

7 February 2023

Chairs, Senior Energy Officials  
Jo Evans, Deputy Secretary Climate Group  
Simon Duggan, Deputy Secretary Energy Group  
Department of Climate Change, Energy, the Environment and Water

*Sent via email*

## **Consultation Paper: Incorporating an emissions reduction objective into the national energy objectives.**

Dear Ms. Evans and Mr. Duggan,

Energy Networks Australia (**ENA**) appreciates the opportunity to respond to the Senior Energy Officials' (**Officials**) consultation on proposed legislative changes to incorporate an emissions reduction objective into the national energy objectives.

ENA is the national industry body representing Australia's electricity transmission and distribution and gas distribution networks. Our members provide more than 16 million electricity and gas connections to almost every home and business across Australia.

ENA strongly supports the introduction of an emissions reduction component into the national energy objectives. Network service providers are essential partners in supporting government commitments to achieve a decarbonised, modern and reliable grid.

ENA supports the Officials' proposed approach to incorporating the emissions reduction component into the existing 'economic efficiency' framework and considers it to be an effective way of integrating the concept into the decision making of energy market bodies. The inclusion of an emissions reduction component in the energy objectives will appropriately broaden the scope of the market bodies' decision-making powers.

At **Appendix A**, however, we provide drafting and implementation feedback for Officials' consideration, including:

- » supporting a requirement for market bodies to develop/update guidance material to assist participants in understanding how market bodies will apply the amended national energy objectives,
- » providing clarification that the intended scope of cross-fuel considerations under the objectives is directing consideration only to the broad consumer interest with respect to emissions reduction,
- » providing guidance on drafting interpretation in explanatory materials to address the potential for differing interpretations of what is a relevant target or 'public commitment',

- » the need for expedited consequential rule changes to ensure that market bodies are able to fully reflect the proposed policy intent when making critical energy regulatory decisions, and
- » measures to assist the clear and certain operation of the transitional provisions, such as the inclusion of a clear expectation that the amended objectives be implemented as soon as reasonably practicable for processes underway.

If you wish to discuss any of the matters raised in this response further, please contact Lucy Moon, Head of Regulation, on [lmooon@energynetworks.com.au](mailto:lmooon@energynetworks.com.au).

Yours sincerely,



**Andrew Dillon**  
Chief Executive Officer

## Appendix A | Drafting and implementation considerations

### 1. Market body guidance

ENA supports incorporating the emissions reduction component into the existing 'economic efficiency' framework allowing for continuity and clarity in the framework. This approach is an effective way of integrating the concept into the decision making of energy market bodies, notwithstanding the need for corresponding consequential rule changes (as outlined in Section 4 of this appendix).

The intended continuity of the 'economic efficiency' framework between the previous objectives and amended objectives is an appropriate matter for clear guidance in explanatory materials and a second reading speech, which will provide ongoing clarity on this point.

We do also see value in market bodies developing/updating guidance material to assist participants in understanding how market bodies will apply the amended national energy objectives, thereby allowing stakeholders to reasonably understand likely changes in analytical or assessment processes. This guidance should be timely and promote consistency between market bodies where appropriate, so that stakeholders are not left in a position of being unclear as to these interpretation issues for any significant period following commencement of the changes.

This could include:

- » guidance on how the market body will apply the amended objectives into its decision making, and
- » guidance on the value of emissions reduction (i.e., a price on carbon). Energy market bodies should be required to collaborate with stakeholders, including network service providers and energy consumers, to determine a commonly agreed value, and establish a framework for timely reviews of the value.

This guidance from market bodies may be preferable to guidance on these issues through formal explanatory materials (where appropriate) as it will enable approaches to potentially be more adaptable to changing market conditions over time.

### 2. Guidance on scope of 'public commitments'

The Draft Bill frames the emissions reduction objective by reference to 'achieving targets for reducing Australia's greenhouse gas emissions' where the Commonwealth, or a state or territory, has made a public commitment including under a law or an international agreement or as a matter of policy.

As ENA understands it, the policy intent of the new emissions reduction component is to deliver on targets that the Commonwealth, state and territory governments commit to, either in legislation or unlegislated.

ENA is supportive of this policy intent and considers the current drafting a reasonable and necessary approach to proactively reflecting targets into decision-making, particularly given the lengthy processes needed to legislate government policies.

