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Mr Stuart Slack
Senior Economist
Australian Energy Market Commission

Submitted via www.aemc.gov.au

Dear Mr Slack

PIAC response to AEMC's energy storage discussion paper

The Public Interest Advocacy Centre (PIAC) thanks the Australian Energy Market Commission (AEMC) for the opportunity to comment its discussion paper, *Integration of Energy Storage – Regulatory Implications* (the discussion paper).

PIAC's primary concern is whether electricity network service providers (NSPs) should be excluded from including large-scale batteries in their regulated asset bases (RABs) and from owning batteries 'behind the meter' on consumers' properties. While both objectives could potentially be achieved through ring-fenced subsidiaries of network businesses, PIAC has concerns about whether such arrangements can be effectively implemented. PIAC, therefore, takes the view that the risk to competitive neutrality posed by regulatory failure related to ring-fencing—and the cost of that regulation, even were it to be effective—supports a more forceful prohibition on network ownership of battery storage technologies.

PIAC's position is informed by a report recently commissioned from Carbon + Energy Markets (CME), *Batteries and electricity network service providers in Australia* (the CME report), which examines options for regulating NSP ownership of storage technologies. The CME report examines a number of options, including full or partial exclusion of storage assets from NSP RABs, as well as splitting network operation from ownership (the option being pursued in New York State). The CME is provided as Attachment 1 to this submission.¹

PIAC wishes to commend the AEMC for its willingness to engage with consumer advocates on this issue and looks forward to continuing to work with the AEMC as regulation in this area develops.

Finally, PIAC wishes to record its agreement with the AEMC regarding two issues. Firstly, that networks will only be able to sell/lease batteries behind the meter through ring-fenced affiliates. Secondly, that if networks own large-scale batteries (even through ring-fencing arrangements) these businesses will not be able to arbitrage the wholesale energy market. PIAC considers that these positions are clear and non-controversial.

¹ CME, *Batteries and electricity network service providers in Australia: regulatory implications*, September 2015, available at: www.piac.asn.au/publication/2015/10/batteries

Monopoly power and the evolving electricity system

The increasing evolution and roll out of energy storage will significantly change the nature of the electricity infrastructure in the National Energy Market (NEM). As this transition occurs, it is crucial that simple and effective regulation allows for the benefits of this emerging technology to be maximised. As with all aspects of NEM regulation, the National Electricity Law requires that this benefit be distributed in a way that contributes, above all else, to outcomes that are in the long-term interests of consumers.

PIAC considers that the emergence of this new technology offers the chance for the risks for associated with monopoly market power to be more effectively managed and for a new, dynamic and innovative sector of energy market services to be fostered. Accordingly, PIAC is pleased to note that the discussion paper's position that 'storage should be considered a contestable service'.² PIAC endorses this position and notes that the transformation of the energy system through the emergence of new technologies represents an opportunity to reduce the proportion of the whole system over which one entity has monopoly control. Regulating monopoly power is an extremely complex task. Indeed, PIAC has formed the view through extensive participation in network regulation activities that keeping monopoly in check through regulation is an almost impossible task and leaves consumers bearing unacceptable risk (especially under the revenue cap model). As a result, PIAC believes that opportunities to reduce monopoly power and create new markets, should be given careful consideration.

As previously stated, the CME report canvasses a number of models of possible regulation of NSP ownership of energy storage technologies. A variety of options are assessed, ranging from full to zero inclusion of energy storage assets in the RAB.³ The CME report recommends that NSPs be allowed to 'develop unregulated businesses for provision of grid-connected and behind-the-meter storage'.⁴ In preparation for such businesses developing, the CME report further recommends that there be a careful examination of 'the arrangements for ring-fencing of regulated activities from unregulated activities'.⁵ As previously stated, PIAC has serious doubts about whether ring-fencing can be effectively achieved. Nonetheless, PIAC accepts that that is a question that should be closely examined, rather than answered without undertaking such an analysis. Accordingly, PIAC recommends that the AEMC carefully consider this contention, along with the whole CME report.

