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CoAG Energy Council
Energy Strategic Policy
C/- Department of Industry
CANBERRA ACT

By email: Energystategicpolicy@industry.gov.au

Independent review of the Energy Security Board

The Major Energy Users (MEU) welcomes the opportunity to provide its views to the independent review of the Energy Security Board

About Major Energy Users (MEU)

The MEU was established by very large energy using firms to represent their interests in the energy markets. As most of the members are located regionally and are the largest employers in these regions, the MEU is required by its members to ensure that its views also accommodate the needs of their suppliers and employees in those regional areas. It is on this basis the MEU and its regional affiliates have been advocating in the interests of energy consumer for over 20 years and it has a high recognition as providing informed comment on energy issues from a consumer viewpoint with various regulators (ACCC, AEMO, AEMC, AER and regional regulators) and with governments.

To assist in the explanation of the MEU concerns outlined below, we use as an example an issue of extreme concern to the MEU and its members – that of the recent CoAG Energy Council (EC) decisions to change the reliability settings for the application of the RRO, and to have a standing reserve of supply, both of which are likely to considerably increase costs to consumers with little offsetting benefit to them. As a consistent theme, we have heard consumers (including MEU members) stating unequivocally that they don't want increased costs for their electricity supplies as they need lower costs, and that current levels of reliability are sufficient.

While the changes in approach to reliability might marginally increase reliability of supply into the wholesale market, this decision does not reflect the reality that any loss of reliability incurred by consumers is primarily caused in the distribution networks where unserved energy (USE) is perhaps 8-10 times the amount of USE

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seen in the wholesale market. In developing its recommendation to the EC, the ESB did not seek stakeholder input about wholesale market reliability, or to test whether consumers saw the increase in reliability in wholesale electricity market would have much impact on the reliability of delivered electricity (ie where they use it) was offset by the increase in costs that they would see from the change.

Observations about the ESB performance

The MEU has been an active stakeholder in relation to ESB activities and in the early phase of ESB work, the MEU considered that the ESB was working well, although noting that its activities did not deliver a better outcome than what had occurred before its implementation (see comments below).

In more recent times, the MEU considers that there are stresses within the ESB that are affecting its performance and there are signs of more unilateral decision making by the ESB without what we would consider to be proper consultation with, or input from, stakeholders. The ESB recommendation regarding its recommendation to increase wholesale market reliability is a case in point.

ESB role in providing whole of system oversight

While the ESB provided a focus for the development of the National Energy Guarantee (NEG) and widely sought input into the final shape of the NEG for its recommendations to the EC, there were questions raised as to whether there was a need for a separate body to undertake this work as, in our view, developing and implementing the NEG could have just as easily been carried out by the AEMC, reflecting that the AEMC was specifically structured to be the rule making body and provider of advice to governments on energy market issues. Before establishment of the ESB, the AER, AEMO and the AEMC would provide independent views on the energy markets and while this still continues, their voices are now less clear because the ESB is seen as the primary source of advice to the EC. All three of the market bodies provide their views on the way the energy markets are developing and operating, so to establish another body for this task seemed unnecessary.

Most importantly, the AEMC independently assesses proposed rules (including those provided by the AER and AEMO), based on their merits but has strong requirements for stakeholder consultation. A recommendation from the ESB to the EC does not necessarily go through this process for reliability and security issues, and long term planning.

The addition of another market body increases costs to consumers for their energy supplies, yet when consumer advocates sought increased funding in order to provide better input into deliberations about the energy markets, this was effectively rejected as it would increase costs to consumers and in a market where energy costs are unsustainably high, all costs have to be minimised. There has been no additional funding for consumer advocacy. Despite this, consumers are expected to

carry the costs of the ESB and any other increase in cost that the market bodies consider is necessary. For example, AEMO costs have increased considerably over the years. In 2019 Annual Report, NEM fees (which consumers see directly in their invoices for electricity supplies) were \$80m yet in 2016 NEM fees were \$67m and more increases are forecast. Across all of the market bodies we see growth in staff numbers and increasing numbers of requests for stakeholder consultation and input, yet the lack of adequate funding for consumer advocacy results in minimal input from consumers into many critical market changes.

So the MEU questions whether the addition of another market body (effectively duplicating a number of the AEMC functions as well as some AER functions) with its associated costs is necessary or even warranted, especially when it has been decided that funding of consumer advocacy should not be increased because of cost constraints, noting the original three market bodies are still providing sufficient oversight of the markets

Issues relating ESB governance

The MEU has a concern with the current ESB governance as we consider it provides a vehicle for one of its members to “push its own barrow” without any prevailing independent review of the issues that are the province of one of the other regulators. While the ESB ostensibly draws together the heads of the three market bodies (AER, AEMO and AEMC) they each have a defined responsibility to the EC in relation to the energy markets and their operation and development.

