



Commission for Energy Regulation

An Coimisiún um Rialáil Fuinnimh

**CER Business Information Centre**

**Review of CER Public Consultation Process**

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**Summary of responses received to  
Proposals for improvement of CER Public Consultation  
Process**

**15<sup>th</sup> May 2008**

**Ref: CER/08/082**

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## **1.0 Introduction**

On 1 February 2008, the Commission for Energy Regulation (“the Commission”) published its consultation paper, entitled “Proposals for improvement of CER Public Consultation Process” - reference: CER/08/019. This followed a consultation carried out in late 2007 “Review of CER Public Consultation Process” – reference: CER/07/140.

The proposal paper outlined the Commission’s proposals for the future improvement of the CER’s public consultation process in four key areas. These are as follows:

1. Involvement of industry participants and the public in the consultation process;
2. Consultation paper structure and content;
3. Decision paper structure and content;
4. CER website.

Interested parties were invited to comment on a number of proposals in each of these areas. These proposals were developed with the intention of increasing participation from both industry and the public.

In addition, respondents were welcome to submit further suggestions on any aspect of the CER’s consultation process or customer service

The Commission received 11 responses to its proposals. The Commission has now considered the responses received and has decided to publish each response and a summary of responses. This will be followed by a decision paper, standard consultation paper template, standard decision paper template and a detailed timeline for implementation of each specific proposal which has been decided upon.

## **2.0 Purpose of this Paper**

The purpose of this paper is to provide a summary of comments received. A response to comments will not be provided at this stage of the process; all comments will be considered with equal weighting when developing the Commission’s final decision paper.

## **3.0 Summary of Comments Received**

The Commission received submissions on its consultation process from the following parties:

1. Airtricity
2. Bord Gáis Energy Supply
3. Bord Gáis Networks
4. Consumers Association of Ireland

5. Enterprise Development Agencies Joint Submission
6. ESB Customer Supply
7. ESB Networks
8. IBEC
9. Philip Lee Solicitors on behalf of Meitheal na Gaoithe
10. Synergen
11. Viridian Power and Energy

Respondents outlined a number of general comments highlighting the positive aspects of the overall consultation process at present. In addition, there were a variety of criticisms of the process as well as a number of helpful suggestions for improvement.

In general respondents indicated that they are in favour of the proposed changes/ improvements to the current structure and stressed the importance of making every effort to increase participation in the consultation process. However, many respondents clarified that there is room for improvement.

For the purpose of clarity, comments have been grouped under the four main headings as outlined in the original proposal paper:

1. Involvement of industry participants and the public in the consultation process;
  - Industry and public meetings,
  - Regulated company proposals.
2. Consultation paper structure and content;
  - Standard template for all CER consultation papers incl. information page and summary of key questions,
  - 'Jargon Free' consultation papers,
  - Regulatory Impact Assessment (RIA's),
  - Minimum 28 days consultation period,
  - Equal weighting for all options.
3. Decision paper structure and content;
  - Standard template for all CER decision papers including 'reason for decision' section, response to key questions section and next steps section,
  - Publication of all responses.
4. CER website.

## **3.1 Industry and Public Participation in the consultation process**

### **3.1.1 Industry and Public Meetings**

#### **A) Regular/ Individual Consultation Discussion Group**

While the Commission's proposal to form a regular consultation group was welcomed by a number of respondents, many responses questioned the usefulness of such a group.

Summary of comments received:

- One respondent believes the group would lead to improved understanding of issues amongst interested parties and ensure higher quality responses to the consultations that would follow;
- One respondent suggested separate groups should be formed for industry participants and consumers;
- Two respondents suggested high level background material should be published prior to these meetings;
- Background material as well as presentations and minutes should be made available on the Commission's website;
- This group would need to be accessible to all industry and non-market participants, this may not be practical and could undermine the purpose;
- One respondent believes this group would not provide industry and consumers with the same opportunity to approach the Commission. The reason outlined was that consumers can not compete in terms of resources with industry expertise on putting forward their views on technical matters;
- Greater clarification is required on the role and function of this group. There is a risk this group would be unproductive;
- Individual stakeholders must be able to meet with the Commission on a one-to-one basis;
- Consultations should be outlined at the beginning of the year and updated on a regular basis;
- This proposal should be merged with the proposal to hold open hearings and energy information evenings;
- While this type of group would increase industry participation, more needs to be done to ensure interested parties are fully informed on the matter being consulted on.

#### **B) List of upcoming consultations**

- The majority of respondents are in favour of this proposal as improved planning will lead to more informed and considered responses;
- A 6-12 month rolling calendar has been requested by respondents to aid long term resource planning;
- This should be published on the CER's website.

### **C) Open Hearing**

The Commission received a mixed response to this proposal; however it is clear that respondents do not want an 'Open Hearing' to replace the current written consultation process.

