Justice and Equity Centre

2026 Reliability Standard and Settings Review

3 February 2026

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About the Justice and Equity Centre

The Justice and Equity Centre is a leading, independent law and policy centre. Established in 1982 as the Public Interest Advocacy Centre (PIAC), we work with people and communities who are marginalised and facing disadvantage.

The Centre tackles injustice and inequality through:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change to deliver social justice.

Energy and Water Justice

Our Energy and Water Justice work improves regulation and policy so all people can access the sustainable, dependable and affordable energy and water they need. We ensure consumer protections improve equity and limit disadvantage and support communities to play a meaningful role in decision-making. We help to accelerate a transition away from fossil fuels that also improves outcomes for people. We work collaboratively with community and consumer groups across the country, and our work 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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The Justice and Equity Centre office is located on the land of the Gadigal of the Eora Nation.

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2. Introduction

The Justice and Equity Centre (JEC) welcomes the opportunity to respond to the Australian Energy Market Commission (AEMC) Reliability Panel's 2026 Reliability Standard and Settings Review draft report (the draft report).

We support the move to relax the reliability standard to 0.003% unserved energy (USE). The JEC strongly supports the draft report conclusion that "a different reliability standard could limit the cost impacts on consumers without significantly affecting the reliability they experience."[1] Indeed, we would also support relaxing the standard to 0.004% USE.

Regulatory stability should not impede relaxation of the standard

We contend there is inadequate evidence recent increases in the market price settings were necessary and maintain it is in consumers' interests to reverse them.

We strongly disagree with the proposition in the draft report that regulatory stability should be a major consideration in this decision. Relaxing the reliability standard to 0.004% does not constitute a major regulatory rupture. It is an incremental shift in settings – one that responds to updated consumer preferences – within the same regulatory structure. Additionally, if regulatory stability has not been relevant in previous decisions to strengthen the standard, it is unreasonable to now regard it as preventing relaxation of the standard.

A review of the for of market settings is necessary

The JEC supports the Nelson Review's recommendation for a review of the form of the market price settings. We recommend that a new, independent panel is convened to conduct this work so as to minimise the risk of status quo bias shaping its work and conclusions. But we concur with the Nelson Review panel that a review conducted by the Reliability Panel is preferable to one conducted by the AEMC itself. We propose a set of questions a newly convened panel should be tasked with considering in the review.

Correctly characterising market price settings

We contend that a distorted description of the market price settings as primarily a market price signal that serve consumer interest via their role in incentivising efficient investment has become sedimented within the reliability regime. The market price signals are, by their nature, limitations placed on the spot market. They are a consciously made decision to limit the information and incentive produced by the market to serve consumer interest by limiting excessive volatility.

The focus on investment signaling as the primary purpose of the market price signals, in place of protection of consumers from excessive volatility has contributed to the successive decisions in recent years to tighten the settings, we argue to the detriment of consumers. There is good evidence the impact of the market price settings on investment decisions has been overstated in recent decisions, and further that the significance of the settings on investment viability is declining over time.

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[1] AEMC Reliability Panel, 27 November 2025 '2026 Reliability Standard and Settings Review; Draft Report', p.iii.

3. Relaxing the reliability standard

The JEC supports the proposal to relax the reliability standard to 0.003% expected USE. We would support the standard being further relaxed to 0.004% expected USE.

In any case, the draft report makes an excellent case that this decision process represents a critical opportunity to reduce energy costs for consumers by reducing the market price caps without impacting the reliability outcomes consumers actually experience.

We concur with the consideration the draft report gives to:

- the low proportion of outages experienced by consumers being caused by resource inadequacy,
- the over-performance of the NEM in terms of resource adequacy in the last five years, and
- the substantial falls in the values of customer reliability (VCR) – on which the reliability standard is based – in all regions.

We also note the causes of changes in the VCR as relevant considerations, namely changing demand patterns and the rise of consumer energy resources.

