Public Interest Advocacy Centre

Submission to the National Electricity Amendment (Amendment of the Market Price Cap, Cumulative Price Threshold and Administered Price Cap) Rule

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Public Interest Advocacy Centre
ABN 77 002 773 524
www.piac.asn.au

Gadigal Country
Level 5, 175 Liverpool St
Sydney NSW 2000
Phone +61 2 8898 6500
Fax +61 2 8898 6555

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.

Contact

Michael Lynch
Public Interest Advocacy Centre
Level 5, 175 Liverpool St
Sydney NSW 2000

mlynch@piac.asn.au
Website: www.piac.asn.au

Public Interest Advocacy Centre

@PIACnews

The Public Interest Advocacy Centre office is located on the land of the Gadigal of the Eora Nation.

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1. Introduction

PIAC welcomes the opportunity to respond to the AEMC Consultation Paper on the Amendment of the Market Price Cap, Cumulative Price Threshold and Administered Price Cap relating to the rule change request from the Reliability Panel (the consultation paper).

PIAC opposes the proposed rule change. We support the market price settings remaining at their current levels for the review period. There is insufficient evidence to suggest that the reliability standard is likely to be breached during the review period. There is also insufficient evidence that consumers would value any resulting increase in reliability sufficiently to support paying the increased costs involved.

It is not appropriate for the Commission to use a substantially changed terms of reference from those used by the Reliability Panel in producing its recommendation. If a rule change is to be made, it should only occur after the recommendation is returned to the Reliability Panel for review and resubmission. This should be accompanied by updated terms of reference and detailed guidance from the AEMC on how the jurisdictional and federal schemes and demand response capacity should be modelled and incorporated.

PIAC proposes that more substantial reform of the reliability regime reflecting the changed nature of the National Energy Market (NEM) is needed. In particular, it must be acknowledged that the NEM is no longer an energy-only market; it is an energy- and capacity-market hybrid. It is more dynamic and complex than the thermal-based, linear system the reliability regime was originally designed for.

The market price settings – the Market Price Cap (MPC), Cumulative Price Threshold (CPT), Administered Price Cap (APC), and the Market Price Floor (MPC) – continue to play a crucial role in ensuring that the reliability standard in the NEM is met. However, they are not the only tools available for the provision of reliability. Nor are they the only tools available to signal the efficient level of investment in generation, storage, firming, or demand response.

The place of the market price settings in the reliability regime should be adjusted in light of the slew of new tools that have been added since the regime was designed. The market price settings should also be set with reference to all the elements in the reliability regime, not merely an arbitrary subset of them.

The practice of ‘intentional gold-plating’ should be abandoned. This refers to setting the market price settings at levels which aim to effect the reliability outcomes set in the National Energy Rules (NER) on their own. This approach is not appropriate in an energy-capacity hybrid market, and renders the provision of reliability which matches consumer willingness to pay almost impossible.

Over-reliance on the market price settings also limits the regulator’s capacity to provide appropriate incentives to storage and demand response investment. By taking a technology-neutral approach, the market settings are forced to treat storage and demand response projects as equivalent to generation projects. This is despite them potentially having very different impacts

on reliability outcomes and potentially being impacted differently by changes in the market settings. The previously appropriate approach is no longer fit for purpose in today's more complex market.

PIAC proposes a move to a more bespoke system where the market price settings for each jurisdiction are set according to the reliability risks and energy challenges that jurisdiction faces. This would not be difficult to arrange and would return revenue to consumers who would face unchanged reliability outcomes.

Finally, we note that the dissenting opinions from Reliability Panel members noted in the 2022 Review of the Reliability Standard and Settings Final Report (the RSS Review) were not included in the consultation paper. This is not acceptable and undermines the transparency of the consultation process. PIAC does not consider that the issues raised in the dissenting opinions have been dealt with adequately in the consultation paper. These issues remain pertinent and should be dealt with more substantively.

2. The dissenting positions in the RSS Review have not been acknowledged or addressed

Dissenting opinions from the RSS Review should have been carried forward into the consultation paper. Given the rule change is proposed with the explicit aim of enhancing the long-term interests of consumers, it is significant that the two dissenting opinions were from the two consumer advocates on the Reliability Panel. This makes it particularly important that these perspectives are presented in full.

