an instrument remains fit for purpose.</p> <p>Consulting parties are required to review some instruments periodically, under the NER, and will also review instruments where there are material changes in circumstances.</p> <p>The recommended instrument register (see chapter 2) is a lighter touch approach that will also reduce transaction costs and provide greater transparency for market participants. Introducing a simple process for minor changes incentivises transparent and regular reviews of instruments by consulting parties.</p>
<p>Plus ES</p>	<p>Following industry submissions, the decision maker to engage the industry stakeholders in a feedback review session. These sessions to be a formal consultation tool – minuted for transparency.</p>	<p>The Commission’s decision is designed to allow for greater flexibility in the types of consultation that a consulting party may undertake. A consulting party could undertake a feedback review session, if it feels that this will assist a process. However, depending on the number submissions, other engagement tools like individual meetings, targeted group session or other tools may be more appropriate. Irrespective of the consultation tool, for</p>

STAKEHOLDER	ISSUE	COMMISSION RESPONSE
		transparency, the draft rule requires consulting parties to publish summaries of the material matters considered and outcomes.
Plus ES	Publication of amended procedures should always be before the effective date, including those procedure changes deemed as administrative/manifest. Whilst these procedures may not require market changes, a business may require operational process changes to ensure they remain compliant.	There may be valid reasons that an instrument should commence on or close to the date that it is published. To protect against regulatory risks or burden for stakeholders, in these circumstances, it is good regulatory practice that a consulting party engages with stakeholders throughout the process to help to reduce these operational risks or this burden. Certain rules (eg NER cl 7.16.3(b)) do provide for minimum time periods between publication and effective date. The draft rule requires the draft and final reports to specify the effective date, but does not specify a standard minimum period, for flexibility.
Plus ES	If general consultation notices were to cease and there was a reliance only on the website publication, there is a risk that stakeholders could miss a consultation.	The Commission has included a recommendation for the AER and AEMO to develop a register, which should improve transparency and could include information such as when an instrument is likely to be reviewed. The Commission believes this should be more effective than providing notices to affected stakeholders as these organisations will be able to better plan and resource processes. Additionally, there are other ways that businesses can stay abreast of change proposals including by subscribing to newsletters and by monitoring the AER and AEMO websites.
Shell Energy	Additional governance improvements could be achieved with the addition to the RCP to access the disputes resolution procedure in the NER.	Including access to the disputes resolution procedure is likely to create unnecessary burdens on consulting parties, as it risks encouraging stakeholders to use this clause whenever they disagree with a decision. The process will involve two rounds of consultation as a default

STAKEHOLDER	ISSUE	COMMISSION RESPONSE
		and a consulting party is required to publish reasons for its decision, and stakeholders can still access judicial review in certain circumstances.
AER	The AER considers the additional round should take a form that the consulting party considers appropriate for the circumstances.	As this standard process is reserved for new issues and material issues, the Commission considers that the opportunity for written submissions should be a minimum consultation requirement.
CS Energy	Any rule change should include a periodic review mechanism to ensure that the framework is efficient, effective and fit for purpose. To maintain transparency, robustness and integrity, this review must be performed by an independent body.	Any person may submit a rule change request to the AEMC, including a rule change request in relation to the rules on a particular instrument. Stakeholders can also initiate review of some instruments under NER chapter 7. The draft rule does not extend this to other instruments for the reasons set out in chapter 3.
CS Energy	The governance framework must ensure like-for-like consultation occurs for like-for-like instruments. One model to ensure this occurs is to classify instruments into a hierarchy.	By including the new consultation procedures for minor and administrative instrument changes and non-material changes, the Commission's draft rule will require that instrument changes that are similarly complex are treated the same. The Commission believes that this is more effective than classifying all instruments into a hierarchy, as it will require a consulting party to consider the nature of the proposed changes rather than the nature of the proposed instrument. This approach still provides assurance that complex changes will be dealt with using a robust consultation process, but will also mean that for instance a minor change to an important instrument does not require an unnecessarily burdensome process.