



Your ref: ERC0323

26 May 2022

Mr Edward Orum  
Australian Energy Market Commission  
**Submitted online at:** [www.aemc.gov.au](http://www.aemc.gov.au)

Dear Mr Orum

### **Submission: Improving Consultation Procedures in the Rules Draft Rule Determination**

CS Energy welcomes the opportunity to provide a submission to the Australian Energy Market Commission's (AEMC's) *Improving Consultation Procedures in the Rules Draft Rule Determination (Draft Determination)*.

#### **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 questions**

CS Energy commends the AEMC on its more preferable draft rule determination which recognises the importance of appropriate consultation while balancing the need for flexibility in selecting a consultation process that is commensurate with the materiality of the proposed change.

CS Energy considers that the Draft Determination can be strengthened by clarifying and codifying the following issues.

**Brisbane Office**  
PO Box 2227  
Fortitude Valley BC Qld 4006  
Phone 07 3854 7777  
Fax 07 3854 7300

**Callide Power Station**  
PO Box 392  
Biloela Qld 4715  
Phone 07 4992 9329  
Fax 07 4992 9328

**Kogan Creek Power Station**  
PO Box 41  
Brigalow Qld 4412  
Phone 07 4665 2500  
Fax 07 4665 2599

## Expedited consultation procedure

### *Criteria of initial test for expedited procedure*

The test of the materiality of the proposed change suggested in the Draft Determination is whether the change is likely to have a significant impact on the NEM. CS Energy considers this would benefit from adding the following explicit criteria:

- Significant impact on related markets (for example, the contract market); or
- Significant impact on an individual participant or participant group (including consumers); or
- Significant interaction with or impact on other in-train or expected rule change processes.

CS Energy agrees the criteria should not be exhaustive or prescriptive but considers it prudent to ensure the consulting body considers the full range of potential impacts, particularly those that may not be immediately apparent. Stakeholders should be permitted to draw the consulting bodies' attention to significant impacts on any aspect of the market, market participants or other stakeholders when requesting to switch to the standard process. If a non-listed issue is repeatedly raised by stakeholders in their requests, the consulting bodies should consider adding that issue to the test.

To ensure robust consultation and market reform, identifying the materiality of a proposed change (and hence which consultation process to use) should not be influenced by its perceived urgency. The primary concern is how consulting bodies and stakeholders can delineate between genuine unforeseen issues that require immediate attention and either an anticipated issue that has increased in priority or an issue that is deemed "urgent" without appropriate supporting evidence.

It will also be important for the materiality test to apply consistency and transparency in what is regarded as a 'significant impact', as this can vary based on perspective. What is significant to one stakeholder may not be significant to another, while a change which has negligible impact on the operation of the NEM may have a significant impact on the contracts market or vice versa. The measure of materiality must be consistently applied across all consultations irrespective of focus.

### *Request for reverting to standard consultation procedure*

As per the current procedure, the consulting party should only be able to reject a stakeholder request to switch to the standard process if the request is "*misconceived or lacking in substance*". Weakening the criteria (for example, to "*if the consulting party still considers it appropriate to use the expedited process, and publishes reasons*", as suggested in the Draft Determination) would grant consulting bodies too great a degree of discretion when assessing stakeholder requests, particularly given the vested interest.<sup>1</sup>

A high benchmark must be maintained to ensure the views of stakeholders are adequately represented in the decision about whether or not to switch to the standard consultation procedure, and that the consulting body exhibits appropriate transparency and accountability.

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<sup>1</sup> Australian Energy Market Commission, [Improving Consultation Procedures in the Rule Draft Rule Determination](#), p. 7

In the event the criteria is weakened, CS Energy recommends the AEMC introduce an appeals process, whereby an independent third party (for example, the AEMC) assesses the concerns raised by stakeholders and determines the appropriate consultation procedure, to ensure stakeholders retain confidence in the process following the softening of the assessment criteria. This appeals process would need to be expedited promptly, to minimise the impact on the timing of consultation processes.

#### Minor and administrative change consultation procedure

##### *Definition of “minor or administrative change”*

CS Energy seeks clarification of what metric or assessment criteria will be applied to determine whether a proposed change is minor or administrative. Clear definitions of what changes fall under this classification will remove ambiguity, assist stakeholders to prioritise their assessment of these consultations and ensure the expedited rule change procedure is used when appropriate.

Further, a number of minor and administrative changes may individually represent an immaterial change but could cumulatively equate to a material change or display interdependencies. Grouping several minor or administrative changes into a more-significant consultation procedure would both reduce the number of consultation processes for all parties and allow for the holistic identification of interactions between the proposed changes and other in-train and expected reform processes.

CS Energy suggests the AEMC consider a batching procedure for minor and administrative changes in the final rule determination to address any potential unintended consequences. This would have the added benefit of increasing overall efficiency through a reduction in the number of consultation processes.