Further, the issues raised in the dissenting opinions in the RSS Review have not been adequately engaged with or resolved in the consultation paper. This is, at best, poor engagement practice. It leaves no opportunity to build on presentation of the issues to a productive end or to understand and accept their dismissal.

The concerns of the dissenting opinions as stated in the RSS Review were that the:

- reliability standard is unlikely to be exceeded during the review period
- financial impact and risk for some retailers and spot-exposed customers may be too high
- modelling assumes limited volumes of demand response are available under the existing price cap which does not reflect anticipated changes to the Wholesale Demand Response Mechanism, and
- The modelling does not include revenue from jurisdictional schemes, such as the NSW Electricity Infrastructure Roadmap when calculating the MPC and CPT required to support marginal new entrants.[1]

The closest the consultation paper comes to developing these concerns is promising further discussion on the Commission's consideration of jurisdictional schemes. However, this is promised in chapter 4, and there are only three chapters in the document.

[1] RSS Review, p.vi

> Given these schemes are additional measures to support reliability (in addition to emissions reduction), the Commission will consider how these schemes and the market price settings interact and the implications for the proposed changes to the settings. Further discussion on the Commission's consideration of jurisdictional investment schemes is provided in Chapter 4.[2]

3. The terms of reference have changed

The terms of reference for the Commission's consideration of the rule change are different to the ones the Reliability Panel had in producing its recommendation. The recommendation should be returned to the Reliability Panel for review and resubmission according to the updated terms of reference.

Failure to engage with the dissenting opinions in the consultation paper is particularly problematic as it renders it difficult to determine what exactly is within scope for the Commission's evaluation of the rule change and how different elements will be considered and weighted. The issues of how the jurisdictional schemes and the federal government's Capacity Investment Scheme (CIS) will be considered is particularly opaque.

The inclusion of jurisdictional schemes in the modelling for the Reliability Panel is clear:

> Investment under jurisdictional schemes was accounted for in PLEXOS modelling. Jurisdictional policies were included if they meet the NER criteria as being legislated or sufficiently committed.[3]

The CIS, by contrast, was unambiguously out of scope for the RSS Review, despite commentary being allowed:

> The 2022 RSS review and final recommendation are provided in the context of the existing energy-only market design. The design and scope of a capacity mechanism and the interim reliability measure were out of scope for the 2022 review. The Panel has made some commentary on those issues, to the extent they intersect with the Panel's final recommendations on the reliability standard and settings. [4]

The summary of the recommendation in the RSS Review also noted the omission of the CIS when responding to stakeholders' submissions that the case for a higher MPC/CPT had not been sufficiently made. It noted that again that:

> The Panel's terms of reference however require it to recommend market price settings for the current energy-only market design. The Panel was therefore unable to consider any future reliability mechanisms, such as a capacity mechanism, in its final recommendation. [5]

Despite being out of scope for the Reliability Panel, the CIS is explicitly within scope for the Commission's determination of the rule change:

[2] Consultation paper, p.3
[3] RSS Review, p.15
[4] Information sheet for the RSS Review, p.1
[5] RSS Review, p.72

> The Commission will also consider… the interaction with federal and jurisdictional reliability schemes, the market price settings, and other complementary measures in supporting reliability as the power system transitions.[6]

'These schemes' are specified as including the CIS on page 3 of the consultation paper.

This approach calls into question what weight the Commission will place on commentary provided by the Reliability Panel on the capacity mechanism. If the answer is none, either it is not appropriate that the commentary was left in the RSS Review or it is not appropriate that the Commission is ignoring the Reliability Panel on a matter that is reasonably within the Panel's purview.

It also introduces confusion and inconsistency regarding the Reliability Panel's interpretation of what an 'energy-only market' is. Parts of the jurisdictional schemes, which were included within the original analysis, are unambiguously capacity-based, such as the Long-Term Energy Service Agreements (LTESA) in NSW. If these were allowed within the confines of considering an 'energy-only market' the CIS should also be allowed. In the consultation paper, the Commission acknowledges as much, as well as that the CIS is likely to have a material impact on investment and so reliability outcomes within the review period.

The inclusion of the federal and jurisdictional schemes by the Commission is a positive development. It acknowledges the reality that the NEM is no longer energy-only; it is a hybrid energy-/capacity-market and is on a trajectory to being more weighted to the capacity side as time passes.

