

26 May 2022

Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

Submitted by email to aemc@aemc.gov.au

Project number: ERC0323 / GRC0060

Improving consultation procedures in the Rules

The Snowy Hydro Group (Snowy Hydro Limited, Red Energy and Lumo Energy) welcome the opportunity to comment on the draft determination by the Australian Energy Market Commission (the Commission) on proposed changes to consultation procedures in the National Electricity Rules (NER) and National Gas Rules (NGR).

Support for the draft determination

The Snowy Group supports the Commission's decision to ensure there are two rounds of consultation for proposed changes to subordinate instruments under the NER and NGR in the vast majority of instances. Furthermore, we also support the introduction of an expedited process that not only allows for stakeholders to consider and raise concerns, but also allows for reversion to the Standard consultation process if those objections are legitimate. This creates consistency across the processes to amend Rules and subordinate instruments, which is particularly important as regulatory agencies are contemplating how to enact a broad range of regulatory initiatives in the coming years. This includes any that will flow from the Energy Security Board's post 2025 market design program.

As we argued in our submission to the consultation paper, two rounds of consultation are needed to ensure market participants and other important stakeholders can carefully consider a proposal and offer views on alternative ways of addressing a perceived problem, and to then consider the costs and benefits of a draft solution. This reflects an inherent and unavoidable information asymmetry about the potential impact of regulatory proposals.

We also noted in our previous submission that regulatory decision makers have their own incentive structures, strategic plans, priorities and focus areas, which may not always be consistent with best-practice market design nor industry expectations. A streamlined process could create an incentive for decision makers to select an approach based on the ease of implementation or the minimum resourcing requirement rather than what is the optimal response.

Detailed consultation is an opportunity to carefully consider all aspects of a proposal. It is an important element of NEM governance and of good regulatory practice more generally. We acknowledge AEMO's views about the need for a more flexible framework in light of a rapidly evolving external environment but the Commission's proposal strikes an appropriate balance.

Removal of extended consultation from the National Gas Rules

The Commission notes that the Extended consultation process in the NGR—which it proposes to remove—only relates to 5 subordinate instruments. However, this covers issues of major significance, including the development of AEMO's fee structure for gas market participants, the determination of major gas projects, and consultation requirements for market reviews and market procedures.

Therefore, we support the Commission's decision to combine the shift to the Standard consultation with a rule that requires a consulting party to meet with a stakeholder on request and within a reasonable timeframe, to extend these meeting rights to the second round of consultation, and to explicitly allow a consulting party to use additional consultation methods such as working groups and forums.


Consultation procedures under the National Energy Retail Rules

We acknowledge the Commission's decision to leave the consultation processes for subordinate instruments under the NERR unchanged. We continue to hold the view that there is considerable merit in revisiting the process for developing subordinate instruments. This is due to some recent determinations by the Commission that have required the Australian Energy Regulator (AER) to subsequently enact a regulatory initiative through a subordinate instrument. These determinations have covered significant issues with a substantial impact on market participants, such as hardship management and the structure and content of bills.

Therefore, we strongly support the Commission's suggestion of a broader review of the instruments made under the NERR, including the AER's requirements in the National Energy Retail Law. This would capture the AER's consultation obligations and the discretion it currently holds and also extend to other relevant issues. These include the factors that the AER must consider when it develops such instruments (such as the costs and benefits of feasible options), and the appropriate division of responsibilities and rule making functions of the Commission and AER under the NERR. It would also be an opportunity to review recent outcomes under the current Rules, such as the Better Bills Guideline.

About Snowy Hydro

Snowy Hydro Limited is a producer, supplier, trader and retailer of energy in the National Electricity Market ('NEM') and a leading provider of risk management financial hedge contracts. We are an integrated energy company with more than 5,500 megawatts (MW) of generating capacity. We are one of Australia's largest renewable generators, the third largest generator by capacity and the fourth largest retailer in the NEM through our award-winning retail energy companies - Red Energy and Lumo Energy.



