



12 September 2018

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

Dear Kerry

Re: Draft National Electricity Law (NEL) Amendment Bill to implement the National Energy Guarantee (NEG)

Thank you for the opportunity to provide feedback on the draft NEL Amendment Bill to implement the NEG.

Stanwell notes that the draft NEL amendments establish a framework for the NEG, which will be further specified in amendments to the National Electricity Rules (Rules). Stanwell supports this approach however we note that developing the Rules will be a significant task which will uncover further policy decisions that must be made. Stanwell requests industry consultation and involvement throughout this Rules development process.

Stanwell notes that the draft NEL Amendment Bill departs from the Energy Security Board's Final Detailed Design of the NEG in a few key areas, including de-linking the making of a T-1 reliability instrument from a T-3 reliability instrument in certain circumstances¹ and permitting the AEMC to make Rules regarding the establishment and maintenance of a trade repository². Stanwell supported the Final Detailed Design which provided a predictable framework and an appropriate time period for market participants to respond to notices and declarations. We also supported the ESB's conclusion that given the presence of the Market Liquidity Obligation, the costs of establishing a trade repository are not warranted. These sections should therefore be removed in order to avoid unnecessary cost, ultimately borne by consumers.

Stanwell objects to the AER, AEMC and AEMO having regard to an Emissions Objective (as well as the National Electricity Objective) when performing their

¹ Proposed section 14ZG(3)(b) of the NEL (see section 6 of the draft NEL Amendment Bill). AEMO may request that the AER make a T-1 reliability instrument where circumstances to be defined in the Rules exist, even if a T-3 reliability instrument was not made.

² Proposed item 6R of Schedule 1 of the NEL (see section 26 of the draft NEL Amendment Bill).

functions under the NEL and the Rules³. As explained by the Australian Energy Council⁴, rather than specifying an Emissions Objective, emissions could be a static threshold when assessing Rule changes in the same way as reliability and safety considerations are. This allows the National Electricity Objective to remain the primary focus of the regulation and operation of the National Electricity Market and reduces the practical risk that an Emissions Objective could influence decision making in matters that are seemingly unrelated to the emissions reduction requirement. Creating two objectives creates the risk that efforts become unfocussed or counterproductive.

Stanwell is also concerned about the potential requirement to maintain a net contract position from the contract position day to the end of the reliability gap period⁵. A requirement to maintain a net contract position is impractical and will likely stifle liquidity, increasing costs to consumers. For example, for Stanwell (as a net generator) to maintain a net contract position it would require no further sales of contracts after T-1. This would be especially detrimental to non-vertically integrated retailers. If the objective is to prevent gaming then other “good faith” type provisions would be more preferable.

Stanwell suggests that the Market Liquidity Obligation should apply in all regions in all years, regardless of whether there is a reliability gap. This would support liquidity, transparency and fair access to market for all participants. Stanwell, as one of the largest market participants in Queensland already provides support for price transparency and liquidity, but considers these elements of market design could be improved. Stanwell suggests that the MLO be implemented in a manner that enables participants to meet their obligation through involvement in the current ASX Market Making Incentive Scheme⁶. This reduces the regulatory burden on both the participant and the AER.

Please see Attachment A for several other suggestions on the draft NEL amendments.

Thank you for considering Stanwell’s response to the draft NEL Amendment Bill. If you would like to discuss this submission, please contact me on 07 3228 4546.

Regards

³ Proposed sections 16A, 32A and 49(3) of the NEL (see sections 7, 10 and 14 of the draft NEL Amendment Bill).

⁴ Objecting to the Objectives, 15 December 2016, Australian Energy Council, available at <https://www.energycouncil.com.au/analysis/objecting-to-the-objectives/>

⁵ Proposed section 14ZQ of the NEL (see section 6 of the draft NEL Amendment Bill).

⁶ See <https://www.asx.com.au/products/market-maker-arrangements.htm>



Jennifer Tarr
Manager Market Policy and Regulatory Strategy

Attachment A

NEL reference	Problem	Suggested approach
Proposed sections 14ZG, 14ZH and 14ZI	For the purposes of entering into sufficient qualifying contracts to cover their share of peak demand, liable entities need to be able to assume that the figures and descriptions in AEMO's request and the AER's subsequent reliability instrument are correct. Liable entities also require certainty that the reliability instrument will not be altered to increase the number of trading intervals.	<p>Amend section 14ZG to expressly require that the AER publish a request received from AEMO for a reliability instrument on the AER's website, as well as any corrections to such a request.</p> <p>Amend section 14ZI to expressly provide that once the AER makes a T-1 reliability instrument, the instrument may only be (i) amended to reduce the number of trading intervals during the forecast reliability gap period or (ii) revoked and substituted in a manner which would have the same effect⁷.</p> <p>Amend section 14ZH to require that AEMO (rather than to permit AEMO to) correct a request promptly after discovering a material miscalculation or material mistake, at any time before a reliability instrument is made.</p> <p>Also amend section 14ZI(3)(b) to permit the AER to correct any manifest but immaterial errors in the figures or descriptions provided by AEMO when making a reliability instrument.</p>
Proposed section	This section adjusts the contracted number of MW in	Amend section 14ZM(3) to read as follows ⁸ :

⁷ In this regard Stanwell notes that under the NEL, the definition of "make" includes to revoke and substitute (see section 10 of Schedule 2), and the power to make an instrument includes the power to amend or repeal an instrument (see section 20 of Schedule 2).

⁸ Note that the underline and strikeout are amendments to the existing text of proposed section 14ZM(3).

NEL reference	Problem	Suggested approach
14ZM(3)(b)	<p>qualifying contracts for “firmness” as per the Final Detailed Design. The Final Design was for the adjustment to be to the MW of qualifying contracts based on the unique characteristics of each contract. The liable entity may “retain exposure in relation to the volatility of the spot price during the period” for other reasons, and the MW adjustment to the qualifying contracts should not account for this.</p> <p>The consequences of the AER taking a different view of the proper firmness adjustment to apply to a qualifying contract are also unclear. The Final Detailed Design suggested that the firmness adjustment method would need to be supported by an independent audit report (the AER could seek a copy of this report from a liable entity under section 18ZD).</p>	<p>A liable entity’s net contract position during a particular period is the <u>sum of the notional</u> number of megawatts of electricity to which <u>each of the</u> liable entity’s qualifying contracts under subsection (1) relate for the period, <u>and with such notional number</u> adjusted in accordance with the Rules to account for the likelihood that, despite the qualifying contracts, the liable entity retains exposure in relation to the volatility of the spot price during the period <u>under the terms of each qualifying contract.</u></p> <p>Amend the NEL to clarify that the AER may not take enforcement action against a liable participant (including for a breach of section 14ZP(2)) if the AER disagrees with a firmness adjustment made by a liable entity, provided that the methodology used to calculate such firmness adjustment is supported by an independent audit report.</p>
Proposed sections 18ZE and 18ZF	<p>Compliance audits requested by the AER should be paid for by the AER. This reduces the risk of unnecessary audits and reduces the regulatory burden of the NEG, which may otherwise increase costs to consumers. The AER already has the power to request information under 18ZD relating to compliance</p>	<p>Amend these sections to require that the AER bears the cost of any audit it undertakes under section 18ZE or requires a regulated entity to undertake under section 18ZF.</p>



NEL reference	Problem	Suggested approach
	with the NEG.	