Public Interest Advocacy Centre

Unlocking CER benefits through flexible trading draft rule determination

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About the Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is leading social justice law and policy centre. Established in 1982, we are an independent, non-profit organisation that works with people and communities who are marginalised and facing disadvantage.

PIAC builds a fairer, stronger society by helping to change laws, policies and practices that cause injustice and inequality. Our work combines:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change and public interest outcomes.

Energy and Water Consumers' Advocacy Program

The Energy and Water Consumers' Advocacy Program works for better regulatory and policy outcomes so people's needs are met by clean, resilient and efficient energy and water systems. We ensure consumer protections and assistance limit disadvantage, and people can make meaningful choices in effective markets without experiencing detriment if they cannot participate. PIAC receives input from a community-based reference group whose members include:

- Affiliated Residential Park Residents Association NSW;
- Anglicare;
- Combined Pensioners and Superannuants Association of NSW;
- Energy and Water Ombudsman NSW;
- Ethnic Communities Council NSW;
- Financial Counsellors Association of NSW;
- NSW Council of Social Service;
- Physical Disability Council of NSW;
- St Vincent de Paul Society of NSW;
- Salvation Army;
- Tenants Union NSW; and
- The Sydney Alliance.

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Contents

1. Introduction

PIAC welcomes the opportunity to respond to the Australian Energy Market Commission's (AEMC) Unlocking CER benefits through flexible trading draft rule determination (the Draft).

Well-designed flexible trading provisions could help enable a more efficient energy system transition. They could contribute to improved coordination of consumer energy resources (CER) through the development of virtual power plants and materially reduce maximum demand and the need for new generation and system augmentation.

Consumers are currently limited to having one provider manage all their electricity generation and load, including rooftop solar, batteries, and electric vehicles (EVs). We are disappointed by the AEMC's proposal to maintain this limitation. We contend that abandoning any efforts to enable small consumers to trade with multiple providers undermines the central purpose and greatest potential value of this rule change. While we welcome changes to permit large consumers to trade with multiple service providers, the proposed market arrangements confer significant competitive advantages on gentailers.

The proposed framework makes it easier to separately identify CER for market settlement. However, it does not provide a fairer basis for competition and seriously limits the value consumers can derive from their flexible resources. Providing more open and fairer avenues for small generation aggregators (SGAs) to compete would incentivise retailers to develop products and services that optimise benefit for consumers and contribute more meaningfully to the efficient operation of the electricity system.

The proposed framework unreasonably delays progress that would benefit all consumers. It delays the introduction of increased competition with gentailers and delays the expansion of consumer choice around the management of their energy resources.

The AEMC has taken a step forward, though even it regards this step as 'relatively modest'. The proposed changes are purported to promote innovation and competition, but the vital change to unlock the potential of CER, that of enabling small consumers to enter contracts with different providers, is still missing.

2. Trading with multiple energy providers

PIAC supports implementing a more appropriate and enduring framework for flexible trading. This would help shift reliance away from a problematic embedded network framework and help address some of the barriers to participation in flexible trading. The flexible trading framework is intended to be a more efficient mechanism to engage multiple financially responsible market participants (FRMPs). While it introduces a new mechanism, it does not require large customers currently using the embedded network for flexible trading to switch.

In certain circumstances the flexible trading and embedded network frameworks may overlap. The Draft cites the example of a large customer premises with a second customer connected within the site boundaries, buying from its own retailer through a parent/child metering arrangement. The proposed flexible trading framework would allow each of these customers to

establish their own secondary settlement points to manage their controllable load within the embedded network.

While this is a relatively straightforward interaction, flexible trading within embedded networks is likely to raise other complexities – such as when CER assets are shared or when an embedded network consisting of predominantly small customers is categorised as a large customer based on aggregate load[1]. As such, we recommend the AEMC clarify potential interaction between the two frameworks or consider means to ensure they remain separate. This should include developing measures to assist or even require consumers currently using embedded networks to transition to the flexible trading framework.

Recommendation 1

The AEMC should work with the AER and other relevant stakeholders to implement measures to streamline and clarify interactions between the embedded network and flexible trading frameworks, including potentially requiring a transition to flexible trading frameworks.

We strongly support providing distribution network service providers (DNSPs) with visibility of data from the secondary meter. This data should be provided free of charge to defined market participants (such as DNSPs, retailers, and AEMO) for a range of defined purposes. The Draft proposes that 'rules provide DNSPs with the right, but not the obligation, to access metering data from secondary NMIs'. The reason for this distinction is unclear. This raises the question of how the DNSPs 'right to access' intersects with ensuring that metering coordinators have an 'obligation to provide' secondary settlement point data. The AEMC should resolve this to ensure provision of free access is an obligation.

