



**Australian Energy Market Commission**

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## **CONSULTATION PAPER**

**National Electricity Amendment (Governance of retail market procedures) Rule 2014**

**Rule Proponent**

Australian Energy Market Operator

24 October 2013

**RULE  
CHANGE**

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## **About the AEMC**

The Council of Australian Governments (COAG), through its then Ministerial Council on Energy (MCE), established the Australian Energy Market Commission (AEMC) in July 2005. In June 2011, COAG established the Standing Council on Energy and Resources (SCER) to replace the MCE. The AEMC has two main functions. We make and amend the national electricity, gas and energy retail rules, and we conduct independent reviews of the energy markets for the SCER.

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# 1 Introduction

On 20 June 2013, the Australian Energy Market Operator (AEMO or proponent) submitted a rule change request to the Australian Energy Market Commission (AEMC or Commission) in relation to the governance framework for the making of retail market procedures under chapter 7 of the National Electricity Rules (NER or rules).

Chapter 7 of the NER contains rules that cover a range of matters relating to metering, such as meter installations and data, metrology and market settlement and transfer solutions (MSATS) requirements and procedures. It also makes provision for the introduction and use of evolving technologies and processes as well as business to business (B2B) arrangements.

The governance framework covers the mechanism for how the chapter 7 procedures<sup>1</sup> can be implemented and amended. Under this rule change request AEMO is seeking changes to the NER that would mean this governance framework would be located almost entirely outside of the rules and, instead, placed in AEMO's procedures. This would affect how the chapter 7 procedures are set and, therefore, will affect market participants that are required to follow the chapter 7 procedures. In particular, it would have an impact on the development of B2B procedures, including who is responsible for making the decisions in relation to these B2B procedures.

This consultation paper has been prepared to facilitate public consultation on the rule change proposal, and to seek stakeholder submissions on the rule change request.

This paper:

- sets out a summary of, and a background to, the rule change request proposed by the proponent;
- identifies a number of questions and issues to facilitate the consultation on this rule change request; and
- outlines the process for making submissions.

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<sup>1</sup> In this document, and unless otherwise noted, references to 'chapter 7 procedures' is a reference to the procedures that are specified in chapter 7 of the NER, including the retail market procedures (which themselves include the B2B procedures). References to AEMO's procedures are a reference to the body of procedures that AEMO administers, develops and publishes in accordance with the NER.

## **Submissions**

Submissions to this paper are to be received by no later than the close of business on 21 November 2013. Additional details on lodging a submission are included in section 6 of this paper.

## **Timetable**

The draft rule determination (and draft rule, if applicable) is required to be published by 30 January 2014.

## 2 Background

This rule change request relates to the governance for the making of procedures under chapter 7 of the NER. This section provides an overview of the procedures covered by chapter 7.

### 2.1 Chapter 7 of the NER

Chapter 7 of the NER contains rules that cover a range of matters relating to metering, such as meter installations and data, metrology and MSATS requirements and procedures. It also makes provision for the introduction and use of evolving technologies and processes as well as B2B arrangements.

The procedures that are made under the NER that are "for or in connection with the sale and supply of electricity to retail customers, or the operation of retail electricity markets" are collectively referred to as 'retail market procedures'. This definition was inserted into chapter 10 of the NER following the implementation of the National Energy Customer Framework (NECF), although the rules and respective procedures themselves generally predate the insertion of this definition.

#### **Box 2.1: What are the retail market procedures?**

Under the current NER, retail market procedures include:

- B2B procedures, which covers the exchange of customer information between retailers and distribution network service providers (DNSPs);
- MSATS procedures, which govern the customer transfer process between retailers;
- metrology procedures; and
- other procedures dealing with, or incidental to, the retail sale or supply of electricity or related services.

#### 2.1.1 B2B arrangements

The term 'B2B arrangements' covers both:

- the obligations for AEMO to provide, and specific participants to use, the B2B e-hub;<sup>2</sup> and
- the B2B electronic communications between distribution network service providers (DNSPs) and electricity retailers.

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<sup>2</sup> Described later in this section.

B2B communications involve the routine exchange of large volumes of information that underpin retail competition activities, in relation to end-use customers. Such communications include service orders, for example for the purpose of instructing connections, disconnections and special meter reads, as well as customer and site details, and remittance of network billing.

The procedures that relate to B2B communications are referred to as 'B2B procedures'.

This information is transferred between market participants via the B2B e-hub, the electronic information exchange platform that was established to facilitate the B2B communications.

The B2B hub is an IT system designed to manage the transactions between multiple parties such that, instead of having multiple bilateral communication systems in place between all businesses in the NEM, each participant simply requires a communication path between itself and the hub. The hub then routes transactions from the initiator to the intended recipient(s). This requires all transactions to conform to a standard set of protocols and procedures such that they are recognisable and capable of being processed appropriately by the hub.

The hub is owned, maintained and operated by AEMO.

The original code change proposal introducing the B2B arrangements was submitted by the National Electricity Market Management Company (NEMMCO) on behalf of industry participants to the National Electricity Code Administrator (NECA).<sup>3</sup> It proposed the establishment of an independent Information Exchange Committee (IEC), comprised of industry representatives, with functions and powers to develop and consult upon the B2B procedures.<sup>4</sup>

These code provisions, and the intention of the original rule makers to keep the B2B procedures distinct from other chapter 7 procedures, were carried over into the making of the initial NER.

## **2.2 Governance arrangements for chapter 7 procedures**

While AEMO administers most chapter 7 procedures under a uniform framework, chapter 7 of the NER currently sets out a separate framework for B2B procedures.