However, we recognise policy commitments can be delivered in various formats and level of detail, ranging from, for example, a statement made by a Premier or Prime Minister on social media or breakfast radio, to formal policy documentation published by the respective government.

Therefore, ENA recommends that further guidance be provided in explanatory materials to provide clarity and consistency in the interpretation of this provision.

Without wanting to unduly restrict the flexibility afforded in the current drafting, which we strongly support, we recommend that the guidance outline that a public commitment, as a minimum, includes a commitment/target published under the authority of a state, territory, or Commonwealth Minister. For example, this could include an official media release from a Minister outlining new public commitments relating to emissions reduction but exclude commentary in media without corresponding official documentation.

### 3. Cross-fuel considerations

ENA is supportive of acknowledging the potential for interactions between electricity and gas markets by replacing references to “consumers of electricity” and “consumers of natural gas” with “consumers of energy” in the National Electricity Objective (NEO) and National Gas Objective (NGO).

The Draft Bill indicates that the long-term interests of consumers of energy are to be promoted with respect to:

- » price, quality, safety, reliability and security of supply of natural gas under the NGO (electricity under the NEO); and
- » the achievement of emissions reduction targets.

ENA supports the scope of cross-fuel considerations as proposed in the Draft Bill – i.e., consideration of the interests of consumers of the alternative fuel be limited to the achievement of emissions reduction targets across electricity and gas markets.

An additional change to replace references to “supply of electricity” and “supply of natural gas” with “supply of energy” in the respective NEO and NGO is not necessary and will likely be challenging to practically implement.

In particular, the impact of a decision under the gas law or rules on electricity prices, national electricity market security or reliability is likely to be too uncertain or remote, making it challenging to determine such impacts and take them into account (and vice versa for electricity). Hence, the only component of electricity (gas) consumer interests that should be considered when making a decision under the gas law or rules (electricity law or rules) is the contribution to achievement of emissions reduction targets.

However, to support stakeholder alignment and clarity of intent, ENA recommends clarifying that the NEO and NGO are directing consideration to the broad consumer interest with respect to emissions reduction. This clarification could be provided either through further amendments to the drafting or in the explanatory materials. We note that explanatory materials may be the preferred course for Officials, given the potential for further drafting amendments to make the objectives overly ‘wordy’ and unwieldy.<sup>1</sup>

## 4. Consequential rule changes

While the proposed changes to the national energy objectives will allow for greater scope for emissions reduction to be taken into account as a relevant component of the consumer interest, ENA recommends that consequential rule changes be made as an immediate priority to ensure that market bodies are able to fully reflect this policy intent when making energy regulatory decisions.

There are likely to be some decision types where the impact of the proposed changes to the objectives may be muted, or at least delayed until there are consequential rule changes. This issue is likely to arise in two cases. First, where decisions are governed by prescriptive rules that do not directly reference the objectives, and secondly, where the contents of these rules are modelled on the existing objectives.

ENA has not undertaken a comprehensive review of existing rules and regulations under the national energy laws; however, we provide two important examples below related to forecast expenditure and investment planning where we recommend that Officials submit consequential expedited rule change requests as a priority to accompany the legislative changes.

### 4.1 Assessment of forecast expenditure

An important area in which the impact of the changes may be muted (or at least delayed until there are consequential rule changes) is in processes for assessment and approval of operating and capital expenditure required to support emissions reduction initiatives. This is because these processes are governed by prescriptive rules that do not directly reference the objectives. In some other cases, these rules in fact more are modelled on, and directly replicate in substance, the existing objectives.

For example under cl 6.5.7(c) and (d) of the National Electricity Rules (**NER**), the Australian Energy Regulator (**AER**) can only accept a distribution network service provider’s forecast capital expenditure if it is satisfied that the forecast reasonably reflects the efficient costs of achieving the capital expenditure objectives, the costs that a prudent operator would require to achieve those objectives, and a realistic

---

<sup>1</sup> For example, one possible amendment would involve referring to the relevant ‘consumers’ separately in each limb of the objectives, rather than in the chapeau – to make clear that the broader interest of energy consumers is only relevant to the emissions reduction limb.

expectation of the demand forecast and cost inputs required (the capital expenditure criteria).

Importantly, the capital expenditure objectives are focused on meeting demand, complying with regulatory obligations and maintaining *safety, quality, reliability and security of supply* of standard control services<sup>2</sup> - thus, the capital expenditure criteria and objectives (and also those for operating expenditure) essentially replicate the core of the *existing* NEO.

