Clean Energy Investor Group

50 Camberwell Road Hawthorn East VIC 3123

13 October 2026

NEM Review Implementation Taskforce
Department of Climate Change, Energy, the Environment and Water (DCCEEW)
Commonwealth Government
Lodged online at: DCCEEW Consultation hub

Dear Taskforce,

Response to Commonwealth Government's NEM Wholesale Market Settings Regulatory Reforms

The Clean Energy Investor Group (CEIG) welcomes the opportunity to provide feedback on the Commonwealth Government's consultation paper and draft regulatory package on the National Electricity Market Wholesale Market Settings Regulatory Reforms published in September 2026.

CEIG represents domestic and global renewable energy developers and investors, with approximately 18GW of renewable energy capacity in the NEM across 139 power stations and a combined portfolio value of more than $41 billion. CEIG members' project pipeline is estimated to be more than 150GW across Australia. CEIG strongly advocates for an efficient transition to a clean energy future on behalf of the investors who will provide the low-cost capital required for this transition.

KEY POINTS

Overview

- CEIG supports the ESEM as the right response to the tenor gap.
- Much of the commercially important detail sits in future Guidelines, so investors can't fully assess the package yet.

- Transmission is a critical enabler. Without firm connection dates, ESEM projects won't reach financial close.

Governance

- The FME needs an investment-grade rating, supported by a jurisdictional guarantee.
- Guidelines should be flexible, but only within published bounds:
    - no changes during a round
    - 12 months' notice of any tenor change

CCD process

- We suggest including a requirement that pro-forma contracts be bankable/capable of supporting investment in new projects.
- The ESEMA should publish reasons when it departs from working group advice and consult lenders on draft contracts.
- Contracts should only change between co-design rounds in response to clear failure.
- CEIG supports a separate co-design process for offshore wind.

AET and tender plan

- CEIG suggests a two-year notice period before a state target is cut, with increases taking effect immediately.
- We note the gap between the delivery of state targets and national goals, and suggest several options to close the gap:
    - a minimum procurement floor linked to the ISP
    - a Commonwealth-funded top-up tranche (by allowing the Minister to nominate extra volume - this would need changes to cost recovery provisions though)
    - a reconciliation report each cycle
- CEIG suggests options to strengthen the tender plan framework:
    - clear, published guidelines defining circumstances for non-procurement
    - publish unprocured volumes offered and cleared, relevant pricing information, and its reasons for the decision, including any assessment applied
    - six months' notice and published reasons before skipping a round
    - unprocured volumes roll into the next round
    - publish an annual report comparing the plan with actual procurement

Eligibility

- Competition thresholds should count only stakes that give control (dispatch control or majority ownership), not any 10% stake, with listed and unlisted investors treated the same.
- Projects holding an LTESA or CIS contract should be able to bid, and give up that

contract (at no cost) only if they win an ESEM contract.

- Jurisdictional criteria should be:
  - pass/fail
  - harmonised across jurisdictions where possible
  - proportionate and verifiable
  - consulted on & published 12 months before a round

Strategic reserves

- CEIG supports the strategic reserve mechanism, but with:
  - an independent, published assessment of whether a reserve is needed
  - transparent formulas for sizing reserves
  - a least-cost test
  - an in-market period to apply to strategic reserves when moving to an ESEM contract

ESEM procurement

- CEIG supports:
  - price-only assessment with contingent bids
  - a firm notice-to-proceed deadline with extensions only for genuine force majeure
  - no renegotiation of ESEM contract terms
- CEIG recommends including a bond at submission into ESEM tenders (similar to LTESA model), that is proportionate & capped at a $/MW.
- We suggest that there be a minimum ESEM contract tenor of at least 10 years, and that in-market periods and tenors published together and differentiated by technology.
- On contract recycling, we support over-the-counter sell-downs, with:
  - a 24-month sell-down calendar
  - publication of the FME's unsold position and prices
  - a published fair-value method for proponent buybacks
  - capped credit support that a project company can meet without parent guarantees
  - transparent, long-dated sales to large energy users

Cost relief & cost recovery

- Support recovery through NEM settlement with smoothing, which supports the scheme's political durability.
- Cost relief is essential so PPA buyers do not pay twice.

