SUBMISSION

NATIONAL ELECTRICITY AMENDMENT ERC0335 | 26 MAY 2022

EUAA
Energy Users Association of Australia

The Energy Users' Association of Australia (EUAA) is the peak body representing Australian commercial and industrial energy users. Our membership covers a broad cross section of the Australian economy including significant retail, manufacturing, building materials and food processing industries. Combined our members employ over 1 million Australians, pay billions in energy bills every year and in many cases are exposed to the fluctuations and challenges of international trade.

It is surprising given the AEMC's role to further the National Electricity Objective, that it seems to regard this rule change as a simple administrative process where the outcome is obvious. The Commission sees it as non-controversial and hence can easily be dealt with in an expedited process (p.3):

> "The rule change does not impact the market and market participants as the proposal only relates to improving the processes for TNSPs to pass on to their customers AEMO's fees that are allocated to TNSPs. As set out in section 3.1, under current arrangements these fees should ultimately be passed on to consumers through existing mechanisms, but these mechanisms may be less administratively efficient."

The existing pass through mechanisms are seen as '…less administratively efficient' so the commission is happy to provide a process that is more efficient. Or at least more efficient to the rule change proponents.

EUAA believes the matter is far from an administrative issue. To treat it that way ignores fundamental issues around incentive based network regulation.

In this submission:

- We do not support the assessment framework because it ignores efficiency.
- We do not support the rule change.

We do not support a proposal that allows AEMO costs to be passed through to consumers without any test of whether they are prudent and efficient like all other costs components in a TNSP's regulated revenue.

<u>We do not support the proposed assessment framework</u>

The Consultation Paper highlights an assessment framework that focuses on the NEO and the revenue and pricing principles. It quotes part of section 7A of the rules (p.5):

> "Relevantly, the revenue and pricing principles provide that a regulated network service provider should be provided with a reasonable opportunity to recover at least the <u>*efficient costs*</u> the operator incurs in complying with a regulatory obligation or requirement, or making a regulatory payment." (emphasis added)

Yet the proposed assessment criteria only relate to cost, complexity, simplicity and transparency. No mention of efficient costs that is central to the incentive based regulatory framework for TNSPs.

The costs involved cover a number of functions formally performed by TNSPs that have gradually moved over to AEMO in recent years. AEMO made a decision in 2021 that a proportion of its costs should be recovered from TNSPs[1]. Charging TNSPs is guided by the 'involvement principle' because of the TNSP's involvement in these activities with AEMO eg AEMO and TNSPs are jointly involved in grid security[2]. This is consistent with a user pays principle which the EUAA supports. But user pays means that the 'users' – here TNSPs – challenge AEMO to provide the services efficiently rather than accepting them as a pass through, knowing that they can, in turn, pass through these costs to consumers.

This challenge is not occurring. If a TNSP were to fulfill the functions that AEMO is charging them for, then the costs would be subject to the AER scrutiny. It would seem reasonable that TNSPs should have some 'skin in the game' regarding the level of the AEMO fees.

The assessment framework should be expanded to reflect the efficiency requirement as well the 'involvement principle'.

The incentive based regulation framework for networks needs to apply in this case

We do not support a process where one monopoly (AEMO) is able to pass on costs to another monopoly (TNSPs) without those costs being subject to the same incentive based regulation framework that other TNSP costs are subject to. AEMO as a monopoly service provider is able to:

- determine its own level of costs without any external scrutiny on whether they are prudent or efficient; consumer groups were recently informed at a Consumer Forum meeting that AEMO has overspent on its budget by >$100m and this overspend was allowed to continue for a number of years before the action now being considered
- allocate its costs as it sees fit without any requirement for a consultation and independent review process to test that this allocation in both % terms and quantum meets the NEO

and then seek to pass on those costs on an annual basis, rather than provide a 5 year cap at the state of the regulatory period.

All these means that there is no requirement for AEMO to show that its costs meet the Section 7A requirement for efficient.
The Consultation Paper dismisses the existing two methods of TNSPs recovering costs as not 'administratively efficient'. They may not be if the assessment framework assumes the rule change is simply an administrative issue.

We argue it is not – it is a fundamental question around what is efficient. The two existing cost pass through provisions:

- unexpected costs that are not provided for in the opex/capex allocations eg major storm with the 1% maximum allowed revenue threshold
- a special legal/regulatory change eg a new tax or legal requirement

[1] See https://aemo.com.au/en/consultations/current-and-closed-consultations/electricity-market-participant-fee-structure-review
[2] See p.16 https://aemo.com.au/-/media/files/stakeholder_consultation/consultations/nem-consultations/2020/electricity-market-participant-fee-structure-review/final-report/aemo-electricity-fee-structure-final-report-and-determination-260321.pdf?la=en

are consistent with the incentive based framework where only the efficient level of costs are passed through to consumers. In all cases where the legal/regulatory requirement is not a specific cost, the AER assesses whether the pass through is prudent and efficient. The 1% threshold is designed to require the TNSP to accept some of the risk for cost changes and incentivises the network to ensure its increased costs are, similarly, prudent and efficient.

Agreeing to the rule change may have a perverse incentive of encouraging TNSPs to hand over more functions to AEMO, because it reduces the level of scrutiny a TNSP has to face on its cost base.

If AEMO is confident that it is an efficient organisation, then it should have no concerns about the AER reviewing the costs it proposes to pass to TNSPs and be subject to the same incentive based regulation TNSPs are subject to if they were doing the same functions.

There is no precedent with National Transmission Planner fees

Finally, we consider that the rule change proponents use of the pass through of National Transmission Planner fees as a precedent in the current matter is misplaced. The NTP fees were to cover the preparation of the ISP – a new function that only partly replicated what TNSPs had done in the past. The decision to have a pass through was done quickly without any opportunity for consumers to question the costs exclusion from AER scrutiny. We would propose that a more preferrable approach would be to bring the NTP fees under than same scrutiny we are proposing for the participant fees.

Do not hesitate to be in contact should you have any questions.

Kind regards,

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