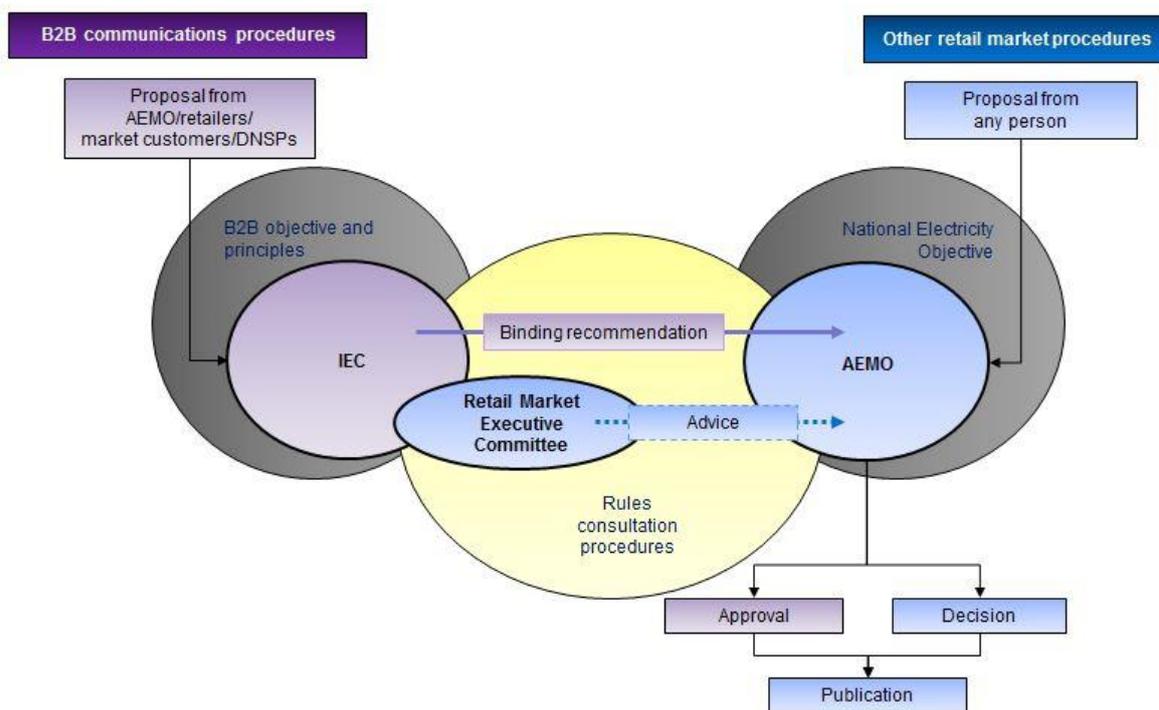
An overview of the current governance arrangements for B2B and non-B2B procedures is illustrated in Figure 2.1.

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<sup>3</sup> NEMMCO's and NECA's market functions are now performed by AEMO and the AEMC, respectively.

<sup>4</sup> National Electricity Market Management Company, Code change proposal, 1 October 2004.

**Figure 2.1 Current governance arrangements under chapter 7 of the NER**



### 2.2.1 Governance arrangements for B2B procedures

The establishment, development and maintenance of B2B procedures are currently the responsibility of the IEC. Except for the requirement of two independent members, the IEC is primarily an electricity retail industry committee made up of, and representing, retailers and DNSPs.

The rules reflect an intention to ensure that membership of the IEC, and the decisions made, are representative of retailers and DNSPs.<sup>5</sup> However, they explicitly restrict the ability of other market participants to contribute in the development of B2B procedures in the following two ways:

- by limiting the composition of the IEC membership to retailers, market customers under the NER,<sup>6</sup> and DNSPs;<sup>7</sup> and
- by permitting only AEMO, local retailers,<sup>8</sup> market customers and DNSPs to submit proposals for amendments to the B2B procedures.<sup>9</sup>

<sup>5</sup> See rule 7.2A.2 of the NER.

<sup>6</sup> See chapter 2 of the NER.

<sup>7</sup> Rule 7.2A.2(b) of the NER.

<sup>8</sup> Generally this includes the retailer that is responsible for supply to a specified geographical area under jurisdictional electricity legislation. See chapter 10 of the NER for a more specific definition.

<sup>9</sup> Rule 7.2A.3(a) of the NER.

On receiving a proposal, the IEC is required by the rules to follow a prescribed process and timeframe in making its decision, and must comply with the rules consultation procedures.<sup>10</sup> In particular the IEC is specifically directed to have regard to the B2B objective and the B2B principles in exercising its decision making powers. These are set out in Boxes 2.2 and 2.3 below.

**Box 2.2: B2B objective**

“The benefits from B2B Communications to Local Retailers, Market Customers and Distribution Network Service Providers as a whole should outweigh the detriments to Local Retailers, Market Customers and Distribution Network Service Providers as a whole.”

**Box 2.3: B2B principles**

“The following principles:

- (a) B2B Procedures should provide a uniform approach to B2B Communications in participating jurisdictions in which there are no franchise customers;
- (b) B2B Procedures should detail operational and procedural matters and technical requirements that result in efficient, effective and reliable B2B Communications;
- (c) B2B Procedures should avoid unreasonable discrimination between Local Retailers, Market Customers and Distribution Network Service Providers; and
- (d) B2B Procedures should protect the confidentiality of commercially sensitive information.”

The focus of the B2B objective and principles is the commercial and operational interests of the parties perceived to be affected by the B2B arrangements. That is, the interests of the participants that are represented in the IEC. B2B decisions of the IEC are subject to their own dispute resolution process.<sup>11</sup>

The role of AEMO in relation to B2B procedures is deliberately limited under the rule. Specifically, provided all the requirements are met, the recommendations made by the IEC are binding on AEMO. This means that if the IEC makes a recommendation with respect to a B2B proposal, then AEMO must approve the recommendation. There are limited circumstances in which AEMO may object to the recommendation, but these are tightly prescribed by the rules.<sup>12</sup> The rules do not allow AEMO to consider such

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<sup>10</sup> These procedures are discussed in section 2.2.3.

<sup>11</sup> Rule 8.2A of the NER.

<sup>12</sup> Rule 7.2A.3 of the NER.

matters as the manner in which the IEC considered the B2B objective or principles, or the merits of any recommendation made.<sup>13</sup> The decisions of AEMO in this regard are also subject to the same B2B dispute resolution process referred to above.

While AEMO has no formal representation on the IEC, it does perform a number of important administrative functions necessary for the IEC's operations. These include the provision of secretariat services, which also gives AEMO a presence at IEC meetings, and the recovery of IEC costs through participant fees.

## **2.2.2 Governance of other chapter 7 procedures**

Rule 7.1.3(a) of the NER provides that, except for B2B procedures, AEMO has responsibility for establishing, developing and maintaining the remainder of the chapter 7 procedures, although it also has a more general head of power under rule 8.3 to make electricity procedures.<sup>14</sup>

The process that AEMO is required to follow for amending procedures is also prescribed by the rules, which also includes complying with the rules consultation procedures<sup>15</sup> in assessing any proposal.<sup>16</sup>

Involvement in the procedure change process by market participants in general is unrestricted: subject to some exceptions, including B2B matters, the rules allow any person to submit a proposal to amend any chapter 7 procedure.<sup>17</sup>

While not required by the rules, AEMO has established an industry group, the Retail Market Executive Committee (RMEC), to assist it in the development of the chapter 7 procedures. The composition of the RMEC membership, meetings and other administrative matters are set out in an operating manual that is published on the AEMO website.<sup>18</sup>

AEMO is required to have regard to the National Electricity Objective (NEO) in executing its statutory functions. This includes any functions conferred under the NER in relation to the development of chapter 7 procedures.<sup>19</sup> In contrast to the B2B objectives and procedures, the focus of the NEO is the long term interests of consumers.

