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14 September 2023

Ms Anna Collyer
Chair
Australian Energy Market Commission
GPO Box 2603
SYDNEY NSW, 2001

Dear Ms Collyer

Re: National Electricity Amendment and National Energy Retail Amendment (unlocking CER benefits through flexible trading) Rule 2023

The Australian Energy Regulator (AER) welcomes the opportunity to provide a submission to the Australian Energy Market Commission's (AEMC) 'National Electricity Amendment and National Energy Retail Amendment (unlocking CER benefits through flexible trading) Rule 2023' directions paper.

The AER exists to ensure energy consumers are better off, now and into the future. As part of our functions, the AER protects the interests of household and small business customers by enforcing the National Energy Customer Framework (NECF), which applies in New South Wales, South Australia, Tasmania, the Australian Capital Territory and Queensland. The AER has a number of roles under the NECF, which include administering the retailer authorisation and exemption regime, approving retail hardship policies, administering a retailer of last resort (RoLR) scheme and providing the Energy Made Easy price comparator website. The AER also sets the Default Market Offer (DMO) price each year under the Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019 which provides the legislative framework for the DMO and the AER's role. It is in the context of these functions and roles that the AER provides the comments in this submission.

The AER notes the AEMC intends to progress with three core areas in this rule change request, including:[1]

[1] AEMC, Directions paper National Electricity Amendment and National Energy Retail Amendment (Unlocking CER benefits through flexible trading) Rule 2023, 3 August 2023, paragraph 18.

1. Optimising the value of Consumer Energy Resources (CER) flexibility by examining opportunities for separately identifying and managing flexible CER for small, residential customers.

2. Flexible trading of CER with multiple energy service providers for large, commercial premises.

3. Opportunities to improve how energy use is measured for street lighting and other street furniture.

The AER agrees with the AEMC's decision to not progress with the Australian Energy Market Operator's (AEMO) Flexible Trading Model 2 (FTM2) proposal that seeks to introduce flexible trading with multiple energy service providers for small customers. We also support the AEMC exploring alternative options in the future that promote consumer choice and enable consumers to access more value from their CER through innovative new energy services. We note that building consumer trust and confidence, supported by effective consumer protections is an important factor in considering any options.

As outlined in our previous submission, a multiple energy provider model creates many complexities for household and small business consumers, many of whom will struggle to navigate decisions about new energy products and services and understand the intricacies of flexible trading. In our previous submission, we strongly urged the AEMC to consider the issues that may arise from introducing multiple parties at a secondary settlement point. These include miscommunication and network safety issues, pricing protections (such as the DMO) considerations, the challenges of passing signals regarding network capacity to the party able to manage this at the connection point, and network pricing complications. We noted these issues need to be addressed for the benefits of the rule change to be realised. We note the AEMC's directions paper acknowledges similar concerns with the implementation of the FTM2 model.[2]

The directions paper also notes one of the implementation challenges with the FTM2 is the need for substantial modifications to the NECF, which, in turn, could potentially impose additional costs on both consumers and market participants. Through the AER's Review of consumer protections for future energy services,[3] we consider there is a compelling case for reforming the NECF so that it can cover new energy services and can continue to adequately protect consumers through the energy transition and beyond whilst also supporting innovation.

Regarding the three core areas the AEMC intends to progress in this rule change, this submission will reiterate and build on the AER's view that the final rule change needs to promote the best interests of consumers. We provide our views on the following areas in the appendix to this letter:

- **Minimising, to the extent possible, the complexity this rule change could introduce for consumers:** The AER believes that promoting consumer trust and confidence is a key factor in enabling consumers to benefit from innovative new energy services and to promote the successful integration of CER and demand side services into the market.

[2] AEMC, Directions paper National Electricity Amendment and National Energy Retail Amendment (Unlocking CER benefits through flexible trading) Rule 2023, 3 August 2023, section 4.2.1.

[3] AER, Review of consumer protections for future energy services, April 2022.