Summary of comments received:

- A number of respondents supported this proposal on the grounds that it would allow greater transparency in the decision making process and the opportunity for all stakeholders, including the public, to ask questions and gain a greater understanding of the relevant proposal;
- Concerns were expressed that regulated companies would have to undergo a different degree of challenge compared to other market stakeholders;
- One respondent stated that the regular consultation groups would be more useful than an open hearing;
- This proposal could be very resource intensive, leading to long delays and impose significant time and cost commitments on smaller entities;
- Open hearings should be confined to issues of 'significant consequences' such as fundamental industry reform and not price reviews;
- Price reviews involve a large volume of documentation, infrastructure proposals and commercially sensitive information. This would have significant time implications and undermine the value of the process;
- No evidence that it will add value to the consultation process;
- It was suggested that the 'open hearing' be used by the Commission to communicate on significant matters and create a means for interested stakeholders to express opinions in advance of a formal consultation paper;
- One respondent agreed with the concept of an open hearing to provide interested parties an opportunity to input/ query proposals by regulated entities however it is not suitable for a price review due to the complexity of their nature;
- One party was in favour of the current process whereby CER publish a consultation paper on price review proposals;
- One respondent was in favour of 'open hearings' and would like these to be recorded and transcribed;
- Concerns were expressed about the introduction of an 'open hearing' procedure. It is suggested that while it may be suitable in the context of price reviews, both CER and the regulated entity should present their

proposals and be open to questions during the process. Outside of price reviews, if one entity is required to present and defend their position than this should apply to all, including CER.

#### **D) Energy Information events**

- Respondents tended to be in favour of this proposal as it encourages communication between CER and a broad spectrum of stakeholders;
- Good method for outlining rationale behind developments in energy sector;
- Clarification was requested on what is meant by public meetings and how they would be structured.

#### **3.1.2 Regulated company proposals**

- Respondents were in favour of this proposal however, proposals must be published in sufficient time to be of use to participants;
- One respondent believed that all information capable of influencing the Commission's decision should also be published e.g. correspondence and communication with the regulated company regarding the proposal;
- The Commission was asked to clarify how implementation of this measure will "add significantly to the time it takes to complete a consultation period";
- The point was made that not all consultations emanate from proposals from regulated companies;
- One respondent believed that implementation of this proposal is critical for market transparency.

### **3.2 Consultation Paper Structure and Content**

#### **3.2.1 Standard Template for all CER Consultation Papers (including standard information page and summary of key questions)**

Respondents were very much in favour of this proposal.

Summary of comments:

- Information page and summary of key questions would ease process of responding and clarify issues on which CER is seeking a response;
- Background section could include a list of previous papers and documents of relevance to the consultation paper;
- Each consultation paper must provide details and access to, all related documents/ information;
- While the summary of key questions would be a useful mechanism for focussing responses, it should not also serve to limit responses to these areas;

- Importance of identifying the target audience in the summary page and providing simple clear bulleted summaries is stressed;
- One respondent suggested using the format of the European Commission. (i.e. Summary document of key issues in a simple question and answer format).
- Another respondent proposed that consultations should be published in ‘policy packages’ on a particular issue, in order to ensure interactions between individual consultations are clear;
- The legislative background should include details of the CER’s legislative authority to make the proposal, relevant domestic and/or EU legislation and details of relevant government policy.

### **3.2.2 ‘Jargon Free’ consultation papers**

Summary of comments:

- Most respondents welcomed this proposal as improvements in clarity of consultation paper language would aid understanding and encourage a greater level of response from stakeholders;
- Important however that topics are explained in full in order to have a full understanding of the issues;
- Reservations expressed about the caveat that consultation papers will be kept jargon-free “where possible”;
- Two respondents requested a vocabulary of terms used in consultation & decision papers be included with each paper;
- It was suggested that a definition section could be included in each paper which would aid the objective of jargon free papers;
- The CER should use footnotes and provide a summary of Acronyms where necessary.

### **3.2.3 Introduction of short Regulatory Impact Assessment (RIA) for major CER Consultations**

Comments received welcome the inclusion of a RIA into major consultations but suggestions were made that this should be standard for the majority of consultations.

- It was suggested that the Commission should work to produce a RIA template by quarter 3 of 2008;
- One participant suggests the CER look to the UK for best practice in this area;
- The introduction of RIA’s was welcomed in support of a more transparent, consistent and harmonised approach to regulation;
- Concerns were expressed that a ‘short’ RIA would not be sufficient in some cases. Full RIA’s should be conducted where decisions have environmental impacts or result in significant/ disproportionate costs for a particular group or sector;



- RIA's are a critical element of the consultation process but a balance should be found between the level of assessment needed and the CER resources required to carry out the assessment. Quantification of costs and benefits of each option should be set out with analysis data made available on request;
- One respondent suggested that in decision papers, information is provided on the process that is to be introduced to implement the decision and when the decision takes effect.

### **3.2.4 Minimum 28 days consultation period**

The majority of respondents welcome the introduction of a minimum 28 day consultation period.

