Public Interest Advocacy Centre

Amendment of the market price cap, cumulative price threshold and administered price cap – 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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Public Interest Advocacy Centre

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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's draft rule determination on the amendment of the market price cap (MPC), cumulative price threshold (CPT) and administered price cap (APC).

PIAC strongly opposes the proposed change. The market price settings should remain at their current levels (plus annual indexation for the MPC and CPT) as there is insufficient evidence to demonstrate that the reliability standard is likely to be breached during the review period. Further, insufficient evidence has been presented that consumers would value any resulting increase in reliability sufficiently to support paying the increased costs.

PIAC raised five distinct concerns related to the proposal in our original submission to this process. We consider two of these concerns have been inadequately addressed:

- that Commonwealth and jurisdictional schemes aimed at guiding renewable energy investment and storage were not considered by the Reliability Panel; and
- that it has not been established that a reliability gap to be addressed actually exists.

We consider the three other concerns we raised were not responded to at all. These are:

- that the market settings do not differentiate between battery energy storage systems (BESS) and open cycle gas turbines (OCGT) as marginal entrants. We contend this results in analysis that under-estimates the impact of the marginal battery on reliability outcomes;
- that having a single set of market settings covering all jurisdictions in the NEM is no longer appropriate given that jurisdictions face very different conditions and reliability challenges; and
- that the process for determining the rule change has not been adequately robust and transparent to accord with good regulatory practice.

All five concerns remain relevant.

PIAC highlights the unity of consumer advocates' opposition to the proposed rule change. We echo the comments made by the Energy Users Association of Australia (EUAA) in their submission to the rule change proposal. Referring to the dissenting opinions of the two consumer advocates on the Reliability Panel, they wrote:

> We are surprised that while the Paper argues extensively for the changes to be in the long-term interests of consumers, it makes no mention of that lack of support. It is as if their views have been deleted from the record. It gives the impression that consumer views are no longer relevant and makes us wonder why we should even consider making a submission to the consultation paper. Despite these concerns, we feel it is still important to put a stake in the ground on behalf of EUAA members and to support the consumer representatives on the Reliability Panel.

We concur.

The marginal increase in reliability the rule change is intended to bring about exceeds what consumers are (and have demonstrated they are) willing to pay for. We do not consider a reliability gap exists, and market settings are unlikely to be the most efficient or prudent way to manage any potential reliability gaps, particularly in this case.

As a key regulatory tool, we consider the market settings are no longer fit for purpose. It is in the long-term interests of consumers for the Commission to initiate a process to review and re-design the market settings to ensure they are fit for the new energy market we are now operating in, and will be operating in into the future.

2. The analysis adding the Capacity Investment Scheme and jurisdictional schemes counters a straw man argument

The Reliability Panel drew on analysis in developing their proposal which could not include the federal government's Capacity Investment Scheme (CIS) or the jurisdictional schemes aimed at de-risking generation and storage investment. These are material exclusions which PIAC objected to in our submissions to the initial consultation to the rule change request. It would have been appropriate to return the rule change request to the Reliability Panel for further consideration, as we recommended. The AEMC has instead commissioned analysis from HoustonKemp on the question '*Do jurisdictional schemes change the need for the Reliability Panel's proposed market price settings?*' We do not consider this analysis to be adequate.

The HoustonKemp report largely responds to a straw person argument – that the jurisdictional schemes replace the market settings or render them unnecessary to achieve the reliability standard. This is not the argument made by PIAC or any other stakeholders and, as such, could be refuted without addressing the central concerns we have raised.

The point raised in our original submission was that the practice of determining market settings **without reference to the other elements of the reliability regime** was no longer appropriate. This, given the growth of instruments included in the regime over recent decades as well as their potentially material impact on reliability and excess cost to consumers.

The key question for PIAC that remains pertinent to this determination and which is not answered by the paper is: when adding the CIS, the NSW Electricity Infrastructure Roadmap and firming tenders; the Victorian Energy Target Auction 2, the Queensland Energy and Jobs Plan and the South Australian Hydrogen and Jobs Plan to the analysis done for the market settings, is there a reliability gap in the period to 30 June 2028 that would justify a change to the market settings?

While the HoustonKemp paper does not answer this central question, the Australian Energy Market Operator's (AEMO) most recent Electricity Statement of Opportunities (ESOO) does.

