

15th March, 2018

Dr Kerry Schott AO
Independent Chair
Energy Security Board

via: info@esb.org.au

Dear Dr Schott

Submission in response to the National Energy Guarantee Draft Design Consultation Paper

The ACTU is the peak body for Australian unions who represent working Australians and their families all over the country. We thank the Energy Security Board for the opportunity to make a submission in relation to the National Energy Guarantee (NEG) Draft Design Consultation Paper (the paper).

Workers will be directly impacted by the NEG, should it be finalised and implemented, both as consumers and as many tens of thousands whose jobs either in the energy sector or reliant on affordable, reliable and sustainable electricity supply.

At the outset, we would like to place on record our dissatisfaction with the consultation timeframe allowed for in this part of the process. As you are well aware, the current paper was publicly released on 15 February 2018 and requested feedback and submissions by 9 March. That means there were sixteen working days for stakeholders to digest, consider and respond to what is a quite technical policy design paper. That is manifestly inadequate and makes a mockery of the word 'consultation' and is particularly biased against small, not-for-profit organisations with limited resources.

1. Emissions Requirements

In order to drive emissions reductions in the electricity generation sector the paper proposes that electricity supply contracts would have their emissions rates determined either by the specified generation source or for those where no source is specified, through a deemed emissions rate. It is currently proposed that these emissions requirements and obligations would sit with retailers.

To record and regulate emissions obligations under the NEG the paper proposes the establishment of a compliance registry¹ that would be operated by the Australian Energy Regulator who would track all contracts including emissions, with retailers that do not meet the constraint facing compliance costs.

It is our view that, the paper is currently understating both the cost and complexity of maintaining the NEG emissions compliance registry. At any given time in the National Electricity Market (NEM) wholesale generation market there are literally tens of thousands of contracts, often with complex contingency provisions, that can be created or terminated on a daily basis.

¹ NEG Draft Design Consultation Paper, p22.

Also, as the Energy Security Board (ESB) would be aware, vertically integrated generator-retailers (Gentailers) have internal arrangements between their generators and retail arms that don't have contracts in the open market. The paper does not adequately address the problem of getting these arrangements into the open, and how the situation is likely to disadvantage independent, non-vertically integrated generator-retailers, thus further entrenching and reinforcing Gentailer advantage.

Emissions constraints will be expressed as CO2 per megawatt hour (MWh), and while this would ensure certainty for retailers, it would produce uncertainty for regulators as to whether the emission per MWh would meet the total sector requirement of a 26% reduction by 2030, given the uncertainty arising from changes in electricity demand.

The paper also contemplates the deferral of emissions requirements up to a mandated limit (eg 20%) along with the ability to carry forward any emission reduction 'overachievement' as a credit towards the next years compliance. We do not support either of these propositions.

While we acknowledge that the ESB does not set Australia's emission reduction targets, as that responsibility sits rightly with the government of the day, we would be remiss not to put on record our dissatisfaction of the current targets of 26-28 per cent on 2005 levels by 2030. Australia's climate targets should be consistent with our Paris commitment to keep global warming below 2%, and should be based on advice from competent authorities. This is directly relevant considering the NEG is an attempt to combine energy and climate policy into a single mechanism for the electricity sector. We are particularly concerned that the paper applies the economy wide national emissions reduction target via the NEG on a flat, like-for-like basis to the electricity sector, ie 26-28 per cent. This is particularly important when considering the energy sector has developed mature low or zero emission technologies and a lower economic emissions abatement cost per unit compared with most other industries and sectors.

1.1 External Offsets

With respect to the possibility of allowing the use of offsets, we consider there to be no compelling rationale for the use of offsets within the NEG and consider that allowing offsets would simply increase uncertainty levels, due to the lack of known details, and therefore deter investment. Therefore we submit that there should be no access to external offsets.

2. Reliability Requirement

With respect to the reliability, the paper proposes a reliability requirement would not operate unless it was "triggered" by a forecasting process that show reliability requirements not being met. The ESB suggests there are already forecasts issued by the Australian Energy Market Operator (AEMO), both short and long term ranging anywhere from 2 years to 10 years, that could be used for this purpose.

We are concerned with this for several reasons. Currently these forecasts are for information only and have no regulatory effect. Making them the trigger for regulatory action will mean that market participants suddenly have major potential liabilities riding on the forecasts. Additionally, and with the greatest respect to the regulators, the forecasts are often not accurate.

The paper indicates that there is some confidence that certain types of contracts already in the market would meet the reliability constraint easily – ‘caps and swaps’ - but others like most wind and PV power purchase agreements would not unless they had batteries or another form of backup. The paper signals the need for contracts to be ‘certificated’ as to meeting reliability requirements. Again, in our view this understates the complexity of achieving this in reality and the way it might reduce liquidity in the market and therefore push up prices.

We also do not see how the practice of segregating the reliability requirement once the trigger occurs would only be on the additional reliable power required or all power in the market.

The paper also proposes that in the event the market does not produce the reliability required, the AEMO would step in as contractor/purchaser of last resort to ensure reliability. This raises the issue that some generators may prefer to sell to the AEMO because the prices might be higher, a practice which almost certainly create price manipulation.

3. Price Impacts

We are of the view that the added costs associated with placing emissions requirements on retailers, as well as further entrenching the market dominance of large retailers will mean that NEG will drive up costs for consumers. This is a view that is supported by a wide range of industry participants and stakeholders.

Smaller retailers have warned the NEG will entrench the power of large retailers, a concern that has been echoed by the Minerals Council, Macquarie Bank, Energy Users Association of Australia and the Energy Consumers Association² to name a few, while large retailers have echoed the concerns about impacting market liquidity and increased cost.³

Given the volley of concerns raised by such a wide range of industry stakeholders, we take no confidence in the wholesale price modelling provided thus far by the ESB in relation to the NEG that indicates wholesale prices will decline. It is the only modelling to date that indicates that prices will decline, whereas all other analysis and respected opinion predicts prices increases for consumers.

4. Just Transition

In the energy transition, an absolute priority for Australian Unions is ensuring a just transition for affected workers and communities. The sudden closure of two foreign owned private generators in, Alinta’s operations in Port Augusta in 2016 and Engie’s Hazelwood power station in 2017, illustrate the inadequacy of an unplanned transition in this sector. Both were sudden and came with disruptive impacts on workers and their community.

We understand and acknowledge that the NEG is being developed with the intention that it will work not in isolation, but with a raft of other measures and policy mechanisms, including the accepted recommendations of the Finkel Report, but the fact is that there are no measures towards ensuring a Just Transition for the energy sector in the NEG or the wider suite of proposed policies.

² <https://www.smh.com.au/business/the-economy/protesters-storm-the-stage-at-neg-forum-20180226-p4z1py.html>

³ <http://www.afr.com/news/politics/turnbulls-national-energy-guarantee-has-serious-flaws-says-big-energy-retailers-20180311-h0xb7q>

We cannot, and will not, accept the absence of Just Transition policies given they are such a critical part of the required energy policy framework.

Conclusions

Overall the information released to date on the policy architecture of the NEG is still vague at best. Analysis to date indicates that the NEG will;

- a. Increase prices;
- b. Entrench market power of large retailers (particularly gentailers);
- c. Reduce market liquidity;
- d. Have difficulty enforcing both emissions and reliability requirements; and
- e. Do nothing with regards to achieving a Just Transition for the energy sector.

While these issues remain, we are not in position to support the NEG.

Yours sincerely



Sally McManus

Secretary