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Energy Policy WA
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Energy Sector Governance: Proposed Changes to the Regulatory Framework

The Australian Energy Council (the “**AEC**”) welcomes the opportunity to make a submission to Energy Policy WA on the consultation paper for the Energy Sector Governance: Proposed Changes to the Regulatory Framework (the “**Consultation Paper**”).

The AEC is the industry body representing 22 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 and sell gas and electricity to over 10 million homes and businesses.

Role and composition of the Market Advisory Committee (“MAC”)

Independent Chair

Some of the proposed changes to the Wholesale Electricity Market (“**WEM**”) rules make some welcome amendments to the MAC. In particular, the AEC supports the appointment of a suitably qualified independent Chair to add some separation from the rule maker. The AEC does encourage, however, further changes to the WEM Rules to include a fixed term for the independent Chair to ensure regular rotation of this key role.

Capping representation of Contestable Customers and small-use consumers

In addition to the independent Chair, Energy Policy WA has proposed some changes to the MAC membership, including Contestable Customers having ‘at least one’ member rather than one member and increasing the representation of small-use consumers from one member to ‘at least two members’.

It is a concern that Contestable Customers and small-use consumers could exceed the representation from Market Participants because there is no limit on those representatives. This is not reflective of the composition of the WEM and the AEC suggests that a limit of ‘not more than four’ members apply to Contestable Customers and small-use consumers.

Independent appointment of small-use consumers

Under section 2.3.5(e), the Minister shall nominate at least two small-use consumer representatives. It is important that these representatives are truly independent and without any association to Energy Policy WA or any other government department or entity. The AEC encourages a further change to note that the Minister shall appoint ‘at least two *independent* members’.

Convening the MAC

The Consultation Paper also makes changes to section 2.3.15 on when the MAC must convene:

“The ~~RCP~~ MAC Secretariat must convene the Market Advisory Committee: ... (c) on any occasion when ~~two or more members~~ the independent Chair of the Market Advisory Committee has~~ve~~ informed the ~~RCP~~ MAC Secretariat in writing that ~~they~~ she or he wishes to bring a matter regarding the evolution of these Market Rules or the operation of these Market Rules before the Market Advisory Committee for discussion.”¹

This amendment gives the Chair discretion on when to request that the MAC convenes. The AEC suggests that the change is altered to state:

“The ~~RCP~~ MAC Secretariat must convene the Market Advisory Committee: ... (c) on any occasion when *two or more members* or the independent Chair of the Market Advisory Committee has~~ve~~ informed the ~~RCP~~ MAC Secretariat in writing that ~~they~~ she or he wishes to bring a matter regarding the evolution of these Market Rules or the operation of these Market Rules before the Market Advisory Committee for discussion.”

Providing advice to the Coordinator

The Consultation Paper raises a new addition to the WEM rules that encourages MAC members to reach a consensus position and notes that the Coordinator ‘must’ take any dissenting views into account:

“It is proposed that the MAC ... must endeavour to provide a consensus position and note any dissenting views when providing advice to the Coordinator on the evolution of the market, and the Coordinator must take these views into account. This is a new requirement.”²

The AEC supports the MAC reaching a consensus position, or preferably a unanimous position, wherever possible. However, the proposed changes to the WEM rules do not appear to align with this statement. In section 2.3.1C, the amendments say that “the independent Chair must provide advice to the Coordinator which reflects any majority view and which includes or is accompanied by the dissenting views”, but it doesn’t indicate that the Coordinator ‘must’ take into account the dissenting views.

Section 2.5.3A is more definitive and notes that the ‘Coordinator must have regard to any advice received from the Market Advisory Committee regarding the evolution of the Wholesale Electricity Market or these Market Rules’. However, even in this drafting there is no positive emphasis on the Coordinator to act on the advice received from the MAC.

The AEC strongly encourages further changes to positively oblige the Coordinator to take into account dissenting views and act on advice received from the MAC.

Reviews to be conducted by the Coordinator

The Consultation Paper notes that “as part of its market development role, the Coordinator must also monitor the effectiveness of: (i) the Coordinator’s WEM Rule change process”.³ This is reflected in the addition of section 2.16.13B.

This approach lacks independence and creates a conflict of interest with the Coordinator monitoring the effectiveness of its own rule change process. It would be extremely difficult for the Coordinator to impartially monitor the effectiveness of its WEM Rule change process and any position taken by the Coordinator could be called into question by its conflict of interest.

¹ See [Consultation Paper on Energy Sector Governance: Proposed Changes to the Regulatory Framework](#)

² See p3, [Consultation Paper on Energy Sector Governance: Proposed Changes to the Regulatory Framework](#)

³ See p5, [Consultation Paper on Energy Sector Governance: Proposed Changes to the Regulatory Framework](#)

The AEC recommends that an independent body is given responsibility to monitor the effectiveness of the Coordinator's WEM Rule change process. The most suitable body is likely to be the Economic Regulation Authority but whoever performs this role, there is value in separating the body monitoring the Coordinator's WEM Rule change process and the Coordinator who is overseeing the WEM Rule change process.

Determination of Market Fees

The Consultation Paper is proposing a change to section 2.24 to include Coordinator fees as part of the fees charged by AEMO. The AEC observes that market fees in the WEM are already significant and increasing, and this change will add further difficulty to AEMO's task of minimising fees. Any Coordinator fees should be appropriate and justifiable, and the AEC suggests that a consultation process is warranted so that stakeholders can assess and comment on the Coordinator's proposed fees.

Conclusion

The AEC appreciates this opportunity to provide feedback on the Consultation Paper and encourages Energy Policy WA to consider the issues raised above.

Any questions about our submission should be addressed to Graham Pearson, Western Australia Policy Adviser by email to graham.pearson@energycouncil.com.au or by telephone on 0466 631 776.

Yours sincerely,

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