As referred to above, AEMO also has a general procedure making power under rule 8.3. In contrast to rule 7.1.3, under rule 8.3, AEMO has a general power to make

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13 Ibid.

14 This provision was inserted into the NER following the implementation of NECF and only has effect in those jurisdictions that have implemented the NECF.

15 Discussed in section 2.2.3 below.

16 Rules 7.1.3(b) and 7.1.4(c) and (d) of the NER.

17 Rule 7.1.4(a) of the NER.

18 Australian Energy Market Operator, *NEM Retail Market Executive Committee - Operating manual*, version 4, 1 November 2010.

19 Sections 49(1)(i), and 48(3) of the National Electricity Law.

'electricity procedures'. It is noted that the definition of 'electricity procedures' includes retail market procedures, which is itself then defined as including B2B procedures.<sup>20</sup> This would appear to give AEMO a broader procedure making power, which could give rise to inconsistencies with rule 7.1.3, and with the B2B governance framework established under rule 7.2.

### 2.2.3 Rules consultation procedures

The rules consultation procedures set out a default consultation procedure that applies to any party that is required to comply with them, under the rules.<sup>21</sup>

As noted above, both the IEC and AEMO are required to follow the rules consultation procedures in amending the particular chapter 7 procedures over which they have respective responsibility. A high level summary of the process is provided in Table 2.1.

**Table 2.1 High level summary of the rules consultation procedures**

Requirement	Timeframe
Consulting party must give notice of commencement of process to nominated or interested parties and invitation to make written submissions.	
- Close of round 1 submissions.	The date specified in the notice (not less than 25 business days after notice given by the consulting party).
- Consulting party must consider all valid submissions.	Within 20 business days of the close of submissions.
- If any meetings are considered necessary, best endeavours required to hold such meetings.	Within a further 25 business days from the end of consideration of submissions.
Draft report issued and invitation to make written submissions.	No date specified.
- Close of round 2 submissions.	The date specified in the draft report (not less than 10 business days after the publication of the draft report or such longer period as reasonably determined by the consulting party).
- Consulting party must consider all valid submissions in relation to the second round of consultation.	Within a period of not more than a further 30 business days.
Consulting party must issue final report.	No date specified.

<sup>20</sup> These definitions are in chapter 10 of the NER.

<sup>21</sup> This procedure is set out in rule 8.9 of the NER.

As the rules consultation procedures form part of the NER, proposals for changes or amendments to these provisions must be submitted as a rule change request to be determined by the AEMC.

### **2.3 Other relevant work**

On 30 November the AEMC published its final report *Power of choice - stage 3 demand side participation review*.<sup>22</sup> That report recommended a number of rule changes that, once commenced, are likely to have an impact on various provisions of chapter 7 of the NER.

These changes would not, however, impact the governance framework that is the subject of the current rule change request.

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<sup>22</sup> Australian Energy Market Commission, Final report, 30 November 2012.

## 3 Details of the rule change request

### 3.1 The proposal

The rule change request proposes the following key changes to the NER:

- removal of the existing provisions that relate to the establishment and operation of, and procedures followed by, the IEC; and
- replacement of the current procedure development and consultation processes in chapter 7 with a new framework that aligns the making of all chapter 7 procedures.<sup>23</sup> This framework would be established in procedures to be managed by AEMO, to allow some flexibility for future amendments to be made outside of the rule change process.

This section discusses each limb of the proposal in more detail.

The proponent's rule change request includes a proposed rule. The proposed rule also incorporates a number of other changes to the rules in chapter 7 that do not appear to be directly related to the rule change request. Each additional amendment will need to meet the rule making test individually and on its own merits.

The rule change request included drafts of a proposed approved process for the consideration of changes to chapter 7 procedures, a proposed retail market procedure committee operating manual and proposed retail market procedure committee election procedures. While these documents provide relevant context to help understand some of the potential implications of the requested changes, they are not directly relevant to the decision on the rule change. This is because the proposed content of these documents, as presented with the rule change request, could differ in their final form on establishment, and in the future.

Consequently it is not intended that this paper will address or further consider these proposed procedures as part of this rule change request. This rule change process will consider the proposed amendments to the NER on their own merits, independent of proposed changes to the procedures, based on consideration of whether the specific proposed changes to the NER would promote the NEO.

#### 3.1.1 Removal of provisions that establish the IEC

##### Details of the proposal

The rule change request proposes removing most of the rule that provides for B2B arrangements from chapter 7. This includes the provisions that cover AEMO's obligations with respect to, and the requirement for certain participants to use, the B2B

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<sup>23</sup> It is noted that, in the rule change request, the proponent has included a new, broader definition for the term 'retail market procedures'. This is discussed in section 5.4.

e-hub, as well as the establishment, administration and procedure making process of the IEC.

The rule change request has proposed the retention of those parts of the rule that set out the scope of the B2B procedures.

### **Proponent's rationale**

*There is a current lack of clarity around the accountability and liability for procedures made under the current rules, for both the AEMO board and the IEC.*

The rule change request acknowledges that the IEC was established under the NER as an independent body to oversee the development of B2B procedures.<sup>24</sup> According to the proponent, the rationale for the independent establishment of the IEC reflected a number of factors at the time including:

- the lack of, and desire for, consistency of these communications across jurisdictions;
- the understanding at the time of the fundamental nature of B2B communications to the commercial and competitive activities of retailers and DNSPs, who also bore the costs of investment in these processes; and
- that they were not relevant to market operations.<sup>25</sup>

It was therefore considered appropriate for B2B arrangements to have their own governance framework.

Nevertheless in practice, the activities of the IEC have never been wholly independent of AEMO. As the proponent points out, the IEC's operations and delivery have always required the support of AEMO in the provision of secretariat services, cost recovery, provision of the B2B e-hub and publication of procedures. More importantly, although AEMO is not formally represented on the IEC, it retains formal responsibility under the NER for making and amending the B2B procedures on the recommendation of the IEC.<sup>26</sup>

The proponent also indicates that the activities of the IEC and RMEC have merged in practice. This extends to the common membership of the committees, merging of the reference and working groups, and holding jointly chaired meetings. According to the proponent, this has been due to the overlapping of many of the procedural areas, and also for reasons of expediency and efficiency. The proponent indicated that the current

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<sup>24</sup> The rules governing the B2B arrangements were originally the subject of a code change proposal submitted by the National Electricity Market Company Limited (NEMMCO) to the National Electricity Code Administrator (NECA) in 2004: see National Electricity Market Company Limited, *Proposed code changes: B2B Governance*, Code change request 1 October 2004. The arrangements were originally made under the MSATS procedures, before being moved to the B2B procedures under rule 7.2A.5 following the establishment of the IEC.

