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Australian Energy Market Commission
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By email: submissions@aemc.gov.au

National Transmission Planning Arrangements – Draft Report

The Energy Supply Association of Australia (esaa) welcomes the opportunity to comment on the Australian Energy Market Commission's (AEMC) Draft Report of 2 May 2008 on the proposed *National Transmission Planning Arrangements*.

esaa is the peak industry body for the stationary energy sector in Australia and represents the policy positions of the Chief Executives of over 40 electricity and downstream natural gas businesses. These businesses own and operate some \$110 billion in assets, employ over 40,000 people and contribute \$14.5 billion dollars directly to the nation's Gross Domestic Product.

esaa strongly supports the COAG decision to strengthen the national character of the electricity transmission system to support an efficient national energy market, and to strengthen the national character of energy market governance by establishing a single Australian Energy Market Operator (AEMO) governed by an independent skills-based Board with market participants involved in Board appointment processes.

This submission addresses the governance arrangements proposed by the AEMC for the national transmission planning function. In particular, the esaa does not support the proposal to add supplementary objectives to the NEL or to prescribe a statutory National Transmission Planner Advisory Committee (NTPAC) in the National Electricity Law (NEL). The NEL objective is sufficient to guide efficient transmission planning, and creating supplementary objectives risks compromising the primary objective by introducing ambiguous and potentially conflicting considerations. Prescribing the creation and functions of a NTPAC in the Law would unnecessarily complicate and undermine the governance arrangements for the proposed AEMO that were agreed by COAG in the energy market reform decision of 13 April 2007.

The governance of the AEMO was settled by COAG in its April 2007 decision on energy market reform. The objective of the decision was to improve the efficiency and effectiveness of energy market outcomes by establishing a single national Australian Energy Market Operator (AEMO) under more streamlined and rigorous accountability provisions. The accountability provisions included an independent skills-based AEMO

Board appointed under governance arrangements that involve market participants in board appointment processes.

The NTP function is one of a number of AEMO functions, broadly covering electricity and gas market operation, transmission system operation and security, and planning functions. It was not intended that the functions would be subject to individual governance and accountability arrangements, and to have done so would have compromised the benefits of improved national governance and streamlined and transparent accountability.

The COAG decision on the electricity transmission planning function was similarly clear: in recognition of the importance of the development of a national electricity transmission grid to support energy market reform, the enhanced national planning process was to provide a coordinated approach to transmission network development to help optimise investment between transmission and generation across the power system. The national transmission planning function was to be part of the AEMO functions, and the AEMO was to be required to develop an annual strategic National Transmission Network Development Plan (NTNDP). The NTNDP would not replace localised transmission planning, but would provide information to the market to guide network investment decisions and provide signals for efficient generation investment.

The AEMC proposals for implementing the national transmission planning function include a number of amendments to the National Electricity Law (NEL) to provide a head of power for the AEMO to undertake the national transmission planning function, a specific objective for the planning function, a number of statutory Considerations to be taken into account by the AEMO in performing the function, and the establishment of a statutory National Transmission Planner Advisory Committee (“the Committee”) to oversee the preparation of the NTNDP and assist the AEMO Board in the performance and exercise of the national transmission planning functions.

The draft Rules proposed by the AEMC for the national transmission planning function include detailed obligations and specifications for the AEMO in relation to the content of the NTNDP, the timing and related arrangements for consultation on the NTNDP at various stages of preparation, the content and publication of an NTNDP database, information collection provisions and limitations, other documents that the AEMO must consider in preparing the NTNDP, and ring-fenced budgeting provisions for the NTNDP.

The NEL and Rule proposals raise a number of questions about the implementation of the national transmission planning function. The questions include:

- (i) the efficacy of separate governance arrangements for the function, including the proposed Advisory Committee;
- (ii) the level of prescription that should be provided in the NEL and Rules for undertaking the function;
- (iii) given an agreed level of prescription, the most appropriate division of prescription between the Law and the Rules; and
- (iv) matters that are most efficiently left to the discretion of the AEMO.

Separate Governance

Matters relevant to the governance of the national transmission planning function are the provision of a separate objective for the function, the mandating of a statutory Advisory Committee, and the role of that Committee.

The AEMC proposes that the NEL include an objective for the transmission planning function that supplements the NEL objective by requiring the NTP to contribute to the achievement of the national electricity objective “in a manner that promotes the efficient, long term and coordinated development of the national transmission grid”.

