

Australian Energy Regulator
GPO Box 520
MELBOURNE VIC 3001

10th May 2019

Submitted via e-mail to: RRO@aer.gov.au

Dear Sir/Madam,

Draft Interim Market Liquidity Obligation Guideline
Reference: 64873

The Australian Energy Council (the “**Energy Council**”) welcomes the opportunity to make a submission in response to the Australian Energy Regulator’s (“**AER**’s”) *Draft Interim Market Liquidity Obligation Guideline Consultation Paper*.

The Energy Council is the industry body representing 23 electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. These businesses collectively generate the overwhelming majority of electricity in Australia, sell gas and electricity to over ten million homes and businesses, and are major investors in renewable energy generation.

Introduction

The Energy Council appreciates the limited time the AER has to implement the Draft Guideline and appreciates the consultation being conducted, although it does note that, by issuing individual guidelines over a period of time, it is difficult for industry to obtain a holistic view of the guidelines, and identify any interrelationships and conflicts which require detailed comment.

The Energy Council remains unconvinced that there is a need for a Market Liquidity Obligation (“**MLO**”). As it submitted to the Energy Security Board’s *Retailer Reliability Obligation Draft Rules Consultation Paper*,¹ the Energy Council believes that the Market Making Arrangements in the NEM Rule Change Request² being contemplated by the Australian Energy Market Commission, as well as ASX Energy’s voluntary market-making arrangements³ are more than sufficient to encourage flexibility, liquidity and market efficiency.

Discussion

Updating the MLO Register

One of the Energy Council’s main concerns with the principles set out in the Consultation Paper is the treatment of confidential and/or market-sensitive information under Section 3.3.1 “Updating the MLO register”.

The Consultation Paper states, “When an application is received, the AER will publish a notice on the website that the application has been received and is being considered as per Rule 4A.G.14(b).”⁴

It is likely that as part of a sale or acquisition process, parties performing due diligence will approach the AER to advise of changes to generator ownership arrangements. This may cause generators to become MLO Generators, or to cease being so. Whatever the change, the new arrangements may not be finalised and their disclosure will put them in jeopardy, or any revelation to the market may have implications for investors and competitors. The Energy Council therefore recommends that any application be kept confidential between the

¹ Available at <http://www.coagenergycouncil.gov.au/publications/energy-security-board-%E2%80%93-retailer-reliability-obligation-draft-rules-consultation-paper>

² Available at <https://www.aemc.gov.au/rule-changes/market-making-arrangements-nem>

³ See for example https://www.asxenergy.com.au/newsroom/industry_news/market-making-expressions-of-

⁴ p.10

AER and the company, until the AER's assessment has been made. It is only once the assessment has been finalised that the MLO Register should be updated. In addition, this update will need to be coordinated with any announcement being made by the companies affected, to ensure any market effects are minimised. For example, this may need to occur after the securities and electricity markets' trading days have concluded.

MLO Products

The Energy Council notes the products the AER intends to accept as MLO Products.⁵ The draft rules specify that the contract period for MLO Products must be monthly or quarterly,⁶ but the AER has discretion to approve other products in accordance with the MLO Guidelines.⁷ In order to encourage additional liquidity in the market by increasing the number and type of products which can satisfy the forecast reliability gap, the Energy Council recommends that the AER includes calendar year and financial year contracts as eligible products in the Interim, and ultimately the Final, MLO Guideline.

Approval of MLO Exchanges

The Energy Council also suggests that more detail needs to be included in the processes the AER intends to follow in relation to approving MLO Exchanges. It is appreciated that further detail will be included in the final guideline which will be developed over the coming year, but the Energy Council believes that two of the criteria listed⁸ need more detail, specifically:

- the trading facility has an adequate volume of trading and diversity of participants: The Energy Council submits that at the start of the Market Liquidity Obligation, and for exchanges in their formative stages, there may be little trading. This criterion should not be such that it excludes exchanges which have the potential to develop deeply liquid markets, and the AER should take the exchanges' potential into account when assessing them; and
- the costs and ease of trading on the trading facility are reasonable: This is a very subjective test, and the Energy Council suggests that more information be provided in the Interim MLO Guideline that sets out the AER's expectations in this regard.

Bids, Offers and Volumes

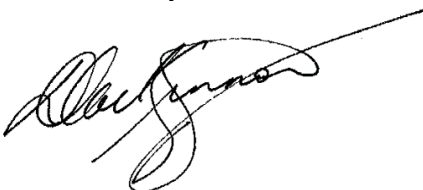
The Consultation Paper expresses acceptable bid-offer spreads in terms of the higher of $x\%$ or \$1/MWh.⁹ For clarity, the Energy Council recommends that the assessment be made on the offer price.

Exemptions to Performing the MLO

Section 4A.G.21(a) of the Draft Rules grants limited exemptions to generators to suspend offering MLO Products. In addition to the circumstances listed, there may be cases when generators are privy to price-sensitive information which would normally cause a halt in trading activities. On these occasions it would be reasonable for generators' obligation to offer MLO Products to be suspended also, and the Energy Council recommends that provisions to allow this should be included in the Interim, and ultimately the Final, MLO Guideline.

Any questions about this submission should be addressed to the writer, by e-mail to Duncan.MacKinnon@energycouncil.com.au or by telephone on (03) 9205 3103.

Yours sincerely,



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Australian Energy Council

⁵ pp.13-14

⁶ Draft Rule 4A.G.22(a)(2)(ii)

⁷ Draft Rule 4A.G.22(b)

⁸ p.15

⁹ p.16