The acknowledgement that the terms of reference for the Reliability Panel are no longer appropriate should be formalised and they should be updated. This acknowledgement also gives weight to the concerns of the dissenting members of the Reliability Panel that the increases in the market settings are not required or justified.

The rule change should be returned to the Reliability Panel for review using the updated terms of reference before being resubmitted. The revised terms of reference should include added guidance on how the jurisdictional and federal schemes should be treated in the modelling.

Additional guidance should also be provided on the modelling of demand response capacity in response to the concerns of the two dissenting members of the Reliability Panel.

4. The existence of a reliability gap has not been established

The proposed increases to the MPC, CPT, and APC come at a cost to consumers. The rule change proponent must establish a need for the changes and that the increases will be in the long-term interests of energy consumers. This has not occurred.

[6] Consultation paper, p.D

The analysis in the RSS Review suggests that the reliability standard is unlikely to be exceeded during the review period. It summarises the findings on the point as follows:

> IES base case modelling, which represents the Panel's best estimate of likely outcomes, does not indicate a reliability gap in any NEM region between FY2026 - FY2028 under the approach and assumptions used.[7]

Crucially this summary does not account for the impacts of the CIS, which the Commission will include in its determination of the rule. This inclusion can be expected to further decrease the probability of the reliability standard being exceeded during the review period.

Any case that expected investment may not be adequate should be accompanied by analysis of the factors preventing new projects in storage, generation, firming, and demand response. This is because any shortfall of investment may be caused by demand-side factors, which the market price settings can be expected to influence, or supply-side factors, which they do not. Supply side factors might include the rates at which generation connections occur, rates at which environmental and other approvals occur, resource supply chain issues, or labour supply issues. All these issues are currently prevalent and material considerations in the NEM. Further, there is good evidence from recent auctions in jurisdictional schemes such as Renewable Energy Zones (REZ), LTESAs, and storage tendering, that there is strong demand for investment in the NEM. This would indicate there are no apparent demand side issues which need to be addressed.

Given these considerations, a positive argument must be made by the rule change proponent that the cause of anticipated investment shortfall is predominantly on the demand side and not the supply side. If the issues are predominantly on the supply side, increasing the market price settings is unlikely to change investors' behaviour. It will only result in investor windfall gains and, importantly, excess costs to consumers.

5. Uniform market settings across the NEM

It is not appropriate for there to be one set of market settings across all the jurisdictions of the NEM. The jurisdictions have very different compositions in terms of:

- renewable and thermal generation
- long term storage
- demand response capacity
- domestic photovoltaic take-up
- domestic battery take-up
- degree of electrification
- electric vehicle take-up

As a result, each jurisdiction faces very different challenges in terms of their energy transitions and very different reliability issues. In the RSS Review, it is clear that Queensland, South Australia, and Tasmania face far smaller likelihoods of exceeding the reliability standard than New South Wales or Victoria during the review period. Nonetheless, they face market settings

[7] RSS Review, p.12

based on the needs of New South Wales and Victoria and so pay more than is necessary to achieve reasonable reliability outcomes in their own jurisdictions.

The current market settings are a blunt investment signaling mechanism. It would be relatively easy to shift to a more bespoke market settings system, providing each jurisdiction with levels appropriate to their own conditions. This could be done without changing the governance arrangements currently in place and would have a range of benefits to consumers across jurisdictions.

6. The market price settings should be set with reference to all the elements reasonably thought of as within the reliability regime

The consultation paper does well to situate the market price settings within a wider reliability regime, and to describe the many current projects aiming to manage reliability risk over the short, medium, and long terms.[8] The Commission should be commended on its move to expand the terms of reference for its consideration of the rule change. However, the expansion of the terms of reference should be done systematically, and with clearly stated guiding principles.

One such principle should be that the market price settings be designed and set in conjunction with the rest of the reliability regime. That is, the regime should abandon the pursuit of market price settings that aim to effect the targeted reliability outcomes on their own.