We recommend a more comprehensive consideration of the impacts of the jurisdictional schemes and the incoming ESEM, which add further room to reduce the cost of energy for consumers without impacting reliability outcomes. We discuss this further below.

We contend the standard remains artificially inflated by operating on a lowest common denominator basis in terms of the optimal setting for each NEM region, despite being defined on a NEM-wide basis. This is inappropriate and consideration of alternatives to this arrangement should be added to the task of the review of the form of the market settings recommended by the Nelson Review.

Recommendation 1

That the reliability standard be relaxed to 0.004% expected USE, or at least 0.003% expected USE, with related adjustments to market price caps.

Regulatory stability

We strongly disagree with the views of stakeholders cited in the draft report[2] that 'regulatory stability' is a reason not to relax the reliability standard beyond 0.003% USE. A move of 0.002% USE to 0.004% USE – and the lowering of the market price caps that would be implied by this – does not constitute a profound regulatory change. The claim insinuates that investors are much more sensitive to the market price settings than there is robust evidence for.

Any potential disincentive to invest arising from regulatory instability turns on investors' expectations about the future following this decision rather than this decision itself. The claim being made by those demanding the AEMC place weight on regulatory stability is that investors

[2] *Ibid*. p.26-27.

will interpret a decision to relax the reliability standard now – in line with consumers' VCRs and anticipated expectations of resource adequacy – as raising the prospect of further relaxations in the reliability standard in the future. Such a claim has no merit.

The reliability standard is firmly and transparently grounded in the VCRs, and there is no reason to expect that VCRs will develop in a non-linear progression in future years. Maintaining the strong link between VCRs and the reliability standard – which unreasonably valuing regulatory stability would weaken – is the strongest way to assure investors that the evolution of the regulatory regime will be incremental, rather than unstable.

We do not regard regulatory stability as relevant or significant in consideration of further relaxation of the reliability standard.

Recommendation 2

That 'regulatory stability' is not regarded as a priority consideration in assessing the relaxation of the reliability standard.

4. The objectives of the reliability regime

The objective of the reliability regime is, by definition, to most efficiently ensure energy reliability which meets consumer preferences. In this context, the function of the market price settings has consistently been incompletely or inaccurately described. Their role as market investment signals is over-emphasised at the expense of their critical role in shielding consumers from the excesses of volatility in the spot market.

Appropriately considering all market and non-market reliability mechanisms

The draft paper describes the 'core objective of the reliability framework of the NEM' as "to deliver efficient reliability outcomes through market mechanisms to the greatest extent possible."[3] We object to this on the grounds that it does not reflect the actual working of the reliability regime, which includes both out of market mechanisms and market-supporting mechanisms.

The regime includes (but is not limited to):

- AEMO's forecasting outputs: the Electricity Statement of Opportunities (ESOO) and Projected Assessment System Adequacy (PASA) tools;
- The Interim Reliability Measure (IRM), which triggers AEMO's Retailer Reliability Obligation (RRO) tool;
- Jurisdictions' and the Federal Government's investment de-risking mechanisms, such as the Long Term Energy Services Agreements (LTESA) and the Capacity Investment Scheme (CIS);
- Australian governments' capacity to initiate and direct new dispatchable energy projects directly;
- AEMO's powers to procure capacity directly, using the Interim Reliability Reserve (IRR) or Reliability and Emergency Reserve Trader (RERT) contracts;
- AEMO's powers to direct dispatch under NEL Section 116; NER clause 4.8.9.

[3] *Ibid.*, p.i-ii.

- The anticipated Energy Service Entry Mechanism (ESEM), to be added to this list in the period of relevance for this market price settings decision.

All of these impact the reliability outcomes consumers experience and so must be counted as within the 'reliability regime'.

There is no limit on the degree to which market mechanisms are used to effect reliability outcomes. We choose to have non-market and market-supporting mechanisms in the reliability regime on the basis of an assumption they are in consumers' interest. To say that the purpose of the regime is to employ market mechanisms to the greatest extent possible is both nonsensical – if it were the aim we would only use market mechanisms – and beggars the question of what the optimal tools and mix of those tools is to provide the reliability outcome that most closely conform to the preferences of consumers in the most efficient (ie. least costly) way possible.