The Snowy Group appreciates the opportunity to respond to the consultation paper and any questions about this submission should be addressed to me by phone on 0438 671 750 or by email to geoff.hargreaves@snowyhydro.com.au. We will follow up this submission by providing some minor changes to the proposed drafting that we believe will better reflect the Commission's objective

Yours sincerely,

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

Geoff Hargreaves
Wholesale Regulation
Snowy Hydro



Clarification or amendments suggested to the rules:

Schedule 1

[3] Clause 7.16.4 Jurisdictional metrology material in metrology procedure

In clause 7.16.4(f), in the opening paragraph, omit "in accordance with rule 8.9(k)".

Clarification: existing rule 8.9(k) requires publication of the report. Where will AEMO's obligation to publish the report that it provides to jurisdictions sit should this amendment be made?

[4] Clause 7.16.7 Amendment of procedures in the Metering Chapter

Omit clause 7.16.7(a) and substitute:

- (a) AEMO or any other person may make a proposal (the proposal) to amend any procedure in this Chapter 7 including the metrology procedure except:
- (1) in relation to the jurisdictional metrology material which is contained within the metrology procedure; and
 - (2) procedures specified in rule 7.17,
- and a proposal by a person other than AEMO (that person being the proponent) must be submitted to AEMO and include reasons for the proposed change.

Amendment suggested:

- (a) AEMO or any other person may make a proposal (the proposal) to amend any procedure in this Chapter 7 including the metrology procedure except:
- (1) in relation to the jurisdictional metrology material which is contained within the metrology procedure; and
 - (2) procedures specified in rule 7.17,
- [and include reasons for the proposed change](#), and a proposal by a person other than AEMO (that person being the proponent) must be submitted to AEMO ~~and include reasons for the proposed change~~.

It should be incumbent upon ANY proponent of a Procedure change to adequately advise of the reasons for the proposed change. AEMO should not be excluded from this obligation, in particular as the reasons for a change will provide information to participants as to whether the standard or expedited nature of the consultation is valid.

[10] Clause 7.17.4 Changing B2B Procedures

Omit clause 7.17.4(k) and substitute "[Deleted]".

Clarification and amendment: existing 7.17.4(k) placed a positive obligation on AEMO to publish IEC notices on AEMO's website to satisfy the IEC's rules requirements. Under the new rule 8.9.1(j), AEMO no longer has a positive obligation to do it, rather an implied one.

We request that the obligation on AEMO mirrors that of a Transmission Network Service Provider, recommending the following amendments to 8.9.1(j) [note - 8.9.1(h) and (i) are included for reference]:

- (h) If the consulting party is a Transmission Network Service Provider consulting under rule 5.18, a requirement under this rule 8.9 to publish a document is met when the Transmission Network Service Provider has published the document on its website and given a copy of the document to AEMO. AEMO must publish the document within 3 business days of receiving it.

(i) If the consulting party is the Reliability Panel, a requirement under this rule 8.9 to publish a document is met by publication of that document on the AEMC's website.

(j) If the consulting party is the Information Exchange Committee, a requirement under this rule 8.9 to publish a document is met by publication of that document on AEMO's website.

[AEMO must publish the document within 3 business days of receiving it.](#)

[11] Clause 7.17.4 Changing B2B Procedures

Omit clause 7.17.4(l) and substitute:

(l) If the Information Exchange Committee is engaging in the standard rules consultation procedure or the expedited rules consultation procedure the reports it publishes under clauses 8.9.2(b) and (c), or clauses 8.9.3(a) and (g) (as applicable), must contain details of how the Information Exchange Committee has:

- (1) had regard to the national electricity objective and the B2B factors; and
- (2) sought to give effect to the B2B Principles,

when considering the B2B Proposal and the material issues raised in the relevant consultation.

Clarification and amendment #1 - Materiality:

In the original 7.17.4(l) the IEC needed to consider 'each valid written submission', whereas in the new clause, the IEC only needs to consider 'material issues raised'. Why does the IEC only now need to consider 'material' issues, this is an erosion of the rights of a participant, and the word 'material' should be removed from the amended rule. See suggested amendment below.

