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COAG Energy Council Secretariat
GPO Box 9839
Canberra, ACT 2601

By email: energycouncil@environment.gov.au

Dear Secretariat

Ministerial Power to Make Rules

Meridian Energy Australia Pty Ltd and Powershop Australia Pty Ltd (MEA Group) are pleased to provide comments to the COAG Energy Council (Energy Council) in relation to its proposal to introduce an additional Energy Council rule making process under the National Electricity Law (NEL), National Energy Retail Law and National Gas Law (collectively referred to as the Laws).

MEA Group is the owner, operator and developer of renewable energy facilities including the Mt Mercer and Mt Millar Wind Farms. MEA Group also launched Powershop Australia, an innovative retailer committed to:

- providing lower prices for customers;
- improved customer service and engagement;
- giving customers the ability to better understand and control their usage and price outcomes through its world leading technology platform and mobile app; and
- developing innovative demand response programs with its customers to further system reliability and security and lower costs.

MEA Group is committed to ensuring that customers benefit from the transition to a more renewable-based and distributed energy system, and working with all parties involved in the industry to achieve this outcome.

While we recognise the circumstances which have led to the recommendation of this change, and we do not doubt the good intentions behind the proposed change, we are concerned that the proposed mechanism will create additional uncertainty and risk in the market at a time when risk and uncertainty are the major enemies of improved customer outcomes whether in relation to reliability and security or otherwise. The importance of the various Rules in providing the necessary environment for businesses to invest the billions of dollars required to deliver security and reliability cannot be underestimated. The negative impact of uncertainty created by additional rule making processes may substantially outweigh the benefits expected from the additional process itself. This is even more important when the benefits of the proposed additional rule making process could be achieved by better use, or modification of, the existing rule making powers (including non-controversial, urgent and other expedited rule making powers). Our experience of the current rule making process has over the years been generally very positive and as a smaller player, particularly in the retail market, we appreciate that our opinion has been heard.

This proposal, although well intentioned, in our opinion has the potential to significantly disrupt the market and undermine the investment signals necessary to maintain the security and reliability of the energy system which is the exact opposite of the intended effect. In fact, by modifying the regulatory compact upon which billions of

dollars in long term investments have been made, the proposal has the potential to undermine the attractiveness of investing in Australia. As a foreign investor in Australia who has invested over a billion dollars on a clear understanding of the current rules as well as the fair rule making tests that put customers at the centre of their approach required to change such rules, this proposal gives us pause to consider whether we should continue our intended investment program. We understand that this is a view shared by many current investors in the market. While we do not doubt the good intentions behind this proposed change it is worth pointing out the inherent conflict in having bodies that are subject to the Rules potentially party to a new rule changing process. In addition, we note that the AEMC cannot propose a rule change under the current process for this very reason.

If the Energy Council was to proceed with such a proposal, we believe the proposal as currently drafted has a number of deficiencies which unnecessarily increase risk and uncertainty without advancing customer benefits. We have detailed these concerns in our below responses to your questions set out in the Energy Council’s bulletin and also have made some suggestions on how the drafting in the Bill could be improved in a way that would alleviate our concerns as an investor and as a market participant with a long history in innovation and customer centred reform.

Question	Comment
<p>1. Does the proposed mechanism for the making of Rules by the Minister deliver the desired outcome of timely implementation of the Energy Security Board's recommendations?</p>	<p>The additional proposed mechanism for the making of rules by the Minister has the potential to be of assistance in the timely implementation of Energy Security Board’s (ESB) recommendations. However, as discussed above we do not believe that this mechanism is necessary to achieve this outcome.</p> <p>There is no reason why the existing rule making process or a modification of it could not be utilised to achieve the same outcome with less risk and uncertainty.</p> <p>We are particularly concerned that the proposed arrangement has the potential for ESB recommendations to be implemented without sufficient review of their impact on other Rules and the market more generally.</p> <p>We propose that, at a minimum, the ESB be given the explicit right to propose rule changes via the existing processes where appropriate. Where this right exists, the ESB should not utilise any Ministerial basis rule change process unless it first satisfies a threshold test that the use of that process instead of the original process is necessary.</p> <p>We have proposed drafting in the Appendix to this submission to achieve this outcome in respect of the NEL.</p>
<p>2. Is the mechanism for the proposed Rule making process sufficiently robust by requiring a Rule be recommended by the ESB and MCE before it can be made by the Minister?</p>	<p>No, we do not believe the proposed process is sufficiently robust. This is on the basis that the proposed consultation requirements are not sufficiently robust to ensure that all affected parties have an opportunity to participate and advise on rule change impacts where possible. Again, we suggest that the process should require the utilisation of the best practice consultation procedures set out in the Laws and/or the Rules where such procedures are suitable for use within the relevant timeframes. Where this is not possible, as much of the processes as can be reasonably utilised should be followed.</p> <p>Again, we have proposed drafting in the Appendix to this submission to achieve this outcome below.</p>
<p>3. Does this Bill deliver on the intention that Rules made by the Minister utilising this power become indistinguishable</p>	<p>No. We are particularly concerned that ‘differential Rules’ (as that term is defined in the draft Bill) can only be made via the proposed process and it is unclear how amendments to them</p>

