

10 June 2022

Ms Clare Savage
Chair
Australian Energy Regulator
GPO Box 3131
Canberra ACT 2601

Email: [REDACTED]

Dear Clare,

Re: Tender Rules with respect to long-term energy service agreements

Thank you for your feedback dated 8 March 2022, following consultation on the matter of the draft tender rules prepared by AEMO Services acting as the NSW Consumer Trustee, with respect to long-term energy service agreements as required under section 47(6) of the *Electricity Infrastructure Investment Act 2020 (NSW)* (EII Act)

The Consumer Trustee is now focused on delivery of an enlarged Q4 2022 tender, and the draft tender rules are being updated accordingly. A second round of consultation is underway with AER officers on the updated draft tender rules which consider AER's earlier feedback.

Whilst that further consultation is underway, I have taken the opportunity to outline our responses to your comments below:

[Non-price assessment \(section 2.4\)](#)

The AER's comments on the non-price assessment (section 2.4) highlight the importance of the independence of the Consumer Trustee in running assessments including external advice received during the assessment process.

The Consumer Trustee agrees and confirms conflict of interest will be managed through the tender probity framework.

[Questions on price proposals \(section 2.5\)](#)

The Consumer Trustee agrees that all questions received from proponents and answers provided should be available publicly on the Consumer Trustee's website (with the exception of information that is determined to be commercial in confidence).

Financial value of long-term energy service agreements (LTESAs) is to be the Consumer Trustee's primary consideration

The Consumer Trustee acts in the long-term financial interests of NSW electricity customers to improve the affordability, reliability, security and sustainability of electricity supply. Whilst assessing bids, the financial value of an LTESA will be the Consumer Trustee's primary consideration, the deliverability and commercial viability of a project will also be considered, these factors are assessed in merit criteria 3, 4 and 5. The scoring matrix and information requirements for proponents will be detailed in the tender guidelines which are under development and will be made publicly available.

The Consumer Trustee will analyse outcomes of tender processes along with feedback from proponents after each round to ensure that areas for improvement are identified and actioned where required. A focus on continuous improvement will form part of the business operating model.

Eligibility and merit criteria

In response to the AER's comments for eligibility and merit criteria:

- Eligibility criteria 2 – the Consumer Trustee agrees that long duration storage and firming should have eligibility constrained where projects have previously been awarded an LTESA and consider that eligibility constraints on capacity for these projects should remain as per the minimum requirements of the EII Act.
- LDS eligibility requirements- the EII Act provides LDS eligibility requirements, which the Consumer trustee supports. Similarly for firming LTESA we will adopt the requirements of the EII Act which does not mandate duration.
- In references to Demand Response, it is expected that it could compete as firming, and this will be made clear in future communications.
- The portfolio assessment process, in addition to assessment of cumulative impacts of proposals in a specific tender round, will consider existing LTESAs that the Scheme Financial Vehicle (SFV) would have awarded.
- SFV discretion - the feedback is noted. The role of the SFV and its discretion will be articulated in tender materials

Outstanding merit

It is correct that regulations will define 'outstanding merit'. Clear communication on applicability of 'outstanding merit' will be published.

Frequency of consultation with AER on tender rules – s47(1)

The Consumer Trustee intends to recommend to the SFV the award of LTESAs, via competitive tenders. In the event of extraordinary circumstances where the procurement method needed to be altered, in the long-term financial interest of NSW electricity customers, the Consumer Trustee would consult with the AER as to a process that would apply under s 47(1).

I thank you for the productive consultation process, helpful feedback and look forward to continuing to work with you and the AER in the future. For further information on tender rules or to discuss how AER's feedback has been incorporated please contact Baharak Sahebkhitiari, General Manager Commercial at

Yours sincerely,



Paul Verschuer
Executive General Manager
AEMO Services Limited