Recommendation 1

PIAC recommends the AEMC carefully consider the analysis and recommendations contained in the CME report at Attachment 1 to this submission.

Effective ring-fencing

The discussion paper notes that the 'AEMC is broadly confident in the ability of ring-fencing'⁶ to address instances of monopoly power, in particular where:

- network services are able to cross-subsidise a competitive service from its regulated activities;
- an NSP acquiring sensitive information through the performance of its regulated activities, which provides it with a competitive advantage over other suppliers.⁷

² AEMC, *Integration of Regulatory Storage – Regulatory Implications*, October 2015, ii.

³ CME, above n 1, 66.

⁴ Ibid, 80.

⁵ Ibid.

⁶ AEMC, above n 2, 66.

⁷ Ibid.

However, the discussion paper also highlights a third, 'more problematic' scenario, in which network businesses are able to restrict access to monopoly infrastructure, or provide such access on a basis that gives an affiliate a competitive advantage.⁸ The discussion paper draws a parallel with the separation of the wholesale and retail sectors (which are competitive markets) from regulated monopoly NSPs.⁹

This difficulty serves to illustrate PIAC's concerns about the possibility of ring-fencing not maximising consumer benefit in the long term. That is, PIAC is concerned that ring-fencing will not provide the market with protection from monopoly power in all circumstances. Further, PIAC has concerns about the ability of the Australian Energy Regulator (AER) to effectively develop and oversee strong ring-fencing arrangements. This is not a criticism of the AER, but rather a comment on the complexity of the task and the resources required to carry it out. Accordingly, PIAC recommends that the AEMC engage with the AER on whether the regulator is confident such arrangements could be developed and implemented.

Recommendation 2

PIAC recommends the AEMC examine closely, in consultation with the AER, whether sufficiently strong ring-fencing arrangements in relation to the provision of energy storage services can be implemented in the NEM.

Prohibition on NSP ownership of energy storage assets in front of the meter

Depending on the position of the AER on ring-fencing, PIAC believes that there is merit in careful consideration being given to prohibiting any NSP ownership of battery storage assets. Such an arrangement would remove the risk of ineffective ring-fencing, as such arrangements would not be necessary. Instead, NSPs would be required to seek tenders from third party providers to provide a specific, required service.

PIAC acknowledges that there is a potential cost to such an arrangement, being some of efficiencies NSPs may be able to achieve through their knowledge and experience of the network. However, PIAC believes that the associated benefit (the reduction of monopoly NSP power) would outweigh this cost. While such a move may be considered bold, PIAC believes that requiring NSPs to source all their storage services from third parties (and fund them through operating expenditure, rather than capital expenditure) has a greater chance of ensuring new technology is smoothly integrated into the system. An alternative scenario, in which networks are at first allowed to invest in energy storage, and then prevented from continuing to do so if (or, as PIAC would say 'when') the uncompetitive outcomes become clear, is potentially more disruptive. Given that businesses generally crave certainty, PIAC submits that there is an argument for adopting a prohibition at this very early stage in the roll out of grid-connected electricity storage technology.

Recommendation 3

PIAC recommends the AEMC give careful consideration to placing a prohibition on NSP ownership of energy storage assets.

AEMC engagement and next steps

PIAC has been pleased with the opportunities for consumer representatives to meet with AEMC staff as part of this review. These efforts come in the context of the NEM Governance Review, during which PIAC was critical of a number of aspects of AEMC operations.¹⁰

⁸ Ibid.

⁹ Ibid.

¹⁰ PIAC's submissions are available at: www.piac.asn.au/publication/2015/06/complex-fragments-competitive-consumer-focused-markets

Following that process, PIAC has made concerted efforts to better engage with the AEMC and has been pleased that an enhanced spirit of cooperation appears to have been fostered.

PIAC looks forward to continuing to work in that spirit in any processes that stem from this review, such as a rule changes related to effective ring-fencing regulations or a possible prohibition on NSP ownership of energy storage assets.

Once again, PIAC thanks the AEMC for the opportunity to provide comment on the discussion paper. If you require any further information, please don't hesitate to contact Oliver.

Yours sincerely



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