- One respondent believed that a standard 21 day period is long enough if adequate notification is given to stakeholders through such mechanisms as an annual calendar for consultations and bi-monthly information on timelines;
- The 28 day consultation period should be supported by a system of widespread awareness extending beyond the bi-monthly newsletter;
- The suggestion was made that a minimum of 28 days be applied to all CER publications i.e. Discussion Papers as well;
- Two respondents were concerned about the allowance for shorter periods. The 28 days rule should only be relaxed following an unforeseen event, however this should be the exception. If urgency derives from an unexpected external event, then it is reasonable. If it is due to an internal error, then this is insufficient reason.

### **3.2.5 Equal weighting for all options**

The majority of responses indicate that interested parties are in support of the CER to give equal weighting for all options but suggest that the Commission should continue to indicate its preferred option where relevant.

- It is important that CER continues to outline a preferred option and weigh up advantages and disadvantages. This will allow responses to be focussed on core issues and reduce time spent responding to issues which CER may not be intending to pursue;
- One party stated that it is important from a regulatory transparency point of view that the Commission indicates its preferred option and why. If the CER has no preferred option, then it should say so too;
- Respondents encouraged the CER to make greater use of signposting where additional inputs are being sought to challenge or to re-enforce a view;
- Equal weighting of all options may not always be practical;
- The Commission's preferred approach should be identified where it is likely to be material to the outcome;
- Each consultation paper should detail the likely impact of each option on issues such as security of supply, prices, etc;

- While it is important the CER remains flexible and open-minded, where the CER has a preferred option it should be at least identified with a balanced description of all options also provided. Outlining a preferred option allows for more directed responses.

### **3.3 Decision Paper Structure and Content**

#### **3.3.1 Standard CER decision paper template (including Standard ‘Reason for Decision’ Section, Response to key questions section and Next steps section)**

The majority of respondents agreed with the proposed introduction of a standard decision paper template.

- The standard “reason for decision” section was also welcomed from a transparency point of view. This should indicate the specific point of influence for the CER in making their decision in a particular direction;
- Standard response to key questions was welcomed;
- One respondent suggested that CER consultation papers request a summary of questions be set out by respondents. The CER would then specifically answer these questions in its decision paper and provide any additional data requested;
- Another pointed out that in many responses from participants, direct questions are asked of the CER or clarifications sought. The CER should include a standard “Responses to Participants Questions” section in each consultation;
- A detailed next steps section with a full timescale should be included in every decision paper;
- Each of the consultation proposals outlined should be accompanied by a specific timetable for its implementation.

#### **3.3.2 Publication of all responses**

Most respondents were happy for full responses to be published provided that there was some mechanism such as “confidential appendices” to allow commercially sensitive information to be submitted to support positions.

- One respondent suggested that it may not always be necessary to publish all responses;
- Some respondents would prefer current arrangements to remain in place whereby respondents retain the right to have a response kept confidential. i.e. including confidential information in a separate Annex, “confidential”;
- Essential to use confidential appendices and respondents should have control over what part is confidential;

- Another respondent suggested that responses should be published within 5 working days of receipt by the Commission.

### **3.4 CER website**

The proposed improvements were welcomed by all respondents, in particular the improved search function and further development of consultation section. In addition a number of further suggestions were made.

Summary of comments:

- Consultation section should list all consultations by date in one document and not just under broad headings of Renewables, Gas and Electricity;
- A useful tool would be a “Consultation and Decision” spreadsheet similar to that on the AIP website, where consultations were searchable by title, date due, date published etc;
- Improvements needed in website particularly to standardise naming of CER documents and coding;
- There are a number of positive design aspects to CER website which should not be lost such as document consultation section;
- The Commission needs to commit time and resources to further improve the CER’s website, in particular the accessibility of consultations and archived documents;
- Part of the consultations section of the CER’s website could be more focused on consumers;
- The electronic archive also needs to be updated regularly;
- A full list of CER ‘officers’, their roles and direct dial telephone numbers should be published on the website.

### **3.5 Additional Comments received**

#### **Timeline for Implementation**

- One party suggested a standard approach for consultation should be progressed across both regulators in the all island market.
- Clarification was requested from one respondent that the CER’s proposals are based upon “Reaching Out, Guidelines for Consultation for Public Sector Bodies”;
- There was a suggestion from one respondent that the CER needs to be more imaginative in how it gets feedback from consumers/ public;
- Another party suggested that different weightings should be applied to industry and public submissions as industry has greater resources to put its case across;
- Not all consultations will require the full suite of proposals. In order to prevent “over-zealous” application of these measures, the Commission should issue guidance to its employees on consultation management and engagement;

- One respondent suggested that responses to queries made during a consultation process are published on the CER's website for all interested parties to view;
- One party stressed the importance of the CER seeking independent advice regarding the technical aspects of regulated companies' proposals.

## **4.0 Next Steps**

The Commission would like to take this opportunity to thank all respondents for their valuable input to this consultation. As outlined in the consultation paper, public consultation is a critical aspect of the regulatory decision making process. In light of the comments received the Commission is working towards publishing a final decision.

**It is anticipated that a decision paper outlining specific proposals to be implemented along with a detailed timeline and standard templates for consultation and decision paper will be published by Friday 30<sup>th</sup> May 2008.**

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