



EnergyAustralia

LIGHT THE WAY

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Dear Commissioners,

NATIONAL ELECTRICITY AMENDMENT (IMPROVING RULES CONSULTATION PROCEDURES) RULE

EnergyAustralia (EA) welcomes the opportunity to comment on the Australian Energy Market Commission's (AEMC's) consultation paper on improving consultation procedures in the National Electricity, Gas and Retail Rules (NER, NGR and NERR).

EA is one of Australia's largest energy companies. We have around 2.4 million electricity and gas customers in NSW, Victoria, Queensland, South Australia, and the Australian Capital Territory. We own, contract and operate a diversified energy generation portfolio that includes coal, gas, battery storage, demand response, solar and wind assets. Combined, these assets comprise 4,500MW of generation capacity.

EA is dedicated to building an energy system that lowers emissions and delivers secure, reliable and affordable energy to all households and businesses. This requires being a good neighbour in the communities we operate in. We, therefore, recognise and value working with Aboriginal and Torres Strait Islander peoples as the traditional custodians of this land. We acknowledge and respect their continued connection to all aspects of Country.

EA is appreciative of the AEMC's efforts to investigate whether current consultation settings are appropriate in light of ongoing, significant market change. Ensuring these settings are fit for purpose will be a vital enabler of a rapid and robust energy market transition. The key points in this submission are:

- EA supports the intent of the rule change request. Unfortunately, as proposed, it favours expediency for decisions makers over engagement with stakeholders.
- To remedy this imbalance, we suggest an alternative approach to consultation.
- Major instruments that have the potential to fundamentally alter market functioning would have a minimum of two rounds of consultation. Simpler instruments would have only one.
- Additional consultation would occur where:
 - a new subordinate instrument is created;
 - any change would alter the competitive market landscape such as broadening or narrowing the number of potential industry players;

- specifications for service or information provision are altered;
 - there is the potential for material changes in costs or earnings;
 - market transparency, information disclosure, accountability and reporting by decision-makers is reduced;
 - regulatory burden is likely to increase;
 - there is a significant departure from, or inconsistency with, an earlier draft or made rule; or
 - where requested by a participant.
- We strongly disagree with the proposal to abolish participant meeting requests. They are a simple, effective and time-efficient method for resolving consultation issues that are not possible via public fora or written submissions.
 - Allowing decision-makers to choose additional consultation elements is supported subject to:
 - no one-way, information-only presentations being used;
 - Q&A sessions having the majority of time devoted to questions and answers; and
 - cost-benefit analysis being mandatory above a given threshold.
 - We strongly support stakeholders being able to request changes to an instrument or procedure. This would be consistent with NER rule change procedures and promote continual improvement in subordinate instruments.
 - The assessment framework is supported. However, we highlight the need for clear examples of the AEMC's expectations for best practice consultation by decision-makers, the benefits of cost-benefit analysis and post-implementation reviews.
 - Should the suggestions, principles and criteria proposed in this submission be adopted, we see no reason why the new consultation framework could not apply to other consultation processes.

We would welcome the opportunity to discuss this submission further with you. Should you have any questions, please contact me via bradley.woods@energyaustralia.com.au or on 0435 435 533.

Regards,

Bradley Woods
Regulatory Affairs Lead

QUESTION 1: WHAT SHOULD STREAMLINED CONSULTATION INVOLVE?

EA supports the intent of the rule change. In theory, a more pragmatic, tailored and flexible approach will ease regulatory burden and speed up rulemaking for simpler instruments. It should also improve consultation to secure better outcomes on more complex issues. Unfortunately, as proposed, the rule favours expediency for decisions makers over engagement with stakeholders. This is unfortunate and risks undermining best-practice engagement outcomes that have been seen in other recent consultations. Examples beyond the Connections Reform Initiative (CRI) highlighted in the discussion paper include:

- The System Strength Framework Review. This was extended several times to allow more Technical Working Group (TWG) input to arrive at a more robust, practical and industry supported solution.
- The Market Ancillary Services Specification (MASS) review. The Australian Energy Market Operator (AEMO) overturned its initial ruling to work with the industry on further analysis. The result will see greater competition in the supply of Frequency Control Ancillary Services (FCAS).
- The stakeholder challenge to the Australian Energy Regulator's (AER's) recent ruling on the Humelink Project Assessment Conclusions Report (PACR). This resulted in TransGrid having to reapply the PACR to include alternate route information.

