



Response (Draft): Proposals for improvement of CER Public Consultation Process

CER/08/019

March 7th, 2008

Airtricity welcomes the opportunity to respond to the Commission's proposals for improvement of the Public Consultation Process. The Commission has shown good responsiveness to shareholder's comments in the first round of the consultation.

We have a number of specific comments with regard to a number of the proposed measures:

- the Commission should provide a specific timeline for implementation of the proposals;
- the "open hearing" should not replace a full paper consultation;
- the publication of regulated company proposals should happen sufficiently in advance of related consultations;
- the Commission should include a standard "Answers to Questions Raised" section in consultations;
- Regulatory Impact Assessments should be standard on the majority of consultations – the CER should look to the UK for best practice;
- the reasons for why a consultation period could be less than 28 days should be clarified;
- there should be a mechanism for ensuring the confidentiality of commercially sensitive submissions.

1. Concrete timelines

1.1. The implementation of all proposals in the consultation document should have specific timelines attached. This will provide more certainty to participants that the proposals will be implemented.

2. Industry and Public Participation in the Consultation Process

The proposals for improving public and industry participation in the consultation process should all be implemented. This will result in a greater degree of participation and ease the perception of a "futile" consultation process.

2.1. Regular Consultation Discussion Group

2.1.1. Airtricity welcomes the proposal to establish a regular consultation discussion group. It will ensure a shared understanding of issues and a shared vocabulary amongst respondents. This will ensure a higher quality of response to the CER's consultations. It will improve respondents understanding of the answers being sought by the CER.

2.2. Publish list of upcoming CER consultations

2.2.1. Airtricity supports this measure. It provides clarity to participants.

2.3. Open Hearing

2.3.1. Airtricity supports the principle of holding open hearings for major consultations. It promotes open discussion between the CER and respondents for example the recent Gate 3 discussion event.

2.3.2. The suggestion that such an open forum would replace a full “paper” consultation should not be pursued. It would result in decisions being reached in a fashion that was not fully auditable and more ambiguously. Individual understandings of a discussion will be more subjective than a paper document.

3. Public Meetings

3.1. Energy Information Events

3.1.1. Airtricity welcomes this proposal. It encourages communication between the CER and a broader selection of stakeholders. For example, the recent CER Open Day provided participants with a very clear understanding of the structure and year ahead plan of the CER. It also provides an opportunity for participants to engage on a one-to-one basis with officers of the CER that might not otherwise be available.

4. Regulated Company Proposals

4.1. Publication of Regulated Company Proposals

4.1.1. Airtricity supports the principle of publishing regulated company proposals. In implementation, they should be published in a sufficiently timely fashion to be of use to participants, for example in the tariff setting process.

4.1.2. We ask the CER to clarify how the implementation of this measure will add “significantly to the time it takes to complete a consultation period”.

5. Consultation Paper Structure & Comment

Airtricity supports the standardisation of the consultation paper format.

5.1. Standard Information Page

5.1.1. The information page will ease the process of responding to a consultation.

5.2. Standard summary of key questions

5.2.1. Clarity on the issues to which the CER is seeking a response is welcome.

5.3. Response to Direct Questions

5.3.1. In many responses from participants to historic consultations, direct questions are posed of the CER, or clarifications are sought. The CER should include a standard “Responses to Participants’

Questions” section in each consultation. This allows the CER to make clarifications to participants in a standard fashion.

5.3.2. It improves the sense that the CER is directly responding to participants. This would also reduce the perception in the market, raised in a number of responses to the original consultation, of the futility of participating.

5.4. “Jargon Free” consultation papers

5.4.1. Improvements in the clarity of consultation paper language will encourage a greater level of response from stakeholders as it aids understanding.

5.5. Regulatory Impact Assessment (RIA)

5.5.1. Airtricity welcomes the intention of including a short RIA in major consultations. We feel however, that an RIA should be included with the majority of consultations, to permit participants to readily assess the importance of the consultation document. The CER should work to produce an RIA template by quarter 3 of 2008. We suggest following the format in the UK; in a 2004 analysis for the EU Directors of the Better Regulation Group, the UK was cited as a member state following best practice: *“The “best practice” which is recommended is that of the United Kingdom”*.¹

6. Length of time allowed for responses

6.1. Minimum of 28 days consultation period

6.1.1. Airtricity supports the suggested minimum consultation period. We have concerns about the provision for the CER to reserve the right to apply a shorter consultation period. The document references the urgency of the decision as a reason to apply a shorter period. The CER should specify in its response to this review the circumstances in which this contingency would occur. While accepting statutory review periods as a reason for a diminished consultation period we feel “urgency” is too ill-defined. If the urgency derives from an unexpected external event, then it is reasonable. However if the urgency is due to internal error then it is insufficient reason to shorten the consultation period.

6.2. Equal weighting for all options

6.2.1. The CER should give equal weighting to all options, but indicate its preferred option. This will allow respondents to focus their responses on key issues and not draft unnecessarily lengthy counters to options which the CER is not minded to pursue.

7. Decision Paper Structure and Content

7.1. Standard CER Decision Paper Template

7.1.1. Airtricity welcomes this initiative. It allows easier cross referencing of consultation and decision documents.

7.2. Standard “Reason for Decision” section

¹ http://www.betterregulation.ie/attached_files/Pdfs/Report%20on%20RIA%20in%20the%20EU.pdf

7.2.1. We welcome the transparency created by the provision to reference the specific submission/point that influenced the CER in reaching a decision. It allows respondents to have a better understanding of the reasoning behind a decision and ensures auditability of the chain of a decision.

7.3. Publication of all responses

7.3.1. Airtricity believes it is essential for full transparency that all responses are published in full alongside the decision. However, we feel there should be a mechanism- such as the “confidential appendices” mentioned in the consultation document- whereby respondents can submit commercially sensitive information to support their argument. In order to support their case, participants may have to refer to information that could prejudice their interests were it to be distributed around the market.

7.4. Standard Response to Key Questions Section

7.4.1. This is welcome.

7.5. Standard “Next Steps” section

7.5.1. This is very definitely welcome. Next steps and a timeline would provide stakeholders and the market with clarity.

8. CER Website

This is an area in which the proposed improvements are very welcome. It can be difficult to locate documents on the website.

8.1. Development of an improved search function

8.1.1. Airtricity would strongly encourage the CER to augment the search function to return a more comprehensive list of results upon a search.

8.2. Further development of the documents by year section

8.2.1. This would facilitate the speedier navigation of the website.

8.3. Further development of the Consultation section

8.3.1. The current “Consultation” section should list all consultations by date in one document and not just under the broad titles of “Renewables”, “Gas” and “Electricity”. A useful tool would be a “Consultation and Decision” spreadsheet similar to that on the All-Island Project Website, where the consultations were searchable by title, date due, date published etc.

8.4. Development of a Decision documents storage section

8.4.1. Listing the decision documents in a section would make the website more user friendly. It would allow users to pull up all decisions from one screen and research past regulatory decisions, rather than having to navigate in and out of different screens.