Having a primary source of information feed to the EC from the ESB, makes it more difficult for any one of the other market bodies to raise legitimate concerns they might have with what another market body proposes. The single body (the ESB) must deliver a joint view and as all three market bodies are part of the ESB, so it is therefore difficult for one of the ESB members to dissent from what is meant to be a “joint view”. In our view, often the “joint view” can be compromised or skewed in order to get tripartite agreement, when such an outcome might not be the best interests of consumers

For example, AEMO had repeatedly raised the issue of increasing reliability through modifying the reliability benchmark and for a need to establish a standing strategic wholesale market reserve. Such a change will increase costs to consumers so it would be useful for one of the other bodies to assess whether AEMO concerns were valid and to provide (say) a view that consumers do not see the need for increased wholesale market reliability. In fact, there was such an assessment as AEMO sought these changes through a rule change. During financial year 2018/19, the AEMC conducted a rule change process considering the need for these changes and the outcome was that the AEMC saw that overwhelmingly stakeholders opposed the change and the AEMC rejected the rule change. Despite this clear rejection by stakeholders and the AEMC, the ESB has supported AEMO in implementing the changes, without seeking stakeholder input.

The evolving role of the ESB

It is not clear to the MEU that the ESB has provided a better outcome for consumers than would have been the case under the three market bodies addressing the concerns that are within their areas of expertise. Equally, not having the ESB would make it possible for the other market bodies to independently express concerns about developments and initiatives proposed by one of the others.

For example, in the past, the AER has provided considerable and valuable input into rule change proposals and market advice under consideration by AEMC. Now, as the AER is a party to an ESB position (because the ESB provides a joint view), then it is more difficult for the AER to provide input critical of the joint position, even if it has significant concerns. In the absence of the ESB, the AER can provide independent advice to (say) the AEMC, and then reiterate this to the EC, providing a more balanced assessment to the EC of AEMC advice.

The MEU is very concerned that a single voice within the ESB has the potential to be louder and/or more influential than others and thus bias the advice and recommendations the ESB provides, noting the ESB is not accountable for any specific part of the markets, unlike the other market bodies. Not having the ESB allows each of the market bodies to provide advice and recommendations to the EC which then has to make its decisions by ministers who are accountable to the electorate. In our view, the previous provision of independent advice by each of the market bodies has led to better outcomes for consumers than the current outcomes co-ordinated by the ESB.

The MEU questions the long term purpose of the ESB. The EC (and its predecessor, the MCE) should be the decision making body, basing its decisions on proposed changes via an AEMC review process, allowing for fully independent advice from the three market bodies which reflects their particular skills and knowledge base. The presence of the ESB takes some of this responsibility from the EC and vests it to a large degree in a body that has no responsibility for a specific part of the market, or even a requirement to engage with stakeholders, especially consumers.

Other matters

There is no evidence that the existence of the ESB has delivered better outcomes than would have occurred in the absence of the ESB (ie the counterfactual). In fact, based on observed outcomes, consumers are concerned that the existence of the ESB has resulted in outcomes that are less efficient than what might have occurred without the ESB.

While the ESB did do some good work in the early part of its existence, the same (or even more acceptable) outcomes might have come using pre-ESB review and rule change processes. Specifically, greater consumer engagement and consultation would have applied relating to the ESB decision to recommend to EC the proposed

AEMO reliability changes as under the pre-ESB times consumers would (and did) have had a greater say about the need for increased reliability compared to its cost through closer working with the AER and AEMC (and its Reliability Panel).

Conclusion

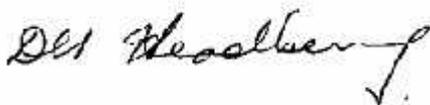
The MEU is not convinced that the additional cost the ESB imposes, coupled to its ability to bypass stakeholder consultation (via section 90F of the NEL) has been a successful innovation and recommends that there is a reversion to the previous structure where decisions regarding the direction of NEM market development are really made by elected ministers through the EC, basing their decisions on independent advice from each of the AER, AEMO and AEMC, coupled with stakeholder input initiated by the EC.

If there is a decision made to continue the operation of the ESB, then there needs to be some essential changes to its structure and processes, where:

-) The ESB would explicitly be required to consult with stakeholders, including consumers, on all their recommendations to the EC.
-) The ESB gets a better understanding of consumers issues and concerns by implementing:
 - o As a standing part of the board, a member who has explicit knowledge of consumers' needs, and
 - o A consumer panel or similar, following the AER CCP and the more recent proposed AEMO Consumer Panel
-) All rule changes should be processed through the AEMC and the NEL 90F changed to eliminate the ability of by-passing this process
-) The ESB would have a clear statement as to what it is required to complete (eg the post 2025 review) and a date by which it will be disbanded with a reversion to the pre ESB structure

We appreciate the opportunity to have provided this input to the review process of the ESB. Should you wish for amplification of any of the comments provided in this response, please contact our Public Officer (David Headberry) on 03 5962 3225 or at davidheadberry@bigpond.com .

Yours faithfully



David Headberry
Public Officer