MMO

- Support an MMO above a size threshold covering all three ESEM services, but:
  - sell-side only for generators
  - always-on only for large generators with a retail position, voluntary for other

large portfolios and single-asset owners
    - an exemption for ESEM contract holders during their ESEM tenor
- The MMO and contract recycling must reinforce each other rather than compete.

CONTEXT

Overview

CEIG supports the Electricity Services Entry Mechanism (ESEM) as the right response to the tenor gap. We have assessed the consultation package against the five tests that matter most to investors: revenue certainty, counterparty strength, fair risk allocation, stable rules and a predictable tender pipeline.

However, much of the commercially important detail needed to apply these tests is not in the Bill and has been deferred to Guidelines to be made by the ESEM Administrator (ESEMA) or the Australian Energy Regulator (AER). Until these Guidelines are developed, investors cannot fully assess the package.

Above all, the ESEM will only succeed if its contracts are bankable. As CEIG set out in its submission on contract co-design[1], this means:

- managing force majeure risk at the ESEMA level rather than leaving it with sellers
- a $0 price floor in negative price periods
- stable technology-specific reference indices
- price caps that support both bankability and merchant upside.

Risk that proponents cannot manage is either priced into bids, raising costs for consumers, or keeps projects out of the auction altogether.

Transmission is a critical enabler of the ESEM

While CEIG understands that transmission falls outside the scope of this review, it remains a critical enabler for the successful delivery of the ESEM. Although the ESEM encourages investment in generation and storage, investors will remain reluctant to proceed to FID, then construction without a firm connection date (or else the project may not be bankable if lenders are not convinced that the project will be able to evacuate its output as expected).

To address this, we suggest making the Integrated System Plan (ISP) more binding for transmission development, for example, specifying how much and when transmission capacity must be built. At present, no party is clearly accountable for implementing the

[1] https://www.ceig.org.au/wp-content/uploads/2026/10/CEIG-Submission_ESEM-Contract-Co-Design.pdf

ISP's transmission recommendations, outside of renewable energy zones (REZ). This is an issue we have highlighted previously, and we believe Ministers must take a stronger leadership role to ensure timely delivery of critical transmission projects.

Governance

Counterparty strength

ESEM contracts will run for a decade or more, and lenders will assess the FME as they would any offtaker. CEIG welcomes the Bill's requirement for full cost recovery on a non-profit basis (s 118AAS(6)(a)), which is the foundation of the FME's credit.

The Consultation Paper states that cost recovery will "support the FME to achieve an investment-grade credit-rating", but the Bill does not make this an objective or provide a backstop. Jurisdictions may appropriate funds (s 118AAO(f)) but are not committed to do so. Each of these gaps adds a credit or sovereign risk premium to bids.

CEIG recommends that the Bill state that the FME must hold an investment-grade rating, supported by a jurisdictional guarantee.

Guidelines

CEIG supports that the ESEM Guidelines will set lead times, contract and in-market periods, milestones, damages, the NTP date, bond matters and the assessment methodology (cl 4AA.C.36(b)(7)–(13)). It is important for the ESEMA to have the flexibility to change or adjust these settings based on market changes, but within published bounds. Settings should not change during a round, and changes to tenor should be signalled at least 12 months in advance.

CCD process

CEIG supports an industry-led contract co-design (CCD) process and welcomes its formal establishment in the Rules.

CEIG understands that the contract co-design working group set and prioritised contract evaluation criteria (i.e. bankability, attractive for both sellers and buyers, operationally achievable, simple to value, efficient at allocating risk, adaptable to the future market, and complementary within a set of ESEM contracts). However, the Bill requires pro-forma ESEM contracts to be consistent with a derivative arrangement, standardised, fungible and tradeable, and consistent with market conventions (s 118AAM(2)(a)). It says nothing about whether contracts can support project finance. CEIG recommends adding to s 118AAM(2)(a) a requirement that pro-forma contracts be bankable/capable of supporting

investment in new projects.

