

10 November 2021

Australian Energy Market Commission
GPO Box 2603
Sydney NSW 2000

Electronic submission

National Electricity Amendment (Extension of time and reduction of scope of the 2022 Reliability Standard and Settings Review) Rule 2021

Snowy Hydro Limited welcomes the opportunity to comment on matters raised in the Consultation paper from the Australian Energy Market Commission (the Commission) on the National Electricity Amendment (Extension of time and reduction of scope of the 2022 Reliability Standard and Settings Review) Rule 2021 ("Rule Change Request").

This submission is limited to the proposed designation of the Rule Change Request as non-controversial.¹

Legislative Framework

The National Electricity Law defines a non-controversial rule as "*a Rule that is unlikely to have a significant effect on the national electricity market*".² Furthermore, the Commission must not make a Rule in accordance with the non-controversial process if it receives a request from any person not to do so within two weeks of publishing a relevant notice and the reasons set out in the request are not, in its opinion, misconceived or lacking in substance.³

Background to the NEM

Snowy Hydro opposes the treatment of the Rule Change Request as non-controversial and the Commission should not assess it as such, because it does not satisfy the relevant statutory requirement. That is, it is not a rule that is unlikely to have a significant effect on the national electricity market (NEM) and is by its nature not a rule that should be expedited. The design of the NEM, and the importance of reliability settings within that design, demonstrates why this is the case.

The NEM is an energy-only market. The distinguishing feature of this market structure is that resource adequacy is realised by scarcity pricing. Market volatility, in which prices rise above short-run marginal cost, provides marginal generators with quasi-rents that cover generators' fixed costs and signal the need for investment in new capacity. In the NEM, scarcity pricing is inextricably linked with reliability settings. These are the Market Price Cap (MPC), Cumulative Price Threshold (CPT), Market Floor Price (MFP) and Administered Price Cap (APC). These settings moderate the extent to which market outcomes in the NEM are able to incentivise an efficient level of investment. In short, reliability settings are critical to ensuring the market is well-supplied. It follows that the

¹ For the avoidance of doubt, this submission is a written request for the purposes of NEL, s95(2)(a) and 96(3).

² National Electricity Law (NEL), s87

³ *Ibid*, ss. 95-96.

process by which reliability settings are assessed and determined must be robust, transparent and beyond reproach.

The NEL and NER assign responsibility for assessing and recommending appropriate reliability settings to the Reliability Panel.⁴ There are deliberate reasons why the Reliability Panel, a separate body whose membership includes a range of industry participants as well as market bodies, was established for this role, and why it is different from other rule-making processes in the NEM. In particular, this function recognises the fundamental importance of reliability settings to a well-functioning market. It is in the interests of all stakeholders that reliability settings are set at an appropriate level. The broad stakeholder representation of Reliability Panel members was designed to ensure that adequate account was taken of stakeholder interests in this process. Having a separate and independent body recommend the level of reliability settings also improves trust and public confidence in the decision making process.

The relatively diverse membership of the Reliability Panel reflected the specific legislative intent of the legislation creating the Reliability Panel under the NEL:

Under the Rules, the representative nature of the Reliability Panel will be enhanced by the requirement that it include representatives of the retailers, generators, transmission and distribution providers and end users.

(Second reader, SA Parliament, National Electricity (South Australia) (New National Electricity Law) Bill 2005 (Page 1453 of the Legislative Assembly Hansard.)

Assessment

The principal outcome of treating the request as non-controversial would be to curtail opportunities for stakeholder feedback on the matters considered in the request, and allow it to be 'done and dusted' within eight weeks. The ESB seeks to justify the non-controversial status of the Rule Change Request on the basis "it is a transitional, one-off amendment to the scope and date of the 2022 RSS Review" and that there are "likely to be benefits from a streamlined stakeholder engagement process". Snowy Hydro strongly disagrees with these statements.