<sup>25</sup> Australian Energy Market Operator, Rule change request, 20 June 2013 at page 4.

<sup>26</sup> Ibid.

arrangements had evolved over a number of years and have, to date, worked effectively and to the satisfaction of industry.<sup>27</sup>

However, the proponent has raised a concern that these developments have led to a blurring of the accountability and liability between the IEC and AEMO for B2B procedures. In addition, the proponent expressed concern that there is potential that it would be required to make, or not make, B2B procedures even where that decision may conflict with its statutory functions or with the operation of other market procedures or processes.<sup>28</sup>

### **3.1.2 Single procedure making framework**

#### **Details of the proposal**

The proponent is seeking to streamline the two procedure making processes contained in chapter 7 into a single, uniform procedure making framework to be managed by AEMO.

A central feature of this proposed framework is the development of an 'approved process'.<sup>29</sup> This is the formal process by which AEMO would consult on, and assess, proposals received to develop chapter 7 procedures. In relation to this process, the proposed rule includes the following requirements:

- AEMO is to establish the approved process in accordance with the rules consultation procedures; and
- subsequent amendments to the approved process must also be in accordance with the rules consultation procedures, and any additional requirements set out in the approved process.

#### **Proponent's rationale**

*Maintaining concurrent frameworks for the development of different procedures provided for in the rules is inefficient and impractical. In addition, increasing flexibility in the procedures is required to meet future market and technological changes in a timely manner.*

The proponent claims that the current rules around the development of B2B procedures limit industry involvement to DNSPs and local retailers or market customers. This means that other market participants, such as meter data providers, are excluded from involvement in the committee,<sup>30</sup> from being able to propose changes,<sup>31</sup> and therefore in any of the decision-making in relation to B2B procedures.<sup>32</sup>

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27 Ibid.

28 I.d. at page 5.

29 Australian Energy Market Operator, Rule change request, 20 June 2013 at page 8.

30 Rule 7.2A.2(b) of the NER.

31 Rule 7.2A.3(a) of the NER.

32 Rule 7.2A.2(b) of the NER.

The proponent states that with the future development of the retail market, and as new or associated technologies are progressively rolled out, B2B procedures will no longer be a matter of concern for only DNSPs and retailers. The consultative framework must therefore be flexible enough to allow the involvement of other participants that may be affected, as required. Retention of the B2B procedures in the rules potentially creates a barrier to the ability of the market to respond in a timely manner to changes in the market and to stakeholders.

According to the proponent, procedural matters are also increasingly overlapping in more than one area. For example, retailer of last resort requirements overlap both MSATS and B2B procedures. Moreover developing technologies or new retail services, such as the technology required to roll out the national smart meter program, may not clearly fall under B2B, MSATS or metrology. These may require new heads of power to make procedures. Under the current rules however, it is unclear who should have responsibility for them.

According to the proponent the proposed procedure development and consultation regime would align governance for all chapter 7 procedures under a single framework by:

- establishing an integrated framework for the development of all chapter 7 procedures;
- maintaining the operation of the existing industry consultative framework and procedure development process;
- providing clearer accountability for the making of these procedures; and
- providing a more flexible consultative process to accommodate changes to stakeholders.<sup>33</sup>

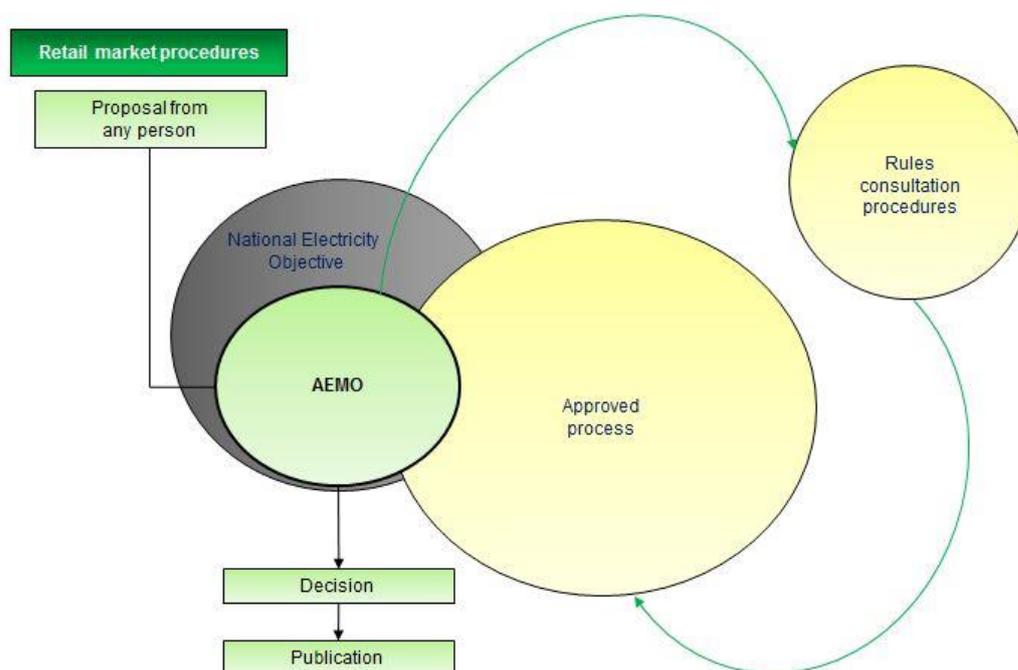
The proposed solution would introduce a new, single set of provisions covering the process for proposing and making all chapter 7 procedures. This process would sit largely outside of the NER, as procedures managed by AEMO. The proponent expresses the view that AEMO is the appropriate body to manage and be accountable for this framework, based on its current statutory role, functions and its governance structure.

An overview of the proposed governance arrangements for all chapter 7 procedures is illustrated in Figure 3.1.

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<sup>33</sup> Australian Energy Market Operator, Rule change request, 20 June 2013 at page 6.

**Figure 3.1 Proposed governance arrangements for chapter 7 procedures**



### 3.1.3 Other proposed changes

The proponent's rule change request includes a proposed rule.

The proposed rule includes a number of other changes to the rules in chapter 7 that are not discussed in the rule change request itself. These include:

- various amendments to the introductory rules, the rules relating to MSATS, evolving technologies and metrology and service level procedures;
- removal of the civil penalty provision that imposes a financial penalty on requirements to comply with MSATS procedures;<sup>34</sup> and
- insertion of a new compliance obligation in relation to the chapter 7 procedures, which primarily captures and replaces the existing obligations to comply with the individual procedures that comprise the chapter 7 procedures.

See Table 5.1, in section 5.4 for a more complete list.

## 3.2 Proponent's stakeholder engagement

The rule change request states that the IEC/RMEC began examining options to establish a single governance structure for all chapter 7 procedures.<sup>35</sup>

<sup>34</sup> This is discussed in section 5.3.