CEIG welcomes the guaranteed CCDWG seat for the perspective of stand-alone developers (cl 4AA.D.5(a)(2)), which addresses a gap CEIG identified in the Panel's 2025 pilot contract co-design process.

We support the ability of ESEMA to vary contract structures outside of the formal 4-yearly contract co-design process, but suggest that doing so should not be done lightly. Any variation should only be used to respond to clear failure of the current structures. This should also come with a consultation process to ensure the perspectives of different types of market participants feed into ESEMA decision making.

CEIG recommends:

- the ESEMA publish reasons when it departs from a CCDWG recommendation, or varies a designated contract under cl 4AA.C.17(c)
- the CCD Guidelines require the ESEMA to consult proponents and lenders on the bankability of draft pro-formas before designation (i.e. via the CCDWG and a separate independent lenders roundtable).

CEIG supports a separate CCD process for offshore wind.

CEIG considers that ESEM contracts should be for electricity only, and should not include Renewable Energy Guarantees of Origin (REGOs) or other environmental certificates. Including certificates tied to individual projects would undermine the fungibility of ESEM contracts, which is essential for them to be traded and recycled.

Anticipated entry trajectory (AET) and tender plan

<u>The AET and emissions considerations</u>

The ESEM and the AET process allow for a focused delivery of state targets, but a clear weakness is the dependence on those state targets. If a state withdraws its targets, the trajectory for that state falls back to the reliability standard alone. One change of state government could collapse the pipeline for investment, which creates a disincentive to investing in front-end development work and risks returning to boom-bust cycles according to political changes – precisely the outcome that a national scheme should help avoid.

We acknowledge the position that the ESEMA will not consider “economy-wide greenhouse gas emissions targets or targets of jurisdictions not in the ESEM, including the Commonwealth”. However, the policy paper says “all ESEM entities must also consider the NEO” (brought in by s.118AAK(1) in the Bill - “an entity must... have regard to

the NEO"). It is unclear how the emissions component of the NEO will be pursued under this section, especially in circumstances where jurisdictions do not provide any ambition beyond the reliability standard.

If the only consideration of the emissions component of the NEO is that the Rules require bulk energy to be zero emissions, then it hardly warrants a stand-alone principle stating that entity behaviour must have regard to the NEO. We therefore submit that this reference to the NEO should require something additional. A minor step would be to strengthen the language in s.118AAK(1) from "must have regard to" to "must seek to contribute to". While this centralises a pursuit of the NEO, it still does not provide much solidity to investors.

Another complication is that AEMO will produce an ESEM scenario based only on nominated state targets and an ISP scenario that includes Commonwealth targets. The difference between these two scenarios is a volume of renewable energy capacity that nobody is committed to buying once the CIS ends. It also means that the ISP is planning transmission to accommodate renewable energy capacity that the ESEM might not procure.

To address these two issues (need to consider the NEO; a delivery gap between transmission and generation scenarios), we suggest considering the following:

- **A minimum procurement commitment beyond the reliability standard**. This could be added by introducing a second minimum into s.118AAI(a) alongside the reliability standard. This could be articulated as zero-emissions bulk energy build of at least X% of that jurisdiction's renewable build in the ISP optimal development path. The ISP is a technocratic document, even if it incorporates political commitments, and already has regard to the NEO. Establishing an emissions-linked procurement floor should be a no-regrets approach. We have not yet done any analysis to offer a position on what "X" should be.

- **A Commonwealth funded top-up tranche**. The framework should allow the Commonwealth government to nominate an additional volume to meet the national target. This could effectively bring the intended outcomes of the CIS into the ESEM machinery and could be achieved by amending s.118AAI to allow the Commonwealth Minister to nominate extra volume (eg. Up to an ISP or IASR floor). This volume should be kept in the same auction round to deepen competition. This approach would also need changes to the cost-recovery provisions, as well as a mechanism for discouraging jurisdictions from not lodging their own targets for the purpose of leaving the Commonwealth carrying the cost.

