

Our Ref: 13468810.3
Contact Officer: Mark McLeish
Contact Phone: 03 9290 1834

3 February 2022

Ms Anna Collyer
Chair
Australian Energy Market Commission (AEMC)
GPO Box 2603
SYDNEY 2001

Dear Ms Collyer

Re: Improving consultation procedures in the Rules (ERC0323/GRC0060)

We thank you for the opportunity to comment on the Australian Energy Market Operator's (AEMO's) proposal to improve the consultation framework for the procedures and guidelines used in the energy sector. We have worked collaboratively with AEMO in the development of the rule change request and addendum and support AEMO's proposed changes to the Rules Consultation Procedures.

The current Rules Consultation Procedures require a two-stage consultation process, including for minor or administrative amendments and corrections, and there is limited flexibility for the consulting party to extend or revise the consultation process if unusually complex or difficult issues arise. The two-stage consultation procedure is also inconsistent with the transmission and distribution consultation procedures also outlined in the NER, which provide greater flexibility for the consulting party than the current Rules Consultation Procedure and are more aligned with AEMO's proposed changes to the Rules Consultation Procedures.

AEMO's proposed changes to the Rules Consultation Procedures will provide decision-makers flexibility to pursue fit-for-purpose consultation approaches as required by the issue under consideration, which is not provided for under the current Rules Consultation Procedures. This is achieved by:

- requiring one round of consultation
- providing for the consulting party to extend or undertake further rounds of consultation if the consultation involves issues of unusual complexity or difficulty or because of a material change in circumstances
- removing the requirement to undertake a rigid two-stage consultation process for issues of limited complexity

- providing the consulting party the ability to use a range of consultation tools in addition to written submissions
- providing the consulting party criteria to consider when developing an appropriate consultation plan
- requiring the consulting party to be transparent in undertaking the consultation.

The NERR consultation procedures

The Commission asks whether the retail consultation procedure outlined in the National Energy Retail Rules (NERR) also requires changes, so that it is consistent with the proposed changes to the consultation procedures in the NER. In the absence of clear, quantified benefits, we do not consider changes to the NERR consultation procedure necessary if it is only to ensure consultation procedures are consistent between the NER, NGR and NERR.

The consultation procedure currently required in rule 173 of the NERR already provides the AER with proportionate and appropriate flexibility in how it can consult. Changing the current NERR consultation procedure does not address an underlying need to simplify and streamline consultation procedures in the NER.

For example, in its consultation on the Better Bill Guidelines, the AER is engaging extensively alongside the formal arrangements required by the NERR and is finalising the consultation efficiently using the appropriate processes currently provided by the NERR consultation provisions. The NERR provisions have enabled the AER to use a range of complementary consultation measures to ensure the Better Bills consultation is comprehensive, effective, and flexible, without burdening stakeholders and decision makers with unnecessary or ineffective consultation steps.

The AER also considers that the flexibility provided through the NERR has enabled the AER to innovate in a way that uses new technology and platforms and takes into account the burden on stakeholders. In particular, the Better Bills process has included:

- making use of the ACCC/AER consultation hub to seek stakeholder views on key issues (as an initial consultation step)
- submissions based consultation on the Draft Better Bills Guideline and Notice of Draft Instrument, supplemented by a stakeholder forum
- consultation through the Better Bills Working Group, with minutes published on the AER website

The form of an additional consultation round

The AER notes that the AEMC has asked whether there should be greater clarity in the rules regarding the form and timing of an additional consultation round under the AEMO rule change proposal. Based on the AER's experience, we consider the additional round should take a form that the consulting party considers appropriate for the circumstances. This provides flexibility, enables innovation and allows the AER to take into account impacts of different forms of consultation on stakeholders, including those stakeholders (such as consumer groups) who may have less capacity/resources to engage.

Requests for changes to instruments or procedures

The Commission is also interested in views on whether stakeholders should be allowed to request a change to instruments or procedures. The AER undertakes periodic reviews of instruments or procedures it is required to develop and/or maintain as part of its business-as-usual practices. The AER identifies issues via feedback provided by a range of stakeholders, including ombudsman schemes, and through complaints and queries to the

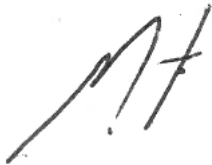
AER. As identified by the AEMC, extending review request provisions to any instrument or procedure in the Energy Rules risks creating unnecessary burden for decision-makers and regulatory uncertainty for market participants.

Summary

AEMO's rule change request seeks to simplify and streamline the Rules Consultation Procedures in the NER by eliminating unnecessary consultation steps for stakeholders and decisionmakers and providing appropriate flexibility for consulting parties to tailor consultation processes to the issue under consideration. We support a focus on simplifying and streamlining this consultation procedure, which will better enable to AER to undertake efficient, flexible and effective consultation processes.

If you have any questions or wish to discuss any aspect further, please contact Mark McLeish, Director, Sandboxing Team at Mark.McLeish@aer.gov.au or on 03 9290 1834.

Yours sincerely

A handwritten signature in black ink, appearing to be 'MF', written in a cursive style.

Mark Feather
General Manager
Strategic Policy & Energy Systems Innovation

Sent electronically via AEMC portal