

Energy Security Board

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Introduction

The Energy Users Association of Australia (EUAA) is the peak body representing Australian energy users. Our membership covers a broad cross section of the Australian economy including significant retail, manufacturing and materials processing industries.

Combined our members employ over 1 million Australians, pay billions in energy bills every year and expect to see all parts of the energy supply chain making their contribution to the National Electricity Objective. Our members are highly exposed to movements in both gas and electricity prices and have been under increasing stress due to escalating energy costs.

The EUAA recognise the need to comprehensively evaluate the best pathways to a decentralized and decarbonised electricity system including the challenges that come with the retirement of thermal plant and the integration of new and emerging technologies. We also recognize the challenges from a changing climate and the growing impacts of extreme weather events on the electricity system.

We support the development of the ISP and see it having a crucial role in facilitating this transition pathway at the most efficient cost to consumers, provided there is thorough, transparent and respectful engagement along with rigorous, independent oversight of costs and benefits. Therefore, the EUAA is focused on ensuring the development of the ISP follows rigorous process, achieves a high level of accountability and involves consumers, who ultimately foot the bill, as an integral part of an ongoing engagement process.

This submission should be read in conjunction with our parallel submission to the AER in the ISP Guidelines. A number of matters are discussed across both submissions.

Our main recommendations in the submission to the AER were that:

- the ISP Guidelines, at least as they apply to development of the 2022 ISP, should be more prescriptive than discretionary for AEMO. We see this as reducing the risk of over-investment. We provided some examples of where more prescription might apply in specific parts of the Cost Benefit Analysis Guideline.
- The critical role the AER should play in the ISP process consistent with its obligations under Chapter 15 of the rules in furthering the NEO
- Following completion of the 2022 ISP, the AER undertakes a review of the effectiveness of the Guidelines which may lead to greater discretion being given to AEMO for the 2024 and subsequent ISPs.

These recommendations stem from our view that while AEMO has made improvements in the way it has undertaken the current 2020 ISP compared with the 2018 ISP, we still do not have confidence in its ability to meet the NEO objective for the 2022 ISP. This stems from:

- (i) The perception that AEMO's forecasting is overly conservative, its level of transparency could be improved as could its level of focus on costs to consumers
- (ii) The current state of AEMO's consumer engagement and the information asymmetry consumers face
- (iii) The limit on disputes to matters of process

More detailed information is provided on (i) and (ii) in the AER submission. We discuss (iii) in more detail below.

This remainder of this submission provides specific comments on selected issues in the Consultation Paper and draws on the companion submission to the AER. Our particular focus here is on the governance framework, dispute resolution, transitional arrangements and assessment framework.

We would welcome further discussion on the issues we have raised in this submission.

Sincerely,



Andrew Richards
Chief Executive Officer
22 January 2020

Specific Comments on Proposed Rule Changes

1. Governance framework - prescription vs discretion in the ISP Guidelines

We refer the ESB to the discussion in our submission to the AER where we discuss why we prefer a bias towards prescription at least in the Guidelines to apply to the 2022 ISP. In summary we suggest a range of areas where this prescription should apply:

- (i) In selecting the scenarios, AEMO is required to assess “staged” as well as “unstaged” development paths
- (ii) AEMO should assign probabilities to the scenarios it develops and then be required to provide a comprehensive justification for these probabilities and have these tested in a fully transparent and consultative process – this is the same as is currently the case under RIT-T guideline;
- (iii) AEMO would not have the flexibility to select an optimal development path that did not have the highest net benefit based on the probabilities decided after the consultation process in (ii);
- (iv) Requirement to undertake sensitivity testing for each development path and each scenario rather than leave that to AEMO’s discretion. This sensitivity analysis should not be limited to simply changing one variable at a time but should also consider the impact of changes in related variables at the same time
- (v) How HILP events are to be considered
- (vi) There should be a process of post implementation review to assess each ISP. This could be in various stages parts e.g. 2022 ISP assesses the assumptions/forecasts on which the 2020 ISP was based; the actual benefits that have accrued to projects that are built would be assessed at say 5/10-year intervals
- (vii) Requiring AEMO to value market benefits of credible options using multiple scenarios
- (viii) Providing explicit guidance on economic inputs and assumptions that the AER has jurisdiction over e.g. discount rates and value of customer reliability including the specific values to be used and how they should be used in the CBA
- (ix) Require specific support for consumer engagement around how the proposed ISP Panel would function

2. Consultation Process (Clauses 5.22.7 – 5.22.11)

As we note in our AER submission, the assumption in the Issues Paper that underlies the ISP Guidelines - that a high level of transparency and information provision is sufficient for effective consumer engagement – is understandable, but not our experience in practice¹.