<sup>35</sup> Australian Energy Market Operator, Rule change request, 20 June 2013, at page 4.

In April 2013 the proponent advised all IEC and working group members of the proposed changes and distributed a package of consultation documents to all registered market customers and distributors. A national teleconference was held on 17 April 2013 and written submissions were invited. Four submissions were received. The proponent's responses to these submissions is discussed in the rule change request, and copies were included as part of the documentation accompanying the rule change proposal.

The proponent indicates that the rule change request is supported by the IEC.<sup>36</sup>

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<sup>36</sup> Australian Energy Market Operator, Rule change request, 20 June 2013, at page 3.

## 4 Assessment Framework

The Commission's assessment of this rule change request must consider whether the proposed rule promotes the National Electricity Objective (NEO) as set out under section 7 of the National Electricity Law (NEL).

Section 7 of the NEL states:

“The objective of this Law is 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.”

In assessing the rule change request against the NEO, the AEMC will consider the likely long term costs and benefits of adopting the rule change request. It will also consider whether the proposed rule satisfies the rule making test in that it will, or is likely to, contribute to the achievement of the NEO.

The issue at the core of this rule change request is the governance framework for the development of chapter 7 procedures, and the basic premise of the analysis is that good process and governance will provide greater assurance of good outcomes, consistent with the achievement of the NEO.

There are a number of factors that contribute to the establishment of a good governance framework. These include:

- *Establishment of an appropriate governance framework for B2B procedures.* Meeting this criterion would enhance the level of efficiency of the retail market. Having in place an appropriate decision making process, incorporating appropriate checks and balances, would mean that decisions are made by those that are best placed to make them. This is likely to enhance the decision making process and lead to decisions that produce efficient outcomes. It includes considering whether the proposed rule contributes to improvements in such matters as:
  - *accountability:* the governance framework should clearly identify, and relevant parties should be able to gain a clear understanding of, their respective roles and responsibilities in practical terms, in relation to the development of chapter 7 procedures. It should also identify the most appropriate party to fulfil each role;
  - *independence:* this involves determining the parties to make B2B procedures who do not have a vested interest in the outcomes, and the most appropriate criteria to make such a determination;

- *participation*: this implies that the resulting framework is flexible enough to identify and offer affected parties the opportunity to participate in the development of chapter 7 procedures; and
- *transparency*: this refers to the availability of information to participants regarding the procedures, processes and decisions that affect them.

One key aspect of this factor is the balancing of interests between different market participants, as well as determining the appropriate balance between rules and procedures. This means whether, and to what extent, the rules should specify the criteria, methodologies and process to be applied by procedure making bodies, compared to the level of discretion that such bodies might otherwise have over those matters in properly performing their functions.

Overall, it is the balance of these different matters that needs to be considered.

- *Yielding an appropriate balance between certainty and flexibility of process for participants.* An appropriate balance of certainty and flexibility would enhance dynamic efficiency of the market by allowing participants to make long term investments with confidence. All legal processes, whether contained in the rules or procedures, need to be sufficiently certain with clear and objective processes for change. This is because participants base much of the planning of their operations and activities on their knowledge and understanding of current requirements. At the same time, processes need to be flexible enough to be able to accommodate change. The balance between rules and procedures referred to above is also relevant here.
- *Improvement in administrative efficiency.* This refers to the overall efficiency of the final procedure making process or processes. Minimisation of costs to achieve a given outcome will enhance the productive efficiency of the market.

## 5 Issues for consultation

We have identified a number of issues for consultation that are relevant to the consideration of this rule change request.

The issues outlined below are provided for guidance. Stakeholders are encouraged to comment on these issues as well as any other aspect of the rule change request or this paper, including the proposed assessment framework set out in section 4. The assessment framework may be reviewed and revised following the receipt of submissions and the AEMC's own further analysis.

### **Question 1      The assessment framework**

- (a) **Is the assessment framework outlined in section 4 appropriate for the consideration of this rule change request?**

### **5.1 Significance and scope of the problem**

#### **5.1.1 Is there a problem to be addressed?**

Before considering the proposals raised by the proponent, it is important for stakeholders to consider the more preliminary question of whether in fact there is a problem with the NER that needs to be addressed by way of a rule change.

One of the key concerns on which the proponent has based its proposal for a rule change is the existence of a B2B procedure change process that is independent of the process for the development of other chapter 7 procedures, and over which it has no formal control.

The rule change request identifies a number of issues associated with the current procedure making arrangements, but does not specifically identify any significant incidents that have arisen solely due to these arrangements.

### **Question 2      Is there a problem?**

- (a) **Do you consider that the governance framework for the development of B2B and other chapter 7 procedures is appropriate or could it be improved? In what way?**
- (b) **Could market developments in the future affect the appropriateness of governance arrangements? If so, how?**

#### **5.1.2 Flexibility and responsiveness**

Historically, B2B procedures appear mainly to have been of concern for retailers and DNSPs. The proponent has indicated that it is becoming less clear that this is the case

as new technologies appear and need to be accommodated. These changes include the emergence of new participants, such as metering service providers, whose activities are impacted by the B2B procedures, but who are unable to participate in the development of B2B procedures due to the restrictions under the current rules.

The proponent has suggested that these market and technological changes mean that the B2B procedures will no longer be the sole concern of retailers and distributors, and therefore other participants should have the opportunity to participate in the development of them.<sup>37</sup> It is implicit in the rule change request that this group of potentially affected participants cannot be readily identified as a finite group, and flexibility in the framework is therefore required to be able to bring them in to the process as their participation, and roles in the market, develop.

In line with this view, the level of detail in the rules around the membership and activities of the IEC might be seen as further entrenching the current B2B procedure framework. The proponent expresses the view that this level of detail is more appropriate in procedures, and for AEMO to manage the process.<sup>38</sup> This would provide greater flexibility to the procedure making process.

It is worth noting, however, that greater flexibility may also reduce the overall certainty for stakeholders in the form of the governance frameworks for chapter 7 procedures.

**Question 3      Flexibility and responsiveness**

- (a) **Do you think that the governance arrangements for chapter 7 procedures have been sufficiently flexible to date?**
- (b) **Have any participants been excluded by how the B2B governance framework, including the IEC, has been structured under the rules? In what way?**

**5.1.3      Uniformity of process**

The proponent submitted that the continued separation of processes for the development of different chapter 7 procedures amounts to duplication of process, which is neither practical nor efficient.<sup>39</sup>

The difficulty of maintaining separate processes, and of separate accountability over each, is a broad theme that runs through the rule change request. Some procedures, such as the retailer of last resort procedures, have been identified as straddling more than one procedural area, making it difficult to determine which body has overall accountability for them. It is also one of the issues identified by the proponent that

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<sup>37</sup> Australian Energy Market Operator, Rule change request, 20 June 2013, at page 5.

