

20 June 2013

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By online submission

Dear Mr Pierce

### **Rule Change Request – Electricity Retail Market Procedure Governance**

AEMO requests the AEMC consider making a rule change under section 91 of the National Electricity Law. AEMO is proposing changes to Chapter 7 of the National Electricity Rules (NER) to facilitate implementation of a more efficient and effective single governance framework for all electricity retail market procedures.

The proposed rule will address issues with the current split in accountabilities for procedures under Chapter 7 of the NER, and establish a robust but flexible governance framework, capable of adaptation to best meet the expected, and potentially, significant changes to the retail market environment in coming years.

AEMO would appreciate the AEMC considering the attached rule change request. For further details, please do not hesitate to contact Terry Grimwade, Group Manager - Market Development, on (03) 9609 8520.

Yours sincerely



Mike Cleary  
**Chief Operating Officer**

Attachments: Electricity Retail Market Governance Rule Change.pdf

Attachment A - Rule Change Drafting.pdf

Attachment B - Draft Approved Process June 2013 with Flow diagram.pdf

Attachment C - RMPC Operating Manual Draft June 2013.pdf

Attachment D - RMPC Election Procedures Draft May 2013.pdf

# RULE CHANGE REQUEST: ELECTRICITY RETAIL MARKET PROCEDURE GOVERNANCE

PREPARED BY: Market Development

DATE: 20 June 2013

# Contents

1	Executive Summary .....	3
2	Background .....	4
3	Statement of Issue .....	5
3.1	Achieve single framework for all retail market procedures .....	5
3.2	Improved clarity and accountability .....	5
3.3	Flexibility to meet changing retail market environment .....	5
4	Proposed Solution and Rule .....	6
4.1	Description of the Proposed Rule .....	7
4.1.1	Approved Process .....	8
4.2	Proposed Rule .....	8
4.3	Stakeholder Engagement on this Rule change proposal .....	8
5	Expected Benefits and Costs of the Proposed Rule .....	9
6	How the Proposed Changes Contributes to the NEO .....	10
7	Attachments .....	11

## 1 Executive Summary

AEMO is proposing changes to Chapter 7 of the National Electricity Rules (NER) to facilitate implementation of a revised single governance framework for all electricity retail market procedures.

Clauses 7.1.3(c) and 7.2A of the NER provide for the establishment and operation of the Information Exchange Committee (IEC) to manage the ongoing development of business to business (B2B) procedures and any changes to them. Clause 7.1.3(a) of the NER states that Australian Energy Market Operator (AEMO) is responsible for the establishment and maintenance of all procedures under Chapter 7, except the B2B procedures.

While the IEC is responsible for the establishment and maintenance of B2B procedures, it is required to make recommendations to AEMO to make or change the B2B procedures. Subject to limited criteria set out in clause 7.2A3(k), AEMO is bound to implement the IEC's recommendations.

Therefore, while the NER allocate responsibility for establishment and maintenance of B2B procedures and all other procedures under Chapter 7 between the IEC and AEMO, it is AEMO that actually makes and amends all procedures.

In 2011, the National Smart Metering Program, aimed at developing national procedures to govern the requirements and operation of smart metering infrastructure ("SMI procedures") was paused pending the resolution of a number of issues that required policy direction. One key issue was the requirement for a suitable head of power under the NER for the establishment and maintenance of SMI procedures, some of which would not fall under the current definition of B2B procedures or the other procedures defined in Chapter 7 of the NER.

Recent AEMC reviews ("Power of Choice", and Metering Arrangements for Electric Vehicles), have made far reaching recommendations in respect of meter requirements, meter provision, meter data services, and other consumer related services via smart meter interfaces.

The governance provisions under Chapter 7 of the NER for the establishment and maintenance of procedures are not adequate, or well suited, for the necessary establishment and maintenance of new categories of procedures to facilitate orderly and efficient business and market transactions to support these new services.

Having consulted extensively with the IEC, AEMO is proposing amendments to the NER to replace the existing provisions related to the establishment and operation of the IEC, with a rule that obliges AEMO to establish an "approved process" to be followed by AEMO in considering any proposal to make any retail market procedures. AEMO will be required to follow the Rules consultation procedure in making or amending the approved process.