Not only is there a huge information asymmetry between AEMO and consumer advocates, these advocates lack the resources and the capability to be able to understand many of the detailed issues they are asked to comment on as part of AEMO’s stakeholder engagement.

We look forward to participating in the ISP Panel, though establishing it in time for input into the 2020 ISP would have been advantageous. In the AER submission we propose greater prescription around how the Panel is to operate and the resources that would be assigned to the Panel to ensure it facilitates high quality consumer engagement such as:

- Requirement to follow the AER’s Consumer Engagement Guideline

¹ This is similar to the Hayne Royal Commission finding that lengthy product disclosure statements are not sufficient to ensure a consumer understands a financial product.

- Requirement to develop a stakeholder engagement plan with the ISP Panel and that the Panel will be required to present a report to the AER on their views on that Plan prior to engagement commencing on the 2022 ISP

3. Dispute resolution process

Our earlier submission argued for the existing dispute mechanism to be retained with the AER signing off in a similar way to their role in relation to AEMO’s declaration of a reliability gap under the RRO. We can understand why the ESB has landed with the much more restrictive disputes process than was suggested by the EUAA – or indeed the processes suggested by many other stakeholders – as it seeks to balance accountability and timely decision making.

The ESB’s approach is based on the application of the Rules and the AER CBA and Best Forecasting Practice Guidelines driving extensive stakeholder consultation during the process of preparing the ISP. While we can understand an approach that encourages stakeholders to debate their concerns as part of the ISP consultation process rather than using the dispute resolution framework as a substitute for consultation, it would be helpful for the ESB to provide more clarity about how it would work in practice.

It seems that a “process” dispute is about AEMO not following the Rules and Guidelines and not about a merits style review. So, the following situation would not qualify as a valid dispute:

- AEMO sets out its views, engages in wide consultation, this results in significant opposition to AEMO’s approach, but AEMO retains their original approach

This is a major reason why we support more prescription in the Guidelines for the 2022 ISP.

We would also propose that any stakeholder should not have to wait until the publication of the final version of the ISP to lodge a dispute. This should be possible at key decision points along the way. For example, stakeholders should be able to raise a dispute when AEMO publishes its forecasting and planning scenarios, inputs, and assumptions report (In the 2020 ISP timetable that was published in August 2019).

Stakeholders should not have to wait nearly 12 months to put in a dispute notice by which time it will be very difficult to focus on the particular issue as all the focus is on the final ISP document. Also, even if the dispute is valid there will be enormous pressure on the AER to not require a revised ISP about a matter that AEMO thought was resolved many months previously.

Our interpretation of 5.23.4(d) suggests that even where the AER finds the dispute valid, that the project is allowed to proceed and incur costs that will eventually be recovered from consumers:

“The raising of a dispute under clause 5.23.1, or the making of a determination under subparagraph (a)(2)(i), does not affect the validity, or stay the operation, of the Integrated System Plan.

If this is a correct interpretation then we do not support it.

The purpose of having a very focussed and time limited (maximum 40 days for the AER to make its decision) disputes process is to ensure that matters can be dealt with expeditiously.

If a dispute is considered valid under Clause 5.23.1(b) then the network should have to decide if it wishes to continue with the PADR during the 40 days the dispute is being considered:

- (a) If the dispute is dismissed then preparation of the PADR would continue and costs incurred in the period up to the AER decision would be part of the costs in the contingent project application
- (b) If the dispute is upheld then the costs incurred in the period up to the AER decision should not be recoverable in any eventual contingent project application. A successful appeal may result in a revised ISP.

We are not intending to frustrate the process, just to recognise due process.

Then, if the appeal is upheld, we do not agree with the wording of Clause 5.23.4(a)(2)(i):

“directing AEMO to remedy the non-observance with the prescribed ISP process, which direction may include requiring AEMO to consider whether an *ISP update* is required; or Proposed clause should be amended to;”

Because it gives AEMO the discretion to decide if an ISP update is required. We think that whether an update is required should be a decision of the AER’s determination. And so, suggest the following redraft:

“directing AEMO to remedy the non-observance with the prescribed ISP process, which direction may include requiring AEMO to issue ~~consider whether an *ISP update* in the area of the AER’s determination” is required; or Proposed clause should be amended to;~~”

4. Updates to the ISP (Clause 5.22.12)

One of the two reasons that trigger an ISP Update is (Clause 5.22.12(a)2):

“an actionable ISP project does not satisfy the regulatory investment test for transmission under rule 5.16A,”

Does this mean that if the TNSP concludes, following the RI-T on the actionable ISP project, that an alternative project is better, that there has to be an ISP Update?