<sup>38</sup> Australian Energy Market Operator, Rule change request, 20 June 2013, at page 6.

<sup>39</sup> Australian Energy Market Operator, Rule change request, 20 June 2013, at page 5.

stalled the roll out of smart meters under the National Smart Metering Program.<sup>40</sup> The proponent claims it is not efficient to have multiple governance frameworks for different chapter 7 procedures.

Having B2B procedures separate from other chapter 7 procedures allows a separate governance framework to be applied, and greater industry control of the changes to the B2B procedures. Given the different nature of B2B procedures compared to other procedures this may be appropriate. If however there is increasing overlap between B2B procedures and other chapter 7 procedures it may be inappropriate to retain this distinction. In addition it may be practically difficult to retain the distinction where procedures straddle multiple areas.

It is also administratively more complex to have multiple governance streams. Recent changes to the NER, accompanying the implementation of NECF, appear to consider a merging of the approach to chapter 7 procedures. Rule 8.3, for example and as discussed in chapter 3, allows AEMO to make electricity procedures in general, including all retail market procedures.

**Question 4      Uniformity of process**

- (a) **Do you agree that there is increasing cross over, or likelihood of cross over, in different procedural areas occurring such that B2B procedures should no longer be treated separately from other chapter 7 procedures;**
- (b) **Is there justification for a continuation of greater industry control over B2B procedures than other chapter 7 procedures?**

**5.1.4      Accountability**

Clear accountability is a key requirement of a good governance framework. This concept includes the notion that all participants should have a clear and practical understanding of their roles and inter-relationships in order to effectively discharge their required functions and be answerable for them.

AEMO considers that the accountability and liability of the AEMO Board and the IEC for the making of B2B procedures is not clear. This is because while it is AEMO which must formally make the B2B procedures, it must follow the recommendations of the IEC except in certain limited circumstances.

There could be circumstances in which AEMO may be required to formally make procedures even though it may disagree with them from a policy perspective. If AEMO is seen as responsible for these procedures this may be inappropriate.

On the other hand, the current B2B structure has some advantages. AEMO's role allows it to have some oversight of the decisions of the IEC. The IEC is a committee made up of select industry representatives. In some circumstances the IEC may not

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<sup>40</sup> Australian Energy Market Operator, Rule change request, 20 June 2013, at page 3.

undertake full consultation on some of the procedures it considers, or it may not take the B2B objective fully into account. Alternatively the IEC may not be fully aware of some aspects of the MSATS procedure that conflict with its recommendations. AEMO is an independent body which can act as a limited check on decisions of the IEC.

Finally it may be that, as provided for in the rules, there is no problem of accountability but that the main problem is the merging of the IEC and RMEC which has created a lack of clarity in practice. The uniformity of process issues have been discussed more in section 5.1.3 above.

#### **Question 5      Accountability**

- (a) Is there an accountability problem to be addressed in relation to B2B procedures where AEMO is required to make decisions based on recommendation of the IEC?**
- (b) Which body should be making decisions on B2B matters?**

## **5.2 Governance of the procedure making process**

One of the key considerations arising out of the AEMO's rule change request is the appropriate balance between rules and procedures.

### **5.2.1 Balance between rules and procedures**

At present the rules contain significant detail on the governance framework for B2B processes, as described in section 2.2.1 above. AEMO proposes taking much of this out and locating it in procedures to be made by AEMO. Accordingly, this would bring the B2B framework more into line with the governance framework for other chapter 7 procedures. Among other things this would give AEMO greater discretion over the governance framework.

In assessing AEMO's proposed change in this regard, it is important to consider the risks and consequences of locating the governance framework in rules or procedures.

A governance framework based in the rules – as is currently the case for B2B - provides some advantages. The Commission has previously identified that regulatory obligations might be viewed as more appropriately located within the rules rather than procedures where they:

- impose (or impact on the) substantive rights, obligations and duties on (of) participants;
- have, potentially, significant financial implications for trading participants;
- have a significant impact on the economic efficiency of the market and market design;

- have effects that are likely to change relatively infrequently over time and be subject to limited exceptions; and
- have industry wide application or impact.<sup>41</sup>

While the governance framework for gas differs from that of electricity, these principles still provide some relevant guidance.

On the other hand, locating the governance framework in the rules may make it less flexible. The process for changing the framework may be more formal and take more time than if it was located in the procedures. For this reason, it would appear less appropriate to include in the rules those governance matters which are operational or technical in nature.

As indicated by AEMO, technology changes can affect the energy industry and the governance framework could be more adaptable to changes such as these where it is located in procedures and more easily changed. For example, as metering becomes more sophisticated it may be appropriate that metering service providers are represented on any committee that oversees changes to the B2B procedures.

The consequences of locating the governance framework in procedures would be the opposite of where it is located in the rules. While there is likely to be greater flexibility, there could also be less certainty. It is also worth noting, additionally, that greater flexibility may not always be desirable. If external factors such as technology are changing rapidly, it may in fact be better to retain some stability by having a governance framework which is less reactionary and not able to be changed quickly.

Finally, locating more of the governance framework in procedures may give AEMO greater control over the changes to the governance framework in the future. At present, the mechanism of requiring AEMO to make changes to the B2B procedures as proposed by the IEC, gives the IEC a greater measure of control over the governance framework. Since IEC is comprised of industry representatives, in theory, this gives industry greater control over how B2B procedures are designed and changed.

### **5.2.2 Ways to address the balance between rules and procedures**

The balance between rules and procedures could be addressed in a variety of ways. The manner in which this is achieved will depend to a large extent on whether the B2B procedures should retain a separate governance framework from the remainder of the chapter 7 procedures.

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<sup>41</sup> These principles have been referred to by the Commission in a number of rule change requests, most recently in *Market Operator Service - Timing and Eligibility*, Rule Determination, 23 May 2013, at page 18. Note that this list is not exhaustive, and is derived from the discussion and principles set out separately by the AEMO Implementation Steering Committee (ISC) in the context of the transfer of the jurisdictional gas market rules to the national regulatory framework in 2009. See *Australian Energy Market Operator Establishment, Legislative framework: statement of proposed approach*, August 2008.

Combining the B2B procedures and other chapter 7 procedures would create administrative simplicity, in that there would be only one governance framework. As discussed above, though, there may be ongoing reasons for preserving the distinction between the two types of procedures.