- **Publishing a reconciliation report each cycle.** If the central pillar of the wholesale

market's approach to bringing zero-emissions bulk energy into the system hinges on state targets, AEMO or ESEMA should be tasked with publicly reporting on the gap in volume between the ISP's least-cost path to combined state/Commonwealth and the ESEMA scenario. Any gap between state ambition and national goals should be made explicit. This then also sizes any Commonwealth-led interventions, either using a procurement floor or a top-up tranche.

Separately, there should also be a notice period before jurisdictional targets are withdrawn or lowered. Any reduction to a target should only take effect after a full two-year cycle. This holds governments to delivering what has been committed to and prevents the pipeline from collapsing entirely. Any increase in a jurisdictional target should be allowed to take effect immediately.

Developing and delivering tender plans

Renewable energy developers commit capital to a pipeline years before a tender round, through land agreements, environmental studies, planning approval processes and connection studies. They need confidence that the anticipated entry trajectory (AET) will translate into tender rounds, with volumes they can plan around.

CEIG welcomes the Bill's requirement that the ESEMA "must undertake procurement rounds to address shortfalls identified in the anticipated entry trajectory" (s 118AAJ(2)(a)). CEIG also welcomes the fixed timetable: a trajectory every two years by 30 September, and a tender plan within three months of it (cl 4AA.C.3(c), 4AA.C.4(a)(2)).

However, the rules state that the tender plan is "not binding on the ESEM Administrator" (cl 4AA.C.4(b)), and rounds may be skipped where the ESEMA believes need or competition is insufficient (cl 4AA.C.10(c)). This is weaker than s.118AAJ(2) in the Bill and introduces some uncertainty. CEIG recommends that the Rules give effect to s 118AAJ(2)(a): each round should offer the volumes in the tender plan unless a published exception applies. The ESEMA should be required to publish reasons and give at least six months' notice before skipping or reducing a round. Additionally, section 118AAJ(2)(a) could be strengthened by adding "in a timely manner" or "in the earliest practicable procurement round" into the text.

The Rules should also clearly define when an offered volume may remain unprocured. Where sufficient suitable projects bid, a price above the ESEMA's assessment of value should not, on its own, justify leaving that volume uncleared. If volume is not procured, the ESEMA should publish the volumes offered and cleared, relevant pricing information, and its reasons, including any value assessment applied.

Additional opportunities to strengthen the tender framework include:

- Incorporating a fifth sub-section in Rule 4AA.C.4(a)(1) that says the ESEMA must consider any volumes identified in previous tender plans that weren't procured. There should be a presumption that deferred volumes roll into the following round.
- Rule 4AA.C.10(b) could be amended from "the ESEMA *should* adhere to an auction scheduling process" to "*must* adhere to...".
- Defining the "insufficient competition" and "successful competitive tender" referred to in 4AA.C.10(c). "Competition threshold" is defined as a concept in the draft NEL bill, but it offers no guidance on the scale of competition needed to pass the test set by 4AA.C.10(c). The ESEMA should have to publish reasons (not merely give notice) if it decides to not proceed with a tender under this rule.

CEIG also recommends a high level of transparency on tender outcomes and delivery:

- formal, published review of the performance of the first ESEM procurement rounds and contracts early in the scheme's life, so that lessons on deliverability, contract design and transparency can be applied to later rounds
- publication of price outcomes for each round, and of any ceiling or reserve prices that prevented capacity from being cleared
- standard, regular public reporting on each contracted project's progress through contract execution, NTP, financial close, construction and COD
- public announcements that clearly distinguish selected bids from executed contracts. Ideally, projects should not be announced until contracts are executed, as announcing selected bids that do not proceed distorts market signals.
- an annual report comparing the trajectory, the tender plan and actual procurement, to create some visibility and accountability for deliverability

Eligibility requirements

Competition thresholds

CEIG supports competition thresholds, which stop the ESEM from contracting with companies that already hold too much market power. Our concern is how ownership is counted.