AEMO's proposed rule amendment is supported by the IEC. It will address issues with the current split accountabilities for procedures under Chapter 7 of the NER, and establish a single governance framework that is robust but flexible and capable of adaptation to best meet the expected changing retail market environment and constituency of parties interested in and affected by retail market procedures.

## 2 Background

The IEC is a committee required by and established under clause 7.2A2 of the NER, to oversee development of B2B procedures. As required by the NER, the IEC is comprised of three distributor and three retailer representatives, and two independent members nominated and elected by the retailers and distributors collectively. The IEC has no formal AEMO representation, although AEMO is required under the NER to provide secretariat services, recover costs for independent members and operation of the IEC through participant fees, provide a B2B e-hub and publish the B2B procedures. However, AEMO retains responsibility under the NER for making and amending the B2B procedures, although in doing so it is required to follow recommendations of the IEC.

The rule requiring establishment of the IEC was submitted to National Electricity Code Administrator (NECA) in 2004. The rationale for establishing the IEC at that time was as follows:

- B2B processes and communications were considered fundamental to how DNSPs and retailers conducted their commercial affairs (and, at the time, were not seen as relevant to market operations).
- There was a lack of consistency across the jurisdictions (e.g. Victoria had compulsory requirements under DNSP licences while other jurisdictions had differing voluntary arrangements).
- The industry wanted an enforceable mechanism through which standardised processes could be implemented, in the absence of agreement between all relevant participants.
- The B2B procedures were considered only to affect DNSPs and retailers, therefore it was considered appropriate that the IEC should be comprised of representatives of these two groups, accountable to their respective stakeholders, and two independent members elected by industry for governance purposes.

By contrast, all other National Electricity Market (NEM) procedures are made by AEMO following the Rules consultation process as specified in clause 8.9 of the NER. Similarly, AEMO makes all procedures in its gas markets in accordance with prescribed consultation processes under the National Gas Rules. AEMO is committed to ensuring broad and effective stakeholder engagement in the development of market procedures and related processes. It has, therefore, established a series of industry committees, forums and working groups to provide targeted input throughout the development of new or amended procedures.

For electricity retail market procedures (other than B2B), AEMO has separately established the Retail Market Executive Committee (RMEC) to advise it on the development of MSATS, metrology and metering services matters. The establishment of the RMEC is not mandated under the NER.

Many aspects of B2B, MSATS and metrology procedures are closely inter-linked, and the industry skills and knowledge required to develop these procedures are largely the same. Over time, this has resulted in the merging of IEC/RMEC reference and working groups, the common industry membership of IEC and RMEC, and the long standing practice of IEC and RMEC meetings being held jointly under a common Chair. Consequently, the division of accountability of the IEC for B2B and AEMO (via the RMEC) for MSATS and metrology procedures has become blurred. This aside, the IEC/RMEC arrangements have evolved over a number of years and have, to date, worked effectively to the satisfaction of the industry. However, the electricity retail market environment is likely to undergo significant and potentially rapid development over the coming years, with smart meter infrastructure being increasingly deployed and new, innovative retail service offerings likely to be offered by a broader range of service providers.

AEMO was established in 2009 with a Board and governance structure specifically designed to effectively perform its functions as independent market and system operator and national transmission planner, including its responsibility for the development and management of procedures for the markets it operates under the NER and NGR.

In August 2011, the IEC and RMEC began examining options to establish a single governance structure for all electricity retail market procedures, resulting in this Rule change request. Section

4.3 of this document sets out details of the consultation AEMO has undertaken with the IEC and more broadly with interested stakeholders prior to submitting this Rule change request.

### **3 Statement of Issue**

There are a number of drivers for change of the current governance framework for the development and maintenance of electricity market retail procedures.

#### **3.1 Achieve single framework for all retail market procedures**

The continued separation of processes for development and maintenance of B2B and non-B2B procedures is not practical or efficient. Many of the issues requiring the development of retail market procedures have implications for more than one category of the procedures made under Chapter 7 of the NER, (for example, Retailer of Last Resort requirements include both MSATS and B2B procedures). Current working practices of the IEC and RMEC have evolved to achieve more effective and efficient joint operation to the extent that they no longer reflect the formal separation set out in the NER,

The National Smart Metering Program has identified the need for a new head of power for smart metering infrastructure procedures, some of which may not fall clearly under the definition of B2B, MSATS or metrology procedures. The resolution of this issue is one of the re-start criteria for the National Smart Metering Program, which is currently paused, pending determination of this and a number of other policy issues.