Under AEMO's proposal, less of the governance framework would be left in the rules and would exist primarily in procedures over which AEMO would have greater discretion. This would allow for greater flexibility. In order to achieve more certainty, part of the governance framework could instead be included in the rules. That is, the governance framework could be split between the rules and AEMO procedures to achieve the desired balance between certainty and flexibility. If uniformity between B2B procedures and non-B2B procedures is desired, this could even mean moving elements of the governance framework for non-B2B procedures back into the rules.

Alternatively, if the governance framework is located primarily in AEMO procedures, it may be possible to increase the predictability and certainty around how AEMO is to exercise any discretion it has by introducing guiding principles to the rules. For example, these principles could be based on the B2B objective and principles currently contained in the NER.<sup>42</sup>

### **5.2.3 Impacts on market participants**

The way the balance of rules and procedures is set for the governance framework would affect market participants because it would directly affect the way the chapter 7 procedures would change. If the governance framework is set in a way that is not appropriate then this could result in chapter 7 procedures themselves which are not robust.

The proponent's proposal is to move the current procedure making arrangements into a single process, to be managed by AEMO, which would sit outside of the NER. In particular it would result in less industry control over the development of B2B procedures, which might affect whether those procedures are designed in a way which best suits the requirements of market participants affected by them.

The proponent's proposal would also give AEMO the power to make changes to its own approved process for making/ changing chapter 7 procedures, albeit subject to the rules consultation process. That is, a significant part of the governance framework (being the approved process) could be changed by AEMO without the need for a rule change.

Stakeholders are in the best position to advise on what the impacts on them are likely to be of changes in the governance framework for chapter 7 procedures.

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<sup>42</sup> See section 2.2.1.

## **Question 6      Governance of procedure making process**

- (a)    Should greater flexibility be introduced into the governance framework for chapter 7 procedures by moving it into AEMO procedures? Are there other ways of achieving this?**
- (b)    Is it appropriate for AEMO to be able to determine and change its own process for making chapter 7 procedures, subject to the rules consultation procedures, or should there be greater or additional oversight of this process?**
- (c)    Would there be any difference in the impacts on participants if the governance framework was located outside of the NER in AEMO procedures?**

### **5.3      Compliance and enforcement**

In the proposed rule, the proponent has deleted the civil penalty provision from rule 7.2.8, which imposes a requirement to comply with MSATS procedures. Removal of a civil penalty provision would remove the financial penalty attached to a breach only: other forms of enforcement may still be pursued.

A review of chapter 7 of the NER reveals that many of the rules are currently classified as civil penalty provisions. This means that, in addition to other enforcement actions that could be undertaken by the Australian Energy Regulator (AER), a civil penalty could be imposed for a breach of these provisions.

The AEMC can remove civil penalty provisions, however it is required to notify the Ministerial Council on Energy of the policy rationale for this course of action. Except for a comment on the proposed rule that indicates that the proponent does not consider it appropriate for the chapter 7 procedures to attract such penalties,<sup>43</sup> the rule change request itself is silent in relation to the proponent's position in this regard.

While the exact reason why rule 7.2.8 was classified as a civil penalty provision is unclear, the imposition of such a clause is an indication that the original rule makers determined that the breach of such provisions was of a more serious nature. For example, civil penalties may be assigned to rule requirements if they are perceived as necessary to the integrity or security of the National Electricity Market (NEM).

There may therefore still be reasons why the MSATS procedures should continue to attract a civil penalty. It would also be relevant to consider whether other chapter 7 procedures also justify a civil penalty. As part of this consideration, thought should be given to whether there is benefit in having all chapter 7 procedures treated consistently

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<sup>43</sup> Australian Energy Market Operator, Rule change proposal, 20 June 2013, Attachment A: Draft rule at page 3.

with respect to civil penalty procedures. This would add to clarity and simplicity in the NER. In this case, leaving the reasons for penalties to one side, consistency could be achieved by either:

- a civil penalty being available for *all* breaches of chapter 7 procedures; or
- *no* civil penalty being available for breaches of *any* chapter 7 procedures.

**Question 7      Compliance and enforcement**

- (a) **Should civil penalties be available for breaches of any or all of the chapter 7 procedures or for none? Why?**

## 5.4 Other issues

### Opt out provisions

The rules currently allow for parties to opt-out of adhering to the B2B procedures if there is a bilateral agreement in existence between them. This provision was inserted following concerns expressed by stakeholders and has been retained in the proponent's proposal.

A central theme of the proponent's rule change request is the desire to establish a uniform process for chapter 7 procedures as a whole. In this respect the retention of a provision that effectively permits parties to vary, by way of agreement, the manner of a B2B communication between them might seem to be contrary to this. Removal of this provision would require all parties to comply with the B2B procedures at all times for B2B communications, regardless of any alternative arrangements, including new technologies/service providers.

**Question 8      Opt out provisions**

- (a) **Is it appropriate that the opt out provision be retained in the B2B procedures? Why?**

### Evolving technologies and processes

The rule relating to the use of evolving technologies or processes states that, provided it either meets or improves the performance and functional requirements of chapter 7 of the NER or facilitates market development then it may be used if:

- there is agreement between the relevant market participant, AEMO and the local network service provider (LNSP); and
- there is no material adverse impact on any other party.<sup>44</sup>

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<sup>44</sup> Rule 7.13 of the NER.

The proponent has proposed, in addition to the above, to allow use of an evolving technology or process if AEMO provides for it in published procedures, and inserts an additional provision to allow it to establish such procedures.<sup>45</sup> This would avoid the need to obtain any further agreement. According to the proponent,<sup>46</sup> this would allow the proposed governance framework to provide clear support to the making of procedures for evolving technologies by AEMO, including for the national smart meter program.

If approved, this amendment might allow AEMO to determine the availability of new technologies or processes without reference to other affected parties. It would not, however, require any party to actually use such new technology or process.

**Question 9      Evolving technologies and processes**

**(a)    Do you think that this additional power, for AEMO to authorise new and evolving technologies through procedures, is necessary or desirable?**

**Other proposed changes**

The rule change request includes a number of other changes in the proposed rule, although these are not explained in the rule change request. Table 5.1 lists these additional changes. Note that the table only lists those changes that are not otherwise addressed elsewhere in this consultation paper.

**Table 5.1      Other proposed changes to chapter 7 rules**

<b>Proposed change</b>	<b>AEMO's reasons for proposed change/proposed rule reference</b>
Renaming the chapter 7 from 'Metering' to 'Metering and retail markets'.	This would better reflect the subject matter of the chapter as the content is already broader than just metering, and includes all existing procedures that fall within the term 'retail market procedures'.  AEMO has subsequently clarified that the title is not useful as this chapter already deals with matters that are unrelated to metering.  Attachment A, page 1, comment LT1.
Various amendments to rule 7.1.1, which sets out the contents of chapter 7.	AEMO has commented, in subsequent discussions, that the proposed change is to reflect the intention of the rule change request to provide a consistent governance framework for all NEM retail market procedures.  Attachment A, page 1.

