

20 November 2013

Mr John Pierce
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By online submission

Dear Mr Pierce

National Electricity Amendment (Governance of Retail Market Procedures) Rule 2014 – ERC0162

AEMO appreciates the opportunity to respond to the AEMC's Consultation Paper on the National Electricity Amendment (Governance of retail market procedures) Rule 2014 – ERC0162.

As the proponent, AEMO makes this submission in further support of the rule change request, and to clarify the context and scope of the request, in light of matters raised in the Consultation Paper.

Should you have any questions or wish to discuss this submission further, please contact Terry Grimwade on (03) 9609 8520 or terry.grimwade@aemo.com.au

Yours sincerely



Mike Cleary
Chief Operating Officer

Attachment: AEMO Submission in response to AEMC Consultation Paper: National Electricity Amendment (Governance of retail market procedures) Rule 2014 – ERC0162

**AEMO Submission in response to AEMC Consultation Paper: National Electricity
Amendment (Governance of retail market procedures) Rule 2014 – ERC0162**

In this submission, unless stated otherwise, references to sections and section numbers refer to those sections in the AEMC's Consultation Paper.

With the exception of Questions 1 and 9, AEMO has not specifically addressed the questions posed in the AEMC's Consultation Paper, as its position on these matters has generally been addressed in its rule change request.

This submission seeks to clarify the context for, and scope of, the rule change proposal.

As part of that context, AEMO acknowledges that the development of both B2B and non-B2B procedures has generally been characterised by a high level of collaboration and cooperation between AEMO and industry participants. AEMO's rule change proposal is not driven by unsatisfactory outcomes historically, but has been developed in consultation with the Information Exchange Committee (IEC), and stakeholders more broadly, in recognition that the governance arrangements need to evolve to meet current and future requirements.

2. Introduction – scope of the rule change proposal

Under the rule change proposal, the governance framework for all Chapter 7 procedures other than B2B procedures would remain substantively unchanged. Further, the same consultation requirements that currently apply to IEC recommendations would continue to apply to AEMO in making B2B procedures.

Certain statements in the introduction to the Consultation Paper may give a different impression of the proposal, which AEMO wishes to clarify.

For example, on page 1 it is stated that:

"The governance framework covers the mechanism for how the chapter 7 procedures 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."

All Chapter 7 procedures other than B2B procedures are subject to clause 7.1.3(b), which requires them to be "established and maintained by AEMO in accordance with the *Rules consultation procedures*." This will not change. The proposed replacement clause 7.1.4(a) retains this requirement, and will in fact provide for additional consultation requirements (the approved process) which do not currently apply to non-B2B procedures.

For B2B procedures, the IEC is also subject to the Rules consultation procedures (clause 7.2A.3 (e)). The key change is not the consultation process itself, but rather that AEMO would be the body responsible for undertaking that consultation for all Chapter 7 procedures.

3. Section 2.2.1 Governance Arrangements for B2B procedures

This section explains the role of the Information Exchange Committee (IEC) as being responsible for the "establishment, development and maintenance of B2B procedures". Although noted later in the Consultation Paper, a key nuance that is important in considering

the governance arrangements is that the IEC does not *make* the B2B procedures. Instead it develops, consults on and makes a recommendation, which is effectively binding on AEMO except in very limited circumstances.

As explained in section 3.2 of AEMO's rule change proposal, this leads to unclear accountabilities between AEMO and the IEC in the current governance framework. This is further exacerbated by AEMO's supporting secretariat role for the IEC, the recovery of IEC costs through AEMO fees, and the increasing overlap between consideration of B2B and non-B2B procedures.

4. Section 4 Assessment Framework

AEMO is comfortable with the AEMC's proposed assessment framework.

5. Sections 5.1.1, 5.2.1 & 5.2.2 Flexibility and Certainty of Rules or Procedures

These sections include discussion of the relative merits of prescribing the detail of the consultative framework and processes for considering retail market procedure development in the rules or in procedures.

The Consultation Paper states that placing this detail in procedures would provide greater flexibility, but "may also reduce the overall certainty for stakeholders".

AEMO would like to make the following general observations about flexibility and certainty in the context of this rule change proposal.