- **Separately identifying and managing flexible CER for small customers from a network pricing perspective:** Although we believe the proposal to establish a secondary settlement point is a feasible approach that enables the application of a separate network tariff, we reiterate our concerns with the associated network pricing considerations. This includes concerns with the added cost and complexity for customers to install a new secondary settlement point and associated wiring, and for retailers to develop and offer additional tariffs, and the administrative processes to support them.

- **Flexible trading of CER with multiple energy service providers at commercial premises:** In our submission we outline some concerns in relation to network pricing costs and risks, which were raised in our previous submission, but which also extend to medium and large customers. We reiterate that failing to address these issues will create risks for both customers and primary retailers or impose additional administrative and regulatory burdens.

- **The option of using the embedded networks framework to enable flexible trading of CER:** As previously submitted, we maintain the concerns that embedded networks may be used by customers to obtain a secondary settlement point to engage in flexible trading arrangements, which goes against their intended purpose and poses potential risks and harms to customer protections. The AER has concerns as to whether the embedded networks framework is the appropriate avenue to enable flexible trading arrangements for small customers due to retail competition and transparency of energy settlement issues expressed by AEMO in their draft rule change request.[4]

- **Interaction with AER's Flexible Export Limits review:** In this submission, we provide an update on the recently published Flexible Export Limits Final Response paper, noting the AER is currently developing a rule change request to ensure consistency with the capacity allocation principles. We also restate our comment on the challenges of passing signals regarding network capacity to the party able to manage this at the connection point.

- **Undertaking a cost-benefit analysis of increased integration of CER flexibility:** We are supportive of Energeia performing a cost-benefit analysis of increased integration of CER flexibility – both to consumers and the system. The work will include modelling whole of system benefits from different types of load flexibility, developing case studies that show how the benefits of CER will flow to customers with and without CER, and forecasting the growth of flexible loads to 2050. We offer our comments, specifically on Phase A.2 in Energeia's methodology report.

We thank the AEMC for the opportunity to provide our input on the consultation paper, and we welcome the opportunity to work closely with the AEMC on the identified issues above.

If you have any questions in relation to this submission, please contact Tammie Ko, at [redacted] or on [redacted]

[4] AEMO, Rule change request – Flexible Trading Arrangements (Model 2) and Minor Energy Flow Metering in the National Electricity Market, AEMC, 6 May 2022, pages 13-15.

Yours sincerely

Mark Feather
General Manager – Strategic Policy and Energy Systems Innovation
Australian Energy Regulator

Submitted on: 14.09.2023

Appendix: The AER's comments in response to the directions paper

1. Minimising the complexity this rule change will introduce for consumers

We agree with the Australian Energy Market Commission's (AEMC) view that separately identifying and managing flexible Consumer Energy Resources (CER) will optimise the value of CER and provide key benefits for consumers associated with accessing innovative new services. However, it is important that any approach adopted by the AEMC ensures that consumer benefits can be realised and that it promotes consumer trust and confidence in CER, considering CER based services will introduce new levels of complexity for consumers. The AEMC should ensure that the chosen approach minimises the complexity of this rule change, which will enable transparency between all market participants. Once carefully designed and implemented, this rule change could promote efficient home energy systems and arrangements that meet consumers' individual needs. When consumers trust the system and its outcomes, they are more likely to actively participate, which, in turn will support the realisation of the benefits of the broader energy transition.

As highlighted through the AER's Review of consumer protections for future energy services, consumer uptake of CER will be critical in realising these benefits. This is reflected in a report commissioned by the Australian Energy Market Operator (AEMO) where they highlighted the significant potential benefits from better integration of CER of up to $6.5 billion in reduced system costs by the end of 2039.[5] Consumer uptake of CER is largely dependent on consumer trust in new technologies and the energy sector as a whole, and overwhelming complexity in the energy market can be a significant impediment to promoting consumer trust.

