

15 August 2023

Economic Regulation Authority  
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### **Frequency co-optimised essential system services offer price ceiling determination: Draft report**

The Australian Energy Council (the “AEC”) welcomes the opportunity to make a submission to the Economic Regulation Authority (the “ERA”) on the *Frequency co-optimised essential system services offer price ceiling determination: Draft report* (the “Draft Report”).<sup>1</sup>

The AEC is the peak industry body for electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. Our members collectively generate the overwhelming majority of electricity in Australia, sell gas and electricity to millions of homes and businesses, and are major investors in renewable energy generation. The AEC supports reaching net-zero by 2050 as well as a 55 percent emissions reduction target by 2035, and is part of the Australian Climate Roundtable promoting climate ambition.

The AEC makes the following comments in relation to the Draft Report.

#### **Timing**

The new market start date is rapidly approaching and it is likely to present a range of challenges. Many Market Participants are still working to set up their internal systems, and they will need time to adjust to the new requirements in the Draft Report, Offer Construction Guideline and Trading Conduct Guideline, and update and implement their procedures to ensure compliance.

The ERA indicated at its online stakeholder workshop on 30 June 2023 that it aimed to have the final Offer Construction Guideline and Trading Conduct Guideline completed one month prior to the start of the new market. It is assumed that the final determination on the FCESS price ceiling will be released at a similar time.

This tight timeframe puts significant pressure on Market Participants to adjust to the new requirements in a matter of only a few weeks. The AEC considers that there must be flexibility, especially when they are finalised so close to the market start, and encourages the ERA to adopt an amnesty period.

There is already a precedent for amnesty periods to be applied so that Market Participants can adjust to new requirements. For example, Energy Policy WA released the *Monitoring and Compliance Framework in the Wholesale Electricity Market Information Paper* (“Information Paper”) in 2020 and proposed an amnesty period “to enable participants to adjust and become familiar to the new WEM requirements without the threat of compliance action”.<sup>2</sup> The Information Paper also noted that a similar amnesty was introduced for the Balancing Market in 2012.

The AEC encourages the ERA to formally implement an amnesty period to assist Market Participants with adjusting to the significant changes created by the Draft Report, Offer Construction Guideline and Trading Conduct Guideline. This amnesty period will help Market Participants to improve their compliance without the threat of immediate action.

## Interaction with the Offer Construction Guideline

The Draft Report states that:

*“The Offer Construction Guideline provides guidance to market participants on costs that may be included in energy and FCESS offers to be compliant with the requirements of the WEM Rules. The ERA’s draft determination on the FCESS Offer Price Ceilings is consistent with the Offer Construction Guideline.”<sup>3</sup>*

The AEC notes that the final Offer Construction Guideline is not yet released and only expected approximately one month prior to the start of the new market. Given this, there is still no certainty about what costs can be recovered, making it difficult to provide meaningful feedback to the ERA on the proposed FCESS offer price ceilings. Further, the AEC is unsure if the Offer Construction Guideline is consistent with the Draft Report. For example, the Draft Report says:

*“In the existing market, market participants may not pass on the costs of contractual arrangements for energy in balancing market offer prices or load following markets offer prices. The same principle applies to the Real-Time Market offer prices for energy and FCESS. Such costs are, therefore, not allowable costs in FCESS offers.”<sup>4</sup>*

This statement suggests that contractual arrangements are not considered opportunity costs and should not be included in offers. However, the *Offer construction guideline: Draft report*<sup>5</sup> was silent on this issue and did not address how Power Purchase Agreement (“PPA”) and large-scale generation certificates (“LGC”) contract positions should be accommodated in offers from renewable generators. Stakeholders sought further guidance in their response<sup>6</sup> to the *Offer construction guideline: Draft report* about how the ERA would consider other commercial arrangements that are common in the market, however there were no further details in the *Offer construction guideline: draft for consultation*<sup>7</sup> apart from an example that only applies in a narrow set of circumstances.

Many renewable generators have an amount of capacity contracted with a PPA and some contract a volume of LGCs or location-specific LGCs. In all cases, these would be considered an opportunity cost for the generators and influence their bidding strategy. The AEC again asks the ERA to outline how renewable generators should construct their offers taking into account common PPA and LGC commercial arrangements.

## Conclusion

The AEC appreciates this opportunity to provide feedback on the Draft Report.

Noting the very limited time now available prior to market start, and the lack of clarity around some fundamental issues, the AEC strongly urges the ERA to adopt an amnesty period and continue to engage with industry on these fundamental issues associated with market operations.

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<sup>1</sup> See [Frequency co-optimised essential system services offer price ceiling determination: Draft report](#)

<sup>2</sup> See p14, [Monitoring and Compliance Framework in the Wholesale Electricity Market Information Paper](#)

<sup>3</sup> See p9, [Frequency co-optimised essential system services offer price ceiling determination: Draft report](#)

<sup>4</sup> See p10, [Frequency co-optimised essential system services offer price ceiling determination: Draft report](#)

<sup>5</sup> See [Offer construction guideline: draft report](#)

<sup>6</sup> See for example the [AEC’s submission on the Draft Report](#) and [Synergy’s submission on the Draft Report](#) and [Collgar’s submission on the Draft Report](#)

<sup>7</sup> See [Offer construction guideline: draft for consultation](#)

Please do not hesitate to contact Graham Pearson, Western Australia Policy Manager by email on [graham.pearson@energycouncil.com.au](mailto:graham.pearson@energycouncil.com.au) or by telephone on [REDACTED] should you wish to discuss this further.

Yours sincerely,

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