<sup>45</sup> Australian Energy Market Operator, Rule change proposal, 20 June 2013, Attachment A: Draft rule, proposed rule 7.13(b1) at page 12.

<sup>46</sup> Australian Energy Market Operator, email to the AEMC dated 29 July 2013.

<b>Proposed change</b>	<b>AEMO's reasons for proposed change/proposed rule reference</b>
Amend rule 7.1.4(e)(2) to delete 'Ministers' from list of persons to be notified of minor/administrative change to procedures.	AEMO has commented, in subsequent discussions, that this rule was originally drafted when the provisions of chapter 7 were more narrowly focussed on metering and metrology. It therefore reflects the different jurisdictional arrangements in place at the time. Should Ministers wish to receive notification of this sort on specific matters then this could identified in the public consultation process on the approved process and included in the resultant procedures.  Attachment A, page 3.
Amend rule 7.1.4 to insert sub rule (g) - new general compliance clause; and replacement of 7.2.8(d) and 7.2A.4(i), which impose specific compliance obligations on participants.	AEMO has commented, in subsequent discussions, that this provision replaces a number of existing individual obligations with a single overriding obligation.  Attachment A, pages 3, 4 and 11.
Renaming the heading of rule 7.2 from 'Responsibility for metering installation, metering data and market settlement and transfer solution procedures' to 'Metering installations and metering data'.	To better reflect the subject matter of the rule.  Attachment A, page 4, note 3.1.
Amend rule 7.2A.4(d) to insert new clause (5) incorporating B2B hub matters into the content of B2B procedures.	AEMO has commented, in subsequent discussions, that this proposal is for completeness (in respect of B2B arrangements).  Attachment A, page 10.
Amend rule 7.2A.4 to delete sub rule (g) which allowed B2B procedures to be constituted by one or more separate documents.	This provision is unnecessary and not specified for other procedures.  Attachment A, page 11, comment LT16.
Amend rule 7.2A.4(k) to delete the word 'communicate' and replace with the word 'make'.	AEMO has commented, in subsequent discussions, that this proposal reflects improved drafting.  Attachment A, page 11.
Amend rule 7.13(a) and (c) (evolving technologies and processes) to insert the word "new" and delete the word "evolving", and insert the words "new or" into sub rule (d).	AEMO has commented, in subsequent discussions, that this proposal reflects improved drafting.  Attachment A, page 12.

### **Question 10 Other proposed changes**

- (a) Do stakeholders have any comments on these additional changes, or their possible impacts?**

## **Application of proposed rule to non-NECF jurisdictions**

The National Energy Retail Rules (NERR) came into operation on the day that Schedule 1 of the National Energy Retail Law (South Australia) Act 2011 commenced, which was 1 July 2012. These rules are concerned with the sale and supply of energy to small retail customers, and provide the detailed content of the consumer protection measures and model contracts that govern the relationships between consumers, retailers and distributors.

This legislation is intended to be applied across all Australian jurisdictions that form part of the NEM. So far it has been adopted in all NEM jurisdictions except for Queensland and Victoria.

Due to the overlap in some areas, implementation of the NERR required some corresponding changes to be made to the NER, as well as to the National Gas Rules. However the uneven adoption of the NECF package by jurisdictions to date has complicated the impact of these changes. This is because different versions of the NER apply in each jurisdiction depending on whether that jurisdiction has adopted the NECF.

Ordinarily, for the NECF related provisions of the NER to apply in a particular jurisdiction, that jurisdiction must have adopted and implemented the NECF package. As such, changes to the NECF related provisions in the NER will not have any application to the version of the NER that applies in non-NECF jurisdictions, until such time as those jurisdictions adopt the NECF.

The proposed rule includes a proposal to delete the current definition of the term 'retail market procedures' in chapter 10 of the NER, and replace it with a new, expanded definition. The definition of 'retail market procedures' does not currently exist in the version of the NER as it applies in non-NECF jurisdictions. Nevertheless the proponent's stated intention is for the expanded definition to apply in all NEM jurisdictions, i.e. have universal application, regardless of whether a jurisdiction has adopted NECF.<sup>47</sup>

The effectiveness and appropriateness of this proposal will be subject detailed legal analysis. It is noted however that, other than chapter 7, the term is only otherwise used in chapter 6B and in the glossary of the NER.

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<sup>47</sup> Australian Energy Market Operator, Rule change proposal, 20 June 2013, Attachment A: Draft rule, comment LT19 at page 13.

## **6 Lodging a submission**

The Commission has published a notice under section 95 of the NEL for this rule change proposal inviting written submission. Submissions are to be lodged online or by mail by no later than the close of business on 21 November 2013 in accordance with the requirements set out below.

Where practicable, submissions should be prepared in accordance with the Commission's Guidelines for making written submissions on rule change proposals.<sup>48</sup> The Commission publishes all submissions on its website subject to a claim of confidentiality.

All enquiries on this project should be addressed to Tina Wong on (02) 8296 7800.

### **6.1 Lodging a submission electronically**

Electronic submissions must be lodged online via the Commission's website, [www.aemc.gov.au](http://www.aemc.gov.au), using the "lodge a submission" function and selecting the project reference code ERC0162. The submission must be on letterhead (if submitted on behalf of an organisation), signed and dated.

Upon receipt of the electronic submission, the Commission will issue a confirmation email. If this confirmation email is not received within 3 business days, it is the submitter's responsibility to ensure the submission has been delivered successfully.

### **6.2 Lodging a submission by mail**

The submission must be on letterhead (if submitted on behalf of an organisation), signed and dated. The submission should be sent by mail to:

Australian Energy Market Commission  
PO Box A2449  
Sydney South NSW 1235

Or by Fax to (02) 8296 7899.

The envelope must be clearly marked with the project reference code: ERC0162.

Except in circumstances where the submission has been received electronically, upon receipt of the hardcopy submission the Commission will issue a confirmation letter.

If this confirmation letter is not received within 3 business days, it is the submitter's responsibility to ensure successful delivery of the submission has occurred.

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<sup>48</sup> This guideline is available on the Commission's website.

## Abbreviations

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
B2B	business to business
Commission	See AEMC
DNSP	distribution network service provider
IEC	Information Exchange Committee
LNSP	local network service provider
MSATS	market settlement and transfer solutions
NECA	National Electricity Code Administrator
NECF	National Energy Customer Framework
NEL	National Electricity Law
NEM	National Electricity Market
NEMMCO	National Electricity Market Management Company
NEO	National Electricity Objective
NER	National Electricity Rules
NERR	National Energy Retail Rules
proponent	See AEMO
RMEC	Retail Market Executive Committee
rules	See NER