Question	Comment
<p>from all other Rules over which the AEMC has jurisdiction?</p>	<p>can be made. Consideration should be given as to whether an equivalent power is given to the AEMC.</p> <p>As discussed below, we are also concerned that the different form of the rule making test will unavoidably lead to the Rules diverging or worse, require the AEMC to implement follow up rule changes to ensure compliance with the appropriate rule making test.</p>
<p>4. Is it clear that the ESB will be required to apply the same rule making test as the AEMC in its making of Rules utilising this process?</p>	<p>No. The rule making test in the draft Bill is completely different. The draft Bill proposes a test that the ESB must be satisfied that proposed Rules are consistent with the National Electricity Objective (NEO) whereas the rule making test in the NEL (for example) prohibits the AEMC from making a Rule unless they are satisfied that the Rule will or is likely to contribute to the achievement of the NEO. Such a variation can only lead to uncertainty and risk for no perceivable benefit.</p> <p>We also note that there are important restrictions on the AEMC's rule making power under the NEL which are intended to protect the interests of various market participants¹. The proposed rule making power appears to be totally unconstrained in this respect creating genuine concerns of sovereign risk.</p>
<p>5. Are there any changes to the draft Bill that you consider may better deliver on the desired outcome?</p>	<p>Yes. We have proposed a number of amendments to the draft Bill that we believe will enhance its ability to achieve the intended outcomes while minimising risks for participants and the market generally.</p> <p>In addition to the matters discussed above, we propose a number of simple amendments to the proposed Bill in the Appendix to improve the transparency of the process. These include the imposition of a requirement to publish reasons for a rule change as well as a requirement for dissenting opinions and alternate recommendations to be published.</p>

As you can see from the above, we consider that the proposed changes are likely to introduce unnecessary risk and uncertainty into the market which do not outweigh the potential benefits expected to be gained from the new process. We would encourage the Energy Council to think carefully about proceeding with this legislative amendment without further significant review and consultation. From our discussions with others in the industry, many parties (including large users, potential renewable energy generation investors and market participants) share our concerns and that due to the short time for consultation on these proposals, may not be able to provide submissions.

If you have any further questions please feel free to contact me.

Yours sincerely



Ed McManus
 Chief Executive Officer
 Meridian Energy Australia Pty Ltd

¹ For example, see Sections 88A, 88B and 89 of the NEL.

MEA Group proposes the following amendments to the NEL and the proposed Bill.

Changes to permit ESB to request rule changes under current rule making processes

1. By amending Section 91(1) of the NEL as follows:

(1) *The AEMC may make a Rule at the request of any person, the MCE, ~~or the Reliability Panel~~ or the Energy Security Board.*

2. By inserting the following new subsection after Section 91(4) and before Section 91(5) of the NEL:

The Energy Security Board may only request the AEMC to make a Rule that the Energy Security Board could recommend to the MCE in accordance with Section 90F(4) of the NEL.

Threshold test for Ministerial rule making process and increase transparency

3. By amending proposed Section 90F(4) of the NEL as follows:

(4) *The Energy Security Board may only make a recommendation for the purposes of subsection (2)(b) in relation to proposed Rules if—*

(a) *the proposed Rules are in connection with any of the following:*

(i) *energy security and reliability of the NEM or long-term planning for the NEM;*

(ii) *energy security and reliability of a local electricity system or long-term planning for a local electricity system; and*

(b) *the Energy Security Board is satisfied:*

(i) ~~that the proposed Rules will or are likely to contribute to the achievement are consistent with of~~ *the national electricity objective; and*

~~(ii)~~ *that a similar or equivalent result could not be achieved by the Energy Security Board making a request under Section 91(1); and*

(c) *the Energy Security Board has undertaken consultation on the proposed Rules in accordance with any requirements determined by the MCE which must be the same or substantially similar to the consultation process applicable to AEMC in Section 95; and*

~~(d)~~ *the Energy Security Board has provided to the MCE:*

(i) ~~any information which the AEMC would have been required to include in a final Rule determination under Section 102(2); and~~

~~(ii)~~ *a statement from that member detailing the reasons for not supporting the recommendation where any member of the Energy Security Board does not support the recommendation made under subsection (2)(b).*