

Department for Energy and Mining
Government of South Australia
GPO Box 320
ADELAIDE SA 5001

16th May 2019

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

Dear Sir/Madam,

Proposed Operation of the Retailer Reliability Obligation Rule Changes in SA

The Australian Energy Council (the “**Energy Council**”) welcomes the opportunity to make a submission in response to the Department for Energy and Mining’s *Consultation on the Proposed Operation of the Retailer Reliability Obligation Rule Changes in South Australia*.

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.

Discussion

On 12th December 2018 the Energy Council made a submission in relation to the *National Electricity (South Australia) (Ministerial Reliability Instrument) Amendment Bill 2019*,¹ identifying the shortcomings in the Bill as drafted, and the discretion it affords the Minister for Energy to intervene in the National Electricity Market (“**NEM**”) with little notice and, from the Energy Council’s perspective, without adequate justification. The Energy Council remains committed to this view, but notes that the Consultation Paper “is not seeking feedback on the ability of the South Australian Minister to make a T-3 reliability instrument or other aspects of the Bill itself.”²

Acknowledging that the distortionary aspects of the Minister’s proposed powers are unable to be challenged, the Energy Council believes that the mechanics of the National Electricity Rules, as currently drafted by the Energy Security Board,³ are such that there may be issues should the Minister exercise their powers to make a T-3 reliability instrument with less notice than the expected three years. These concerns are outlined below.

Contract Position Day

Should the Minister make a T-3 reliability instrument 15 months before a deemed reliability gap period, liable entities will be required to have their qualifying contracts ready at the contract position day, which is a full 12 months before the reliability gap period. This grants market participants, at best, three months to finalise their contract needs and enter into contracts to meet their reliability obligations. Ignoring the likely price changes in the financial market as a result of the increased demand for contracts, the limited period available jeopardises market participants’ ability to negotiate contracts fairly, invest in alternative technology solutions such as batteries, or seek demand response solutions with the necessary magnitude. The Energy Council notes that the Hornsdale Power Reserve took 78 days to be completed, but this was only once the Network Connection Agreement had been signed,⁴ (a negotiation which in itself can take up to a year to conclude), therefore the ability of liable entities to seek alternative solutions within the three month period would be extremely limited.

¹ Available at

http://www.energymining.sa.gov.au/energy_and_technical_regulation/energy_resources_and_supply/consultation_on_the_draft_national_electricity_south_australia_ministerial_reliability_instrument_amendment_bill_2019

² p.1

³ Energy Security Board, *Making of National Electricity Amendment (Retailer Reliability Obligation) Rule 2019*, 3rd May 2019, available at <http://www.coagenenergycouncil.gov.au/publications/retailer-reliability-obligation-rules>

⁴ SA Auditor-General, *Report 9 of 2018: Battery Storage Procurement*, 27th November 2018, p.16

The Energy Council therefore recommends that in the circumstances that the Minister calls a T-3 reliability instrument at late notice:

- (a) the contract position day be delayed from T-1 year to T-six months;
- (b) latitude be granted to liable entities to adjust their contract positions within a $\pm 10\%$ buffer in the period between the revised T-six months contract position day and the reliability gap period, to account for residential customer number changes, variations in commercial & industrial customer loads, and forecast revisions; and
- (c) should the Minister's reliability instrument overlap with an Australian Energy Regulator ("AER") reliability instrument, liable entities be permitted to adhere to the Minister's derogated obligations for the overlapping period.

Qualifying Contracts and Firmness

The AER will shortly be consulting on the Contracts and Firmness Guideline, with the intention of having the interim guideline in place by 31st August 2019.⁵ (The final guideline will be more widely consulted upon, and be in place by 31st December 2020.) The Energy Council understands that the Interim Guideline may not be on foot before the Minister calls a T-3 reliability instrument, however the maximum two month delay until the Interim Guideline is in place should not provide the impetus for the SA Government to draft its own state-specific guideline, which may differ from the NEM-wide version being fast-tracked by the AER. Doing so would cause industry confusion and increased compliance costs.

To provide structure while administrative arrangements are being developed, it is reasonable that auditors be engaged to assure the AER that liable entities' contracts meet the requirements of the Retailer Reliability Obligation. However the Energy Council disagrees that these auditors should be approved by the SA Government. Under the ESB's currently drafted National Electricity Rule 4A.E.5, auditors are required to be independent, and selected from an Auditors Panel approved by the AER. On this basis the Energy Council does not believe it is appropriate that auditors be subject to a specific government approval, particularly as there is a risk that this will impose a further delay in entities being able to comply.

Market Liquidity Obligation

It is important for obligated parties to be made aware that they will be called upon to make a market. To this end the Energy Council believes that parties should be notified as soon as possible by the Department, via an e-mail to both the Company Secretary and the energy markets contact as notified by the AER. It is also appropriate for more public notices to be made available, by publication on the AER's website.

The Energy Council cautiously supports the ESB's approach of deeming Market Liquidity Obligation ("MLO") generators, since this a pragmatic short-term solution which offers a mechanism for parties to correct the records should any anomalies be identified. The Energy Council does not support the SA Government nominating liable generators using regulations. While regulations are easier to change than legislation, there remain difficulties and possible delays in obtaining corrections or alterations. This imposes risks for market participants, and therefore this mechanism should not be used.

It is noted that the Consultation Paper suggests that "to maintain liquidity and avoid activation of the MLO for very short periods, South Australia is considering extending the operation of the MLO for a fixed period."⁶ While acknowledging the inconvenience of the MLO being activated for short periods, the alternative of prolonged MLO activation will unduly impose additional administrative overheads, compliance costs and risk on MLO generators. The consequence of a prolonged market liquidity obligation will be additional costs for all SA market participants, and ultimately SA consumers. On this basis the Energy Council does not support extended MLO periods, although it does countenance aligning the conclusion of the liquidity period with a varied contract position day, as discussed above.

Opt-in Cut Off Day

While the SA derogation is intended to allow SA to make its own decisions about the Retailer Reliability Obligation, it is important for compliance costs to be minimised by limiting the use of the derogation, and relying on the general clauses of the Rules for the majority of the RRO's actions. Therefore the suggestion that the SA Minister for Energy should approve large customers becoming opt-in customers serves no purpose, and is an unnecessary complication. The Energy Council therefore believes that the existing provisions of

⁵ See <https://www.aer.gov.au/retail-markets/retailer-reliability-obligation>

⁶ p.6

Clause 4A.D.4 as currently drafted should apply, with customers applying to the AER to become opt-in customers.

Conclusion

The Energy Council remains extremely concerned by the distortionary aspects of the powers to be granted to the SA Minister. At a minimum, the Energy Council believes the SA Government should limit deviations from the rules as currently drafted by the ESB, but allow additional flexibility to accommodate the significantly compressed period for a T-3 reliability instrument to be called, as well as ensuring overlaps with AER reliability instruments are accommodated. This will act in some way to mitigate the risks faced by market participants, and reduce the deleterious effects on end-users.

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,

A handwritten signature in black ink, appearing to read 'Duncan MacKinnon', with a long horizontal stroke extending to the right.

Duncan MacKinnon
Wholesale Policy Manager
Australian Energy Council