We note that many participants provide the IEC (and other consulting parties) with immaterial amendments, such as typographical or incorrect cross references, however, these are also valid inputs to the consultation and should continue to be taken on board by the IEC (and other consulting parties). A move to remove that consideration, may in fact, have the unintended consequence of participants not raising immaterial amendments and a lesser standard of Procedure is published.

(l) If the Information Exchange Committee is engaging in the standard rules consultation procedure or the expedited rules consultation procedure the reports it publishes under clauses 8.9.2(b) and (c), or clauses 8.9.3(a) and (g) (as applicable), must contain details of how the Information Exchange Committee has:

- (1) had regard to the national electricity objective and the B2B factors; and
- (2) sought to give effect to the B2B Principles,

when considering the B2B Proposal and the ~~material~~ issues raised in the relevant consultation.

Clarification and amendment #2 - NEO:

In rule 7.17.4 relating to how the B2B Procedures are amended, there is a positive obligation on the IEC to consider both the NEO and the B2B factors. However, in the rules consultation procedures, there is no positive obligation on consulting parties to consider the NEO. Noting that the AER and AEMO have obligations on them already under the Laws to consider the energy objectives in their consultations, we understand that it could be inferred. However, consulting parties include other parties that are not these two entities, such as the IEC. We question whether the IEC needs a positive obligation? If so, why does this not extend into the other consulting parties under the revised rule 8.9? It is prudent to avoid any confusion, that all consulting parties should consider the NEO, as such we propose the following amendments:

Rule 7.17.4

...

(l) If the Information Exchange Committee is engaging in the standard rules consultation procedure or the expedited rules consultation procedure the reports it publishes under clauses 8.9.2(b) and (c), or clauses 8.9.3(a) and (g) (as applicable), must contain details of how the Information Exchange Committee has:

- (1) had regard to the ~~national electricity objective and~~ the B2B factors; and
- (2) sought to give effect to the B2B Principles,

when considering the B2B Proposal and the ~~material~~ issues raised in the relevant consultation.

...

(q) In making a decision under paragraph (n), the Information Exchange Committee must:

- (1) have regard to the ~~national electricity objective and~~ the B2B factors; and
- (2) seek to give effect to the B2B Principles.

8.9.2 Standard rules consultation procedure

Initial consultation

(a) Where this rule 8.9.2 applies, the consulting party must publish a consultation paper with:

- (1) an explanatory statement that sets out particulars of the Proposal, the issues involved and options to address them;
- (2) the provision of the Rules under which the consultation is being conducted;
- (3) an invitation to make written submissions to the consulting party on the consultation paper; and
- (4) a due date for written submissions, which must be no earlier than 20 business days from the date of the consultation paper.

Consultation on draft document

(b) No later than 50 business days after the due date for submissions under paragraph (a)(4), the consulting party must publish a draft report with:

- (1) a draft of the relevant determination or document for consultation, which is (where the consultation is on changes to an existing document) marked up with the proposed amendments;
- (2) reasons for its approach to the draft determination or document;
- [\(3\) details of how the consulting party had regard to the national electricity objective;](#)
- [\(4\) the material required under clause 8.9.1\(f\)\(2\);](#)
- [\(5\) the proposed date on which the final version of the determination or document would take effect; and](#)
- [\(6\) an invitation to make written submissions to the consulting party on the draft report, and a due date for submissions, which must be no earlier than 20 business days after the date of the draft report.](#)

Publication of final document

(c) No later than 50 business days after the due date for submissions under paragraph (b)(5), the consulting party must publish a final report with:

- (1) the final determination or document, including (where the consultation was on changes to an existing document) a version marked up with the final amendments;
- [\(2\) details of how the consulting party had regard to the national electricity objective;](#)
- [\(3\) the material required under clause 8.9.1\(f\)\(2\);](#)
- [\(4\) the reasons for its decision to make the final determination or document; and](#)
- [\(5\) the date on which the final determination or document takes effect.](#)

8.9.3 Expedited rules consultation procedure

Consultation on draft document

(a) If this clause 8.9.3 applies, the consulting party must publish a draft report with:

