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Rebecca Knights
Director, Energy Policy and Programs
Department of Energy and Mining
SA Government

Submitted by email to: ETRConsultations@sa.gov.au

25 November 2020

Dear Rebecca

South Australia consultation on proposed amendments to the *Emergency Management Act 2004*

AGL Energy (**AGL**) welcomes the opportunity to respond to the South Australian Government's draft *Emergency Management (Electricity Supply Emergencies) Amendment Bill 2020 (Draft Bill)* which proposes amendments to the *Emergency Management Act 2004 (EM Act)*.

AGL is one of Australia's largest integrated energy companies and the largest ASX listed owner, operator, and developer of renewable generation with a diverse generation portfolio in South Australia. AGL is also a significant retailer of energy and telecommunications, providing solutions to around 4.2 million across Australia and including around 488,000 energy customers in South Australia. AGL has successfully rolled out its Virtual Power Product (**VPP**) in South Australia which now allows customers to bring their own battery to AGL's VPP, and for customers to purchase a battery through AGL.

Our feedback on the Draft Bill is based on AGL's experience across our portfolio in generation, retail, and distributed energy resources as well as learnings from our products and services that we offer in South Australia and the NEM.

Key recommendations

AGL appreciates the engagement and feedback provided by the Department of Energy and Mining (**the Department**) to our queries relating to the Draft Bill. Whilst AGL understands the South Australian Government's aim to ensure an efficient, streamlined emergency response process is in effect under the EM Act, and the reasoning behind the EM Act being the preferred legislative instrument over the *Essential Services Act 1981 (ES Act)* to declare an electricity supply emergency, we believe the proposed amendments require some further clarification as set out below to ensure the smooth and effective functioning of the intent of the Draft Bill once enacted:

- Electricity supply emergency – as this term is not defined in the EM Act nor the Draft Bill, AGL seeks clarity on the circumstances which would warrant an electricity supply emergency to be declared by the Minister for Energy and Mining (**Minister**).
- The proposed expanded definition of 'market participants' in the Draft Bill and possible confusion with other NEM definitions of the same term. From an operational point of view, AGL believes

confusion is created with the broadening of this definition to include '*third party energy service provider*' and '*an end user*'. Specifically, the proposed Draft Bill definition departs from its commonly understood meaning in the NEM as market participants are required to be registered with the Australian Energy Market Operator (**AEMO**). We recommend that the persons covered by this definition align with that meaning to avoid confusion in the event of an electricity supply emergency and include only those that can be directed by AEMO. Those not registered with AEMO could be considered '*other participants*' and be subject to appropriate tailored directions by the Minister and not the broad powers available to market participants to satisfy directions as set out in the Draft Bill.

- Notice and process - In the event an electricity supply emergency is declared by the Minister, AGL seeks clarity on the intended notification process under the proposed new amendments which encompass a broader definition of '*market participants*'. Under the Draft Bill, the proposed amendments could result in market participants receiving conflicting or alternative directions from multiple parties. For example, AGL operates in the South Australian market in roles ranging from generator to retailer and supply orchestrator and potentially could receive directions from various market participants, including AEMO, which do not align or require different outcomes. As may be contemplated by the Department, we recommend that AEMO is best placed to be the single source of truth in notifying registered market participants and issue co-ordinated directions to ensure the continued security of the power system. To this end, we also recommend the Draft Bill require the Department to create and publish an operational guideline to inform market participants of the notification and directions process to be followed.
- Power to direct others and hierarchy of directions – AGL has reservations on the efficacy of the proposed new powers enabling market participants to direct others, particularly with no order of hierarchy detailed in the Draft Bill. These concerns are framed against the offence provision in the EM Act that sets out that a person is guilty of an offence if they fail to follow a direction by the Minister and is subject to considerable fines.

We elaborate on this feedback in the **Attachment**.

Should you have any questions in relation to this submission, please contact Sarah Silbert, Regulatory Strategy Manager, on 0400813300 or SSilbert@agl.com.au

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Con Hristodoulidis'.

Con Hristodoulidis

Senior Manager Regulatory Strategy



ATTACHMENT

General comments on the proposed Draft Bill

Electricity supply emergency

Under section 27 of the EM Act, the Minister may declare an electricity supply emergency if it appears, "...on reasonable grounds, that the supply of electricity to all or part of the South Australian community is disrupted to a significant degree, or there is a real risk that it may be disrupted to a significant degree". As the term 'electricity supply emergency' is not defined in the EM Act, AGL recommends that the Department provide clarity on what circumstances would result in the declaring of an electricity supply emergency. In AGL's view, an electricity supply emergency relates to exceptional circumstances and only relied on in limited circumstances, such as events that may lead to a system black scenario.

