



18 May 2020

COAG Energy Council
c/o Department of Industry, Science, Energy and Resources

Submitted via email: Energystrategicpolicy@industry.gov.au

Dear Sir/Madam

Energy Security Board Review

Origin Energy Limited (Origin) welcomes the opportunity to provide comments on the review of the Energy Security Board (ESB). The energy sector continues to undergo a significant transformative period. It is therefore imperative the governance framework facilitates a robust regulatory and policy regime that can keep pace with, and manage, the changing market.

Origin notes that one of the underlying reasons for the introduction of the ESB was to facilitate greater coordination between the various market bodies i.e. the Australian Energy Market Operator (AEMO), the Australian Energy Regulator (AER) and the Australian Energy Market Commission (AEMC). In reflecting on the ESB's performance to date, the Board's speedy and efficient work in developing the Retailer Reliability Obligation (RRO) by effectively mobilising a broad cross section of stakeholders, stands out as a significant achievement from Origin's perspective.

However even prior to the ESB's inception, the regulatory landscape in energy could be described as crowded, with several institutions both at the jurisdictional and national level having a hand in governance. Notwithstanding this, in considering the ESB's future, we recognise the Board is currently overseeing a comprehensive review of the market (through its NEM 2025 work program), which is likely to render it impractical for it to be disbanded at this time.

If the decision is made to extend the ESB's tenure (e.g. up to the conclusion of the NEM 2025 program), Origin has identified opportunities that could improve its effectiveness in carrying out its principal functions. This includes a well-resourced and independent secretariat – lessening the reliance on individual market bodies. Greater clarity and transparency in how decisions are made, with adequate stakeholder consultation prior to agreement on the high level policy direction for important issues, would also be welcomed. Additionally, consideration should be given to potential areas of overlap between the ESB and other institutions – particularly the AEMC. Having two bodies with carriage for rule making and market development can create confusion and inconsistency where their respective areas of responsibility are not entirely clear. Expanding the membership of the ESB to possibly include consumer and industry representatives could also provide a broader perspective and facilitate more informed decision making.

The challenges and opportunities outlined above are set out in more detail in Attachment A. If you wish to discuss any aspect of this submission further, please contact Steve Reid at Steve.Reid@originenergy.com.au or by phone on (02) 9503 5111.

Yours Sincerely

Keith Robertson
General Manager Regulatory Policy

Table 1 – Assessing the performance of the ESB

Responsibility (as per ToR)	Origin observations on ESB performance
Implementation of Finkel recommendations	Many of the recommendations required actioning by AEMO and the AEMC. Notably the ESB was responsible for consulting on the rules to action AEMO's integrated system plan.
Proposing law and rule changes to COAG	Having both the ESB and AEMC with rule-making powers has the potential to create inconsistency and confusion, particularly given the differences in the two processes. The ESB process can sometimes be more operational in nature, focusing on how to implement a policy change that may not have been subject to broad stakeholder consultation (e.g. the planned changes to the reliability standard).
Facilitating better coordination between the market bodies	<p>It is not clear the ESB has facilitated greater coordination between the market bodies. The changes to the reliability standard; multi-year contracting of emergency reserves; and the pursuit of an ahead market are all mechanisms that were proposed by AEMO but were not adopted by AEMC through its review process and have subsequently re-emerged under the ESB's purview. This could highlight the need for a more streamlined approach in dealing with these issues.</p> <p>It is also not clear how decisions are made by the ESB. The ToR states that decisions should be made by consensus where possible, and if disputes arise this should be brought to COAG's attention with the Chair recommending a way forward following discussion.</p>
Assessing the performance of the NEM, any significant opportunities and risks in its operation and how they should be dealt with	Much of this work is already covered by the other market bodies; the ACCC in its monitoring; and state-based regulators. The ESB publishes its annual Health of the NEM report, but it does not materially provide any additional information on market performance.
Providing advice on government actions affecting the NEM	<p>The ESB has demonstrated a willingness to offer independent advice on government actions – notably highlighting the potential impacts of the Commonwealth's Big Stick legislation. However, the nature of how COAG directs the ESB to do work should be examined. The recent decision to implement a higher reliability standard through an Interim Reserve Measure is a useful case study.</p> <p><u>Reliability standard.</u> The policy advice from the ESB to effect changes to the reliability standard was not subject to public consultation. While the ESB will consult on the rules to implement the change, stakeholders had no say on the overarching policy direction. Leaving aside the actual merits of the change, the ensuing process likely arose, given:</p>

