



Your Ref: ERC0323

3 February 2022

Edward Orum
Australian Energy Market Commission
Submitted online to: www.aemc.gov.au

Dear Mr Orum

Submission: Improving Consultation Procedures in the Rules Consultation Paper

CS Energy welcomes the opportunity to provide a submission to the Australian Energy Market Commission's (**AEMC's**) *Consultation Paper – Improving Consultation Procedures in the Rules (Consultation Paper)*. CS Energy is not supportive of the proposed rule change as drafted as the consultation process will not remain as robust.

About CS Energy

CS Energy is a Queensland energy company that generates and sells electricity in the National Electricity Market (**NEM**). CS Energy owns and operates the Kogan Creek and Callide B coal-fired power stations and has a 50% share in the Callide C station (which it also operates). CS Energy sells electricity into the NEM from these power stations, as well as electricity generated by other power stations that CS Energy holds the trading rights to.

CS Energy also operates a retail business, offering retail contracts to large commercial and industrial users in Queensland, and is part of the South-East Queensland retail market through our joint venture with Alinta Energy.

CS Energy is 100 percent owned by the Queensland government.

Key recommendations

CS Energy is supportive of the AEMC's review of consultation processes to ensure that consultation promotes adaptability, flexibility, fairness and transparency. However, CS Energy notes that as a review of the consultation procedures provides an opportunity to expand the review of instruments beyond those identified in Appendix A of the consultation paper to all instruments (for example, directions and processes that underpin some instruments).

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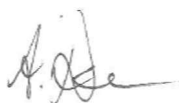
A default two-round consultation process should remain to ensure holistic stakeholder engagement remains, however there is scope under this review to create a hierarchy of instruments to provide default levels of consultation under each hierarchy level based of their impact on the market.

Any changes to consultation processes should be accompanied with a strong governance framework and there should be mechanisms in place that allow all stakeholders to request consultation. The level of consultation should not be at the sole discretion of the decision-maker.

Further detail on CS Energy's response to the consultation Paper is set out in the stakeholder feedback below.

If you would like to discuss this submission, please contact Andrew Broadbent (Senior Strategy Analyst) on (07) 3854 7377 or abroadbent@csenergy.com.au.

Yours sincerely



Dr Alison Demaria
Head of Policy and Regulation (Acting)

Improving consultation procedures in the rules

STAKEHOLDER FEEDBACK TEMPLATE

Please use this template if you wish to provide your feedback on the questions posed in the consultation paper. Please don't feel obliged to answer each question, but address those of particular interest or concern. Further context for each question can be found in the consultation paper.

SUBMITTER DETAILS

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DATE 3 February 2022

PROJECT DETAILS

NAME OF RULE CHANGE: Improving consultation procedures in the Rules

PROJECT CODE: ERC0323

PROPONENT: The Australian Energy Market Operator (AEMO)

SUBMISSION DUE DATE: 3 February 2022

CHAPTER 2 – VIEWS ON PROPOSED CHANGES - ELECTRICITY

At a high level, the Commission is interested in your views on the following issues:

- do the changes promote flexibility that is appropriate in the circumstances?
- what would assist with improving consultation transparency and understanding?
- what are the benefits and risks of streamlining the consultation arrangements and how could risks be effectively managed?
- what are the cost and complexity implications of implementing the changes?

CS Energy is supportive of the Australian Energy Market Commission's (AEMC's) review of consultation processes to ensure that consultation promotes adaptability, flexibility, fairness and transparency. However, CS Energy notes that as a review of the consultation procedures provides an appropriate opportunity to expand the review of instruments beyond those identified in Appendix A of the consultation paper to all instruments (for example, directions and processes that underpin some instruments).