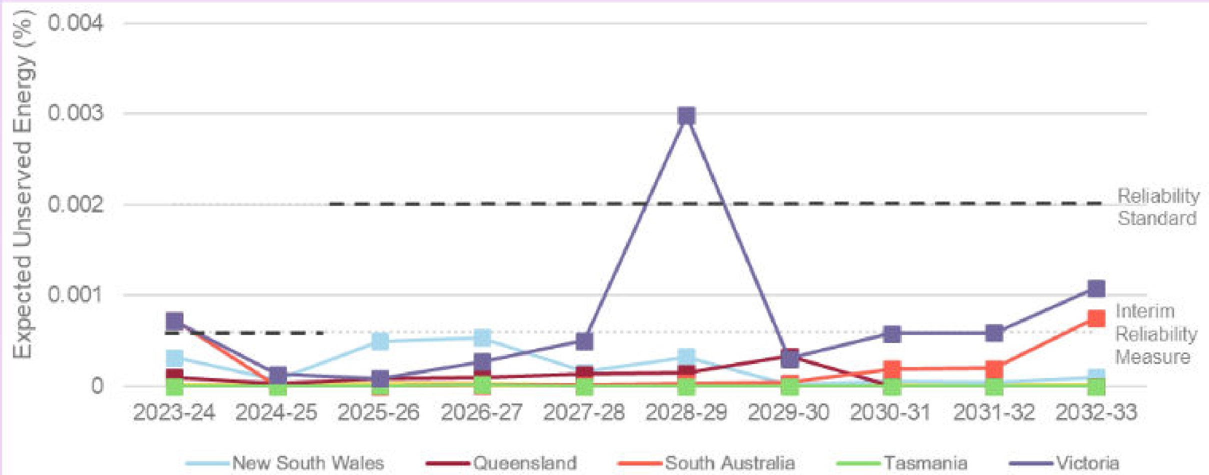
Here is figure 2 and the surrounding box on page 11 of the report:

The *Federal and state schemes* sensitivity includes all developments in the *ESOO Central scenario*, delivered to the schedules advised by project developers, as well as:

- Actionable transmission investments and forecast growth in consumer investments (orchestrated CER and DSP).
- Firming and some renewable energy developments that have specific funding, development or contracting arrangements under federal, state and territory government schemes and programs.

This sensitivity does not include all policies under active development by jurisdictions, and reliability outcomes may improve if all jurisdictional mechanisms deliver to their objectives.

Figure 2 Expected USE, Additional actionable and anticipated developments, 2023-24 to 2032-33 (%)



The report notes that

> [a]dditional policy mechanisms are also under development by various jurisdictions to support the development of renewable energy and firming capacity, but are yet to demonstrate clear development pathways to achieve their objectives. Additional market-led developments in renewable and firming technologies, not modelled in this sensitivity, also have the potential to further reduce risks.

The above graph indicates a breach in the reliability standard, however it occurs outside of the period that the amendment of the MPC, CPT, and APC rule change aims to impact, which is up to June 30 2028. In any case, as AEMO notes in the same section, there are other expected policy mechanisms and developments which are not included in this result, but are likely to impact the reliability outcome in the period in question.

The outputs of the ESOO *Federal and state schemes* sensitivity are not a definitive answer to the central question we have posed above. However, their analysis strongly suggests that no reliability gap exists in the period relevant for this rule change. The onus is on the proponent and determiner to provide evidence that a gap exists, and neither the HoustonKemp report nor the IES analysis does this.

3. A reliability gap has not been established

No demonstrated case justifying raising the costs of energy to consumers to address a reliability gap has been established.

We object to the presentation of PIAC's position in the draft rule determination (section 1.6.1). The AEMC describes PIAC's point that the analysis that the Reliability Panel drew on in making their recommendation identified no reliability gap as being 'in contrast' to the orthodox position that more investment is needed to support the energy transition. We do consider that more investment is needed to support the transition. Our expressed disagreement is that the market settings are the only or even main determinant of marginal investment decisions in the NEM. Market settings must be set in conjunction with the other tools that provide signals to investors in order to effect the reliability standard efficiently and prudently in accordance with consumer preferences and in promotion of their interests.

3.1 Response to the HoustonKemp report

The HoustonKemp report comprises of three main claims.

The first is that the jurisdictional schemes 'complement' the reliability standard in that they also provide incentives for investment, but they don't replace it. On this basis, it argues, there is still a need for market price settings that are set at a level to achieve the reliability standard.

The second claim is that the reliability standard is the appropriate tool for the medium to long term. The jurisdictional schemes, it claims, are more specifically aimed at reducing uncertainty in the period of transition.

The third claim is that making no change to the market settings will raise the pressure on the jurisdictional schemes to bring about the reliability standard, and that this will be a more expensive way to bring about the same result, from the perspective of consumers.

None of these are compelling positions. The first two are responses to a straw person argument. Neither PIAC nor anyone else has argued that the jurisdictional schemes and CIS render the market settings unnecessary. The third claim requires analysis of the costs of alternative ways to resolve reliability gaps, and this is not provided.

