

Proposals for Improvement in the CER Public Consultation Process

(Synergen's response to CER/08/019)

1 Background

This paper is Synergen's formal response to the CER's paper "Proposals for Improvement of the CER Public Consultation process" CER/08/019. Synergen has no objection to this response being published.

A summary of Synergen's views is provided in the CER's pro-forma table within Appendix A of this paper and the main body of this paper provides further comments on specific areas of the CER proposals.

2 Comments

The paper is a forward looking step and should serve to benefit all stakeholders (including industry participants) in:

- understanding the issues being consulted upon;
- responding on the basis of a clear enunciation of the issues; and
- receiving assurance that views submitted have been properly considered.

Thus, the broad direction of these proposals are both welcomed and supported by Synergen but there are some areas where Synergen believes that the Commission's proposals should be re-evaluated and the approach re-defined. Specific comments are set out below in the sections below.

2.1 Industry and public participation in the consultation process

The consultation process needs to balance thoroughness and transparency with ensuring that the scale and scope of regulation is appropriate – and not unduly onerous. Thus the elements of the proposals that provide opportunity for early involvement in issues being consulted on are welcomed – notably the Consultation Discussion Group, advance notice of consultations and Individual Consultation Discussion Meetings. The Energy Information Events and publication of Regulated Company Proposals is also supported. However, the "Open Hearing" as described does raise some concerns.

As set out the "Open Hearing" could oblige regulated entities to be required to present their proposals / position and be questioned on it by a wider selection of parties. Synergen is concerned with the universal application of this approach – if one entity is obliged to participate in this process, then it is assumed that all regulated entities would be (on the basis of equity). For smaller participants this

would be a significant requirement in terms of time and potentially expenditure. However, there is no reason why only regulated entities should be required to present and defend their positions on some issues any more than other respondents would be and indeed the CER. There appears to be no reason why, if such an arrangement was implemented, all respondents and the CER, should not also be obliged to participate on the same basis.

Synergen notes that the example provided is one of a regular price review. In this form of consultation, and areas where a monopoly entity is making specific proposals over its services and revenues, then there does seem to be a case for some elements of the Open Hearing – specifically a presentation of the views of both the regulated entity on its proposals, and a presentation on its proposals by the CER. Both the regulated entity and the CER should be open to questions within this process.

There should be no requirement on other regulated businesses (operating in a competitive sector) to present their views at an open hearing – although if the process was to extend beyond price control reviews, they should have the opportunity to do so.

The Open hearing process is not appropriate for all consultations. The CER should set out the criteria under which an open hearing would be appropriate, and specify (in its list of upcoming consultations) which consultations this would be used for.

2.2 Consultation paper structure and content

The proposed structuring of the consultation papers is welcomed – particularly the proposed inclusion of a summary of key questions, and the impact assessment.

On the impact assessment, a balance needs to be struck between providing sufficient information to inform assessment of the proposals, and the CER resources needed to produce consultations. Synergen believes that an impact assessment is a critical element of the consultation – not least in demonstrating that the issue has been thoroughly considered. Consequently, Synergen supports an impact assessment being included, but does not believe that it should be qualified as “brief”. The CER should:

- a) use its judgement to decide what level of impact assessment is appropriate for any particular issue; and
- b) should take a positive approach to providing additional supporting evidence (i.e. work done but not initially published) if requested.

Regarding the preferred option / all options get equal weighting question, there are clearly arguments for both positions. If all options are viable, and have the potential to be taken forward and the CER has an open mind on the approach to be taken then presenting all options without a “preferred” option would be appropriate. If, however, the CER does have a preferred approach, Synergen

would rather that this was at least identified and its reasoning set out. This can be done whilst providing a balanced description of any other proposals.

2.3 Decision paper structure and content

Synergen believes that anyone submitting a response should retain the right to have the response kept confidential, and that this privacy should not be subject to CER sanction. Historically, Synergen has not objected to its responses being published for the vast majority of issues and Synergen has only requested that responses be kept confidential when responding on certain specific matters. There are areas where confidential data needs to be included to support a response – and that this should not be disclosed. The existing approach of submitting any confidential information in a separate Annex, labelled “confidential”, works well and should be retained.