Rule 79 of the National Gas Rules (**NGR**) is similarly focused on identifying capital expenditure that either has a positive economic value or is necessary to maintain safety, service integrity or the service provider's ability to meet demand (or is the subject of a regulatory obligation).

Equivalent issues arise in respect of the operating expenditure rules in both the NER and the NGR.

Therefore, given that the current prescriptive rules make no reference to achieving emissions reduction targets, it may be the case that operating and capital expenditure directed at meeting such targets may unintentionally be unable to satisfy these criteria (unless it is otherwise required to meet demand or satisfy a regulatory obligation). Clarification through consequential rule amendments would remove the risk of this unanticipated outcome.

## 4.2 Investment planning

Chapter 5 of the NER, including the Regulatory Investment Test (**RIT**) frameworks, makes limited reference to the NEO. Instead, RITs are subject to specific criteria and objectives which do not refer to emissions reduction targets.

For example, the purpose of the Regulatory Investment Test for Transmission (**RIT-T**) is to "*identify the credible option that maximises the present value of net economic benefit to all those who produce, consume and transport electricity in the market*".<sup>3</sup>

Clause 5.15A.2(4) of the NER sets out classes of 'market benefits' which RIT-T proponents must be required to consider under the RIT-T published by the AER. This includes things such as changes in fuel consumption, load shedding and changes in network losses, or any other classes of market benefits that are specified in the AER's RIT-T.<sup>4</sup> It may be that the existing RIT frameworks indirectly permit some consideration of market benefits relating to emissions reduction - for example, where an investment facilitates a change in fuel consumption away from fossil fuels. RIT-T proponents and the AER are also able to agree for other classes of market benefit to be considered before the proponent publishes the project specification consultation report for the RIT-T. However, the change to the NEO, in and of itself, is unlikely to

---

<sup>2</sup> NER cl 6.5.7(a) [similar clauses exist for prescribed transmission services in Chapter 6A of the NER].

<sup>3</sup> NER, cl 5.15A.1.

<sup>4</sup> NER, cl 5.15.A.2(4)(x).

have a direct and unambiguous impact in this area, given the existing specification of purpose and criteria. The same applies to the Regulatory Investment Test for Distribution (**RIT-D**) framework.<sup>5</sup>

As such, if the policy intent is for the existing RIT-T and RIT-D frameworks to allow for *greater* consideration of emissions reduction targets than is currently permitted, changes to the NER and/or the AER's RIT-T and RIT-D are likely to be necessary to give practical effect to this intent.

Additionally, the NER does not currently include 'public commitments' as a matter of policy to be considered by the Australian Energy Market Operator (**AEMO**) as part of the development of the Integrated System Plan (**ISP**). The rule should also be aligned to the amended objectives to ensure the intent of the amendments to the objectives are captured in the ISP.

## 5. Transitional arrangements

The transitional provisions as currently drafted allow a decision-maker to *elect* to apply the new law part-way through the process of making a decision. However, there is no guidance on how this discretion will be exercised, potentially creating some uncertainty for regulated businesses in the transition zone, as well as other stakeholders, and risks inconsistent approaches between decision-makers.

We therefore recommend that the drafting be reconsidered (or expectations set in associated explanatory materials) to instead promote implementation of the amended objectives as soon as reasonably practicable for processes underway. This is particularly relevant given the long duration nature of most energy market decisions and the outcomes afforded (or not) by those regulatory decisions, including five-year regulatory determinations by the AER and rule making decisions by the AEMC.

ENA also recommends that Officials consider a corresponding obligation, or a clearly articulated expectation, on decision-makers to give specific notice to affected stakeholders as to the objectives that will be considered (old or amended) in a particular decision-making context, with a requirement (if relevant) to justify why the amended objectives are not to be applied to that specific process.

In addition, ENA supports additional transitional arrangements to ensure that business-initiated processes such as RIT-Ts and RIT-Ds be captured, thereby allowing RITs already commenced under the NER to take into account the updated objective automatically (and not be subject to market body discretion). This is notwithstanding ENA's concerns regarding the likely need for consequential rule changes to ensure that investment planning processes allow for the emissions reduction objective to be taken into account (as outlined in Section 4 of this appendix).

---

<sup>5</sup> Clause 5.17.1 of the NER allows for consideration of any other classes of market benefit determined by the AER.