

24 May 2022

Jackie Biro
Director
Australian Energy Market Commission

By online submission: aemc.gov.au

Dear Ms Biro,

ERC0323 Improving consultation procedures in the Rules – Draft determination

AEMO is pleased to make this submission to the AEMC's draft determination and more preferable draft rule on Improving Consultation Procedures in the Rules (the Draft Determination). AEMO thanks the AEMC, AER and stakeholders for their time and valuable input throughout this rule change process to date.

Our submission relates to the Draft Determination for the National Electricity Rules (NER). The draft amendments to the National Gas Rules (GRC0060) are consistent with AEMO's proposal, and largely supported by stakeholders who responded to the AEMC consultation paper.

For the reasons outlined in this submission, AEMO agrees with the general direction of the Draft Determination even though it is substantially different to AEMO's proposal. This is subject to four specific areas of concern discussed below. Before outlining those concerns, AEMO also considers it worth reiterating the purpose of the original proposal and clarifying AEMO's approach to consultation.

Objectives of the proposal

In submitting this Rule Change Proposal in January 2021, AEMO was seeking to implement part of an ESB initiative originating from the recommendations of the Finkel Review¹, to streamline the NER and optimise regulatory change processes to keep pace with the energy transition. It was identified that a more fit-for-purpose consultation process for NER consulted instruments or decisions would help to make these changes both more timely and more robust.

With those objectives in mind, AEMO proposed that the major separate consultation procedures in the NER be replaced with a single, flexible process using the already-established transmission/distribution consultation procedures. AEMO considered that procedure would:

- Facilitate enhanced and extended engagement with stakeholders, allowing for the benefits of stakeholder experience and expertise to inform solution design and delivery on matters that impact them.
- Better accommodate the broad spectrum of changes captured by the rules consultation procedures that, objectively, could be made with greater speed and efficiency than currently permitted.
- Strongly align with best practice in energy consultation, after reviewing a range of jurisdictional requirements².

¹ *Independent Review into the Future Security of the National Electricity Market: Blueprint for the Future*, Commonwealth of Australia 2017::<https://www.energy.gov.au/publications/independent-review-future-security-national-electricity-market-blueprint-future>

² Refer to Appendix B of AEMO's Supplementary Rule Change Proposal, 22 November 2021, at https://aemc.gov.au/sites/default/files/2021-12/new_rule_change_proposal_-_aemo_-_20211122.pdf

Stakeholder sentiment

AEMO acknowledges stakeholder sentiment in submissions to the AEMC's consultation paper, some of which saw the proposal as reducing the opportunities for engagement on changes that were important to them.

This was not the intent of the rule change proposal. We believe that strong collaborative relationships with our participants, consumers, market bodies and governments are central to a successful energy transition. AEMO is working to improve its stakeholder engagement capability and transparency through the Reform Delivery Committee³, AEMO's corporate plan priorities and engagement model⁴, and the Financial Consultation Committee⁵ among others. We recognise, however, that there is still much work to do to build trust in this regard.

Detailed feedback on Draft Determination

While the Draft Determination does not reflect AEMO's proposal or deliver material streamlining of the NER, AEMO agrees with the general direction of the Draft Determination. It represents an improvement on the current rule 8.9. In particular, sensible and flexible timelines for both submissions and decision points will give decision-makers more opportunity to fully inform themselves, an expedited procedure will facilitate timely implementation of straightforward or uncontroversial changes, and there will be more transparency on minor or administrative changes. These improvements are necessary to accommodate the large, and increasing, number and range of decisions to be undertaken under rule 8.9.

AEMO's support is qualified by four specific points, which we have had the benefit of discussing with AEMC and AER staff.

1. **Decisions eligible for expedited consultation procedure** – The expedited consultation procedure should be accessible for all matters that meet the threshold criterion for that procedure (in the draft rule, not having a significant impact on the NEM). The outcome of a consultation – whether a change to an existing document, a new document, an ad hoc report or an individual decision – of itself provides no indication of the significance of the issues involved. New documents or decisions will not necessarily have a material impact on the NEM, and should not automatically be excluded from the expedited procedure. There are several examples in the NER of new documents that have not required the full rules consultation procedures for a range of reasons, and it is likely there will be many more in future.

Removing this limitation, but retaining all other requirements for the expedited procedure (including the objections process), would be consistent with the AEMC's assessment framework for this rule change⁶ because it:

- Gives effect to the stated intent of allowing fit-for-purpose consultation for all NER 8.9 matters, adapting to the nature of the specific determination or instrument being introduced or amended.
- Promotes simplicity by avoiding arbitrary restrictions, and improves clarity by covering all decisions to be made under rule 8.9, including reviews and ad hoc decisions, without the need to consider whether the proposal relates to something that has previously been consulted on (which is not a simple question).