Promoting Flexibility

Given the pace and scope of the energy transition, consultation flexibility is necessary. It is important that there are appropriate incentives for regular updates to instruments, however this must be accompanied with a strong governance framework and mechanisms to ensure the ability to consult is robust across all stakeholders. While the proposed changes increase flexibility, the benefits of this flexibility could potentially be viewed as favouring the relevant decision-maker. Adopting a default one-stage consultation process for all instruments, with no objection mechanisms for the broader group of stakeholders, diminishes the role of these stakeholders. By limiting consultation with a broader stakeholder group, there is a risk that instrument changes are not scoped or assessed holistically, and this may require additional changes to address any issues raised by that shortcoming. Where this occurs, any flexibility achieved through one-stage consultation risks being eroded.

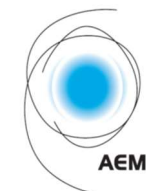
The proposed consultation model allows for consultation to occur, at the decision-makers discretion, prior to the publication of the draft instrument. Depending on the frequency and extent of engaging in consultation prior to the publication of the draft instrument, any flexibility benefits ostensibly gained if the rule change was adopted as proposed may be eroded.

Finally, as the emerging operating environment is vastly different from that which all stakeholders have historically operated within, it is essential that appropriate oversight is maintained, through well-structured governance frameworks. Doing so will ensure that flexibility does not lead to disenfranchised stakeholders, reworking instrument changes or perverse outcomes in the market.

Improving Transparency

The proposed consultation process does not improve transparency. Under the proposed process, all information flows to the decision-maker, who simultaneously defines the scope of proposed changed by preparing the draft instrument and having sole discretion to decide when additional consultation occurs. Transparency is not achieved as there is no explicit requirement for the decision-maker to disclose what issues have been consulted on, what stakeholder input was received and how stakeholder input has been incorporated throughout the process.

Extending the review to all relevant instruments, and providing look-through to stakeholder feedback, as well as consulting all relevant stakeholders, accompanied with a strong governance framework providing oversight to the consultation process will eliminate any actual or perceived information asymmetry that may be occurring, while ensuring a like-for-like consultation process of like-for-like instruments.

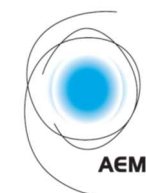


	<p><u>Benefits of streamlining</u></p> <p>One benefit of adopting the proposed consultation process is that it would reduce stakeholder resources that are consumed consulting on 'administrative' and 'non-controversial' rule changes.</p> <p><u>Risks of streamlining</u></p> <p>Several risks arise by streamlining the consultation process as currently proposed. A streamlined process risks information asymmetry across market participants, which directly violates the market design principles.</p> <p>The streamlined process also limits the ability for stakeholders to provide input on the scope of instrument changes as the decision-maker does not have a requirement to consult prior to the publication of a draft instrument. Any consultation that may occur prior to publication is at the sole discretion of the decision-maker, who may not be best placed to make a holistic assessment in all instances. This risk is accentuated as there is no objection avenue available to participants. Broad consultation allows for an appropriate process of discovery to occur. Adopting a streamlined process risks the integrity of this process and may also risk stakeholder engagement more broadly through disenfranchisement.</p> <p>The proposed process of consultation may result in incomplete changes to instruments, or changes that lead to unintended consequences that require a further change to an instrument. Such a cycle would undermine investment confidence of stakeholders, increase market uncertainty and decrease predictability, to the detriment of the rapidly-evolving market.</p> <p><u>Costs</u></p> <p>Where a streamlined consultation results in incomplete changes or unintended consequences, additional costs will be incurred by running an additional process to rectify issues. Where this creates additional uncertainty, stakeholders may face higher financing costs to compensate for this.</p> <p>The decision-maker is required to act in the long-term interest of consumers to comply with the National Electricity Objective (NEO). The information asymmetry that may occur if the streamlined process is adopted will limit the ability to appropriately evaluate the impact on consumers of alternatives or perform a direct cause-effect assessment of instrument changes.</p>
<p>Do stakeholders consider having a default of one round of consultation (rather than two) is a more efficient, effective and appropriate approach for the instruments currently subject to the RCP?</p>	<p>NO</p> <p>A two-round consultation process must remain the default position, with the ability to reduce consultation requirements on certain instruments. Streamlined consultation must only occur where there is mutual agreement of relevant stakeholders. The proposed streamlined process allows for additional consultation to only occur at the decision maker's sole direction without the ability for stakeholders to object or require further consultation. This is of further concern as the decision-maker is not required to consult prior to the publication of the draft instrument.</p> <p>The decision-maker may not be best placed to make an appropriate, holistic assessment of the level of consultation that is required, while the implications of a proposed change to an instrument may not be well understood by the decision-maker. These factors heighten the importance of the above concerns.</p>