	<ul style="list-style-type: none"> - the compressed timeframe in which the ESB was required to deliver its advice (based on a view that a decision was urgently needed); and - the nature of the ESB’s task, which was to consider options to change the reliability standard absent examination of whether a change was required. <p>The nature of how the ESB is given direction by COAG should be re-examined to ensure the outcomes are not inadvertently pre-determined; and that there is allowance for adequate stakeholder consultation before major policy decisions are agreed.</p>
<p>Undertake any other actions to support the transition of Australian energy markets as directed by the Council</p>	<p><u>NEM 2025</u>. There have been some early concerns around the direction of the NEM 2025 project. The ESB’s role is to coordinate the program, but it is not completely clear what that practically entails, and there are areas where there can be improvement.</p> <ul style="list-style-type: none"> - Outwardly, it appears the work streams are being driven by individual market bodies, absent any common framework around consultation approach and timelines. There are concerns around the transparency of the consultation process, for at least one work stream stakeholders were told the primary policy direction had already been decided based on advice from the ESB (without consultation). - Resourcing is potentially an issue, given the modest size of the ESB secretariat means it is dependent on the market bodies doing most of the work. While this is not necessarily a negative, it is problematic when there is an absence of clear direction and there are differing views amongst the market bodies.

If the ESB continues, there are opportunities to improve its effectiveness that should be considered, as set out in Table 2 below.

Table 2 – Possible changes aimed at enhancing the ESB’s effectiveness

ESB feature	Possible required change
Responsibilities	<p>There is a lack of clarity in the current powers for the ESB to make rules. Ideally there should be one rule maker. Where this is not the case the basis of the distinction should be clear. If two rule making processes are retained, they should also be similar in terms of transparency and rigor. There should be adequate stakeholder consultation on the high-level policy direction under the ESB process either prior to, or during the rule change. ESB rule changes should not just focus on how best to implement changes that have been previously agreed at COAG.</p> <p>Similarly, having two bodies with responsibility for market development is not ideal. If both the ESB and AEMC are retained, the rule making and policy development roles could be split.</p>
Tenure	<p>The tenure of the ESB, or the next review period, should be made clear through this review.</p> <p>One option could be for the ESB to focus on the NEM 2025 project and cease operations at the conclusion of the program, on the basis no ongoing need for the ESB has been identified beyond that timeframe.</p>
COAG direction – the ToR enable COAG to direct the ESB quite broadly	<p>While COAG should retain the power to direct the ESB to do work, it should do so as transparently as possible and stakeholders should be consulted before the high-level policy direction is determined.</p>
Composition – currently the three market bodies alongside independent Chair and deputy	<p>The ESB membership could be expanded to include broader stakeholder representation, including consumer and industry representatives to allow for more informed decision making.</p>
Decision making – currently by consensus, but no clear path to address situations where this cannot be reached	<p>The chosen approach should be transparent. Decisions could be put to a vote with members having the ability to publish a dissenting view.</p>

Resourcing – currently administrative support for the ESB is provided by AEMO and the secretariat is modest

The ESB should be adequately resourced and must be independent of the market bodies.

Where staff from the market bodies are utilised it must be made clear they are doing so as part of the ESB secretariat and not as a member of their respective organisations. This approach worked well during the development of the National Energy Guarantee (NEG) when the ESB seconded several individuals from industry and government.