The draft Rules point the AER towards treating any stake of 10% or more as control (cl 4AA.C.20(b)(4), 4AA.A.5). An infrastructure fund with small, hands-off stakes in many projects could therefore be treated as if it owned them all, and be shut out of new rounds. A listed company with the same stakes would not be.

CEIG recommends that only stakes that give control of dispatch, or majority ownership, are counted, with listed and unlisted investors treated the same.

Jurisdictional revenue underwriting

The project criteria in 4AA.C.8 suggest (in sub-clause (5)) that a project can't have a jurisdictional support contract, such as a Long-Term Energy Service Agreement (LTESA), when it applies for ESEM procurement. We submit this should change to say that a project can't hold a jurisdictional contract and an ESEM contract at the same time, as opposed to the criteria preventing ESEM bids. In other words, a project with a jurisdictional contract should be able to bid under an ESEM tender but would need to surrender the jurisdictional contract if it is successful in winning an ESEM contract.

If a project were able to bid for an ESEM contract while already holding a jurisdictional contract, a decision would need to be made about whether the jurisdictional contract would need to be cancelled for the in-market period or just when the ESEM contract period commences.

It isn't clear from the language that the CIS counts as a "jurisdiction specific support". The footnote on p15 of the consultation paper includes the phrase "jurisdictions not in the ESEM, including the Commonwealth." A straight reading of this (and other parts of the consultation paper) suggests the Commonwealth is not a "jurisdiction" for the purposes of the ESEM, and that therefore the CIS is arguably not a "jurisdictional scheme". If this is intended to be the case, the language should be made more explicit.

Finally, jurisdictional schemes and the Capacity Investment Scheme (CIS) should ensure there is a pathway for voluntary termination without costs for those projects seeking to switch to an ESEM contract.

CEIG recognises the need to ensure the ESEM delivers genuinely additional capacity. When setting the tender plan, the ESEMA will remove from the Australian Energy Market Operator's (AEMO) modelling the capacity it considers already in the system, likely based on AEMO's criteria for committed and anticipated projects. If a project counted in that baseline later wins an ESEM contract, the ESEM would be paying for capacity already assumed to be coming, rather than closing the identified shortfall.

However, a project with jurisdictional revenue underwriting or CIS contract will not necessarily have reached committed status. A project willing to give up its existing contract to bid for an ESEM contract is a strong signal that the existing contract was not enough to get it built. CEIG therefore recommends that the Rules allow projects holding a jurisdictional or CIS contract to bid for an ESEM contract, but that any project already counted as committed in the Anticipated Entry Trajectory should not count towards meeting the shortfall in that round.

Jurisdictional pre-qualification criteria

Incorporating jurisdiction-specific policy objectives into tender criteria risks distorting market outcomes between states and unnecessarily increasing the complexity of the bidding process. We have a preference for criteria that is harmonised across jurisdictions to the greatest extent possible, and we welcome commitment in the consultation paper that jurisdictions "will seek to establish ESEM-wide eligibility criteria where possible."

CEIG supports these being pass/fail threshold tests, rather than forming part of the weighted merit criteria alongside financial bids. We consider this to be an improvement on the current operation of the CIS.

However, the framework currently sets no limits on what states can require. We submit that a new element be introduced into Rule 4AA.C.9 specifying that criteria under the rule should be proportionate, objective and verifiable at the bid stage. This should also be accompanied by a requirement for consultation on these criteria, to avoid situations where broader policy objectives (however well-intentioned) might clash with project practicalities (eg. Unrealistically high local content requirements). Where jurisdictions seek to achieve broader policy outcomes in relation to renewable energy projects, these should be pursued through the appropriate regulatory frameworks (such as planning laws), rather than through tender design.

