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Neville Henderson
NE Rule Change Process
C/- MCE Market Reform
Department of Industry, Tourism and Resources
GPO Box 9839
Canberra ACT 2601

Dear Neville

Re: Submission to the MCE Standing Officials on the Proposed Electricity Rule Change Process

Introduction

United Energy has a number of concerns with the above consultation paper that can be addressed under two main headings:

- The level of discretions available to the AEMC
- The transition arrangements between NECA and the AEMC

The Level of Discretions with the AEMC

In moving to a single process and body for approving proposed Rule changes, it is important to ensure that the process followed by the AEMC has integrity, and contains adequate opportunities for industry and consumers to contribute to the decision-making process.

United Energy is concerned that the Rule change process outlined in the *Consultation Paper* requires the AEMC to make several judgments as to merits or appropriateness of a proposed Rule change, in a process that is not subject to external consultation or discovery. For example, in Stage 1 of the proposed Rule change process, the AEMC must assess a proposed Rule change and decide whether the application is “misconceived” or “lacking in substance”, or is “not adequately developed”.

The AEMC is only required to give written reasons to the Rule change proponent if it decides to reject a proposal. The AEMC also has the power to redraft a proponent's Rule change, and is the arbiter of whether this redrafting reflects the "substance" of the original proposal. In stage 2 of the Rule change process, the AEMC can also reject a request to subject a proposed Rule change to a full consultation process if it considers the Rule change to be "minor or administrative in nature, or to correct a manifest error" or is "likely to be unopposed" and that stakeholder objections to the expedited process are "misconceived" or "lacking in substance".

In Fig 2, it appears that the AEMC interpretation of minor or non-controversial changes may cause the rule change to be finalised without formal consultation and written responses from participants. What rule changes may be minor to one participant may not be minor rule or system changes for another participant.

This level of discretion could leave the AEMC open to criticism as to how it manages the Rule change process, and could create significant uncertainty for industry and users. It may also limit the ability of interested parties to seek judicial review of AEMC decisions, as a degree of discretion, as outlined in the previous section, creates ambiguity over the obligations on parties as to process.

United Energy considers that some further safeguards are required in the proposed Rule change process to ensure that the AEMC has a clear consultation process to follow, and that industry and users have an appropriate opportunity to contribute to the Rule change process.

Recommendation

These proposed safeguards have been largely developed by the ENA with some modification by United Energy:

Stage 1

- **AEMC decision to reject a proposed Rule change** – To provide adequate accountability on the AEMC in the initial screening of proposed Rule changes, the AEMC should be required to report annually on the total number of Rule change proposals it receives, the number it amends (with reasons why amendments were necessary), the number it rejects (with reasons why the proposal was rejected) and the number withdrawn by the proponent after amendment. This reporting should be available for public scrutiny.

To ensure that proponents are not blocked from the Rule change process through a lack of understanding as to the process, the AEMC should also be obliged to advise the proponent on how to bring a proposed Rule change in line with the criteria.

In addition, the status of the rule change through to final determination and gazettal should also be readily transparent.

- **AEMC drafting of Rule change proposal** – To ensure that the initial meaning of a proposed Rule change is reflected in any AEMC redrafting of a proposal, the proponent should be allowed opportunity to comment on and, if necessary, withdraw a proposed Rule change if it considers that the drafting approach adopted by the AEMC does not adequately reflect the intent or “substance” of the original Rule change proposal. Whilst United Energy support this flexibility to ensure that the final drafting meets the original requested intent, any significant amendments need to be transparent to all participants who are able to respond during a consultation process.

Stage 2

- **Initial involvement of NEMMCO, AER and ACCC in the Rule change process** – To ensure a transparent consultation process is maintained, the AEMC should outline the advice received in initial consultations from NEMMCO, the AER and the ACCC on issues of operability, enforceability and competition in the market, when it publishes a proposed Rule change for initial consultation. Fig 2 should be amended to reflect the early NEMMCO consideration.
- **Process to expedite Rule change proposals** – United Energy agrees that there should be an avenue for expediting a proposed Rule change, but considers that this process should not sacrifice the opportunity for parties to comment on a proposal.
- **Working Groups and Public Hearings** – Allowing the AEMC discretion as to whether it will conduct Working Groups and Public Hearings may limit the ability of industry and users to understand the issues involved in a particular Rule change and the likely approach of other parties. Under the proposed process, it would be possible for a proposed Rule change to move from a draft decision to a finalised rule (through an expedited process) without parties having been able to respond to a proposal with knowledge of the views of other parties.

United Energy considers that the AEMC should be obliged to hold Working Groups and Public Hearings if they are requested by two or more interested parties. By holding these Working Groups and Hearings within the time granted for submissions, interested parties are able to comprehend to approach likely to be taken by other parties and therefore tailor submissions accordingly. This is also unlikely to extend the decision making process.

Stage 3

- **Pre-determination Hearings** – In line with the arguments outlined above, United Energy considers that the AEMC should be obliged to hold a Pre-Determination Hearing if requested to do so by two or more parties.

The Transition Arrangements

United Energy is concerned that the transition between the establishment of the AEMC and the ceasing of operation by NECA will lead to current important code changes being significantly delayed.

In particular the B2B code change proposals, which have been under development for some time and are expected to be lodged with NECA in October, may not be able to be progressed by NECA, which may be under resourced and winding down.

The transition between the two organisations will not progress smoothly unless NECA is properly wound down after the AEMC is operating effectively. If this is not done valuable time and investment in rule developments by the industry will be unnecessarily delayed and knowledge transfer will be lost in a poor transition.

Consideration should be given to NECA resources progressing code matters during the transition and recommending a final determination to the AEMC to make, subject to having undertaken appropriate code consultation. Catering for some transition arrangement may be prudent if amending the NEC to the new national electricity rules takes longer than anticipated to gain agreement and finalise.

Recommendation

That the transition between NECA and AEMC is reviewed to ensure rule changes can be progressed without unnecessary delay between NECA handover of a final version of the NEC and the AEMC operating effectively.

Should you have any further questions please contact Geoff Towns on (03) 9265 7731.

Yours sincerely

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Manager Economic Regulation