It is also possible that new categories of procedures may be required to deal with future retail market innovations, such as electric vehicles, home area networks, contestability of meter provision, multiple service offerings at consumer premises and increased consumer access to data. It will not be practical or efficient for there to be multiple governance streams for procedures that may be required to support these, and a single integrated framework for all procedures is required.

#### **3.2 Improved clarity and accountability**

While the IEC is established under the NER to oversee B2B procedures, it is AEMO that makes those procedures, although it must follow the recommendations of the IEC. Consequently, AEMO has been concerned for some time that the accountability and liability of both the AEMO Board and the IEC for the making of B2B procedures is not clear. Further, AEMO considers there is potential for it to be required by the Rules to make (or not to make) B2B procedures in circumstances where that decision may conflict with what AEMO's Board considers to be the due exercise of its statutory functions, or with the operation of other market procedures or processes. Under clause 7.2A.3 (k) and (m) of the NER, AEMO is not permitted to make B2B procedures in the absence of, or with any changes to, an IEC recommendation.

For practical and efficiency reasons (referred to in section 3.2 below), the processes for developing B2B procedures have necessarily become increasingly intertwined with AEMO's consultative processes for other procedures under Chapter 7, both through the RMEC and under rule 8.9 of the NER. This compounds the blurring of accountabilities for making B2B and other retail market procedures.

#### **3.3 Flexibility to meet changing retail market environment**

As the retail market and associated technologies develop, it is becoming clear that B2B procedures will no longer only be a matter of concern for distributors and retailers. Metering providers, metering data providers, aggregators, consumer representatives, and other potential new service providers may be affected by those procedures, and the consultative framework will need to be flexible enough to adapt as required to ensure it remains relevant and robust. Over prescription in the NER of the detailed consultation requirements and change management processes for retail

market procedures will be a potential barrier to those arrangements evolving to meet the likely rapidly changing requirements and stakeholders involved in the market. Currently, the membership, terms of reference and operations of the IEC are prescribed in detail in the NER. It is more appropriate for this level of detail be prescribed in procedures forming the “approved process” and for AEMO, based on its statutory role and functions and governance structure, to manage and be accountable for the consultation and the associated decision-making framework for all retail market procedures.

## 4 Proposed Solution and Rule

AEMO, with the support of the IEC, requests that the AEMC consider replacing the current IEC arrangements for B2B procedures in rule 7.2A with a procedure development and consultation regime that aligns with all other retail market procedures, is consistent with the governance and accountability framework for energy market procedures in general, and provides the necessary flexibility for the underlying consultation/advisory structures to adapt to future industry development.

The proposed solution will:

