Public Interest Advocacy Centre

11 April 2024

Christian Dunk
Project leader
Australian Energy Market Commission
GPO Box 2603
Sydney, NSW, 2000

Your Ref: **ERC0383**

Dear Mr Dunk,

Flexibility in allocation of interconnector costs rule change proposal

The Public Interest Advocacy Centre (PIAC) welcomes the opportunity to respond to the Australian Energy Market Commission's (AEMC) consultation paper on the rule change proposal on flexibility in the allocation of interconnector costs (the consultation paper).

PIAC does not support the rule change as proposed. We do not consider creating a secondary pathway for determining how costs of large interconnectors are allocated to be in the long term interests of consumers, and contend insufficient justification has been provided regarding why such an approach is preferable to transparently resolving enduring issues with the cost allocation framework itself.

Should the rule proceed as proposed, there is a substantial risk the AER will feel pressured to approve ministerially determined cost allocation arrangements with inadequate scope to consider whether they are just, equitable, or in the long-term interest of all consumers.

PIAC proposes that the ministers' rule change proposal is merged with the one we have submitted, on the basis that they both respond to the same fundamental problem (inadequacies or issues with the cost recovery framework for interconnectors). We are not convinced the reasons provided for keeping the two proposals separate are substantive or correctly recognise that both proposals seek to address the same fundamental problem. While both proposals provide different approaches to solving the problem, this is a reason to merge the two, not to keep them separate.

PIAC's proposed rule change solves the same problem.

The problem the ministers' proposed rule change responds to is that:

the current cost allocation framework… is not sufficiently flexible… to address unique scenarios, for example where an interconnector would have disproportionately adverse price consequences for a State or Territory's household or businesses or the interconnector passes through Commonwealth waters.[1]

While they have specifically been expressed in relation to the circumstances of the proposed Marinus Link project, the highlighted problems result from the fact that currently the rules allow situations where the costs of an interconnector may not be allocated in accordance with the benefits derived from it.

The PIAC rule change request seeks to address the problem which arises where the "costs [of Integrated System Plan projects] are not borne fairly between beneficiaries."[2]

The solutions proposed in the PIAC rule change would resolve the problem highlighted in the ministers' rule change, as well as other similar problems not addressed by the Ministers' proposal. In PIAC's assessment our proposal also provides a more transparent, consistent and enduring solution than the Ministers' proposal. In any case we consider it appropriate for the AEMC to properly assess their relative merits in parallel, through a merged rule change process.

The risks of allowing cost allocation to be determined by energy ministers

The ministers' rule change proposal does not provide the Australian Energy Regulator (AER) with any substantive criteria to undertake its role on behalf of consumers and evaluate an agreement reached by energy ministers. Importantly, this is an issue with the rules as they currently exist, hence the rule change proposal from PIAC.

The application from the APA Group in May 2023 to convert Basslink from a market network service provider to a regulated transmission network service provider outlines this gap in the rules. They note that the main restrictions on the AER in its allocation of costs is the methodology being based on 'use'. APA provided three alternative methods in its proposal – a geographic method, an energy flows method, and a market size method, all of which could reasonably be interpreted as fulfilling this requirement.[3]

The AER has not yet made a determination on the proposal or the question of allocation of costs for Basslink, and has so far only noted that the issue has been identified as a key one by a number of stakeholders.[4]

The decision to allow the ministers' rule change on cost allocation to move forward without providing a substantial basis for the AER to assess agreements proposed by energy ministers runs the risk of the AER approving cost allocation plans that are inequitable, unjust, or

---

[1] Australian Energy Market Commission, 2024, Consultation paper, 'National Electricity Amendment (Providing flexibility in the allocation of interconnector costs) Rule 2024', p.1.
[2] PIAC, 2024, 'Transmission charging rule change request', p.1
[3] APA, 2023, 'Basslink Transmission Revenue Proposal', p.43-45
[4] AER, 2023, 'Issues Paper: Basslink Conversion Application and Electricity Transmission Determination', p.4.

otherwise not in the long-term interest of consumers. The rules as they stand do not provide the AER clear principles on which to base such a determination.

This consultation process asks stakeholders about a possible minimum set of requirements for a cost allocation agreement. In effect, we contend, this amounts to asking 'how should the regulatory framework best ensure that the allocation of the costs of interconnectors accord with the allocation of their benefits?' This question is at the heart of PIAC's proposed rule change.

The AEMC has asserted it cannot progress the PIAC rule change alongside the ministers' rule change because the task of assessing and answering this question could not be completed within the timeframe of processing the Ministers' rule change. It would then seem this implies that the task of providing the AER a basis on which to substantively vet cost allocation agreements reached by ministers is also not possible within the timeframe of processing the ministers' rule change.

Accordingly a decision to proceed with the ministers' rule change could result in the AER effectively rubber stamping the cost allocation agreements, given they have no other robust basis on which to assess them.

Good regulatory practice

The AEMC prioritises work identified by governments and ministers. However good regulatory practice implies that this extends to responding to the problems and priorities identified by ministers, and then exercising its responsibility to make rules the AEMC assesses to be in the best long-term interests of consumers. It is not reasonable to assume the AEMC must enact solutions proposed by ministers without due consideration and assessment.

It would also be unreasonable to establish a practice of treating rule change proposals from ministers differently to rule change proposals from other stakeholders. Where ministers collectively agree on a specific solution, they already possess the scope through agreement between Energy Ministers, to progress this through policy, law changes and direction to energy market bodies.

Good regulatory practice entails the AEMC assessing each rule change proposal from any stakeholder on the basis of the merit of the rule change proposal itself and its contribution to the long-term interests of consumers.

Best regulatory practice in this situation would entail producing a replicable, transparent, principle-based rule which would guide the regulator's processing of all cost allocation proposals going forwards. The ministers' proposed rule change does not do this.

The bar to justify any alternative to good regulatory practice should be very high. PIAC has seen no evidence to demonstrate that the 'deadline' for the AER to approve the Marinus stage 1 project funding proposal reaches this bar.

There is not a genuinely hard 'deadline' for determining the rule change.

The ministers proposing the rule change have reached a funding agreement to enable Marinus stage 1 to proceed. While they have committed to proceeding with the project, they have made immediate progress dependent on resolving the question of cost allocation before funding can be finalised.

We do not consider this to be a relevant consideration or 'problem' for the AEMC. It is not incumbent upon the AEMC to enable this deal to go through if doing so would require the Commission to lower or otherwise subvert its usual standards of assessment. In simple terms, Ministers who entered into this agreement have created this contingency criterion and they have scope to resolve or address it themselves.

An alternative and arguably more appropriate solution would be for the ministers in question to provide funding directly for the early works of the project, or to seek funding from the Clean Energy Finance Corporation for the same, confident that a funding arrangement will be resolved before the project is ready to apply for stage 2 funding. This is not the only possible alternative solution.

We recommend the AEMC initiate a process to merge consideration of the Minister's rule change proposal with our own and would welcome the opportunity to meet with the AEMC and other stakeholders to discuss these issues in more depth. Please contact me at mlynch@piac.asn.au regarding any further follow up.

Yours sincerely,

Michael Lynch
Senior Policy Officer

0404 560 386
mlynch@piac.asn.au