The Reliability Panel's review of reliability settings is the most important decision-making process in the NEM. Reliability settings influence the levels of investment, contracting, system security and consumer outcomes. As the Reliability Panel itself has remarked, reliability settings protect the long term integrity of the market by limiting the extent to which wholesale prices can rise and fall, limiting market participants' exposure to prices that could threaten the financial viability of a prudent market participant.⁵ It is impossible to reconcile the fundamental importance of this process with the ESB's characterisation of its Rule Change Request (and the Commission's endorsement of this characterisation) as merely a 'transitional arrangement' and, incredibly, that reduced opportunity for stakeholder input represents a 'stakeholder benefit'. A rule change which seeks to reallocate responsibility for assessing reliability settings to an entirely different body cannot be one which is unlikely to have a significant impact on the NEM, simply because of the importance of the settings themselves.

⁴ NEL, s38 and NER, cl. 8.8.1(1b)

⁵ Reliability Panel advice on the Enhancement to the Reliability and Emergency Reserve Trader rule change, 28 September 2018

Snowy Hydro believes, and will argue further in its substantive submission to this Rule Change Request, that the ESB has no proper basis on which to seek to arrogate to itself a decision-making process which, by design, has been entrusted to an independent body, ie. the Reliability Panel.

Membership of the ESB includes the Australian Energy Regulator, the Commission and the Australian Energy Market Operator. This contrasts with the much broader membership of the Reliability Panel, including four members representing market participants. The ESB has no industry representation and that fact alone suggests that the Rule Change Request is not in any sense non-controversial, ie. that it will not have a significant impact on the NEM. If implemented, the Rule Change Request would be a major change to the way in which Reliability Settings are determined. The fact it would be a 'one-off' arrangement is irrelevant. (Previous 'transitional' arrangements, including AEMO's RERT function, and the mandatory (uncompensated) provision of primary frequency control, have now become enduring features of the NEM). The ESB is effectively proposing to strip market participants' representation from the body responsible for assessing reliability settings and this, again, means that the Rule Change Request would have a significant effect on the NEM.

The Commission seemingly acknowledges concerns about removal of stakeholder participation in its comments that "The Commission will have regard to.....stakeholder views on the alignment of the ESB process to consider the design of [a] capacity mechanism with the reliability settings". While both the ESB (in its putative review of reliability settings) and the Commission (in any subsequent rule change) would undoubtedly consider stakeholder input in those processes, that is nevertheless substantially different from direct membership of the decision making body which would otherwise assess reliability settings. Neither the ESB nor the Commission can cure this detriment by promising to take account of stakeholder views in their respective assessments of those settings. Indeed if that were true there would be no need or justification for the Reliability Panel in the first place. Bodies such as the ESB will inevitably have their own priorities and focus areas which may not be consistent with best-practice market design or reflect those of market participants.

Finally, the ESB, as part of its justification for the Rule Change Request, highlights its desire to align the assessment of reliability settings with its consideration of a Physical Retailer Reliability Obligation (PRRO) as part of its Post 2025 Market Design program. The PRRO is a capacity mechanism and would, if implemented, be a radical reform to the NEM, moving away from its traditional energy-only structure. The fact of this process taking place only strengthens the need for the reliability settings to be assessed by the Reliability Panel. The forthcoming review of the reliability settings will, in light of the potential shift to a capacity market, be the most important since the creation of the NEM. For this reason, again, the Rule Change Request cannot be one which is unlikely to have a significant effect on the NEM and should not be subject to an expedited process which limits the scope for stakeholder input.

In summary, the Commission should not designate the Rule Change Request as non-controversial, because, firstly, it does not satisfy the relevant statutory requirement to be treated as non-controversial, and secondly, because the objections raised in this submission constitute a written request for the purposes of NEL, s95(2)(a) and 96(3).



About Snowy Hydro

Snowy Hydro Limited is a producer, supplier, trader and retailer of energy in the National Electricity Market ('NEM') and a leading provider of risk management financial hedge contracts. We are an integrated energy company with more than 5,500 megawatts (MW) of generating capacity. We are one of Australia's largest renewable generators, the third largest generator by capacity and the fourth largest retailer in the NEM through our award-winning retail energy companies - Red Energy and Lumo Energy.

Yours sincerely,

Leigh Creswell

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