

We have read the Recommendations, Evaluation and proposed Terms of Development Consent.

We have also read, in relation to the Commission's role in the planning system, two letters published on the IPC web site, one from the Minister for Climate Change and Energy to the Minister for Planning 20.5.24 and the other from the Minister for Planning to this Commission 2.6.24. The Minister for Climate Change and Energy brought attention to a "new Act" called the Climate Change (Net Zero) Act 2023 passed on 30.11.23 and to NSW emissions reduction targets and essentially demanded every state government department and private industry player get on with building renewable energy projects in the state because the State was (and is) miles behind climate change emissions targets.

We oppose any consent to this project. The documents evidence that there has been no consideration of the National Electricity Law in this approval process. Does the proponent assert that the project satisfies the requirements of the NEL? Has the Department and IPC considered that the project satisfies the requirements of the NEL?

The EIS **claims** at p. 57 that compliance will occur with the National Energy Rules relating to 'generator performance' which therefore ensures that the project will meet "*requirements for safe, reliable and secure connection to the electricity system.*" Such a claim does not satisfy the requirements of the NEL.

The NEL is contained in a Schedule to the National Electricity (South Australia) Act 1996. It establishes the framework and obligations of the National Electricity Market (NEM) and the role of the Australian Energy Market Operator (AEMO). As energy is the constitutional domain of the states, the national framework has been specifically adopted and applied at state level.

The SA legislation is reflected in the *National Electricity (NSW) Law No 20a 1997*. Until 2023, the objective of the NEL was

*The objective of this Law is to promote efficient investment in, and efficient operation and use of, electricity services **for the long term interests of consumers of electricity with respect to—***

*(a) **price, quality, safety, reliability and security of supply of electricity; and***

(b) the **reliability, safety and security** of the national electricity system.

On 23 September 2023, it had a **new additional objective** added:

and

(c) the achievement of targets set by a participating jurisdiction—
(i) for reducing Australia’s greenhouse gas emissions; or
(ii) that are likely to contribute to reducing Australia’s greenhouse gas emissions.

This addition of paragraph “c” is stark acknowledgment by governments in the NEM that prior to this amendment, the objectives of the NEL had **no room for emission reductions as an objective in themselves**.

The **Consultation Paper** published prior to the legislative amendment constituted a belated acknowledgment that to implement the transition of the energy system to renewables, “changes will be needed to the NEL...”. Prior to the amendment of the NEO, the policy push to replace existing synchronous generation with renewable generation was inconsistent with the NEO.

The **Consultation Paper** addressed the intended construction and operation of the amended Objective. It stated:

Consistent with the current approach to applying the objectives, the emissions reduction component will be one of a number of components or ‘outcomes’ (alongside price, quality, safety, reliability and security of supply) that decision makers under the national energy laws will be obliged to consider and have discretion to balance in making their decisions. In this way, the emissions reduction objective is not intended to sit above, or be prioritised over, the existing components within the objectives, but rather will be considered and balanced alongside the other existing components, in a way that maximises the overall objectives, in the long-term interests of consumers.

The amendment will require that market bodies, when making decisions in line with the new emissions reduction objective, consider relevant Commonwealth, state and territory emissions reduction and/or other targets such as renewable energy targets, whilst still being afforded the flexibility to, after considering targets, decide which targets are relevant to that decision. The new set of energy objectives will be taken into account by market bodies in their interpretation and application of laws and rules.

By way of further explanation of the proposed drafting, the **Consultation Paper** set out the following:

“3.1. Utilising the existing ‘economic-efficiency’ framework

All three existing energy objectives are framed in terms of ‘efficiency’. The word ‘efficient’ is not defined in the energy laws but is generally understood to be an economic term, with this interpretation supported by the Second Reading speeches of the NEL and NGL Bills.⁸ What is ‘efficient’ is defined by reference to price, quality, safety, reliability and security of supply as determined by state and territory laws, or in some cases by the national energy laws, and their subordinate rules.

The legislative premise of 'efficient' assumes that the long-term interest of consumers of the relevant form of energy (electricity or gas) will be maximised through efficient investment and efficient use and delivery of either electricity/gas services. For example, the Second Reading speech of the NEL (and of the NGL similarly) states:

The market objective is an economic concept and should be interpreted as such. For example, investment in and use of electricity services will be efficient when services are supplied in the long run at least cost, resources including infrastructure are used to deliver the greatest possible benefit and there is innovation and investment in response to changes in consumer needs and productive opportunities.

The long-term interests of consumers of electricity requires the economic welfare of consumers, over the long-term, to be maximised. If the National Electricity Market is efficient in an economic sense the long-term economic interests of consumers in respect of price, quality, reliability, safety and security of electricity services will be maximised.⁹

The proposed approach in the Draft Bill to adding an emissions reduction component to the energy objectives is to insert this new component within the same 'economic-efficiency' framework with the above legislative premise applying to both the existing components of the objectives and this new component.

The provision of various relevant criteria for the objectives recognises that there are trade-offs to be made. In practice, market bodies routinely have to balance and make trade-offs between them. This is currently achieved in a balancing act that considers each of the components in the objectives together, rather than consideration of each in isolation. Including an emissions reduction component under the energy objectives as proposed would compel decision makers to consider it as one of a number of components or 'outcomes' (alongside price, quality, safety, reliability and security of supply) but allow market bodies the discretion to balance the various components when making decisions, as they currently do.

For example, the AEMC when considering making a rule or a recommendation in a review would focus on whether the proposed change would promote more efficient decisions towards achievement of the relevant components of the energy objectives (currently price, quality, safety, reliability and security of supply), and assess which outcome or option would deliver the greatest efficiency benefit.

In May 2023, Energy Ministers agreed to the incorporation of the emissions reduction objective into the NEO in order to integrate emissions reduction with energy policy. The **Bill** was introduced to the SA Legislative Council with the following second reading speech

As with the existing components of the national energy objectives that include price, quality, safety, reliability and security of supply, the emission reduction component will sit within the existing 'economic efficiency' framework that underpins the current national energy objectives.

*Under this framework, decision makers under the national energy laws, will be obliged to consider the emissions reduction component alongside the other components in making their decisions. In this way, **the emissions reduction component is not intended to sit above, or be prioritised over, any other component within the objectives. This will ensure that the national energy objectives continue to promote the long-term interest of consumers through efficient investment, operation, and use of energy services.***

The second reading speech on the introduction of the amendment made it clear that emission reduction concerns do **not** outweigh the long term interests of electricity consumers in relation to the matters listed at “a” and “b”.

Each of the individually required items in Section 7(a), (b) and (c) of the NEL must be satisfied and the newly inserted achievement of climate targets is **only one** of them. Note well, the law says in the opening sentence “*long term interests of consumers.*” The law does **not** say “safe, reliable and secure connection to the electricity system.” It says *price, quality, safety, reliability and security of supply of electricity*” in the *long term interests of consumers.*

We request that this project be referred back to the Dept of Planning to deal with consideration of the mandatory matter of whether and how compliance with the National Electricity Law has been established.

In essence, the proponent has ignored the NEL, the NSW Climate and Energy Department has ignored the proper process applicable to the objectives of the NEL, the Department of Planning has ignored the NEL. Accordingly, this process is flawed. Until the NEL is properly considered, this project should not and cannot be approved.

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