- The proposal seeks to remove the current prescriptive IEC process from the NER, in favour of arrangements that are both consistent with other Chapter 7 procedures and allow AEMO and market stakeholders to assign appropriate priority and "subject matter expert" resources to the development and implementation of procedures, which are largely operational or administrative in nature.
- It is not clear that the existing IEC processes, to the extent prescribed in the Rules, provide any additional certainty about matters that are relevant to the process of developing and amending B2B procedures, than any other procedures made by AEMO under the NER.
- The governance framework for making procedures – which would also apply to the 'approved process' under the Rules - provides for a similar process and level of consultation among affected stakeholders, and the same assessment criterion (namely advancement of the NEO), as for the rules. The key difference is that AEMO is the decision making body. AEMO believes this is appropriate for this subject matter. AEMO has been established with a governance framework purposely designed for its functions, including its decision making role in the development of a wide range of procedures required to be made under the NER and the NGR¹.

6. Section 5.1.4 Accountability

¹ The NER impose some different consultation requirements for different procedures (e.g. the Settlements Residue Auction rules), and the current B2B procedure framework under clause 7.2A of the NER is a specific variant, but in each case it is AEMO that is empowered by the rules to make the procedures.

The Consultation Paper's discussion on accountability for B2B procedures questions whether, rather than the current rules, it is the merger of the IEC and RMEC that has created a lack of clarity.

AEMO does not consider this to be the case. The merging of the IEC and RMEC has occurred, over time, because this has been accepted by stakeholders as a rational and efficient approach to managing the development of B2B and non-B2B procedures, where there is often considerable overlap both in content, and in the specialist AEMO and stakeholder knowledge and expertise required to develop these procedures.

AEMO considers that a lack of clarity with regard to accountability arises as a result of the respective roles of AEMO and the IEC under the NER. AEMO has the function of making procedures, including B2B procedures, but in this case is bound by the rules to accept the recommendations of a body on which it has no formal representation, and limited ability to test the basis for such recommendations. This does not mean that the respective roles of AEMO and the IEC are not clearly defined in the NER. Rather, the separation of these roles leads to the accountability problem. Preserving this largely artificial separation between B2B and non-B2B procedures is unlikely to achieve a practical or efficient outcome, either for AEMO or affected stakeholders.

7. Section 5.2.1 Balance between rules and procedures

Much of the discussion in this section of the Consultation Paper presupposes that there is a clear rationale for preserving a different process for B2B procedures than for other Chapter 7 procedures. AEMO acknowledges that this question is discussed in section 5.2.2 of the paper, but wishes to comment on two suggestions made in section 5.2.1.

The Consultation Paper states:

"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"

AEMO submits that having a governance framework with flexibility to adapt to changing technologies and changing groups of interested stakeholders is not 'reactionary', but on the contrary can facilitate an orderly but timely response. The change process should be capable of moving as quickly as is required, but be governed by appropriate consultation and decision making criteria and processes to safeguard against ill-considered changes.

The Consultation Paper also suggests that:

"Since IEC is comprised of industry representatives, in theory, this [the present mechanism of binding IEC recommendations] gives industry greater control over how B2B procedures are designed and changed"

A similar view on 'industry control' is expressed in section 5.2.3 of the Consultation Paper. In this context, the discussion in section 2.2.1 of the Consultation Paper is relevant where it is noted that membership of the IEC is limited to representatives of retailers and DNSPs. As discussed in section 3.3 of AEMO's rule change proposal, it is questionable whether the current IEC structure and process, as prescribed in the rules, is likely to be sufficiently

representative of the range of industry and other stakeholder interests on B2B procedures, either now or into the future.

8. Section 5.2.2 Ways to address the balance between rules and procedures

On the issue of certainty in the procedure development process, AEMO notes the following statement in section 5.2.3 of the Consultation Paper:

“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” (emphasis added)

The NER have never prescribed a governance process for non-B2B procedures, other than a requirement to establish and amend those procedures in accordance with the Rules consultation procedures.

AEMO is required under the NER and NGR to establish and maintain a large number of procedures associated with the operation and administration of the gas and electricity wholesale and retail markets. As part of its establishment, AEMO's governance structure, with its combination of Jurisdictional and industry membership, and an independent and appropriately skilled Board, was specifically designed by the MCE to fulfil its statutory functions under the NER and NGR. This includes its obligations to establish and maintain a large number of electricity and gas market procedures (wholesale and retail). The NER provisions setting out the role of the IEC for B2B procedures are an exception.