We note the Draft only refers to energy flow data from the secondary meter and does not specify arrangements for advanced power quality data[2], price setting, or the frequency of data provision. We understand the AEMC plans to address these issues through parallel processes given the central role of data in managing and efficiently integrating CER. This approach is not appropriate as it makes assumptions regarding how these separate processes will proceed and presupposes their outcomes. In the meantime, this approach allows the prevailing data access regime to be entrenched (by default) and is likely to require more comprehensive reforms to unwind business models that do not serve the long-term interests of consumers.

Recommendation 2

The AEMC should establish provisions to manage DNSP access to advanced power quality data. PIACs preference is for this data to be made freely available to DNSPs. In any case, robust regulatory support for price setting is required to curtail the unreasonable exercise of monopoly power over the provision of metering data.

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1 For example, in the case of residential strata buildings.

2 We use the AEMCs definition of advanced PQD as set out in the Accelerating smart meter deployment rule change. That is, basic PQD refers to measurements of voltage, current, and power factor, whereas advanced PQD includes all other measurements not contained therein.

We share the AEMCs view that trading between multiple service providers should not require a contractual relationship between primary and secondary FRMPs. However, we are concerned that the absence of a clear directive for how network tariffs should be apportioned will impair the achievement of this objective.

We do not consider it appropriate to apportion network tariffs through 'contractual arrangements between the customer and the primary and secondary FRMP'. This creates unnecessary complexity. It also fails to align responsibility with the parties with the greatest incentive to act in the best interests of the consumers. We are also concerned the determination 'that there should not be requirements or restrictions on a primary FRMP passing on network tariffs to a secondary FRMP' will undermine the competitive provision of CER aggregation and management services.

The proposed approach establishes a hierarchical relationship. It effectively enables the primary FRMP to set the terms of negotiation with secondary FRMPs (especially where the secondary FRMP is not an authorised energy retailer). Relying on contractual negotiations between FRMPs to apportion network tariffs leaves SGAs and specialist providers at a competitive disadvantage since primary FRMPs have unrestrained leverage to negotiate an agreement in their favour.

While the proposed approach may incentivise retailers to develop in-house CER aggregation and management services, it does nothing to incentivise them to negotiate in good faith or partner with other providers. Just the opposite in fact. Retailers stand to reap substantial benefit from controlling all the load at a consumer's premises. This affords them greater discretion in determining how value generated from trading CER is shared (or not) with other parties such as consumers. Gentailers in particular are disincentivised[3] from operating in a manner that maximises the value the consumer derive from their CER.

As we outlined in previous submissions[4], there is good reason to support the application of discrete network tariffs at each settlement point. This avoids the complexity of splitting network tariffs across FRMPs and encourages DNSPs to develop targeted tariffs to promote the efficient usage of flexible resources. It is unclear whether the proposed framework supports levying such network tariffs[5] to each settlement point. We request the AEMC provide clarification on this matter.

Recommendation 3

In the absence of arrangements where a discrete network tariff applies to each settlement point, the network tariff should only apply to the primary FRMP.

There are concerns a secondary FRMP may 'increase customer bills and drive network expenditure'. While this is theoretically possible, it is not clear how this would occur in practice. We are interested to understand the specific interactions that could bring about this hypothetical

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3 Due in part to their fiduciary duty to maximise profit from their generation business which is at odds with the consumers interest to minimise electricity usage.

4 See PIAC submission to AEMC Unlocking CER benefits through flexible trading directions paper, p. 5.

5 Where relevant network tariffs for such purposes exist.

and recommend the AEMC provide examples or a case study to illustrate a plausible scenario in which this dynamic would arise as a material issue.

We question the view that 'large customers have access to the data, the skills and resources to identify if a secondary FRMP's operations are leading to increases in their network charges.' Large consumers (i.e. those using over 100MWh/annum) are not necessarily sophisticated energy consumers. It is inappropriate to assume that a dry-cleaning business can apply the same level of rigor to analysing and optimising its energy use as a data centre.

While we consider it unlikely for secondary FRMPs to materially increase customer bills and drive network expenditure, there is a risk that flexible trading could raise issues for CER orchestration in situations where flexible assets are assigned to different settlement points. For example, CER assets that are responding to different market signals may produce unintended effects and undermine the efficient operation of the system. The AEMC should accordingly consider the potential implications of these interactions on flexible export limits and dynamic operating envelopes.

3. Enabling CER flexibility for small consumers

Small consumers should have access to a competitive market for managing their flexible resources providing meaningful choice and delivering actual consumer benefit. We do not consider the proposed framework delivers or supports this outcome.