AGL believes further clarity is needed to differentiate between these exceptional circumstances and circumstances where market based solutions can resolve electricity supply issues or where other legislative or regulatory powers exist to manage potentially unfavourable market conditions on the grid, such as network constraints or curtailing PV load, which recent Smarter Homes regulatory changes specifically deal with. These circumstances could also be listed in an ESCOSA published guideline to provide market participants clarity on what events and circumstances will trigger relevant legislative and regulatory requirements.

Further to this point, if an electricity supply emergency is declared, market participants in satisfying directions may be acting in a manner contrary to or not contemplated by their contractual obligations with their customers, and such actions may be detrimental to their customers' contractual and financial interests. This is a risk to market participants and may expose them to separate actions by customers.

SA licensing regime

South Australia already imposes considerable supplementary obligations on generators that are NEM participants through the state based and additional licensing regime, and with the shift from an electricity supply emergency being declared under the ES Act to the EM Act, AGL recommends that the Department could take this opportunity to review some of its regulatory obligations with the view to removing, consolidating or minimising them.

Proposed definition of the term 'market participant'

As set out in Part 2, section 3(2) of the Draft Bill, the current definition of '*market participant*' is being expanded to include:

- "(d) any person who engages in the transmission or distribution of electricity;
- (e) a third-party energy service provider;
- (f) a metering coordinator;
- (g) an end user;"



The inclusion in this definition of ‘*third party energy service provider*’ and ‘*an end user*’ may cause confusion with the AEMO definition of market participants, which does not capture these categories.

These terms are defined under the Draft Bill to mean:

“***an end user*** has the same meaning as in the National Electricity Law;”

“***third party energy service provider*** means a person or body that controls 1 or more devices that use or generate electricity on behalf of the owner of the device;”.

Whilst AGL does not have an issue with the proposed definitions of these terms, including these categories within the term ‘*market participant*’ could be confusing in the event of an electricity supply emergency as the term ‘market participant’ is commonly understood to mean those categories of persons which must be registered with the AEMO in accordance with the *National Electricity Law (NEL)* and the *National Electricity Rules (NER)*, and as a result, can be directed by and receive notices from AEMO. Registration does not apply to ‘*an end user*’ nor does it apply to all ‘*third party energy service providers*’, only those that would be a ‘*Small Generation Aggregator*’ under the NER.

In the event of an electricity supply emergency, AGL queries how any non-registered participants will receive directions and from whom, and how they implement directions under the proposed amendments to section 27C of the Draft Bill, with particular concern to the broad powers given to market participants to direct others under sections 27C (2)(b) and (2b)(a). To avoid any unintended consequences, AGL recommends that these persons be treated separately and could be defined as ‘other participants’ with tailored directions by the Minister under section 27C suitable to these class of participants. This is more fully discussed below.

Notification and direction process

During the consultation period, AGL sought advice from the Department about the notification process if an electricity supply emergency is declared, as we are unclear how the Ministerial direction would be issued to each of the various participants listed under the Draft Bill.

AGL appreciates the Department’s feedback but still have some uncertainties and seek clarification regarding the direction and notice process under Draft Bill due to the following:

- If an electricity emergency is declared or likely to be declared, time will be of the essence and a clear notification process is required which can be implemented swiftly and consistently to all market participants to avoid confusion and potentially conflicting directions being issued by multiple parties, such as by the Minister, AEMO, SAPN, meter coordinators, and under the proposed amendments, more generally, any aggregators and end users.
- If the Minister declares an electricity supply emergency, AEMO in its central market role and being tasked with the statutory obligation to ensure ongoing power system security has established communications protocols with current market participants, and is best placed to notify Registered participants and issue co-ordinated directions to be followed. We acknowledge the Department’s advice that the Minister works closely with AEMO to issue directions but recommend further consideration and clarity on this drafting in the Final Bill, noting:
 - AEMO’s existing obligations on security of supply under the NEL and NER to resolve this issue.