We provide several suggestions and recommendations for how this balance can be redressed below.

QUESTION 2: SHOULD CONSULTATION MOVE TO ONE ROUND?

EA agrees that moving to one round of consultation could improve the efficiency and effectiveness of instrument rulemaking in principle. Without more consideration, however, it is unlikely that the proposed principles will be sufficient to guarantee this in practice. For example, principles three and four are likely to prove problematic if rigidly adhered to.

We appreciate the need to move speedily to address exigent issues per principle three. However, a too-short consultation process will only lead to poorer, less efficient outcomes. There is perhaps no better recent example of this than AEMO's rule change proposal for settlement under low and negative demand conditions.

AEMO's initial proposal was rushed in trying to meet the implementation deadline for Global Settlement. It lacked appropriate industry engagement and an accurate appraisal of resourcing and implementation options. The AEMC chose not to support the proposal with an industry-proposed solution favoured in another rule change.

The AEMC later backed a revised AEMO proposal, which resulted from further option analysis and industry consultation. The revised proposal was implemented in tandem with Global Settlement changes. Despite this, it was an inefficient and confusing process that did little to engender industry goodwill and support.

It might be argued that prior consultation would neutralise the risk of these outcomes per principle four. However, this depends on the prior consultation and its relation to the subordinate instrument. Recent rule changes have pushed more of the technical design detail into subordinate consultations. For example, while a new Fast Frequency Response market was made via rule change last year, the actual technical and market

settings will be decided by a future MASS consultation. A similar outcome was seen on DER export charging. Although the AEMC allowed export charging, Network Service Providers (NSPs) will decide how and when it applies in their jurisdictions.

The AEMC’s desire for a more flexible, principles-based approach to rulemaking has been set out in its Rule Drafting Philosophy and 2021 Strategic Plan. This is a welcome approach in general. However, it inevitably leads to a lower degree of subject matter overlap between Rules and subordinate instrument consultations. Principle four is, therefore, less likely to be a valuable guide to the right amount of stakeholder engagement for subordinate instruments over time.

With these considerations in mind, we suggest that additional consultation on subordinate instruments might apply where:

- a new subordinate instrument is created;
- any change would alter the competitive market landscape such as broadening or narrowing the number of potential industry players;
- specifications for service or information provision are altered;
- there is the potential for material changes in costs or earnings;
- market transparency, information disclosure, accountability and reporting by decision-makers is reduced;
- regulatory burden is likely to increase;
- there is a significant departure from, or inconsistency with, an earlier draft or made rule; or
- where requested by a participant.

Applying these criteria will aid decision-makers in considering potential industry impacts. This should make consultation more efficient and effective where changes are required and avoid unnecessary consultation where they are not.

Evaluating every consultation against these criteria may prove to be time-consuming. They are, therefore, perhaps best applied as part of a tiered approach to instrument evaluation as indicated below. Note, the example provided should not be considered exhaustive. We suggest tier composition is best determined by industry agreement.

Tier	Description	Examples	Minimum Default Consultation
1	Major instruments that have the potential to fundamentally alter market functioning and dynamics.	Reliability standards and settings, Marginal Loss Factors, AEMO Participant Fees Review, VCR methodology, RERT, Rate of Return and Ring-fencing instruments.	Two rounds
2	Instruments other than Tier 1 instruments that meet the consultative principles above.	New instruments, changes to the MASS, RRO etc. that would alter service delivery parameters, substantial B2B process changes.	Up to two rounds
3	All other instruments or those require only minor administrative changes.		One round

QUESTIONS 3 AND 4: WHAT FORM SHOULD CONSULTATION TAKE?

EA supports the proposals to:

- have a consultation plan developed and published before each consultation begins;
- set the minimum consultation period at least 30 days; and
- allow the decision-maker to extend timeframes or where unforeseen circumstances or complex issues arise.

When combined with the principles and criteria described above, more flexible, efficient and effective consultation and decision making are likely to result.

We are strongly opposed to revoking a participant's right to request meetings. We cannot see how it could improve consultation outcomes. Private meetings provide one of the simplest, most effective and time-efficient methods for resolving consultation issues. In particular, they allow for consultation that is simply not possible via public fora or written submissions. This includes:

- the sharing and discussion of private, confidential or commercially sensitive information; and
- in-depth, two-way analysis and deliberation of complex market, engineering, regulatory and legal points.