In addition, the AMEC proposes that the NEL contain Considerations that the AEMO must take into account when performing the national transmission planning function. The Considerations include matters such as best practice planning, technology and fuel matters, alternatives to grid augmentation, and Acts and related instruments made by participating jurisdictions in relation to the supply or use of energy

In relation to the separate objective, the AEMC’s Draft Report argues that the objective for the transmission planning function recognises the level of importance assigned to the function by the Energy Reform Implementation Group (ERIG) and COAG, and specifies the means by which the transmission planning function will contribute to the National Electricity Objective (NEO). The AEMC also suggests that the proposed Considerations supporting the objective provide a correction for the “broadly constructed” nature of the transmission planning function objective.

esaa notes that the question of supplementary objectives for various elements of the national energy market regulatory and institutional architecture has been examined on a number of occasions in the development of the national electricity and gas Laws.

Generally, the analysis has supported the primacy of the NEO, has noted the importance of the NEO in focusing rule making, regulation and market administration on a dynamic efficiency outcome (the long term interest of consumers), and has noted the difficulties associated with creating supplementary objectives that potentially compromise the primary objective and introduce ambiguous interpretative and sometimes conflicting considerations.

For these reasons, esaa suggests the proposed separate statutory objective and related Considerations for the proposed national transmission planning function be deleted from the proposal.

The Proposed National Transmission Planner Advisory Committee

The AEMC’s Draft Report proposes that the NEL be amended to require the AEMO Board to establish a National Transmission Planner Advisory Committee (the Committee), and that the NEL provide that the Committee be responsible for overseeing the preparation of the NTNDP, and assist the AEMO Board in the performance and exercise of the national transmission planning functions.

The Draft Report also proposes that the NEL prescribe that the Committee comprise a chairman and 2 to 4 other members, with knowledge, experience or abilities relating to the planning of the national electricity system, and that no more than one member of the Committee to be an officer or employee of the AEMO. The Draft Report also suggests that the NEL require the AEMC to review the functions and operation of the Committee after five years.

The AEMC's reasons for proposing that the Committee be established, and that it be a requirement of the NEL, include: additional accountability and governance arrangements are necessary given that the transmission planning function is a priority COAG initiative; the AEMO will have a wide range of functions, and hence the additional accountability arrangements will assist the AEMO Board to manage a complex interplay of competing priorities and functions; the Committee will provide a singularity of focus and high visibility for the transmission planning function; the Committee will provide access to relevant technical experience and expertise.

esaa notes that the Committee, established by legal fiat, will create a strong risk of inefficient division of accountability between the AEMO Board and the Committee for the performance and delivery of the national transmission planning function. The draft Rules proposed by the AEMC for the preparation and publication of the NTNDP and related matters vest all responsibility for the function in the AEMO Board. It is unclear how the Committee will, as required by the relevant proposed provisions in the NEL, oversee the preparation of the NTNDP. It is unclear how the AEMO Board will manage its proposed statutory obligations in regard to the function, given the legal constraint of having the Committee oversee the preparation of the NTNDP. It is unclear how members of the statutory Committee would be required to undertake their statutory obligations, and the degree to which they would be accountable or liable for their performance.

The AEMO and its Board arrangements as proposed by COAG and further elaborated in the March 2008 Implementation Plan published by the Ministerial Council on Energy (MCE) provide detailed and robust governance and accountability for the AEMO functions and the AEMO Board. The most efficient circumstances for the AEMO to manage the transmission planning function would be to allow the function to be subject to the general accountability provisions for the Board. The consultative arrangements and engagement of relevant expertise for the function should be a matter for the AEMO and its Board to manage consistent with its general statutory obligations.

esaa strongly contends therefore that the NEL contain only a head of power for the function, and that the proposal for a National Transmission Planner Advisory Committee be deleted as it serves no useful purpose, dilutes the accountability of the AEMO Board and inserts an unwarranted additional bureaucratic layer into the transmission planning process.

Division of provisions between the NEL and the Rules

The development of the national energy Laws and Rules has generally provided effective governance and guidance by limiting to the Laws those matters for which the governing jurisdictions wish to be directly accountable. The authority to make Rules has generally been directed at prescribing implementation arrangements that are relatively generic in nature, while regulatory and administrative discretion has been provided for

where the individual circumstances of market participants, or short term market circumstances, dictate a need for administrative decision-making subject to conforming with the general objective of the Laws and the specific requirements of the Laws and Rules.

With that background in mind, the division of prescription between the Law and the Rules, and the allowance for administrative discretion, will always be a matter for judgement, and there is no pre-determined principle that can be invoked to guide the division in detail.

In relation to the national transmission planning function, esaa suggests that the Law be limited to a general head of power for the AEMO to undertake, and be accountable for, the function. The Draft Rules as proposed by the AEMC in relation to consultation and preparation of the NTNDP are generally appropriate, but can be interpreted in a number of subordinate areas as limiting the scope for dynamic development of the national transmission planning function. esaa suggests therefore that the Rules include a provision for the preparation and content of the NTNDP that allows the AEMO to include any other matters it thinks appropriate, having regard to the national electricity objective.

I would be pleased to discuss these matters further with the Commission.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Brad Page', with a stylized flourish at the end.

Brad Page
Chief Executive Officer