



Ms Kerry Schott
Independent Chair
Energy Security Board
info@esb.org.au

13 July 2018

Dear Ms Schott,

Draft Detail Design Consultation Paper

ENGIE in Australia & New Zealand (ENGIE) welcomes the opportunity to make a submission in response to the Energy Security Board's (ESB) Draft Detailed Design Consultation Paper. ENGIE commends the ESB for its ongoing approach to comprehensive stakeholder engagement and consultation.

Emissions Guarantee

The following section relates to ENGIE's view on the emissions guarantee.

At a high level, ENGIE has long supported the introduction of carbon policy mechanisms that are least cost and do not disproportionately affect one industry over another. As a general principle, ENGIE prefers long-term carbon policy mechanisms that are stable and enable market participants to trade domestically and internationally over regulated outcomes. In turn, where industry specific schemes are introduced, trade between and across schemes should be possible over the longer term to ensure maximum flexibility.

The National Energy Guarantee (NEG) provides an opportunity to work towards this high-level objective, while noting it is contingent on future linkages with other sector specific or international abatement arrangements. To best prepare for ongoing evolution of the NEG in a way which minimises policy uncertainty, ENGIE strongly recommends the ESB consider the following points.

- Where possible relying upon the National Electricity Rules to regulate changes for the NEG. This will allow rules refinement over time through the existing and well-regarded Australian Energy Market Commission rule making and review processes. This also means experience with the NEG and additional time will allow further refinement driven by both industry and government.

Australia

Level 33, Rialto South Tower,
525 Collins Street Melbourne, Victoria 3000, Australia
Tel. +61 3 9617 8400 Fax +61 3 9617 8401 engie.com.au

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- The NEG should not be burdened by the pursuit of policy perfection; whatever abstract perfection may look in the context of the NEG. In this regard, there are elements of the NEG, which may seem desirable or even eloquent on paper but are likely to detract from the primary purpose of the scheme. The ESB is encouraged to adopt a principle that only the essential elements are implemented at this time. Additional elements can be introduced at a later stage, should they be proven necessary.
- The compliance burden is likely to be excessive if the NEG does not rely on incentives as opposed to regulatory prescriptions and restrictions. In our view, there is an attempt to anticipate every possible scenario or stakeholder complaint, no matter how unlikely or unjustified, through additional compliance obligations, enforcement, or penalties.

ENGIE makes the following comments in relation to specific elements of the emissions obligation.

- ENGIE supports the arrangements for reporting and compliance around market participants, and not **controlling corporations**, as a way to reduce complexity and uncertainty.
- The **allocation rules** are broadly supported by ENGIE; however, ENGIE does not believe further administrative arrangements or a legal requirement not to withhold is required. These latter proposed features are not essential components of the scheme and betray a lack of faith in the scheme incentives. ENGIE believes the scheme incentives are correct and further regulatory burdens to respond to perceived concerns are not required.
- ENGIE appreciates the additional complexity that may entail with the exclusion of “**pre-1997 renewable generation**”; however, concerns remain that its inclusion may result in inappropriate wealth transfers or place large renewables portfolios in a significantly advantageous position.
- ENGIE agrees with the position that changes to the **large-scale renewable energy target** are not warranted given the scheme is already significantly mature and its impacts are well progressed.
- Treatment of **jurisdictional schemes** as complimentary is supported. This approach acknowledges that jurisdictions will continue to manage their own energy transition and reliability issues, at least until there is confidence and experience of a well performing NEG.
- While the **50 GWh liability free threshold** may initially sound desirable, in practice it is likely to lead to additional complications. A possible option would be for small retailers to take advantage of more flexible deferral options instead of a liability free threshold.
- In our view, the proposed **penalty regime**, notably the \$100 million and the anti-avoidance, represents a significant misjudgement. The penalty regime is disproportionate, unrealistic, and ignores circumstances where non-compliance may be unavoidable.
 - The notion that the ESB is proposing to bankrupt businesses, or even present the risk of such an outcome, for exceedance of emissions reduction requirements, deferral limits, or over allocation, represents an extremely imbalanced penalty regime.