- (1) a draft of the relevant determination or document for consultation, which is marked up with the proposed amendments;
- (2) an explanatory statement that sets out the provision of the Rules under which the determination or document is proposed to be amended, the consulting party's

reasons for considering the Proposal is a Non-material Proposal, and the consulting party's reasons for the draft amendments;

[\(3\) details of how the consulting party had regard to the national electricity objective;](#)

[\(4\) information on the process in paragraphs \(b\) to \(d\) to request the consulting party to use the standard rules consultation procedure, and the due date for submitting a request;](#)

[\(5\) the proposed date on which the final version of the determination or document would take effect; and](#)

[\(6\) an invitation to make written submissions to the consulting party on the draft report, and a due date for submissions, which must be no earlier than 20 business days after the date of the draft report.](#)

...

Publication of final document under expedited rules consultation procedure

(g) Subject to paragraph (f), no later than 50 business days after the date of publication of the draft report under paragraph (a), the consulting party must publish a final report with:

(1) the final determination or document, including a version marked up with the final amendments;

(2) the material required under clause 8.9.1(f)(2);

[\(3\) details of how the consulting party had regard to the national electricity objective;](#)

[\(4\) the reasons for its decision to make the final determination or document; and](#)

[\(5\) the date on which the final determination or document takes effect.](#)

8.9.4 Minor rules consultation procedure

(a) If this clause 8.9.4 applies, the consulting party must publish:

(1) a draft of the relevant document, marked up with the proposed amendments;

(2) the reasons for making the proposed amendments and why the consulting party considers the amendments to be minor or administrative in nature; ~~and~~

[\(3\) details of how the consulting party had regard to the national electricity objective;](#)
[and](#)

[\(4\) an invitation for comments on the draft amendments within 10 business days of publication of the draft document.](#)

(b) As soon as reasonably practicable after the due date for comments under paragraph

(a)(3), the consulting party must publish:

(1) the final document, including a version marked up with the final amendments;

(2) any comments given to the consulting party under paragraph (a)(3); ~~and~~

[\(3\) details of how the consulting party had regard to the national electricity objective;](#)
[and](#)

[\(4\) a notice, stating the reasons for making the final amendments and the date on which the final document takes effect.](#)

Schedule 2

Rule 8.9 - General

Clarification 1: notification

In the current rules, AEMO and the IEC have positive obligations to notify Consulted Persons. However, under the new 8.9, consulting parties only have an obligation to publish on AEMO's website. Recommendation to reinstate the obligation to notify as well as publish, as Consulted Persons are at the whim of AEMO's website design for information about new consultations. In May 2022, there were no fewer than 647 closed and current consultations, with 336 yet to reach the final report stage. It places a considerable burden on consulted persons to wade through these consultations daily and identify whether there is a new, relevant consultation.

Recommendation: amend all relevant sections of rule 8.9 to have a positive “notify” obligation in instances where the consulting party has a requirement to ‘publish’.

Rule 8.9 - materiality

Consistent with the commentary above regarding materiality for the IEC, the equivalent applies to the general rules consultation procedures. The current 8.9 requires consulting parties to consider “all valid submissions” however the new 8.9 requires the consulting party to only consider “material issues”. As noted above, it is generally accepted that typographical errors are immaterial, however, other matters raised by Consulted Persons may be material to that business, but could be considered immaterial to the consulting party. This could relate to governance concerns, implementation dates, or the inclusion or exclusion of a particular option. The consulting party must retain the positive obligation to consider all matters raised in the consultation, not just those it deems material.

Recommendation: make the following drafting amendments.

8.9.1 Application of Rules consultation procedures and publication requirements

...

Consulting party to publish submissions and other materials

(f) For each stage of consultation under the expedited rules consultation procedure or the standard rules consultation procedure, the consulting party must publish (subject to its confidentiality obligations):

- (1) submissions received by the relevant due date; and
- (2) as part of the reports required under this rule 8.9, summaries of the **material** issues raised in:
 - (i) the submissions referred to in sub-paragraph (1); and
 - (ii) any additional consultation the consulting party conducted under paragraphs (k) and (l),and the consulting party's responses to those **material** issues.