

Dear Ms Collyer,

**Re: Extension of time and reduction in scope of the 2022 reliability standard and settings review**

The Smart Energy Council is writing to lodge our objection to the proposal for the rule change request lodged by Kerry Schott as Chair of the Energy Security Board (ESB) for 'Extension of time and reduction in scope of the 2022 reliability standard and settings review' to be expedited by the Commission.

The Smart Energy Council believes that the proposed rule does not meet the definition of a non-controversial Rule under section 87 of the National Electricity Law (NEL) and therefore it cannot be subject to the expedited rule making process under section 96 of the NEL.

A non-controversial Rule is "a Rule unlikely to have a significant effect on the national electricity market (NEM)".

There are several reasons why the proposal rule is likely to have a significant effect on the NEM and is therefore controversial:

- The proposed Rule would remove a core part of the Reliability Panel's work – the decisions around price settings (the Market Price Cap, Market Floor Price, Cumulative Price Threshold, Administered Price Cap) – and giving it to the Energy Security Board for the 2022 reliability standard and settings review, regardless of whether or not a capacity market is put in place. This is totally unprecedented. The reliability settings are fundamental to the Reliability Panel's role and have not been set by any other body as long as the Reliability Panel has been established. This process change, in and of itself, is a "significant effect" on the NEM.
- The topic of the rule change – the reliability price settings (the Market Price Cap, Market Floor Price, Cumulative Price Threshold, Administered Price Cap) have a major influence on investment in the National Electricity Market (NEM). Billions of dollars of investment will be influenced over the following four years by the 2022 reliability price settings – this is in no way a trivial or non-controversial matter.
- To further explicate this point, should the rule change proceed and the ESB set different price settings to what the Reliability Panel would have done and no capacity market is put in place (as is eminently possible), then the Commission would have had a significant effect on investment in the NEM. The Commission cannot rule out this possibility and assume this outcome is unlikely (and therefore insignificant) before it has made a decision on the rule

THE INDEPENDENT BODY FOR THE SMART ENERGY INDUSTRY IN AUSTRALIA

PO BOX 231, MAWSON ACT 2607  
INFO@SMARTENERGY.ORG.AU  
SMARTENERGY.ORG.AU  
ABN 32 006 824 148



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change decision itself. It would, in fact, be irresponsible of the Commission to do so.

- The Reliability Panel's role is enshrined in the National Electricity Law whereas the Energy Security Board has no legislative basis or authority. The Commission is considering handing over major decisions about the nature of the national electricity market to a body with no legislative basis, no written governance rules and no requirement for transparency. That, again, is a significant process change to the operation of the NEM.
- Further, the ESB consists of the three market bodies whereas by statute the Reliability Panel is comprised of [members](#) who represent a range of participants in the National Electricity Market, including small and large consumers, generators, network businesses, retailers and the Australian Energy Market Operator (AEMO). The rule change is therefore proposing to change the decision maker for reliability settings from a representative one to the Energy Security Board which does not include market participants.
- Finally, this rule change relates to the ESB's post 2025 electricity market design advice which is highly controversial, as evidenced by media coverage, public campaigns against the advice by a variety of public interest organisations and the fact that Ministers only agreed to further work on a capacity mechanism design on an 'opt in' basis. To fuel the fire of public concern about the ESB's advice by fast-tracking a rule change to hand over the reliability settings to the ESB, regardless of whether or not a capacity mechanism is put in place, would invite credulity about the independence of the Commission, given its chair's dual role now as chair of the ESB. Due process is of the utmost importance given this dual role and market participants, consumers and stakeholders expect to see the Commission take good governance, transparency and adequate consultation very seriously under these circumstances.

We strongly request the Commission not to make a rule under the expedited process in section 96 of the NEL and allow full consideration through a standard rule change process.

We would welcome the opportunity to speak with the Commission about this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Grimes', with a stylized, cursive script.

**John Grimes**

Chief Executive  
Smart Energy Council

11<sup>th</sup> November 2021