The Consultation paper (p. 13) notes that:

“The update would simply apply the latest numbers to the existing ISP model. Any changes to the model itself would be consulted upon as part of the subsequent ISP”

But the draft rules only refer to “new information” that “may materially change the outcome of the...ISP” without specific reference to new assumptions in the existing model or that model changes are for the next ISP. We would have thought that material changes can occur in areas other than just particular “numbers” and these changes might require model changes.

We don’t understand why that should wait until the next ISP. We think the waiting may be inconsistent with the AER Guidelines.

For example, what if that material change had a significant impact on the options that are now subject to the network’s PADR? There is a risk that there will be a RiT-T dispute derailing the timetable.

5. Allocation of planning costs to TNSPs (Clause 2.11.1)

We agree with the proposal regarding the allocation of NTP costs to TNSPs.

The AER will need to ensure TNSPs are not over-compensated for ISP costs. While TNSPs may argue the new requirements are a step change, there is also a step change down as many current TNSP functions that are no longer required e.g. detailed market modelling and PSCR.

6. Incorporating ISP Projects into the TNSP's revenue determination (Clause 5.16.A, Rule 6A.)

Given the removal of Clause 5.16.6, the AER will no longer perform a preferred options analysis. But it still has the important task of assessing how much capital is allowed into the RAB for the contingent project. This remains a very important task to consumers and we need to be assured that the AER will have sufficient resources to complete a rigorous analysis of contingent project applications.

7. Transitional arrangements

We have concerns around the proposal that the 2020 ISP shall be deemed to have met the new requirements. We do not know if this has been done for legal reasons or whether it is simply a desire to have the perception that the new rules are in place as soon as possible.

Irrespective of the reason, we do not think this assumption is appropriate. It gives a false view that an effective consultation process is being undertaken in the 2020 ISP. It also risks stakeholders thinking that what AEMO is currently doing for the 2020 ISP will be acceptable for the development of the 2022 ISP, when we believe this is far from the case.

The Consultation Paper notes:

“AEMO is engaging closely with the other market bodies regarding its 2020 ISP process so that the ESB can be satisfied that it meets an appropriate standard.”

but provides no definition of what “appropriate” means.

We think that a preferred approach is something like:

“The Guidelines are being developed in parallel with the development of the 2020 ISP. AEMO has sought to improve its processes to accord with the draft guidelines as they have been developed. However, it recognises that further improvement will be required in preparation of the 2022 ISP to fully comply with the final version of the Guidelines.”

The proposed consumer forum will not be in place until consultation on the Draft ISP is virtually complete and hence will have no impact on the 2020 ISP. Given the projects now being assessed by the RIT-T/contingent project process from the 2018 ISP and the projects that are likely to proceed to a PADR from the 2020 ISP total billions of dollars in capex, consumers are likely to be bearing this increase in RAB without application of best practice CBA and Forecasting Guidelines.

Given the final versions of the CBA and Forecasting Guidelines will be published by 30th June 2020, their application to any update of the 2020 ISP should be made explicit.

Finally, given the Consultation Paper notes (p.6):

“If the COAG Energy Council approves the making of the ESB’s recommended Rules, it is expected that the ISP Rules will be made and commenced prior to the release of the 2020 ISP in mid-2020.”

then the rules should make it explicit that the disputes procedure applies to the 2020 ISP.

8. Assessment Framework

There was considerable comment in the earlier round of submissions on the role of “public policy” in the ISP purpose and how inclusion accords with the NEO. The Consultation Paper notes that the ESB view is that (p.22):

“...the draft ISP Rules are consistent with the NEO for the following reasons:

- It gives effect to a whole-of-system plan for the efficient development of the power system, considering efficiency, reliability, security, *and public policy;*” (emphasis added)

Yet just above that, the Consultation Paper sets out the NEO:

“to promote efficient investment in, and efficient operation and use of, electricity services for the longer-term interests of consumers of electricity with respect to:

(a) price, quality, safety, reliability and security of supply of electricity...”

Given there is no reference to “public policy” in the NEO we see the potential for confusion and conflict to be created.

Now we would distinguish between different types of public policy e.g. a Federal Government commitment to fund Snowy 2.0 vs a State Government commitment to have a renewables target (that might be different between the two states where an ISP project traverses. Our discussion focusses on the latter.

It seems to be an effective change in the NEO through the ISP rather than through a broader based consultation on the NEO itself. We are not against having a public discussion about whether the NEO should be extended to include an explicit environmental/climate change aspect. We just don’t think the ISP is the right place for that discussion.