##### *Identify cases where minor changes will have unintended consequences*

The Draft Determination stipulates a limited amount of consultation on minor changes to foster transparency, support better regulatory decisions and enable stakeholders to identify cases where a proposed minor change may have unintended consequences.<sup>2</sup>

While stakeholders do not currently have an indication of how frequently instruments will be changed if this rule change proceeds, CS Energy is concerned that the lower threshold consulting parties face in initiating changes to instruments provided by the Draft Determination may result in stakeholders facing a large number of minor changes. As a result, stakeholders may miss changes that have unintended consequences amongst other minor changes.

As discussed above, clarification of what is classified as minor and administrative changes and the introduction of a batching procedure would give stakeholders greater opportunity to identify unintended consequences from proposed changes, including interactions between proposed changes and other reform processes.

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<sup>2</sup> *Ibid*, pp. 20-21

### *Contents of final response on minor and administrative changes*

CS Energy suggests expanding the reporting requirements from “*publishing... any comments it has received*” to “*publishing... any comments it has received and the consulting party’s responses to stakeholder comments*”, to ensure stakeholder concerns are adequately considered and addressed during the consultation process.

### Other issues

#### *Consultation notices*

CS Energy is concerned about the position in the Draft Determination that a register of instruments “*should be more effective than providing notices to affected stakeholders*” and “*there are other ways for stakeholders to stay abreast of change proposals including by subscribing to newsletters and by monitoring the AER and AEMO websites*”.<sup>3</sup> While CS Energy agrees with establishing an instrument register and subscription services, it is concerned that stakeholders may miss relevant consultation procedures particularly when they are embedded within the consultation party’s website.

The responsibility for the consulting party to appropriately inform stakeholders of consultation processes is frequently cited in best practice consultation principles, including:

- “*Stakeholders should be adequately notified of proposed consultation*”,<sup>4</sup>
- “*All those who have a justifiable right to participate in a consultation should be made reasonably aware of the exercise*”,<sup>5</sup> and
- “*You should inform stakeholders of proposed consultation by the most appropriate means*.”<sup>6</sup>

CS Energy does not consider stakeholders monitoring the register and AEMO and AER websites for changes to be the most appropriate means for consulting parties to inform stakeholders of new consultation processes commencing. Given the consulting parties know when they are commencing a consultation process, it should be incumbent on them to actively inform stakeholders. To this end, a mailing list could be established in conjunction with the register to allow participants to register for updates advising of changes to the register or consulting parties should be restricted to publishing new consultations weekly on a specified day. For example, the AEMC assists stakeholders to track its consultation processes by publishing consultation papers on Thursdays.

#### *Allow stakeholders to initiate changes to instruments*

The Draft Determination does not give stakeholders the ability to trigger a review of an instrument or determination, stating that “*requiring a consulting party to act within a certain timeframe on requests for a review of instruments and/or determinations is not, on balance, aligned with good regulatory practice... it could require that the consulting party invest significant resources in a review, limiting its ability to allocate resources to and deliver on priority areas and to efficiency group together related areas of work*”.<sup>7</sup>

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<sup>3</sup> *Ibid*, p. 33

<sup>4</sup> Queensland Government, [The Queensland Government Guide to Better Regulation](#), p. 17

<sup>5</sup> The Consultation Institute, [The Consultation Charter](#), p. 3

<sup>6</sup> Office of Best Practice Regulation, [Best Practice Consultation](#), p. 3

<sup>7</sup> Australian Energy Market Commission, [Improving Consultation Procedures in the Rule Draft Rule Determination](#), p. 25

CS Energy supports consulting parties grouping together related areas of work (refer discussion concerning batching of minor and administrative changes above), but notes stakeholders are required to invest significant resources in assessing and responding to AEMO and the AER consultation processes, limiting their ability to allocate resources to and deliver on priority areas.

Further, in response to CS Energy's suggestion of periodic review of the framework, the AEMC notes "*any person may submit a rule change request to the AEMC, including a rule change request in relation to the rules on a particular instrument*".<sup>8</sup> CS Energy's view is that stakeholders submitting rule change requests for minor changes in AEMO and AER instruments is not efficient, either in terms of process or outcomes.

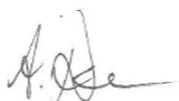
CS Energy does not consider the asymmetry between stakeholders' and market bodies' ability to initiate changes to instruments is consistent with the AEMC's goal to make consultation on subordinate instruments transparent and predictable, and requests the AEMC reconsider its position.

## **Conclusion**

CS Energy largely supports the AEMC's Draft Determination, and notes there are a few areas in which the final determination could be strengthened to ensure the intent of the rule change is delivered to the benefit of all stakeholders, and ultimately, consumers.

If you would like to discuss this submission, please contact Evan Jones (Market Regulatory Manager) on 0419 667 908 or [ejones@csenergy.com.au](mailto:ejones@csenergy.com.au).

Yours sincerely



**Dr Alison Demaria**  
Head of Policy and Regulation (Acting)

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<sup>8</sup> *Ibid*, p. 34