

COAG Energy Council
c/o Department of Industry, Science, Energy and Resources

18th May 2020

Submitted via e-mail to: energystrategicpolicy@industry.gov.au

Dear Sir/Madam,

Independent Review of the Energy Security Board

The Australian Energy Council (the “**AEC**”) welcomes the opportunity to make a submission in response to the COAG Energy Council’s *Review of the Energy Security Board*.

The AEC is the industry body representing 24 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

The Energy Security Board (“**ESB**”) was established in July 2017 at the behest of the Finkel Review,¹ for the purposes of overseeing the implementation of its recommendations, but also to provide guidance to the COAG Energy Council on issues affecting the National Electricity Market (“**NEM**”).

The ESB was given charge of developing the National Energy Guarantee, and to the AEC’s eyes this represented a high water mark in the collaboration of industry and regulatory bodies in the development of a discrete, fit-for-purpose reform.

Since that time the ESB has been commissioned to provide advice on diverse topics, ranging from advice on “ahead markets” to the appropriateness of the Reliability Standard. This is work which could have been done by existing market bodies, using the resources and expertise available to them, and the AEC sees little value in having a separate body being engaged towards such tasks. Furthermore, it appears that there are notable overlaps between the work the ESB is conducting, and the work programmes being conducted by its stakeholders, such as the Australian Energy Market Commission (“**AEMC**”). For example, the ESB is considering Ahead Markets and Essential System Services, while the AEMC is currently contemplating the Removal of Disincentives to Primary Frequency Response,² along with a number of related pending rule changes.

The issue of governance is a particular concern, given the granting of rule-making powers to the ESB under Clause 90F of the *National Electricity (South Australia) Act 1996*. Besides the issue of providing a separate avenue for the amendment of the rules under which market participants operate, the consultation processes differ significantly from the existing, well-tried arrangements within the purview of the AEMC, and the existence of the ESB’s rule-making powers and their planned use,³ with very limited consultation, increases the risks for those participating in the market. These additional risks, whether they be embodied in a direct risk premium or a hesitation to invest, will ultimately be borne by consumers.

¹ Finkel, A. et al., *Independent Review into the Future Security of the National Electricity Market: Blueprint for the Future*, June 2017

² <https://www.aemc.gov.au/rule-changes/removal-disincentives-primary-frequency-response>

³ See, for example, <http://www.coagenergycouncil.gov.au/interim-reliability-measures>

In addition to the issue of the ESB's powers, it is problematic that it acts according to the directions of the COAG Energy Council.⁴ This has the twin disadvantages of compromising its ability to offer independent advice, and reducing its ability to consult on whether contemplated market reforms are useful, warranted and cost-effective.

An example of this was the direction from the COAG Energy Council on 22nd November 2019 for the ESB to undertake a review of the Reliability Standard by March 2020 to ensure it was fit for purpose.⁵ This is a task which the AEMC's Reliability Panel (which includes a range of stakeholder representatives) conducts every four years. The last review was completed in April 2018, and produced a comprehensive 200 page report after a year of consultation and deliberation. In contrast, the ESB, with its limited timeframe available, produced a hasty 34 page report which recommends substantial changes with limited justification and without public consultation.

In addition, the examination of market reforms by the ESB must accede to the expertise of those bringing the reforms to its table. The effect of this is that scrutiny is reduced, and suggested reforms can be recommended to the COAG Energy Council without the proper consideration afforded by the well-defined processes used by the appropriate rule-making body, the AEMC.

The original NEM governance intentionally separated the functions of:

- economic regulation and enforcement in the Australian Energy Regulator;
- market and system operation in the Australian Energy Market Operator; and
- market design and rule-making in the Australian Energy Market Commission.

This separation represented best-practice governance, providing confidence for investors and consumers in the roles and responsibilities of each body.⁶ In the aftermath of the South Australian System Black, the Finkel Review created the ESB to expedite certain critical changes, but in doing so confused the boundaries of the institutions. Now that the Finkel Review's implementation period is complete, it is worth reconsidering whether the remaining value of the ESB exceeds the detraction from the original tri-institutional model.

Rectification

One approach to resolving these issues is for the ESB to conclude as proposed by the Finkel Review, i.e. at the end of delivering the Finkel recommendations, with the 2025 lines of work (which were initiated subsequently) being immediately transferred to the AEMC. An alternative would be for the ESB's 2025 work to be continued to its natural conclusion, with other responsibilities transferred to their natural recipients, and no further work allocated to it. Irrespective of the ultimate disposition of the ESB, the AEC believes that the role of the ESB is too broad, with significant overlap with its component institutions. Furthermore, its separate powers and the absence of well-defined processes and obligations are problematic. To solve these issues, the AEC recommends:

1. Membership of the ESB be expanded to include industry and user representatives;
2. Decision-making processes be defined, with justifications published and the opportunity for dissenting views to be aired;
3. Consultation processes improved, so that proposals are not made to the COAG Energy Council without being disclosed to stakeholders first, supporting analysis published, and opportunity for comment given;
4. The rule-making abilities of the ESB be removed, and the power left with the AEMC;

⁴ Energy Security Board Terms of Reference, available at <http://www.coagenergycouncil.gov.au/publications/energy-security-board-terms-reference>

⁵ <http://www.coagenergycouncil.gov.au/publications/22nd-energy-council-meeting-communicue>


⁶ Vertigan, M., et al., *Review of Governance Arrangements for Australian Energy Markets – Final Report*, October 2015

5. COAG Energy Council directions to the ESB be limited to seeking advice, without conclusions being pre-empted. In addition such directions should have reasonable timeframes, and their content should not require the ESB to duplicate the functions of its constituent stakeholders; and
6. The ESB should be resourced with a secretariat capacity to deliver the tasks required of it. This can be through direct employment, or through secondments from the institutions, government or industry (such as successfully occurred for the National Energy Guarantee). Projects and investigations should be done within that structure, rather than work being outsourced to its member organisations, confusing responsibilities.

Conclusion

The AEC acknowledges the professionalism exhibited by the ESB and its officers in addressing the tasks allocated to it, often in unreasonably short timeframes. As it stands there is significant opportunity for conflict between the role of the ESB and that of its constituent organisations. Therefore the AEC recommends that the ESB's remit should be narrowed, and consideration given to dissolving it now or at the conclusion of its current projects.

Yours faithfully,



Duncan MacKinnon
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