

Mr Peter Adams
General Manager, Market Performance
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

5th April 2019

Submitted via e-mail to: noticeofclosure@aer.gov.au

Dear Mr Adams,

Generator Notice of Closure Exemption Guideline
Reference: 64847

The Australian Energy Council (the “**Energy Council**”) welcomes the opportunity to make a submission in response to the Australian Energy Regulator’s (“**AER**’s”) *Generator Notice of Closure Exemption Guideline Issues Paper*.

The Energy Council is the industry body representing 23 electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. These businesses collectively generate the overwhelming majority of electricity in Australia, sell gas and electricity to over ten million homes and businesses, and are major investors in renewable energy generation.

Discussion

As the Energy Council submitted to the Australian Energy Market Commission’s *Generator Three Year Notice of Closure Consultation Paper*,¹ generators are subject to unforeseeable events which affect their ongoing operability. While some of these events may be discrete, such as a catastrophic plant failure, others may be due to progressive changes in circumstances, which require company directors to adhere to their responsibilities under the *Corporations Act 2001* (Cth) and act to close an asset which may have become uneconomic, or may be breaching (or anticipated to breach) health & safety or environmental regulations.

To accommodate these situations, which result in a generator reaching a “tipping point” which obliges it to close earlier than the three year notice period, the guidelines need to offer sufficient flexibility for generator owners to engage with the AER confidentially, and indicate that there is an expectation that the generator may need to close within three years. The period so notified is unlikely to be a hard date, known a year or two in advance, but may be a window of likelihood, e.g. before the first quarter in a particular year, or perhaps after a certain event has occurred (such as a number of running hours have been achieved). The guideline should therefore allow the AER to grant a conditional exemption.

To support the AER’s decision, the Energy Council believes that the proposed guideline should require generator owners to provide, on a confidential basis, information which attests to the decision made to close a generator prior to the statutory three year period. Such information should be supported by the data provided to the decision-maker (whether that be a Board, or simply a senior officer of the company), but to avoid an undue compliance burden, the guideline should not require companies to provide information in excess of that required by the decision-maker in making their decision.

However it is acknowledged that the decision to close plant may have taken some time to germinate, and the Energy Council believes it would be reasonable for the AER to receive relevant information from the proponent to indicate the immediate history prior to the condition which has triggered the need to close the plant within the three year period. In return, it is suggested that the AER should have an obligation to consider the information promptly and make its decision within six weeks.

¹ Australian Energy Market Commission, *Generator Three Year Notice of Closure Consultation Paper*, 10th May 2018

Given the confidential nature of the information which will be provided to the AER, and the market sensitivity of a possible closure, the Energy Council does not endorse the AER consulting with other parties to make its assessment, nor should the fact that an application has been made be published – although the Energy Council does note that the fact of the application for exemption needs to be considered in the light of companies' continuous disclosure obligations. Nevertheless, the Energy Council believes, much like a power purchase agreement with a renewable generator is not announced to the market until the agreement is executed, it is important that the process is kept confidential between the AER and the company until the AER's decision has been made, to limit any possible market effects.

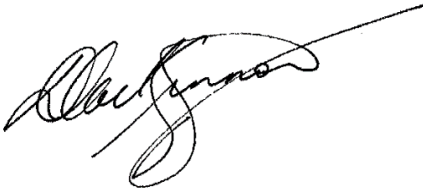
Furthermore, the Energy Council does not believe any of the information provided to the AER should be made publicly available in the AER's decision, however it would be reasonable for the AER to indicate a broad reason for the early closure, such as "environmental considerations" or "catastrophic failure". The Energy Council also observes that notice of the AER's decision will need to be coordinated with the company's announcement, as the market will need to be made aware of the closure at an appropriate juncture, e.g. after the trading day has concluded.

Conclusion

In conclusion, the Energy Council believes that the AER should ensure that the burden of proof for a need for early closure should not be excessive, and confidentiality should be maintained to ensure that there are no unwanted commercial implications, either for the generator seeking the exemption, or for the broader market.

Any questions about this submission should be addressed to the writer, by e-mail to Duncan.MacKinnon@energycouncil.com.au or by telephone on (03) 9205 3103.

Yours sincerely,



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