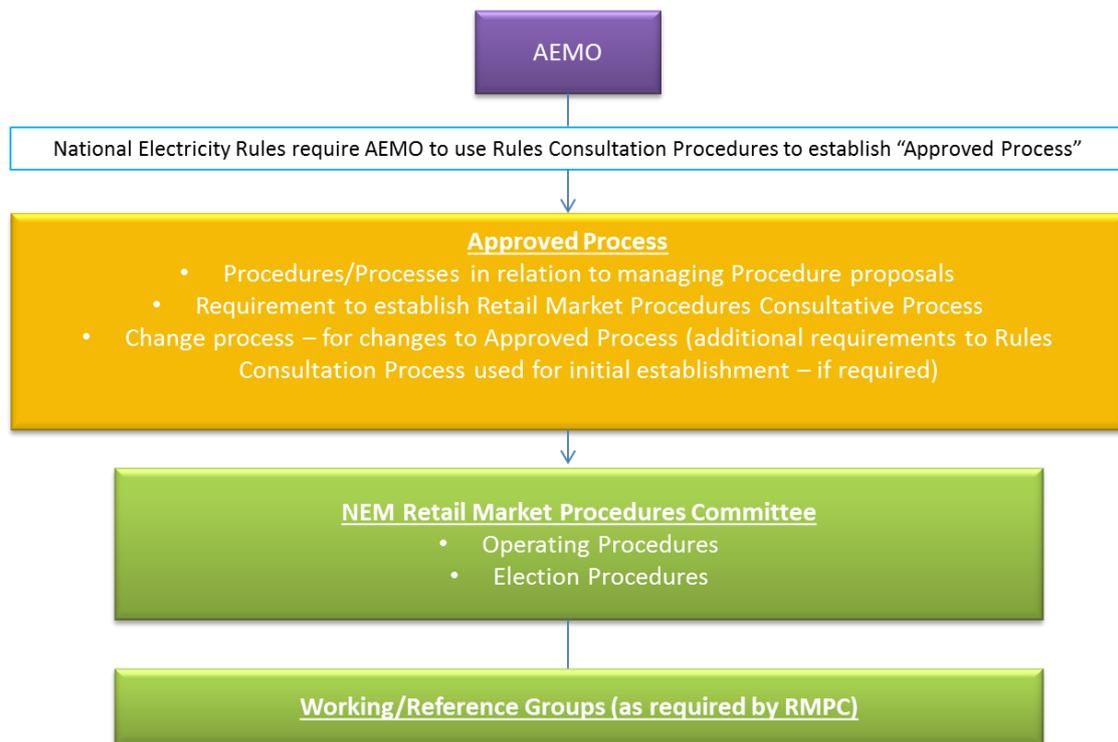
- Establish an integrated framework/process for the development of all NEM retail market procedures, reducing unnecessary complexity and duplication of governance structures.
- Maintain the effective operation of the existing industry consultative framework and procedure development processes.
- Provide clearer accountability for making procedures and for consulting with affected stakeholders in doing so.
- Provide flexibility for the consultative process to accommodate new procedures and stakeholders as recommendations from reviews such as Power of Choice, metering arrangements for Electric Vehicles, and other initiatives are rolled out.

To achieve these outcomes, the proposed solution will replace the IEC provisions in the NER with a single set of provisions covering the process for proposing and making all NEM retail market procedures. AEMO will be required to consult on proposed procedures using the Rules consultation procedures, and must also establish and publish an ‘approved process’ that will set out how AEMO will manage the development of all NEM retail market procedures.

Initially, AEMO and the IEC envisage that the approved process will involve consideration of procedure proposals through a consultative committee or body similar in structure to a combination of the existing IEC and RMEC, but with clear requirements for broad consultation with affected parties and a formal consultation process that follows the rules consultation procedure under clause 8.9 of the NER.

Under this approach, an initial governance framework for consideration by AEMO through the public consultation procedure would be similar to that shown schematically in Figure 1 (overleaf).

It is considered that a representative retail market procedures committee with membership based on a combination of the current IEC/RMEC membership is a reasonable starting point, but with flexibility for its membership structure or operating procedures to be changed through the procedure change process, and in accordance with the approved process. Expansion of the formal committee membership at present is likely to be problematic due to difficulties in identifying parties who would be capable of adequately representing multiple actual or potential third party service providers and consumers. The role of the committee is one of implementing rather than formulating policy, and by its nature generally involves discussion of a highly technical nature requiring detailed knowledge of, and at this time, almost exclusively affecting retailer, distributor and market systems and processes.



**Figure 1: Proposed Revised Governance Framework**

AEMO and the IEC do, however, recognise that interested stakeholders in retail market procedures will extend beyond retailer and distribution businesses and that this may increase over time as new third party service providers enter the market. Therefore, the approved process or committee operating processes will, as a minimum, require that activities and proceedings of the consultative committee be open and transparent, with publication of all agendas, meeting papers and minutes, attendance and participation at meetings being possible for all interested parties to provide input into the committee’s consideration of procedure proposals.

AEMO and the IEC also agree that this consultative and procedure development framework will need to be reviewed on an ongoing basis to best meet changing market requirements, customer service offerings and service providers. AEMO and the IEC therefore consider it important that these arrangements are not prescribed in detail in the NER, but are established and maintained through an ‘approved process that provides greater flexibility to adapt relatively quickly to changing requirements, subject to an appropriate change process (the Rules consultation procedures).