- The rationale for a penalty regime should be to penalise nefarious behaviour, not enforce administrative arrangements. If the NEG contains the right incentives such a penalty regime should be redundant.
 - The penalty regime does not consider market conditions, drought, economic challenges, or other scenarios, where non-compliance may be unavoidable.
 - The anti-avoidance regime does not make it clear what risks the ESB is trying to manage. It looks again like regulation based on imagined misdeeds not actual outcomes. Further, such a regime should be unnecessary if controlling corporation and 50 GWh liability free thresholds are no longer relevant.
 - The withholding and anti-avoidance regimes are seemingly straying into territory that is beyond the domain of the National Electricity Law or National Energy Rules. It is unclear why these further arrangements are needed given the existing compliance and competition law regime market participants operate under.
 - A theme running through recent energy market discussions is complaints by smaller participants that they are at a competitive disadvantage to larger participants on a number of fronts. This is a truism and not the basis for competition policy or unrealistic penalty provisions.
- **EITE load** and the use of scaling factors is a workable approach to these exemptions given the ESB's focus on a perfectly balanced scheme. Alternatively, a more pragmatic approach could be for the sector emissions targets to be adjusted at intervals to meet the 2030 objectives with EITE load excluded. This target or trajectory could be adjusted yearly, or every few years, based on EITE load forecasts. The scheme will not collapse if there is slight over or under achievement against EITE load in any given year, or even in 2030, and therefore the option to simplify arrangements to make compliance easier is strongly encouraged.
 - ENGIE does not support **operation of the registry** by the Australian Energy Regulator. ENGIE would prefer either the Australian Energy Market Operator (AEMO) or a private provider, where such a provider can do so more competitively.
 - Management of **confidential data and transaction information** remains a concern for ENGIE. ENGIE suggests decisions on sharing of information can be made following implementation and operation and that all existing confidential data should remain so.
 - ENGIE understands the approach to **Greenpower** load but it remains unclear if this approach is workable. While voluntary surrender will continue to occur, the potential need to shape the NEG to satisfy Greenpower arrangements may be less effective than alternatives.
 - ENGIE is surprised by some suggestions that **offsets** be disallowed. There is an argument that offsets to the electricity sector are allowed on economic efficiency grounds; however, there is an additional argument for offsets from the electricity sector to also be allowed. The electricity sector may be able to deliver higher abatement than is required by the sectoral trajectory. In this case, other sectors could buy domestic abatement from the electricity sector and the "exported" offsets would in turn support additional renewable generation



without increasing the cost to electricity consumers. Specifically, this arrangement would avoid government tightening the electricity sectors trajectory to achieve additional abatement on behalf of other sectors and placing the cost burden of this abatement on electricity consumers. While unlimited offsets should not be permitted, an appropriate allowance should be.

- The **carry forward of over-achievement** limit is too strict and ENGIE supports an increase to 30 per cent. The 5 per cent limit is not justified and ENGIE is concerned this will disincentivise smaller companies from building projects. It is also not clear that being forced to transact, when carry forward is preferred, will actually result in lower prices as it may increase the risk premium for investors and require a price uplift to compensate.
- Likewise, **under-achievement and deferral of compliance** is overly restrictive. For a scheme targeting 2030, a 10% deferral and a two-year limit, at least in the initial years, should not be imposed.

Reliability Guarantee

The following section relates to ENGIE's view on the reliability guarantee.

- AEMO has an unenviable task under the reliability obligations. For this reason, ENGIE strongly supports **independent third party review of forecasts and post-decision review of intervention effectiveness**. This will minimise dispute and, in combination with a transparent forecasting process, maximise stakeholder support for forecasting outcomes and consequential decisions.
- ENGIE supports the use of **the reliability standard** set by the Reliability Panel as the assessment metric against which AEMO forecasting and interventions are considered.
- ENGIE supports use of **independent auditing** over trade reporting, central clearing, or Australian Energy Regulator review. Despite the rhetoric in some quarters, the sector has a strong record of regulatory compliance and this is unlikely to change. Thus, independent audit of trades and firmness factors is the least intrusive methodology.
- ENGIE supports the **T-3 and T-1 forecasting of breaches** and does not support the alternative proposal proposed by South Australia. The South Australia approach could increase compliance obligations. Further, it does not provide the market the same range of signals as the ESB's approach.
- ENGIE believes the ESB should consider whether AEMO should make **the ultimate decision to trigger intervention**, or whether another party should have that responsibility based on AEMO's forecasts. ENGIE is comfortable with AEMO performing both roles in an environment where AEMO is appropriately scrutinised and there is a strong accountability mechanism. However, ENGIE is concerned that without a strong accountability mechanism, and no financial disincentive, the incentive to trigger will outweigh any other considerations.
- ENGIE does not support the **voluntary book-build**. It is an idea that has gained little, if any, traction to date from market participants and places AEMO in a role it is unfamiliar with, does not need to perform, and overlaps with market participants' businesses.



- The **market liquidity obligation** is not supported by ENGIE and may be more difficult to implement than suggested. ENGIE notes that some forms of generation will find it particularly challenging to meet this form of obligation.
- **Penalties** for non-compliance are still excessive and should be linked to the level of non-compliance. Further, the ESB needs to consider the treatment of non-compliance in circumstances where forecasts were incorrect and the obligation was unduly triggered.

ENGIE looks forward to continuing to work with the ESB on development and implementation of the NEG. Should you have any queries in relation to this submission, please do not hesitate to contact me on, telephone, 9617 8415.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "J. Lowe". The signature is fluid and cursive.

Jamie Lowe
Head of Regulation