The benefits of separately identifying CER depend on the ability of consumers to trade with multiple service providers should they choose to. As we note above, it is unlikely (if not impossible) consumers will realise these benefits if market arrangements do not provide a fair basis for competition – this applies to the proposed framework for both large and small consumers.

Separately identifying CER provides a more accurate image of how these assets are operating through reducing reliance on baselining. This is relevant for market settlement purposes where the limitations of baselining make it difficult to accurately reward consumers for providing demand response and other ancillary services. For instance, a consumer participating in a virtual power plant (VPP) may not receive a reward for flexing their CER in response to high market prices if this response does not coincide with an overall reduction of load at their premises.

As other stakeholders have noted, FRMPs are already able to isolate and separately control behind-the-meter CER. While the proposed framework makes it easier to isolate CER by permitting the use of in-built meters, it does not provide consumers the option to have a separate retailer or trader relationship.

This poses an issue because retailers currently have little or no financial incentive to optimise CER or assist consumers to manage their energy use more broadly. Where this incentive does exist[6] it is almost exclusively leveraged to realise benefits for the retailer rather than the

[6] For example, through managing CER to hedge against a wholesale market position.

consumer. The proposed rule change does nothing to address this fundamentally misaligned incentive.

Limiting small consumers to trading with a single FRMP does not level the playing field for SGAs and further entrenches the unreasonable market power of incumbent retailers. The proposed market arrangements are likely to exacerbate the issues identified in the recent Fel's Inquiry[7]. Namely, that 'there is very substantial price discrimination between business and [household] consumers' and that 'much more activity is required to get competition and good prices in retail'.

In other words, 'less than fully effective competition' in retail electricity markets has led to high prices, which disproportionately impact households. We do not support the proposed arrangements for small consumers as they are likely to enhance the market power of gentailers while providing little in the way of access to innovative energy products and services to efficiently integrate CER into the grid.

At best, the arrangements are likely to see the perpetuation of products and services which purport to deliver innovation and consumer benefit (such as retailer demand response or aggregation programs), but actually serve to undermine consumer support for such products by curtailing their value to consumers. We contend this will only serve to stifle the development and growth of genuinely innovative products and services which could more meaningfully benefit consumers.

Recommendation 4

The market bodies should commit to undertaking a post-implementation review to assess whether flexible trading is delivering intended outcomes (and the materiality of those beneficial outcomes) for small consumers. An explicit purpose of this review should be the development of further measures to improve effective competition and the value derived from household CER.

We strongly disagree with the proposal to give the incumbent MC responsibility for all settlement points downstream of the associated small consumer's connection point. This will unacceptably strengthen the market power of incumbent MCs and exacerbate issues of access to metering data.

The proposal may also produce other unintended consequences. For example, CER equipment manufacturers may not seek pattern approval for devices with in-built metering capability if they are forced to surrender this data to MCs – particularly where those MCs have contracts with retailers to provide CER aggregation and management services. As such we do not consider this change appropriate even in the scenario that small consumers remain limited to trading with a single FRMP.

Furthermore, the proposal to retain the incumbent MC for small consumers that elect to establish a secondary settlement point seems at odds with the determination to make the MP, MC, and MDP roles contestable for type 8 and type 9 metering installations. The AEMC should provide further clarification on this matter.

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7 See Inquiry into Price Gouging and Unfair Pricing Practices, pp. 50-52.

4. Arrangements for new meter types

PIAC supports introducing arrangements for new meter types to enable devices with in-built measurement capability to be used for settlement and billing. We share the view of other stakeholders that it would be most practical for DNSPs to undertake this role. Our submission to the AEMC Review of the regulatory framework for metering services outlines our concerns with the existing industry structure and highlights inadequacies with current provisions around access to metering data in more detail[8].

We do not see a role for metering providers in installing and managing type 8 and 9 meters, particularly where the meter is in-built to the device. These duties may apply to meters wired externally to the device; however, they should not default to the existing MP but instead be subject to competitive arrangements. This would streamline the installation process by enabling CER installers and SGAs to provide these services should they wish.

Recommendation 5

Another level of accreditation for metering providers should be added to the NER outlining relevant requirements to commission, install, and maintain type 8 and 9 meters.

This accreditation should be independent of existing requirements. That is, SGAs and other relevant parties should be able to gain accreditation to act as an MP for type 8 and 9 meters without having to meet more onerous requirements related to managing other meter types.

5. Further Engagement

PIAC would welcome the opportunity to discuss these matters further with the AEMC and other stakeholders. If you have any queries about this submission or would like more information about our advocacy and research work, please contact Jan Kucic-Riker, Policy Officer, Energy and Water at jkucicriker@piac.asn.au

8 See PIAC submission to AEMC Review of the regulatory framework for metering services, pp. 24-29.