#### 4.1 Description of the Proposed Rule

AEMO, with the support of the IEC, proposes changes to Chapter 7 covering the following matters:

- Chapter 7 to be named ‘Metering and Retail Markets’, as more representative of the subject matter of the Chapter;
- Removal of rule 7.2A, other than those parts of clause 7.2A.4 that set out the scope of the B2B procedures, and deletion of definitions in Chapter 10 relating to the IEC and B2B-specific decision-making.
- A new, broad description of the process for proposing and making retail market procedures (ensuring a consistent approach across all procedures), and requiring registered

participants, AEMO, metering providers and metering data providers to comply with applicable retail market procedures;

- A requirement for AEMO to establish the ‘approved process’ (further discussed below);
- Amendments to clause 7.13 (evolving technologies), to allow for procedures relating to new technologies and processes to be clearly captured within the scope of retail market procedures (and intended to allow for the development of SMI procedures as a category of retail market procedures).

#### 4.1.1 Approved Process

The proposed Rule includes the use of an ‘approved process’ to describe how AEMO must consult on the development and consideration of a proposal to make procedures with interested parties. The approved process will be required to:

- allow an opportunity for input on the proposal by Registered Participants and any other person AEMO considers would be affected by the proposal, to the extent reasonably practical; and
- set out the detail on which AEMO is permitted to reject a proposal made by another person without further consideration (AEMO proposes that this discretion could only be exercised for proposals dealing with repeat proposals on the same subject matter, matters outside the scope of retail market procedures, etc.)

## 4.2 Proposed Rule

Please refer to **Attachment A** for a draft of the proposed Rule.

## 4.3 Stakeholder Engagement on this Rule change proposal

On 10 April 2013, AEMO advised all IEC members, IEC nominated representatives (AEMO registered market customers and distributors), members of the Metrology reference group, the B2B and MSATS reference group and Metering Providers working group in the NEM, of the proposed changes affecting retail market procedure governance. AEMO distributed a package of consultation documents for comment, including a draft of the proposed Rule change, approved process and constituent documents for the initial retail market committee. As secretariat to the IEC and chair of the RMEC, AEMO also facilitated a national teleconference forum on 17 April 2013.

Written responses were received from four stakeholders - United Energy Distribution, Simply Energy, Lumo Energy and Ergon Energy.

AEMO conducted follow-up discussions with each of the above respondents to further consider their concerns and explain the approach being undertaken.

AEMO’s summary of the respondents’ key areas of concern, and AEMO’s response to these issues is as follows:

- a) Second tier retailers generally supported the proposed change to the governance framework, but expressed concern over the level of opportunity for active participation that would be provided with the indicated composition of the Retail Market Procedures Committee. In particular, it was felt that one or two second tier retailer representatives may not be able to adequately represent the disparate retailer views on some issues.
  - *AEMO notes that the proposed initial consultative committee structure has limited formal membership. The IEC’s preference was to continue the existing membership as a ‘least change’ transition for practical purposes. However, any party with a demonstrable interest in matters under consideration will be able to attend and participate at meetings, and all meeting agendas, materials and minutes will be published. In addition, removing the detailed IEC requirements from the NER will*

*provide greater flexibility to adapt these arrangements to better meet changing market and stakeholder requirements. All procedures will also (as now) be subject to the Rules consultation procedure.*

- b) A concern by United Energy Distribution that, under the proposed approach, all newly developed procedures would be treated generically as “retail market procedures”, without any differentiation of B2B Procedures. This, in turn gave rise to concerns that, whereas many smart meter infrastructure procedures may be categorised as B2B, the proposal would remove the ability and flexibility, for those procedures, to opt out of the requirements if bilaterally agreed. It was felt this flexibility needs to be set out in the NER, not in subordinate documents.
- *AEMO is not seeking to change the scope of B2B procedures already defined in the NER, which will be neither narrowed nor extended by this proposed Rule. If new requirements affect B2B Communications, the changes relating to those communications will be part of the B2B procedures. The same applies to MSATS and other subsets of retail market procedures. AEMO has a statutory duty to carry out its functions in accordance with the national electricity objective and is accountable to its stakeholders via its Board. As an independent body with this overriding objective, AEMO is in a position to add significant value to the process even in relation to B2B matters, by facilitating mutually acceptable solutions. In addition, many B2B communications are now interwoven with B2M processes; therefore consistency between them is essential to maintain and improve market efficiency.*
  - *The proposal will not remove the flexibility provided for under the Rules for parties to “opt out” of B2B procedures where bilaterally agreed. This is provided for in relation to new technologies in clause 7.13(b), provided it has no material adverse effect on any other party’s interests, and in clause 7.2A4(k), in relation to B2B communications. None of the other current non B2B retail market procedures have opt-out options, and it is not appropriate for such an option to be applied.*
- c) Concern that there would be no process/consequence for breach of the non-B2B procedures. Why are they not subject to civil penalties?
- *Compliance with the procedures is required under the draft rule amendment in clause 7.1.4(g). Taking account of point (c) above, AEMO made further amendments to qualify the compliance requirement to the extent that parties are permitted by the Rules to agree alternative processes, and have done so. It is not correct to say there is no process or consequence for breach of the procedures – such a breach amounts to a rules breach which the AER can investigate and take appropriate action requiring compliance/improved systems.*