The framing of the balance of market, non-market and market-supporting mechanisms as an 'objective' rather than a question to be answered in the service of an actual objective – maximising consumers' interests – is unhelpful and should be removed or significantly reframed.

Recommendation 3

That the objectives of market settings be reframed to more appropriately reflect their actual purpose: maximising consumer interests in meeting the reliability standard (determined by consumer preferences) at the lowest possible cost.

The role of the market price settings

The market price settings are unambiguously limitations on the 'free working' of the spot market as an investment signaling device. They should be described as such in the draft report. Instead, they are framed as providing market signals to investors.[4]

This is problematic as it overstates the importance of the market price settings for investor decisions and understates the importance of the market price settings in protecting consumers. Together these place upward pressure on the market price settings to the detriment of consumers.

Market price settings are intentionally set on the theoretical basis that they alone determine the investment behaviours needed to meet the reliability standard. This is done to produce levels of redundancy in the provision of reliability outcomes (rather than their planning).

This may previously have made sense. However, it is no longer effective and creates the unintentional result of consumers paying more for reliability than they have expressed a willingness to. We identify three reasons for this:

- The tools in the reliability regime have proliferated in recent years. Market price settings being determined in isolation from other tools made sense when operator's directions were the only other relevant factor. Today, however, consumers are paying for the impact of a range of reliability-providing mechanisms which the Commission completely discounts or ignores –

[4] For example, *ibid.*, p.ii.

both their costs and reliability benefits – when determining the level of the market price settings.

- Investors report that the market price settings are not at the forefront of their decision-making processes. Research by Tim Nelson and Alan Rai published in 2021 – which used qualitative surveys to rank investors' perceived barriers to entry – found that out of eleven options, 'Reliability price settings (e.g. MPC) being too low' was ranked tenth in relative importance.[5]

  This is a significant and under-appreciated finding. It has profound implications, most importantly that the marginal benefit in reliability terms of increasing costs to consumers via our globally high market caps is likely to be smaller than is often implied.

- The energy market is evolving in ways that may further dilute the importance of the market price caps for investment decisions beyond 2021 (when the Nelson and Rai paper was published).

  These dynamics include the introduction of investment underwriting schemes – the Capacity Investment Scheme (CIS) and the jurisdictional schemes. While the draft report notes the existence of these, it fails to acknowledge that as a result of risk being moved to consumers, investors need lower overall returns to make investments viable, and so can accept lower market price settings.

  It also includes the rise of batteries as the natural marginal entrant. A key distinction of batteries from gas peakers (the traditional marginal entrant) is that batteries primarily require volatility, not high prices, to be commercially viable.[6] Existing settings are largely predicated on the level of the cap as the key determinant.

For all these reasons, the central narrative that market price caps function primarily as an investment signal rather than a consumer protection is harmful. In reality, they are both. We recommend that, for the reasons outlined, they are more accurately described as *primarily* a consumer protection – a limit on the degree to which the regulatory regime relies on market signals to effect reliability outcomes. Recognising this, and the limits of the market price settings as an investment signal, opens the possibility of more substantial reversals of the decisions in recent years to ramp up the market price settings.

Recommendation 4

That all mechanisms (market, non-market and market supporting) influencing and impacting reliability are appropriately considered and accounted for in the determination of market settings.

[5] Rai, A. and Nelson, T. (2021) 'Financing costs and barriers to entry in Australia's electricity market', *Journal of Financial Economic Policy*, 13(6), 730-754. Available at https://research-repository.griffith.edu.au/server/api/core/bitstreams/532fd9d7-a372-4f1c-a7b4-de0e43202999/content

[6] This is a simplification, but not an inaccurate one.