2. **Objections to the expedited process** – Anyone can object to a consulting party's proposal to use the expedited procedure on the grounds that the proposal does not meet the threshold criterion (not having a significant impact on the NEM). AEMO agrees with the right to object, but the Draft Determination

³ <https://aemo.com.au/consultations/industry-forums-and-working-groups/list-of-industry-forums-and-working-groups/reform-delivery-committee>

⁴ https://aemo.com.au/-/media/files/about_aemo/corporate-plan/2021/fy22-aemo-interactive-corporate-plan.pdf?la=en&hash=6853E9D2FDC8025EB37256D59D8452DA. See also: [AEMO | Stakeholder engagement](#)

⁵ <https://aemo.com.au/en/consultations/industry-forums-and-working-groups/list-of-industry-forums-and-working-groups/financial-consultation-committee>

⁶ AEMC, Improving consultation procedures in the rules, Draft rule determination, 14 April 2022, section 3.2 (page 16-17)

requires the consulting party to accept all objections unless it is prepared to deem them ‘misconceived or lacking in substance’. AEMO recognises that this phrase is used in the National Electricity Law, but suggests it is a polarising and unnecessary test when collaborative consultation approaches are needed to successfully navigate the energy transition.

Instead, AEMO suggests consulting parties be required to consider objections on their merits, and provide reasons for any decision **not** to accept a request to switch to the standard process. This is consistent with the rule change’s assessment framework because it:

- Facilitates fit-for-purpose consultation, as the consulting party will use new information received through an objection to reassess the impact of the proposal on the NEM, or indeed any other factor that suggests two stages of written consultation are appropriate, as opposed to considering the construction or substance of a person’s reasons why the proposal is not ‘non-material’.
- Reduces complexity, cost, and the potential for conflict, by maintaining a consistent focus on the impact of the proposal.

3. **Holding meetings** – AEMO emphasises that there was no intent to remove stakeholders’ ability to request meetings, as indicated in the AEMC’s consultation paper. The current provision provides a very limited opportunity to request a meeting, and in AEMO’s experience has been rarely used. AEMO’s proposal identified meetings as one of a range of consultation mechanisms, without prescription around requests. The Draft Determination retains a modified meetings provision. It expands the window for making requests, which AEMO fully supports. However, it also requires the consulting party to accept all valid meeting requests and hold meetings unless it is not reasonably practicable. This has the potential to cause inefficiency and delay in the consultation process. AEMO suggests that meetings be held on the same basis as under the current rule, i.e., it is necessary or desirable to do so. This is consistent with the AEMC’s assessment framework because it:

- Recognises individual or limited meetings as a form of consultation where it is effective or necessary to communicate complex, in-depth or sensitive information.
- Promotes both efficacy and transparency by allowing for dialogue about the benefits of meetings. As several stakeholders have pointed out, a consultation in which interested parties can share and hear each other’s views tends to improve the quality of feedback and hence the outcome. If interested parties are in a position to present their views openly, that is often preferable. Unless objectively justified, private meetings may create undesirable perceptions of secrecy or even bias.
- Reduces cost and complexity for the consulting party by removing an obligation to hold private meetings if they are not expected to improve the available information or contribute to a better consultation outcome.

4. **Requirements for determinations** – As rule 8.9 will cover a broad spectrum of decisions or amendments, any generally expressed obligations must be capable of being met for all types of consulted proposals. Clause 8.9.2(a)(1) includes a requirement for each consultation paper to set out ‘the issues involved and options to address them’. There may be proposals that raise no issues (e.g. because the NER prescribe what is to be done), and others that have no feasible alternative options. Further, participant proposals to amend Chapter 7 procedures do not need to specify issues or options.

AEMO suggests replacing this with a simple requirement to set out the reasons for the proposal, which has the benefit of consistency with participant proposals under Chapter 7. If the consulting party has identified issues or considered options, those can be explored in the reasons, with no need for additional prescription. This change is consistent with the AEMC’s assessment framework because it:

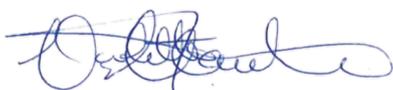
- Is a well understood concept consistent with best practice consultation and administrative law norms, which require decision-makers to give reasons.
- Removes any ambiguity with regard to compliance requirements, and promotes an efficient process for consultations that do not require issue analysis or lend themselves to alternative options.

In addition to amendments necessary to address the four issues discussed above, AEMO has the following drafting suggestions for the AEMC's consideration in the final rule:

- In clause 7.16.7(a), remove “(that person being the **proponent**)”, as there is no doubt that the proponent refers to the person making a proposal.
- In clause 8.9.1(a), remove the words “new or amended” as they are not needed. For consistency with clauses 8.9.2(b) and (c), and 8.9.3(a) and (g), also remove the reference to a “recommendation” (which is also a determination).

We welcome the opportunity to discuss our submission. Should you have any questions on the matters in our submission please contact Kevin Ly, Group Manager – Reform Development & Insights at kevin.ly@aemo.com.au.

Yours sincerely,



Violette Mouchaileh

Executive General Manager, Reform Delivery