



COAG Energy Council Secretariat
GPO Box 787
Canberra ACT 2601

29 September 2017

Dear Sir/Madam,

Energy Security Board – Ministerial Power to make rules

ENGIE in Australia (ENGIE) appreciates the opportunity to comment on the amendments to the National Energy Laws for the purposes of supporting the establishment of the Energy Security Board (ESB).

ENGIE welcomes the establishment of the ESB and supports the view that it represents the missing coordination body within the energy governance architecture that is needed at this time of transition.

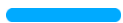
The establishment of the ESB provides an opportunity to not only better coordinate, but also clarify, roles and responsibilities within the energy governance architecture so as to ensure outcomes best meet consumers' needs, support investment, and promote efficient markets.

Nonetheless, a clarification role does not necessitate a duplication of existing roles. ENGIE is acutely aware of the growing confusion in the energy policy environment due to growing role overlap, conflicting expectations, and unclear objectives.

In ENGIE's view, and as confirmed by previous government reviews, the energy governance architecture of the National Electricity Market (NEM), is best served by: an independent market operator; a regulator with specialist energy knowledge and capabilities; an independent rule maker and policy advisory body. The ESB augments this structure by bringing together these areas of expertise with special reference to the energy transition in light of the Finkel review.

While energy policy advice to Minister's can come from a variety of sources, a hallmark of the current arrangements is the confidence and certainty that government will consult the Australian Energy Market Commission (AEMC) in policy matters of detail pertaining to the NEM. Further to this, the market has certainty that processes managed by the AEMC, as an independent body, must be adhered to in order to progress NEM rules.

If a separate rule making process to that managed by the AEMC is established, then a number of conditions regarding consultation, scope, AEMC involvement, sunset term, and application of the National Electricity Objective should be adhered to.





Rationale for establishing a separate rule-making process remains unclear

There are a number of arguments that could be proffered to alter the AEMC's role as independent rule maker of rules for the NEM. First, the AEMC's processes are too slow. Second, the AEMC does not have the requisite skills. Finally, rule-making decisions should be elevated to a political level. None of these arguments are valid, for the reasons outlined below.

Those whose ideological or business interests support immediate change often suggest that the AEMC's processes are too slow. It is understandable but that does not make it correct.

While ENGIE has also noted some reviews can extend for multiple years, this is often required to examine the issues as thoroughly and extensively as is required to recommend beneficial change and ensure its implementation is appropriate. As rushed, haphazard, or popular but ill-conceived changes would undermine certainty, ENGIE does not support the view the AEMC proceeds at a pace that warrants a process change.

One could suggest that the AEMC does not have the requisite skills. ENGIE agrees that AEMC staff on balance lack commercial experience within the market, and while this could be addressed with more engagement with industry and recruitment practices, this gap is common for policy staff. Therefore, ENGIE contends there is no governance institution or similar, that has greater depth of theoretical understanding of NEM dynamics, and the AEMC's economic knowledge is well suited to its independent rule-making role.

Finally, there is always a tension between whether decisions made by government or decisions made by institutions created by government are more appropriate, democratic, accountable, and effective. Recent history has seen institutions created across policy areas for the purposes of "independent" decision-making. The creation of the AEMC as independent rule-maker reflects this trend.

While ENGIE agrees that decisions at Ministerial level are an equally valid way of proposing and managing reform, ENGIE is less comfortable with such decision-making processes for the NEM given it crosses jurisdictions and requires a level of investigation and agreement that may not always be feasible. Furthermore, given the current contentious political environment regarding energy and emissions policy, the risk of significant policy decisions that may cause long-term damage needs to be carefully managed.

If the challenges facing the NEM were at a jurisdictional level only, then not relying on the AEMC would be more sensible, but this is not the case. As such, ENGIE has concerns that the alternative pathway for making rules could result in a crisis management approach to rule changes. This could prove unpredictable and rely on trade-offs not suited to long term stability or investment and therefore, unlikely to serve consumer interests.

ENGIE is concerned that the rule-making power has the potential to duplicate rule-making roles between the ESB and the AEMC at a time when the AEMC is already trying to wade through a range of policy ideas that have not been fully developed or analysed. In such an environment, it would be difficult for the ESB to provide clarity over energy governance roles – between market operator, rule maker, and regulator - where it is also duplicating functions of existing entities.

In an environment of significant transition, with a tendency for some to proffer big solutions, relying on the intellectual rigour of the AEMC gives ENGIE, as a market participant and investor, significant confidence.



Arrangements for the separate rule-making process once established

If the process for separate rule making is established, then at the very least there needs to be a number of clear limitations on its operations to manage the risk of increased confusion, loss of trust by the industry, and ultimately governance failure.

First, the power to make rules should be limited to implementation of the Finkel review recommendations and not to wider issues of market design or operation. If the rule-making power is not constrained there are likely to be conflicts of rule-making responsibility and loss of trust in the governance arrangements. .

Second, a rule can only be made where it has been demonstrated that it meets the National Electricity Objective. Given the breadth of the objective, an inability to demonstrate a proposed rule meets the National Electricity Objective, which is primarily aimed at protecting consumer interests, would be concerning.

Third, the ESB must be in unanimous agreement before a recommending a rule be made. In ENGIE's view, the AEMC must be involved and supportive of a proposed rule.

While ENGIE is supportive of the Australian Energy Market Operator (AEMO) in its current role as market operator, and supports the establishment of the ESB to improve coordination, it would be improper to seek to progress rules in the absence of the support of the AEMC.

While Australian Energy Regulator and the AEMO input is highly valuable, these institutions do not have the rule making experience, institutional history, or economic and legal expertise to fulfil the rule-making role and the risk of conflicting objectives is high.

Further, the ESB has a role in better delineating functions within the governance architecture and a process that could exclude the AEMC would undermine this. In practice, this could mean, the rule making power would be used to expedite change where key risks are identified and the AEMC is not best placed to conduct a review, or where a temporary rule is proposed until a review can be conducted.

Fourth, the COAG Energy Council should unanimously support the rule for it to be implemented. This will give the market greatest confidence in the purpose and the political support for the rule before the South Australian Minister gives it effect.

Fifth, a rule should not be made in the absence of consultation with stakeholders. This includes consumers, large energy users, generators, and retailers. To do so would undermine the legitimacy of the rule making process. One of the AEMC's strengths is its engagement across the electricity sector and its ability to delve into issues from a variety of perspectives. This is a valuable part of the rule making and review process.

Finally, the rule making power should have a sunset provision of three years in recognition of its limited requirement during this time of transition.



ENGIE trusts that the comments provided in this response are of assistance. Should you wish to discuss any aspects of this submission, please do not hesitate to contact me on, telephone, 03 9617 8415.

Yours sincerely,

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

Jamie Lowe

Head of Regulation