CEIG considers that all jurisdictional requirements, such as labour, social licence or other obligations, must be pass/fail tests. Requirements that are scored or weighted cannot work alongside an otherwise price-only assessment of a financial contract, and would risk creating an inefficient state-based screening process.
Pass/fail criteria need to have been settled and published sufficiently ahead of the timing of an auction round in order to give proponents the best opportunity of complying. Rule 4AA.C.9(c) could be amended to say notice needs to be given in writing 12 months before an auction round.

Strategic reserves

CEIG supports the strategic reserves mechanism, subject to appropriate design, as it could provide the certainty needed to underpin investment in shaping and firming assets.

CEIG recognises that strategic reserves will have a role in managing high-impact, low-likelihood events and the risks of generator exit. However, capacity held outside the market can suppress prices and weaken the case for in-market investment. The framework needs safeguards to keep reserves to that role. Transparent and consistent formulas for determining reserve levels will be essential to avoid States overbuilding their reserves and unintentionally suppressing investment signals for other firming technologies.

Added scrutiny on costs

Under the draft Rules, the ESEMA *must* run a procurement when a Minister asks, on conditions the Minister sets, including capacity, total cost and contract terms (cl 4AA.C.40(b), (f)). The Panel recommended that, in response to a Ministerial request for a strategic reserve procurement round, AEMO or the Reliability Panel independently assess and then advise on the need for reserves. This assessment and its market impacts should be published. The draft package replaces this with consultation between the jurisdiction, the ESEMA and AEMO, with no independent test of need. At the very least, the ESEMA should be required to publish any advice it provides under rule 4AA.C.40(c) or (d).

A further reason for scrutiny and review of strategic reserve procurement is that this appears to sit outside the "least cost to consumers" test. This test only applies to the entry objective, which only applies to ESEM services, *not* strategic reserves (eg. see s.118AAI and H). Rules around special purpose procurements under 4AA.C.42 refer to the entry objective (42(c)(3)). Ideally, strategic reserve clauses are amended to ensure reserves are captured by a least-cost test; failing that, added scrutiny must be introduced.

Emissions consideration

CEIG believes greater alignment with Commonwealth government priorities is also required, particularly where reserves rely on carbon-intensive resources such as gas. If the Reliability Panel is tasked with identifying the need for reserves, there may be scope to integrate emissions reduction objectives into this decision-making process, ensuring that reserve procurement reflects both reliability and decarbonisation goals rather than being left solely to state discretion.

The section of the Bill that says every ESEM function "must have regard to" the NEO is the only vehicle for this issue, though this is not a particularly strong requirement.

Risk of cross-subsidy from reserve to firming

Joint tender rounds that are seeking to contract with both firming capacity and strategic reserve run the risk of allowing projects to cross-subsidise themselves. A gas peaker, for example, bundling a reserve contract with its ESEM firming bid could use the reserve income to undercut storage on the ESEM price alone.

The Rules do not specify how bundled bids are evaluated. These should be amended to either assess ESEM price plus reserve cost, or the two contracts should be procured and assessed separately.

Status of reserves over time

The Consultation Paper states that new-entrant capacity procured as a strategic reserve ahead of a scheduled exit would move onto an ESEM contract when the exit occurs, with the prices and terms of both phases set in the initial auction (section 2.2.5). However, neither the paper nor the draft Rules say whether the standard ESEM in-market period (cl 4AA.C.15) applies between the end of the reserve contract and the start of the ESEM contract. This needs to be clarified.

CEIG considers that the in-market period should apply. Projects in standard ESEM rounds must operate in the market for at least three years before their ESEM contract begins. A reserve provider that moves straight from reserve payments to an ESEM contract would give it an advantage over projects competing in standard rounds. Applying the same in-market period keeps the two pathways competitively neutral, and ensures reserve capacity faces market signals before it receives long-term ESEM support.
For reserves procured in anticipation of thermal exit, there is also no guidance in the Rules about treatment if that closure is delayed. The transition to market operation should occur automatically at the actual exit date, or at a fixed back-stop date if exit is delayed. Otherwise, new capacity is held out of the market indefinitely while the incumbent plant continues to operate, and investors would face uncertainty about when that capacity will enter the market.