We disagree with the report's position that the relationships between the market settings and the jurisdictional schemes and CIS are uncomplicated on the basis that the jurisdictional schemes 'address a separate and distinct risk to the uncertainty addressed through the market price settings'. They may address a different uncertainty, but they still work to marginally remove investor risk and so reduce the need for investment signal derived from the spot price. That is to say they materially displace the investment signals provided by the market settings.

As a result, the impact of a marginal increase in the market caps should be expected to have a lesser effect on reliability outcomes, relative to the situation with no CIS and jurisdictional schemes. Instead, the addition of the jurisdictional schemes and CIS has, remarkably, caused no changes in the modelled optimal market price settings.

To make the same point via a different channel, the methodology for setting the market price caps is based on modelling with the assumption that the generator is taking on all the risk. It makes no sense that the price caps should stay the same when the risk is reduced.

PIAC does not agree that the risk of consumers paying for reliability twice is alleviated by the fact that taxpayers foot part of the bill for energy from projects involved in the CIS or jurisdictional schemes, and that the remainder is covered by the consumer via retail electricity tariffs and that the total cost for energy remains the same. First, obviously energy consumers and taxpayers can be the same people.

Second, the purpose of the CIS and jurisdictional schemes is to move risk from the project proponent on to the taxpayer, and in some cases on to the energy consumer (for example, the NSW LTESAs, in the sense that the consumer is the counterparty to the agreement). To say that that the total of investment energy costs remains the same misses the purpose of the capacity underwriting-based schemes, which is to reduce risk for the proponent by moving it to a different party.

PIAC does not agree that higher market price settings 'will allow greater opportunity for investors to obtain market-based revenue, reducing the revenue support required from the jurisdictional schemes'. This is inconsistent with the intent and working of the policies.

Ultimately, the report provides no basis on which to answer the question of whether or not there is there a reliability gap in the period to 30 June 2028 that would justify a change to the market settings when including the CIS and jurisdictional schemes in the analysis.

3.2 Response to the IES report

The extra analysis the AEMC has commissioned following the first round of consultation in support of the amendment to the market settings rule change by IES provides valuable data on the extra costs that consumers face if the market price settings are raised per the draft rule determination.

It is not clear why the task of considering the implications of the CIS and jurisdictional schemes for the market settings fell outside the purview of this much more substantial modelling work, given the AEMC had acknowledged the need for it.

Ultimately, this is modelling that not only ignores projects that are actionable and forecast but actually goes further and removes coal generators that are existing in order to determine the optimal reliability settings. It does not provide a foundation for interrogating the possibility that there is no expected reliability gap in the scenario where market price settings are left where they are.

4. The regulatory process for the rule change has not been robust

Our initial submission noted our concerns that the acknowledgment of (and response to) the dissenting opinions in the RSS Review was inadequate. This concern was echoed by the EUAA in their submission. We note that this concern has still not received sufficient, substantive response. This is not appropriately robust and transparent regulatory practice, particularly for a process of this materiality.

There is apparently a stark divide in opinions between market participant respondents and consumer advocate responses to the initial consultation paper, which matches the divide on the Reliability Panel itself. While we commend the AEMC on their transparency in noting the divide in opinions between these groups, transparency is not adequate in itself. A clear and robust account of how the AEMC weighs the opinions of these two groups is needed, particularly in response to the concerns of consumer stakeholders. Both groups have a vested interest in the outcome of the process, but the AEMC is obliged to promote of the long-term interests of consumers, and should be able to clearly demonstrate how they are doing so. Where consumer advocates are clearly ranged in opposition to market participants, the AEMC should go further than noting the divide, and explain explicitly (and in detail) why the opinions or arguments of market participants are preferable.

PIAC does not consider it appropriate that the AEMC commissioned extra analysis '*in support of*' the proposed rule change, rather than independent analysis seeking to assess the relative merits of different options in light of new, or newly applied, information. It is also inappropriate to use the status quo as the counterfactual and have as a baseline the scenario where the market settings have been changed per the rule change and enough coal generation has been removed from the model to manufacture a reliability gap. This method does not usefully establish that under the existing market settings a reliability gap exists or if it does, that a change to the market settings is the cheapest way, from the perspective of consumers, to resolve it.

5. Other issues

We welcome the added analysis in the draft rule recommendation on the impacts of the MPC-CPT on battery investment decisions, and small section on new entrant demand response. However, we note that these are at a very superficial level and more work is needed to consider the form of the market settings and the need to incentivise these investments more as they have a much greater impact on reliability than alternatives on a per dollar basis.

More substantially, the marginal entrant should be a battery energy storage system (BESS). It is not appropriate for open cycle gas turbines (OCGT), either small or large, to be used as the marginal entrant generators in the modelling. This would be a more appropriate reflection of circumstances where there are no investors reaching financial investment decision on OCGT projects in the NEM anywhere.

6. 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.