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Wednesday, 12 September 2018

Dr Kerry Schott
Chair
Energy Security Board

Dear Dr Schott

RE: Draft National Electricity (SA) (National Energy Guarantee) Amendment Bill 2018

ERM Power Limited (ERM Power) welcomes the opportunity to respond to the Energy Security Board's draft legislative amendments on the National Energy Guarantee ('the Guarantee').

About ERM Power

ERM Power is an Australian energy company operating electricity sales, generation and energy solutions businesses. The Company has grown to become the second largest electricity provider to commercial businesses and industrials in Australia by load[1], with operations in every state and the Australian Capital Territory. A growing range of energy solutions products and services are being delivered, including lighting and energy efficiency software and data analytics, to the Company's existing and new customer base. ERM Power also sells electricity in several markets in the United States. The Company operates 497 megawatts of low emission, gas-fired peaking power stations in Western Australia and Queensland. www.ermpower.com.au

General Comments

ERM Power notes the complexity of responding to this draft legislation at a time where there is ongoing uncertainty over the future of the National Energy Guarantee. There is no indication of whether the Federal Government intends to implement the National Energy Guarantee or if the states will agree to it given the seismic shift in energy policy over the course of the past few weeks. Certainly, it is hard to see how to comment on the clauses relating to the emissions reduction requirement given this is ostensibly no longer part of the policy.

ERM Power believes it would be beneficial for all stakeholders if the exposure draft legislation were to be re-published once it is clear what the Australian Government's stance is on the Guarantee, and whether the state and territory governments still support it.

Nonetheless, it is still important for this legislation to be considered and for ERM Power to provide its input in the event that the reliability requirement does indeed remain part of government policy.

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[1] Based on ERM Power analysis of latest published financial information.

Reliability Requirement

ERM Power strongly opposes Section 14ZF, clause (2)(b) which allows for the Rules to "state circumstances in which AEMO may request a T-1 reliability instrument under section 14ZG when a related T-3 reliability instrument has not been made".

This clause represents a significant change from the framework established ion the final detailed design document. Our understanding is that the Guarantee allows for a T-3 trigger in order to signal to the market that a reliability gap may occur in the near future and therefore, gives retailers and other liable parties the opportunity to start planning and taking action to meet the requirements of the reliability guarantee. The T-3 period also aligns with the AEMC's draft determination for generators to provide three years' notice before closing a generation facility.

Introducing the ability for a trigger to be declared at T-1 without any prior notice adds significantly to the risks imposed on retailers and other liable parties who will incur costs to manage these risks through increased levels of hedging or investments in supply or demand-side technologies. Inevitably, these costs will be passed on to consumers. This would run counter to the overall aim of the Guarantee to help bring electricity costs down for consumers.

The ESB has highlighted through related processes that state governments are concerned that a reliability gap could arise at any point during the 10-year forecasting window.[2] ERM Power acknowledges that this is true, but fails to understand why the originally proposed T-3 and T-1 triggers are not sufficient. A gap that arises further out, for instance 5 or 6 years in advance, signals to the market that more generation may be needed. Investors will take action accordingly and have a number of years to act (including by constructing new power plants) before there may be a risk to reliability. Forecasts are also likely to improve closer to the present day. The history of AEMO's ESOO forecasts shows demand forecasts are highly uncertain further out from the present. We therefore consider it unnecessary to shift to a trigger period further out than 3 years.

At the other end of the scale, it is entirely possible that a gap may arise only 2 years out. The most plausible way this could occur would be due to the sudden and unexpected closure of a large generator along the lines of the Hazelwood and Northern Power Station closures. The AEMC has made a draft determination that will require all generators to give three years notice before closing, which mitigates against this risk to some extent.[3] It could also occur via a catastrophic failure of a plant due to accident or natural disaster. If this were to occur and lead to a reliability gap, there is little any retailer could do at short notice to solve the gap. Most, if not all, retailers would probably find themselves unable to secure enough eligible contracts in such a situation. Triggering a reliability gap period would only therefore penalise retailers who would fundamentally be unable to comply with the Guarantee's requirements. In this instance, the financial penalties associated with the Guarantee would serve little purpose.

Furthermore, ERM Power considers it entirely unnecessary that a gap period be declared less than three years out given that AEMO has access to the existing Reliability and Emergency Reserve Trader (RERT) powers to secure emergency, short-term generation. This is the current 'backstop' in place to deal with reliability concerns at short notice. While ERM Power has concerns about the operations of the RERT, it would be far less damaging than the imposition of sudden and costly regulatory requirements.

There is virtually nothing to be gained by allowing for a reliability gap to be triggered at T-1 with no previous notice. All this will serve to do is increase costs for retailers, costs which inevitably will be passed on to consumers. ERM Power recommends that this clause must be removed from the legislation.

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[2] See COAG Energy Council's *Bulletin on National Electricity Law Amendments for the National Energy Guarantee* and *National Energy Guarantee Reliability Requirement Pre-Condition Options* consultation paper.
[3] AEMC, *Generator Three Year Notice of Closure Draft Determination*, 16 August 2018.

ERM Power queries the need for the Section 14ZI, clause (3)(b) which binds the AER to accepting AEMO's reliability gap request without modification. There may be cases where AEMO has sought to impose a reliability gap that is too broad in nature and does not adequately target the specific trading intervals where reliability is genuinely at risk. In such a case, it would seem that the AER may be obliged to accept AEMO's request in its entirety rather than reject it. In our view, it is reasonable for the AER to be able to narrow a proposed gap period if it believes this is more beneficial to consumers. This could be done in consultation with industry stakeholders as well as AEMO to ensure that a sensible outcome is reached.

Conclusion

ERM Power recommends that these legislative amendments be presented again once it is clear which parts of the Guarantee form part of current energy policy. It is difficult to adequately and comprehensively respond to draft legislative amendments when there is little indication of whether this may be relevant in the near future.

At a bare minimum, ERM Power considers that Section 14ZF, clause (2)(b), allowing for a gap period to be declared when there has not previously been a T-3 reliability trigger should be removed. It is entirely inconsistent with the final detailed design of the Guarantee and adds significant risks and potentially costs to industry.

Please contact me if you would like to discuss this submission further.

Yours sincerely,

[signed]

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