The set of elements in the reliability regime today include the following:

- The Integrated System Plan (ISP)
- the Electricity Statement of Opportunities (ESOO)[9] and Projected Assessment System Adequacy (PASA) tool
- The Interim Reliability Measure (IRM) and Retailer Reliability Obligation (RRO)
- Jurisdictions and the Federal Government tools and schemes that provide investors in dispatchable energy with incentives and locational signal
- Jurisdictions and the Federal Government tools and schemes that provide investors in long term storage with incentives and locational signals
- the Interim Reliability Reserve (IRR) and Reliability and Emergency Reserve Trader (RERT) contracts.
- AEMO's powers to direct generators and instruct transmission or distribution elements[10]; and
- The Gas Code

A number of these are already present within the modelling conducted for the Reliability Panel for the purposes of recommending rule changes on the market price settings. However, the delineation of what is and is not considered in modelling is increasingly arbitrary.

[8] Consultation paper, p.24-25
[9] This appears as an input in the PLEXOS modelling on which the IES Review is based, but also functions as a signal to investors.
[10] NEL Section 116; NER clause 4.8.9.

In order to provide consumers with a level of reliability that accurately reflects their willingness to pay to avoid outages, the market price settings must take into account the full range of policy tools at the federal, NEM, and jurisdictional level that contribute to delivering energy reliability.

We support the comments made by the EUAA on the lack of reference in the consultation paper to the Federal Government's gas price cap and Mandatory Gas Code, and the implications these have for the need (or not) for the proposed increase in the APC.

7. The market price settings do not adequately incentivise batteries or demand response

The energy system today, and that which will endure into the future, involves a more diverse set of elements than it has historically, including different kinds of generators, storage, demand response, and demand-side generation. These changes are fundamental and require re-evaluation of the system's constituent mechanisms, such as the market price settings.

The market settings cannot continue to be used in the same way they have been in spite of the material changes to the system they operate in. The RSS Review and the consultation paper do well to explicitly recognise storage and demand response as relevant elements in the delivery of reliability outcomes. However, there is inadequate attention given to how these elements are distinct from generation. The RSS Report acknowledges many of these shortcomings, but does not provide a remedy to enable the identification of efficient levels for the market settings.[11]

New storage may impact reliability outcomes quite differently to new generation. For example, the main threats to reliability will increasingly originate in dull doldrums impacting variable generation. In these circumstances the addition of a marginal generator that suffers the same risks as the existing fleet of generators is likely to have a less material impact on reliability outcomes than the entrant of an equivalent storage or demand response project, that does not share these risk characteristics. The modelling aims to be technologically neutral, which is commendable. However, it is not appropriate to treat storage and demand response as directly equivalent to generators when their impact on reliability may be substantially different to actual generation (such as in the circumstances outlined above).

Storage investment may also be less sensitive to changes in the market settings than generation investment. This is because storage projects typically have a number of income streams, only some of which are captured in the times the storage project is acting as a generator. As only a proportion of the storage provider's income stream is impacted by a change in the settings, an increase in the settings will have a relatively smaller impact on the storage provider's incentive to invest than a generator's. This may mean the marginal entrant ends up being a generator despite this not being the most economically efficient outcome from a reliability perspective.

The same arguments can be made for a demand response project: the possibility of providing demand response is generally a small component of the financial viability of the business, and so the impact of the market settings on the investment decision is commensurately smaller.

[11] RSS Review, p.77, see the long quote below.

The RSS Review makes a number of valuable observations on storage that echo these points:

> The Panel notes that battery storage investments are heavily supported by FCAS [frequency controlled ancillary services] revenues and likely to be above the conservative assumptions used in the review's modelling… Small end-user storage investments, which participate in the market via a VPP, are also often justified for reasons other than energy market revenue potential.[12] [13]

However, the report does not explain how these changes impact the assessment that the new, high levels of the MPC, CPT, and APC are warranted. It instead provides the general assurance that "incentives for storage investment are incrementally improved"[14] by the final recommendations. This is not an adequate summary of the interaction of the market price settings and storage investment.

Continued engagement

We welcome the opportunity to meet with the AEMC and other stakeholders to discuss these issues in more depth. Please contact Michael Lynch at mlynch@piac.asn.au regarding any further follow up.

[12] RSS Review, p.77

[13] With respect to demand response, the report noted that a significant increase in DR participation was expected, but could not be modelled due to the absence of certainty for the expansion of eligibility and baselining options for AEMO's Wholesale Demand Response Mechanism (RSS Review p.74 and 67).

[14] RSS Review, p.71