AEMO's rule change proposal has been submitted on the basis that the nature and level of prescription on the consultation framework for the B2B procedures has become problematic and is no longer fit for purpose. In practice, the B2B consultation and governance framework has evolved since these provisions were incorporated in the NER, such that, for reasons of practicality and efficiency, it no longer operates with the degree of separation from other non-B2B retail market procedures as originally contemplated in the rules. To impose a greater level of prescription in the NER for the governance of non-B2B procedures would be unnecessarily restrictive and risk introducing the same deficiencies that AEMO is seeking to address through its rule change proposal.

9. Section 5.2.2 - B2B Objective

This section of the Consultation Paper includes a suggestion that guiding principles could be introduced in the NER to increase the predictability around how AEMO exercises its discretion to make procedures, possibly based on the B2B objectives and principles. AEMO considers that the only appropriate guiding principle is the National Electricity Objective (NEO), which is already built in to AEMO's decision-making, as with the exercise of all its functions.

AEMO's rule change proposal includes the deletion of the “B2B objective” and “B2B principles” from the rules, on the basis that they are adequately covered by the NEO and other provisions of the regulatory framework. The B2B principles could, to the extent considered appropriate, be retained in the documentation that would be developed to support the proposed “approved process” for consideration of retail market procedure proposals. The retention of multiple objectives in the NER is unlikely to enhance certainty, and may have the contrary effect if conflicts arise in particular circumstances. This reflects

the policy position adopted when the MCE's Standing Committee of Officials decided to adopt a single efficiency-focused overarching objective for the NEM (in 2004),² and similar findings by the Productivity Commission in its 2004 Review of the Gas Access Regime.³

The B2B objective and principles survived from the National Electricity Code preceding its conversion to the NER. In view of the policy rationale behind the NEO, AEMO considers that is not appropriate to retain them in the NER, or to introduce alternative objectives for B2B or other retail market procedures.

10. Question 9 Evolving technologies and processes

Section 5.4 on page 26 of the Consultation Paper states that the proponent (AEMO) has proposed to allow the use of new technologies or processes if AEMO provides for them in procedures, and inserts a provision to allow it to establish such procedures.

The existing clause 7.13 of the NER - "Evolving Technologies and Processes and the development of the Market" - already includes provisions for:

- The use of new technologies or processes where agreed by affected participants;
- Obligations on AEMO to:
 - publish a report annually on the application of new technologies and processes
 - report annually to the AEMC on the extent to which Chapter 7 may need to be amended to accommodate new technologies and processes or the development of the market
 - publish a report annually on the impact of the introduction of retail competition on the wholesale market
 - monitor developments in Australian metering standards, consult with participating jurisdictions on proposed changes to metering standards that may present barriers to efficient metering solutions, and include any findings in its annual report on new technologies and procedures;
- A review to be conducted by Ministers of participating jurisdictions, by 30 June 2009, on type 5 and 6 metering installations and the metrology procedure

It is questionable whether these provisions are necessary to 'allow' the use of new technologies or the establishment of procedures to accommodate new technologies. The definition of retail market procedures would appear broad enough to incorporate the application of new technologies without specific enabling provisions.

Many of the other provisions in this rule are also out of date, redundant or of questionable benefit. There is, therefore, a separate issue as to the validity of retaining rule 7.13 in the NER.

These are secondary matters, outside the prime purpose of the current rule change proposal. Therefore, AEMO has chosen not to propose substantive change to clause 7.13 at this time but has proposed only minor amendments to improve its drafting, and for

² Paper to SCO by commissioned panel of experts: 14 October 2004

³ Productivity Commission 2004, p.162 and Organisation for Economic Cooperation and Development, (OECD), 'The objectives of competition law and policy' (2003) OECD Journal of Competition Law and Policy, vol 5, no. 1, pp.8-29 at p.9.

consistency/clarity with the substantive changes proposed to the retail procedure governance framework.

In short, it is arguable whether the additional power proposed in clause 7.13(b1) is necessary. However, while rule 7.13 is retained in its current form, it is considered prudent to include this proposed sub-clause to avoid any doubt with regard to the establishment of procedures for the national smart meter project, for example, and other emerging technologies.