It might be argued that meetings are a burden on decision-maker resources and slow the consultation process. In particular, where many requests are made on the same consultation. However, it must be remembered that they are also resource-intensive for participants. In a world of increasingly frequent and longer regulatory consultations and challenging energy market economics, such requests are not undertaken lightly.

It is our experience that where many requests result, it is due to particularly poorly drafted or thought-out proposals, lack of industry engagement or misunderstanding of participant business impacts. That is, the meeting resource risk can largely be mitigated by the decision-maker's approach to instrument making. For example, via early, authentic, transparent and two-way consultation with industry.

EA supports using multiple consultation approaches to support optimal instrument making. For some simpler consultations, written submissions may suffice. For others, TWG and advisory input may be required. Mandating the approach that must be followed for every consultation would not be in keeping with the rule intent. We, therefore, support decision-makers being able to choose additional consultation elements beyond written submissions and private meetings. This support is, however, conditional on the following caveats being met:

- **One-way, information only presentations should not feature** – these are typically low value, unproductive sessions that only reinforce a perception of being consulted at, rather than with.
- **Q&A sessions must be exactly that** – too often Q&A sessions are briefing sessions in disguise with minimal time given to listening and responding to industry concerns.
- **Cost-Benefit Analysis should be mandated by threshold** – if consultation is reduced uniformly to one stage, there will be a greater requirement for robust, initial analysis to facilitate good rule-making. Without transparent and rigorous

information on proposed *and* alternative solutions, the National Electricity Objective cannot be achieved. A regulatory or financial threshold should, therefore, be used to determine when CBA is required.

We support publishing summaries of fora outcomes. This will improve transparency and allow participants not involved on the day to better understand and contribute to the consultation process. It also allows for any misrepresentations or misinformation to be challenged, clarified and corrected. This is also conducive to better consultation outcomes.

We also suggest that full, marked-up versions of old instruments are provided as part of all final determinations. Independent clauses without the requisite context can make compliance implementation, monitoring and reporting much more difficult. Providing the full instrument with clearly highlighted new additions and amendments will simplify this process, thereby reducing non-compliance risks.

QUESTION 5: HOW BROADLY SHOULD THE NEW PROCEDURES APPLY?

EA considers the proposed approach should apply to the Reliability Panel consultations as well as Transmission and Distribution Consultation Procedures if the suggestions above are included.

QUESTION 6: SHOULD STAKEHOLDERS BE ABLE TO REQUEST INSTRUMENT CHANGES?

EA strongly supports stakeholders being able to request a change to an instrument or procedure. This would be consistent with National Electricity Rules procedures. It would also promote continued engagement with, and refinement of, subordinate instruments. We do not see that decision-makers would be unnecessarily burdened by regulatory tyre-kicking as a result. As noted above, there is a resource cost to participants with such requests. Commercial imperatives will limit these to cases where there are significant regulatory benefits to be had.

QUESTIONS 7 AND 8: SHOULD CHANGES APPLY TO THE NGR AND RCP?

EA can see no reason why different consultation approaches should apply for gas and electricity subordinate instruments. Subject to the suggestions, principles and criteria above being included, we would support the same procedure being applied to gas market consultations as well. Similarly, we see no reason why the NERR consultation approach should differ provided the foregoing are adopted as part of the new approach.

QUESTION 9: DO YOU AGREE WITH THE ASSESSMENT FRAMEWORK?

EA agrees with the assessment principles presented in the consultation paper. We note that good regulatory practice as defined in the AEMC's Rule Drafting Philosophy also includes:

- articulation on the nature and scope of a right or obligation,
- the person or class of persons to whom it applies, and
- how compliance is to be monitored and enforced.

Clear examples of the AEMC's expectations for best practice consultation by decision-makers would help to ensure such consultation actually occurs.

We also note that the recently updated 2021 COAG Principles for Regulatory Analysis and Consultation include a rigorous cost-benefit analysis and post-implementation review as best-practice consultation features. We agree and consider almost all AEMC rule changes would benefit from their inclusion by default. Doing so will better promote the achievement of the NEO.