ESEM procurement

Project development terms

CEIG supports price-only assessment with a contingent bid mechanism (cl 4AA.C.10(e), (f)(2)), and strong pre-commitment by successful bidders. CEIG supports a firm notice-to-proceed (NTP) deadline, extensions limited to genuine force majeure, and no renegotiation of ESEM contract terms. These features protect bid discipline and the value of the standardised contract.

However, a price-only auction will only reveal the true cost of new capacity if the projects competing can be delivered in the required timeframe. A bankable contract and a firm NTP deadline are important, but on their own they will not stop projects that are not ready from winning contracts. The experience of recent underwriting schemes, including the CIS, is that weaknesses in project-readiness screening and in transparency of tender outcomes can lead to contracted capacity that is delayed or not delivered. To complement price-only assessment, CEIG recommends:

- objective, minimum pass/fail project-readiness thresholds (for example, development approval, advanced secondary approvals and an advanced grid

connection position), applied before bids are ranked on price
- a short period between award and NTP, with extensions only for genuine force majeure and other clearly defined delays outside the proponent's control
- a bid bond at submission, as under the LTESA model, which escalates after award (see Bonds and damages below)
- a mechanism to promptly re-procure capacity where a selected project fails to execute its contract or meet its delivery milestones, with that volume offered in the next available round.

If a bid bond at submission is not adopted, CEIG recommends that bidders instead be required to provide objective evidence that their project is financeable on the basis of the ESEM contract, such as a completed standard financial model, executed contracts and evidence of committed funding, with disclosure of any revenue the project relies on that is not yet secured.

CEIG also recommends a high level of transparency on tender outcomes, including:
- publication of price outcomes for each round, and of any ceiling or reserve prices that prevented capacity from being cleared
- standard, regular public reporting on each contracted project's progress through contract execution, NTP, financial close, construction and COD
- public announcements that clearly distinguish selected bids from executed contracts. Ideally, projects should not be announced until contracts are executed, as announcing selected bids that do not proceed distorts market signals.

Bonds and damages

CEIG supports bonds, including a bond required to participate in a tender, similar to the LTESA model. A bid-stage bond would help discourage speculative bids and bids intended to test prices or block competition. However, the draft package leaves a proponent's exposure open-ended:
- the ESEMA can require bonds at any stage and of any size, "in its absolute discretion" (cl 4AA.C.11, 4AA.C.13)
- bond size must reflect losses a proponent cannot estimate, such as the cost to consumers of a reliability gap or a missed emissions reduction (cl 4AA.C.36(b)(13))

Together, these mean a proponent cannot know its maximum exposure when it bids, so it must add a margin to its price.

CEIG recommends:
- requiring a bond to participate in the tender
- requiring a bond at award, released at NTP

- making bonds proportionate, capped at a $/MW amount published before each round, released at notice to proceed, and able to be provided as a bank guarantee, letter of credit or insurance bond

In-market period and contract tenor

The draft Rules require every round to include an in-market period of at least three years before the ESEM contract starts, and direct the ESEMA to make it "as long as is reasonably possible" (cl 4AA.C.15(d), (f)). Projects must reach commercial operation before the in-market period begins (cl 4AA.C.8(b)(9)).

The interaction between the ESEM contract period and the "in-market" period before it commences is critical – lenders will treat the period between Commercial Operation Dates (COD) and ESEM contract commencement as substantially merchant and will size debt primarily off the ESEM contracted period, so a long in-market period combined with a short ESEM tenor will not support efficient gearing and will raise bids. The in-market period and ESEM tenor should be published together and differentiated by technology (i.e. wind & solar bulk energy versus offshore wind) where the tenor gap differs, consistent with the Panel's contemplation of differentiated treatment for long-lead, capital-intensive assets.

CEIG also has concerns about how the in-market period will work in practice. Lenders will want revenue certainty from commercial operation. If the first three years after COD are uncontracted, some projects might struggle to reach FID, even with an ESEM contract in hand. CEIG therefore recommends thatthe ESEMA have the flexibility to shorten the in-market period below three years if it observes that projects are struggling to reach FID despite holding an ESEM contract. We note the draft Rules already allow a shorter or no in-market period for special purpose procurements (cl 4AA.C.42(c)(4)).