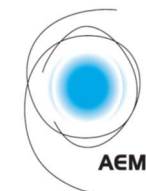
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	<p>Finally, the proposed streamlined process is not accompanied by a strong governance framework, which is essential in maintaining market integrity and robustness.</p>
<p>Do you agree with AEMO's proposed principles for determining if an additional round of consultation is required? If so, why? If not, what changes are needed to the:</p> <ul style="list-style-type: none"> • overall approach of using consultation criteria, and the consultation criteria that AEMO propose? • proposals about when a decision maker would apply the criteria • proposed public communication on decisions relating to the consultation approach to be used? 	<p>NO</p> <p>The proposed principles are high level, lack necessary detail and are highly subjective. CS Energy agrees that a principles-based approach is reasonable, however the principles must be firm, unambiguous and embedded into statutory frameworks (such as the National Electricity Rules (NER)).</p> <p>Principles should not be the sole determinant for the level of consultation. Consultation requirements should be guided by a strong governance framework that is applied consistently and to ensure that any benefits provided are not received by one stakeholder group.</p> <p>Principles must allow for the level of consultation that will occur to be agreed upfront by all relevant stakeholders and provide for the stage(s) where consultation will be concentrated. Some instrument changes will benefit from consultation being weighted towards the start of a process, where others will benefit consultation towards finalisation of a process. A consultation plan should be agreed by stakeholders and published by the decision-maker at the commencement of an instrument change process.</p> <p>It is essential that any revised consultation plan has a minimum standard of content to ensure transparency is maintained and all stakeholders are equally informed.</p> <p>Principles should also have a mandated periodic review to ensure they are fit for purpose, achieving the desired objectives and are not unnecessarily onerous on a stakeholder group.</p>
<p>Do you consider the form of the required consultation in the proposed rule is likely to result in fit for purpose consultation?</p> <p>If not, what changes are needed, and why? For example, are the proposed time periods appropriate, and is it appropriate to remove the current provisions on requesting meetings?</p>	<p>NO</p> <p>The proposed consultation process will not result in fit for purpose consultation. There is no requirement for stakeholders to be consulted prior to the publication of the draft instrument. The proposed rule does allow for this to occur however it is at the sole discretion of the decision-maker and may not be applied consistently across instrument changes. There is also no objection mechanism available to stakeholders to require consultation to occur.</p> <p>The proposed rule change would benefit from the following changes:</p> <ul style="list-style-type: none"> - It is essential there is an appropriate governance framework in place to ensure appropriate oversight of instrument changes. As part of this framework, there must be mechanisms that allow avenues for all stakeholders to require the decision-maker to undertake further consultation. This objection mechanism must have a low standard to satisfy. For example, under the AEMC objection mechanism, if one reasonable objection is received, the AEMC cannot adopt a streamlined consultation process and must undertake a complete consultation. To ensure transparency, the governance framework must include a mechanism that requires the decision-maker to explain why reasonable stakeholder feedback received throughout a consultation process has not been incorporated.