5. A review of the form of the market price settings

We strongly support Recommendation 5 from the Wholesale Market Settings Review (the Nelson Review):

> *The Reliability Panel should provide a long-term outlook on the form of the market price settings as an enduring and ongoing responsibility. It should undertake a review in 2026 which provides an initial long-term outlook on the form of the market price settings and the appropriateness of the form of the settings for the future electricity market.*[7]

To overcome the risk of status quo bias that may result from giving this task to the existing Reliability Panel, we propose that an independent panel is convened to undertake this work.

Failing this, we concur with the Nelson Review panel that the work of a review should be undertaken by the Reliability Panel rather than the AEMC itself.

Recommendation 5

That the review of the form of market price settings be undertaken as recommended by the Nelson review, and that this review be conducted by an appropriately convened independent panel. Failing this, that the reliability panel, rather than the AEMC itself, be responsible for undertaking the review.

Questions that should be considered in the review include:

1. Should market price settings continue to be regarded as the sole determinants of reliability outcomes or should all material impactors of reliability be considered in determining the settings?

2. Can the NEM-wide reliability standard be replaced by regional reliability standards that enable market price settings to more accurately reflect the reliability needs and consumers preferences in each region?

3. Can the form of the market settings be adjusted to encourage investment in specific energy services demanded in the energy system – bulk, shaping and firming – rather than simply aiming to encourage investment generally? For example, can resources providing different services to consumers face different market price settings?

4. Can the market price settings be used to value zero emission dispatch differently from emission-creating dispatch to more effectively deliver lowest cost, reliable, emissions-free energy?

5. How do developments on the demand side of the energy system impact both the reliability standard and the appropriate market settings?

[7] Nelson et al. (December 2025) 'National Electricity Market wholesale market settings review; Final Report', 22

6. Continued engagement

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

Justice and Equity Centre

9 February 2026

Victor Stollmann
Project leader, Australian Energy Market Commission
On behalf of the Reliability Panel
Australian Energy Market Commission
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Dear Mr Stollmann,

2026 Reliability Standard and Settings Review Draft Report – supplementary submission

The Justice and Equity Centre (JEC) welcomes the opportunity to supplement our response to the Reliability Panel's draft report for the 2026 Reliability Standard and Settings Review (the draft report) to address two additional priority considerations.

Market Price Floor during Minimum System Load

We strongly support the Reliability Panel's proposal to clear at the market floor price during Minimum System Load (MSL) level 3 conditions.

The current arrangements result in avoidably high MSL events costs due to a misalignment between the efficient needs of the system and the spot price incentives.

Both generators and retailers, the actors most able to act differently in order to minimise the cost of MSL events, require stronger price signals from the spot market in order to correct this misalignment.

The frequency of MSL events and the magnitude of costs falling on consumers will otherwise be expected to rise over time as spot market price signals become sharper.

The Administered Price Cap

We do not support the Reliability Panel's proposal to retain the administered price cap (APC) and APC floor at $600/MWh and -$600/MWh respectively.

The APC is not functioning adequately as the intended protection of consumers from extended periods of high prices. We see no justification for it to be set at a level above the panel's recommendation in the last review of $500/MWh.

This substantial increase in the APC in the last review was made to erase a perverse incentive for generators to withhold energy during periods of market stress, forcing the

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operator to direct them to dispatch (in order to be compensated). This was effectively a decision to reward bad behaviour, not empower the operator to penalise it. We consider this a fundamentally inappropriate response. This arrangement has not been rendered more appropriate over time and should be reversed.

The APC setting must be balanced with the need for compensation claims (which would need to be demonstrated). It should not be set at level which seeks to avoid compensation claims altogether by, in effect, compensating as a default. Attempting to avoid compensation involves setting the APC at an inefficiently high level. It is extremely unlikely that the figures of $300/MWh or $600/MWh are the product of robust and rigorous analysis identifying the optimal balance. In this review, the panel should insist on rigorous and robust modelling on which to base a recommendation on the optimal level of the APC. This analysis should be transparent and available to stakeholders – particularly consumers – beyond the Reliability Panel.

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

Yours sincerely,

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