CEIG also recommends that the Rules set a minimum ESEM contract tenor of at least 10 years from contract commencement for capital-intensive bulk energy and shaping assets (ideally 10-15 years), with tenors kept stable across rounds and any change signalled at least 12 months in advance.

Auction frequency

CEIG understands that auctions are to be "based on bi-annual rounds" (cl 4AA.C.10(b)(2)). CEIG recommends a quarterly auctions as the default, anchored by a published rolling forward calendar of round dates, services, regions, tenors and indicative volumes at least 24 months ahead.

More frequent rounds would allow capacity to be re-procured promptly where a selected

project fails to execute its contract or meet its delivery milestones (see Deliverability above), rather than leaving that volume unfilled for six months or more.

Contract recycling

CEIG supports recycling through structured over-the-counter sell-downs. However, the draft Rules leave the program's design almost entirely to the FME (cl 4AA.C.22(b)(4), 4AA.C.39). CEIG recommends that the Guidelines commit to:

- a rolling 24-month sell-down calendar, with notice before an auction is deferred
- publishing the FME's unsold position, and recycled prices by service, region and contract year
- a published fair-value method for proponents to buy back their contracts
- credit support that is capped and can be met at project-company level, without parent guarantees
- long-dated sales to large energy users that are tightly framed and transparent, so they support liquidity rather than substitute for the primary contract market.

Cost relief & cost recovery

Cost recovery

CEIG supports recovering ESEM costs through the existing NEM settlement system, with annual AER determinations and the ability to smooth costs across years (s 118AAS, cl 4AA.C.29). Predictable, stable costs for consumers will support the ESEM's political durability, which investors depend on.

Cost relief

Cost relief is essential to the ESEM's design as a voluntary mechanism. Without it, a buyer that underwrites a new project through a PPA also pays its full share of ESEM costs, paying twice for the same outcome.

Market Making Obligation

CEIG supports an MMO for participants above a set size, covering all three ESEM services, which the draft Rules provide. However, several concerns remain unaddressed.

Who is obligated

Obligated Market Makers must "simultaneously buy and sell" designated contracts within a set spread (cl 4AA.B.12(b)). A buy-sell obligation is inappropriate for generators, many

of which are not active on the demand side. CEIG supports the MMO for generators only where it is limited to sell-side offers.

Obligations depend on trading group capacity, not on whether a business has a retail position (cl 4AA.B.9), and the thresholds for bulk energy and shaping are left to the MMO Guidelines (cl 4AA.B.9(d)). CEIG considers an always-on MMO should apply only to large portfolio generators with a retail position, and remain voluntary for other large portfolios and single-asset owners.

The draft Rules do not exempt projects holding ESEM contracts. CEIG believes ESEM generators should not be subject to the MMO for the duration of their ESEM tenor.

Interaction with contract recycling

The draft Rules say only that the FME is not subject to the MMO when it trades on an MMO platform (cl 4AA.B.8(b)). The interaction between the MMO and the contract recycling program needs to be clearly defined so the two mechanisms reinforce rather than crowd each other out. A functioning MMO also requires secondary market liquidity, which needs broad participation. That in turn depends on resolving force majeure, negative price mechanisms and index design.
A functioning MMO requires secondary market liquidity, which needs broad participation. This needs resolution on FM, negative price mechanisms and index design to be resolved.

CEIG thanks the Commonwealth Government for the opportunity to provide feedback on its NEM Wholesale Market Settings Regulatory Reform consultation paper and draft regulatory package and looks forward to continued engagement on those issues. We would be happy to discuss any elements of this submission.

Yours sincerely,

Dr Nicholas Aberle
Director – Policy & Advocacy
Clean Energy Investor Group Ltd
w: www.ceig.org.au
nicholas.aberle@ceig.org.au