- In addition, AEMO has the most comprehensive appreciation and overview of the electricity network. Noting the provisions of sections 27C(4) and (5) of the EM Act, we recommend that the Final Bill contain a provision that the Minister must consult with AEMO and other relevant registered market participants to ensure decisions are as best informed as possible.
- On timeliness, AEMO is best placed to direct market participants as the 24/7 market operator with direct access to the control desks across the NEM.
- AGL acknowledges the Smarter Homes remote disconnection/reconnection standard (**Technical Regulator Guideline**) which sets out the process in the case of remote disconnection but seeks further clarity in how this standard will interact with the EM Act, and whether there will be other directions given to a remote agency and if so, through what communications channel.
- As detailed above, we seek clarification on how those participants not registered with AEMO nor captured under the Technical Regulator Guideline will be notified as AEMO may not lawfully be able to direct this group nor have the current capacity to issue notices within its B2B processes. We recommend this be further considered and these other non-registered persons be treated under a separate provision.
- Whilst noting the potential sensitivity of any information provided by the government in this respect, we recommend the Department develop and publish an emergency management guideline for market participants which sets out clear instructions as to the sequence of events if an electricity supply emergency is declared, which should include:
 - explanation around the circumstances and clear examples which would warrant an electricity supply emergency to be declared;
 - a defined notification process and information flow chart;
 - relevant government and industry bodies and contact details, with escalation contact points;
 - a clear chain of command and hierarchy in which to follow directions;
 - a list of market participants within each category.

A successful guideline would be contingent on facilitating emergency exercises of scenario planning and modelling with market participant engagement and feedback.

- We also recommend the notification provision set out in section 27F of the EM Act be reviewed and updated. It sets out that a direction or requirement must:
 - “(a) be given or made by notice in writing served on the person, personally or by post; or
 - (b) if the Minister is of the opinion that good reason exists for doing so, be given or made by telephone, fax, email or some other form of electronic transmission (however, in such a case, a written record of the direction or requirement must be served on the person, personally or by post, as soon as is reasonably practicable).”

Noting that for broader classes, such as end users, there is no reference to broadcast media, such as newspapers, radio, or television.

Direction powers

AGL is concerned about the application of the proposed amendments set out in Part 4 of the Draft Bill, in particular:

- The amendment to section 27C(2)(b) - the current clause states that directions may, “(b) require AEMO to give directions to any other market participants...;” with this being changed to:
“require a market participant to give any directions of a kind that the market participant may lawfully give....”,

AGL believes that this sub-section should remain unchanged as the proposed drafting is too broad as it decentralises from AEMO the control of actions to be taken when AEMO is best to co-ordinate and issue instructions based on the Minister’s directions. Further, the ability of one market participant to issue lawful instructions to another market participant is at best highly limited, given the relationship between such roles.

- In times of an emergency, if instructions from directions are not decided and co-ordinated through a central body like AEMO, this amendment could potentially lead to other market participants directing in good faith others it has authority over with instructions which may not align or be possible to satisfy. For example, if a direction required the turning on of generation assets then engagement with generators is pivotal to ensure there are no supply chain issues, such as supply of fuel.
- We note the Department’s advice that engagement between it and AEMO occurs to ensure that there are not conflicting directions issued but with the proposed change to section 27C(2)(b) AGL suggests that clear lines of communication and co-ordination must be established between the Minister, AEMO and market participants to determine if a direction can be acted upon. In our operational experience this is not a theoretical risk. For example, in the past AEMO has requested a certain action by our generating assets, unaware the relevant State Government had advised asset owners to act in the opposite manner, creating confusion and uncertainty about what should be done as there was no co-ordination or communication.
- Under this proposed amendment, AGL considers it a real risk that it could receive multiple directions for each of its roles (and which may be in conflict with respect to actions to be taken), by different ‘market participants’ to the various contact points across AGL’s business as it operates in the South Australian market as a generator, retailer, and orchestrator.
- As noted above, there is no clarification as to which directions take precedence over others and some hierarchy of command to inform a market participant which directions to follow over others. This again raises the point that when an end user receives different instructions from their retailer, their network, their metering coordinator or aggregator, they will be unclear which one they should comply with or may attempt to comply with all.
- We are also unclear and seek clarity about how the emergency powers translate to requiring specific outcomes or performance standards as set out in the new section 27C(2a)(c). This type of direction may be counter to other contractual or market requirements a market participant is subject to. Further, we seek clarity as to who (or if anyone) should be able to make such directions beyond AEMO.



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- AGL also queries the inclusion of section 27C(2b)(a) and the circumstances which justify all market participants (as broadly defined under the Draft Bill) having the power to direct or exercise its authority over another person whether or not the direction expressly tells them to do so. We understand this may be required in the instance of the Technical Regulator Standard but seek further clarity on other circumstance in which this might be used. In line with reviewing the definition of market participants, AGL requests this subclause be considered further and clear guidance around the circumstances under which it can be relied on and the protections provided by section 27C(2b)(b).
 - We request the Department also provide more clarity on section 28A of the EM Act, which sets out that it is an offence to not comply with a direction by the Minister under section 27C with potential fines up to \$250,000.