The paper suggests that the CER will specifically respond to (each of its own) questions posed in the consultation paper. Whilst this is sensible, a key requirement for Synergen is that the CER should specifically answer questions posed in the consultation responses to the CER. Synergen (notably in the SEM consultation process which it recognises was not solely a CER exercise) posed specific questions to the Regulatory Authorities. Sometimes these questions were addressed, sometimes they were not. Synergen believes that if specific questions are submitted to the CER, then the CER must answer them in a fulsome manner and provide any additional data requested (unless that data is commercially confidential to another party).

2.4 CER website and other matters

Synergen supports the steps being taken to improve its website. In order to improve the accessibility of the CER, Synergen proposes that the CER publishes on its website and maintains a list of key CER officers and their roles / responsibilities – along with direct dial telephone numbers / e-mail addresses.

Appendix A Response Table

This appendix contains Synergen's responses in the tabular format set out by the CER in CER/08/019a.

CER Proposal	Yes	No	Synergen Comments
1. Industry & Public Meetings — Regular Consultation Discussion Group — Publish List of upcoming CER consultations — Individual Consultation Discussion Meetings — Open Hearing		Not Agreed	Agree with all elements except the Open Hearing. This would be acceptable ONLY if it applied to price controlled activities (the example provided in the consultation is of such a consultation Open Hearings should only be in addition to, not instead of, written consultations.
2. Public Energy Information Events	Agree		
3. Publication of Regulated Company Proposals	Agree		
4. Standard consultation paper template	Agree		
5. Standard Information page to be included at beginning of all consultations	Agree		
6. Summary of key questions posed to be included in each consultation	Agree		

CER Proposal	Yes	No	Synergen Comments
7. 'Jargon Free' consultation papers	Agree (With reservations)		The overwhelming need is to be accurate – and the regulated businesses are complex undertakings. The CER should set out terms in full (with acronym in brackets after first use) and include explanatory footnotes if required.
8. Brief Regulatory Impact Assessment		Disagree	Potentially insufficient. A full impact assessment is likely to be unduly onerous. However, quantification of costs and benefits of alternative options should be set out – along with underpinning analysis. If the analysis is numerical (eg spreadsheet) it may not be necessary to publish it, but it should be available on request.
9. Minimum of 28days consultation period	Agree		The SEM process in particular failed to allow 28days notice on some important consultations, as the timescales were pressing. However, the pressing timescale was often a result of delays with the RAs. There may be times when something unforeseen needs to be consulted on and the timelines are genuinely urgent (in which case the 28 day rule should be relaxed) but this would be very much the exception.
10. Equal weighting for all options		Disagree	This is not necessary in all cases. It is important that the CER is flexible an open minded, and open to argument but this does not require that app options are given equal weighting. Synergen does not mind a referred option being put forwards as this allows responses to be more effectively directed. In short, if the CER has no preferred option, then all options should be presented equally. If there is a preferred option, Synergen would rather know this than have all options presented as being on the table.
11. Standard decision paper template	Agree		

CER Proposal	Yes	No	Synergen Comments
12. Inclusion of standard heading 'Reason for Decision' in all decision papers	Agree		
13. Publication of all responses received	Agree		Subject to confidentiality requests. Also, responses should be published within 5 working days of consultation closure.
14. Standard response to key questions section.			<p>Insufficient. This would allow for discretion in which questions are answered.</p> <p>There is clearly an issue here in terms of what specific questions have been posed by consultees – if this is not clear, then clearly the CER the CER would face difficulties in answering them.</p> <p>Suggest that CER papers request that a summary of questions is set out by respondees in their responses. CER then picks up all these comments.</p>
15. Standard 'Next Steps' section to be included in all decision papers.	Agree		With timescales.

CER Proposal	Yes	No	Synergen Comments
16. Further development of CER website - Improved Search Function - Developments of 'Documents by Year' section - Development of the 'Consultation' section - Development of Decision Documents Storage section	Agree		