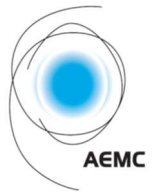


	<ul style="list-style-type: none"> - The governance framework must ensure like-for-like consultation occurs for like-for-like instruments. One model to ensure this occurs is to classify instruments into a hierarchy. Instruments could be classified by applying key principles or by applying a weighting based on an instruments impact on the market. Definitions used in this framework must be explicitly defined and reflected in statutory legislation, such as the NER. Historic stakeholder engagement in instrument changes should not be used to perform this classification. Limited historic engagement does not directly correlate to their impact on the market. Once the hierarchy is developed and instruments classified, a default level of consultation is assigned and must occur for each instrument in that hierarchy level. It would be reasonable to include the ability to streamline this default level of consultation by mutual agreement of all stakeholders. This should be the exception provided the classification process is appropriately undertaken. - Any rule change should include a periodic review mechanism to ensure that the framework is efficient, effective and fit for purpose. This will ensure the consultation process is relevant and is not unnecessarily onerous on one stakeholder group. To maintain transparency, robustness and integrity, this review must be performed by an independent body.
<p>Do you agree with AEMO's proposal regarding the form and transparency of additional consultation?</p> <p>If not, what changes are needed and why?</p>	<p>NO</p> <p>To allow for a more balanced form of additional consultation and to ensure there is appropriate transparency, the following changes to the process should be considered:</p> <ul style="list-style-type: none"> - It is essential that there is a prescribed form that any additional consultation should take. The proposed form is ambiguous and determined at the sole discretion of the decision-maker. There is no mechanism for a broader stakeholder group to shape how additional consultation should occur, nor any ability for them to object to the form proposed by the decision-maker. A consultation plan must be agreed upfront, with amendments made throughout the process only by mutual agreement of all affected stakeholders. - The ability to request additional consultation should be explicit and unambiguous and incorporated into a strong governance framework to ensure consultation requests are applied consistently to similar instrument consultation processes. <p>CS Energy agrees with the proposed transparency provided there is a mechanism in place to ensure any disclosures of stakeholder feedback, issues raised, and their outcomes are complete and appropriately represented. This requirement does not appear to be explicit in the proposed disclosures. An onus must be placed on the decision-maker to explain why any reasonable feedback received from stakeholders throughout a consultation process has not been incorporated into the final publication.</p> <p>Finally, the proposal to remove the current provision regarding meeting requests by stakeholders with the decision-maker should not be adopted. This provision must be maintained.</p>
<p>Should proposed changes to the RCP also be applied to the Reliability Panel's consultation process under clause 8.8.3, and if so, are any modifications required to reflect the</p>	<p>NO</p> <p>CS Energy considers that the current process for consultation by the Reliability Panel is appropriate.</p>

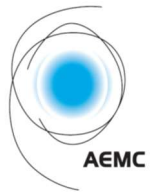
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<p>nature of the Reliability Panel and its involvement with the Commission?</p> <p>Are there any other clauses in the NER with bespoke consultation requirements that stakeholders believe would benefit from requiring consultation consistent with an updated RCP, or are there reasons to maintain separate processes?</p>	
<p>Would instruments benefit from stakeholders being able to request a change in process? If stakeholders were allowed to request process changes:</p> <ul style="list-style-type: none">• should this apply to all processes, or only some,• if only some processes, which processes or categories of processes should it apply to and• what additional safeguards would be necessary to ensure that decision-makers were not unduly burdened?	<p>YES</p> <p>If the hierarchy classification of instruments recommended above (or similar) was adopted, it would allow stakeholders to request a change in consultation process. The instruments the change would then be applied to would be determined based off their hierarchy level.</p> <p>If stakeholders ability to request a change in process is not available on some instrument types (such as those classified as 'administrative' or 'non- controversial') the definition of these must be unambiguous, with their definitions embedded in statutory legislation. A periodic review of the instruments classified into these categories should be a mandatory requirement. This would ensure decision-makers (and broader stakeholders) are not unduly burdened.</p>