United Energy Distribution also provided a large number of detailed drafting comments on the proposed Rule and the associated draft documentation in the consultation package. Some of these were directed at the key areas of concern noted above. AEMO reviewed all of United Energy Distribution's drafting comments on the draft Rule and incorporated those which appeared to be consistent with the objectives of the proposed Rule. United Energy Distribution's process related comments will be considered as part of the consultation to establish the approved process and the constituent documents for the proposed Retail Market Procedures Committee.

Copies of written stakeholder submissions are provided in **Attachment E**.

## 5 Expected Benefits and Costs of the Proposed Rule

The benefits of the proposed approach enable:

- A clear governance framework, with a single, unambiguous line of responsibility and accountability for the consistent development and oversight of all national electricity market procedures consistent with the national electricity objective.

- A framework for accommodating the establishment and maintenance of SMI procedures – without these changes, it has previously been identified by the Legal Working Group of the National Stakeholder Steering Committee (as part of the national smart metering program) that the current NER provisions would not be adequate for dealing with other customer (consumer) service related activities as new technologies are deployed via smart meter interfaces or for electric vehicles, etc
- A consistent governance framework across the national energy (gas and electricity) markets, with flexibility to adapt procedure development and consultative processes.
- Retention of a high level of industry/stakeholder involvement and participation of the procedure development process.
- An ability to maximise synergies and optimise industry costs through a single consultative framework with common consultative forums, working groups, reference groups.

AEMO does not consider that the proposed approach will involve any material additional costs for AEMO or stakeholders, as the proposed arrangements reflect what is, largely, current practice. Over time, by establishing a single governance framework for all procedures (existing and new), there is potential for cost saving as additional efficiencies and synergies are identified.

## 6 How the Proposed Changes Contributes to the NEO

Before the AEMC can make a rule it must apply the rule making test set out in the NEL, which requires it to assess whether the proposed rule will or is likely to contribute to the national electricity objective (NEO):

*...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, reliability and security of supply of electricity; and*

*(b) the reliability, safety and security of the national electricity system.*

This Rule change proposal facilitates the extension of retail market procedures to emerging reforms in the electricity market and contributes to the national electricity objective.

It also promotes more efficient operation and use of AEMO's consultative processes to maintain the confidence of customers and market participants as further market reforms evolve – allowing the possibility of direct consumer engagement.

This approach will enable AEMO to implement changes in a more efficient and unambiguous way for the development of all retail market procedures.

It allows flexibility for broader stakeholder participation as for energy markets evolve.

It provides consistency with established governance frameworks for market procedures and promotes accountability in accordance with energy market policy.

It will eliminate avoidable resourcing costs that would otherwise be involved in administering split consultative processes, and further streamline retail market procedure development.

## 7 Attachments

### Attachment A - Draft Rule Change Proposal

- Comprises marked up draft changes to Chapter 7. These draft changes reflect proposed amendments from extensive consultation between AEMO and the IEC.

### Attachment B – Sample Draft Approved Process

### Attachment C – Sample Draft Operating Manual

### Attachment D – Sample Draft Election Procedures

- Sample drafts of approved process, operating manual and election procedures are provided as an indication of the content of the procedures and processes that would largely replace the current Rules in respect of the IEC and procedure development in Chapter 7. These sample instruments and content reflect the proposed approach developed between AEMO and the IEC.

These would remain subject to further consideration through the rules consultation process that AEMO would be required to undertake under the proposed Rules before establishing the approved process to meet the new Rules requirements.

### Attachment E – Stakeholder Comments / Feedback

- Includes feedback received through written submissions from stakeholders, during an industry consultation conducted by AEMO and IEC in April 2013, on a draft of the proposed rules changes, and a sample set of the approved process, operating manual and election procedures.