CHAPTER 3 – VIEWS ON THE PROPOSED CHANGES – GAS AND RETAIL

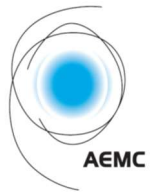
QUESTION 2 – ADDITIONAL MATTERS

<p>Are changes to the consultation procedures under the NGR necessary or desirable?</p>	<p>No comment</p>
<p>If so, what should these changes involve? We welcome your views on whether:</p> <ul style="list-style-type: none"> • instruments that currently require consultation according to the extended consultation procedures should instead be subject to the standard consultation procedures • instruments that currently require consultation according to the extended consultation procedures or the standard consultation procedures should be required to comply with a new procedure that has the same requirements as the updated Rules Consultation Procedure proposed for the NER in this rule change • it would be helpful to have the same consultation processes under the NER and NGR, or whether there are reasons for having different consultation procedures under the NGR. 	<p>No comment</p>

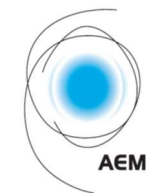
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<ul style="list-style-type: none">• Please explain the reasons for your views.	
Would it be beneficial for the consultation process used by the AER under the NERR to be consistent with the consultation processes in the NER (and NGR)? If so, would the process set out in the proposed rule likely result in robust and efficient consultations under the NERR? Please explain the reasons for your views.	No comment
Are there any additional considerations relating to compatibility of the changes with the development and application of consumer protections for small customers?	No comment



CHAPTER 4 – OUR RULE-MAKING REQUIREMENTS AND PROPOSED ASSESSMENT FRAMEWORK FOR THIS RULE CHANGE

QUESTION 4 - ASSESSMENT FRAMEWORK

Is the proposed assessment framework appropriate for considering the proposed rule? What amendments or additions would you suggest, and why?

NO

Innovation

Consistent with comments above, achieving flexibility should not be at the expense of appropriate governance, oversight and transparency. There is a risk that input from all market participants may not be achieved as streamlined consultation, at the sole discretion of the decision-maker, may not provide a holistic consideration of all relevant issues or stakeholders. This will limit innovation as the process of discovery is circumvented. Any alternate framework must include a mechanism for stakeholders to dispute a decision-makers election of a streamlined consultation approach. To maintain integrity of process any streamlined consultation must be explicitly disclosed upfront with an accompanying, mutually developed and agreed, consultation plan.

Principles of good regulatory practice

Transparency is not achieved as there is no explicit requirement setting out what information must be disclosed. Any streamlining must ensure there is no information asymmetry across stakeholders. Information asymmetry is in contravention of market design principles. More effective transparency would be achieved by maintaining a two-stage consultation process on agreed classifications of instruments, with the option of streamlining should relevant stakeholders mutually agree with a reduced consultation approach. This may be made more efficient by creating a hierarchy of instruments as proposed. By adopting a hierarchy of instruments, with mandated consultation requirements at each level, it will ensure that appropriate consultation occurs relative to a project's complexity. Clear definition of a 'complex' and 'simple' project is essential to maintain regulatory integrity. Any classifications used (such as 'administrative' and 'non- controversial') must be clearly defined, agreed upfront and applied consistently across all instruments.

Stakeholders should retain the ability to provide their input into the scope and context of consultations, rather than having this developed at the sole discretion of the decision-maker. Any election to streamline consultation process should be justified by the decision-maker, with appropriate dispute processes to this decision in place.

In-built, periodic review mechanisms are necessary to ensure any consultation process that is adopted remains efficient, effective and fit for purpose and the requirements of all stakeholders.

Implementation considerations

Creating a hierarchy of instruments as proposed above should not impose onerous cost and complexity to consultation processes. Doing so will also assist to remove unnecessary costs and resources consumed with 'administrative' and 'non-controversial' instruments which will assist in achieving the NEO. Any streamlined consultation processes should be considered cognisant of the risk that any uncertainty that results from changes in consultation processes may increase stakeholders financing costs to compensate for this increased uncertainty.