The energy market already presents a considerable challenge for consumers in terms of navigating offers and switching providers, with 44% of Australians living with literacy levels that fall below what is required to fully participate in society.[6] Further, consumers already find it difficult to understand the different characteristics used to separate plans, products, or services.[7] The emergence of CER is only going to add to this complexity as many new energy products and services require advanced technologies and complex systems. As a result, we are witnessing a major change in the traditional energy system, with consumers no longer merely navigating standard retail energy supply offers. Consumers must now contemplate a broader array of elements, including energy cost reduction, emissions reduction, and energy efficiency optimisation. Navigating this intricate energy market necessitates not only a deep understanding of the products and services, but also access to clear, comprehensive information and resources to facilitate informed decision-making.

The complexity that comes with the energy transition means the AEMC's chosen approach to optimising the value of CER must be driven by achieving simplicity. Concurrently, the AER is conducting a Review of consumer protections for future energy services to ensure adequate protections are in place for consumers who face complexity in the energy market, such as through strengthening dispute resolution mechanisms. We believe there is a compelling case for reforming the NECF and expanding its scope to encompass new energy services based on risk analysis of potential consumer harm.

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[5] Baringa, Assessment of Open Energy Networks Frameworks, Australian Energy Market Operator (AEMO), May 2020.

[6] Consumer Policy Research Centre, Exploring regulatory approaches to consumer vulnerability: A report for the AER, February 2020.

[7] Report commissioned by PIAC, written by All Sustainable Futures, 'Save4Good: a report for the Public Interest Advocacy Centre', 26 April 2022.

2. Separately identifying and managing flexible CER for small customers from a network pricing perspective

From a network pricing perspective, the AER urges the AEMC to consider the costs and risks on consumers, participants, and the system when considering the various options for separately identifying and managing flexible CER. Our comments on AEMO's proposed option for secondary settlement points are:

- While we have concerns about the complexity and cost of this approach for CER customers, the proposal to establish a secondary settlement point appears to be technically feasible from a network tariff perspective. A separate network tariff could be applied to the secondary settlement point, so that energy use through either settlement point can still face a network price signal. This is important to ensure efficient price signals for all energy use.

- The secondary settlement point tariff would have only time-varying price signals (including a long-run marginal cost component) but no fixed charge. It would in effect equate to the secondary tariffs already offered by Distributed Network Service Providers (DNSPs) for controlled load which typically have no fixed charging parameter.

- We agree that an issue for the AEMC to consider is the potential to game between two different retail offers at the respective settlement points if both settlement points could supply the same loads and CER assets.[8] For example, substantial potential for gaming retail offers would exist if one retail offer were time-of-use and another a demand tariff or if different retailers had different peak charging windows (and in the process, gaming could undermine the effectiveness of network tariffs in guiding network use by consumers, and increase network investment needs).

- On the question of whether a second settlement point at a single connection point should be restricted to defined situations and conditions,[9] our view is restricting the situations or conditions for use of a second settlement point might assist in addressing the gaming potential issue. However, it may also limit the benefits if the restrictions are technology specific, namely, electric vehicles as suggested in question 3.2 of AEMC's directions paper,[10] rather than technology neutral (e.g., for flexible load).

- Additional cost and complexity would be inevitable. Customers would incur expenses for installing a new secondary settlement point and associated wiring, while retailers would need to invest in developing and offering additional tariffs, along with the necessary administrative processes to support them (rather than the streamlining of tariffs most DNPSs are currently working towards). We acknowledge the cost-benefit analysis to be undertaken by Energeia will inform consideration of these issues, and we have provided comments on the methodology later in this submission. However,

[8] AEMC, Directions paper National Electricity Amendment and National Energy Retail Amendment (Unlocking CER benefits through flexible trading) Rule 2023, 3 August 2023, page 19.
[9] AEMC, Directions paper National Electricity Amendment and National Energy Retail Amendment (Unlocking CER benefits through flexible trading) Rule 2023, 3 August 2023, page 24.
[10] AEMC, Directions paper National Electricity Amendment and National Energy Retail Amendment (Unlocking CER benefits through flexible trading) Rule 2023, 3 August 2023, page 24.

we anticipate the combination of additional cost and complexity may position this option as a niche choice, appealing only to a small number of consumers who are willing to engage on more complex energy supply and billing arrangements.

3. Flexible trading of CER with multiple energy service providers at commercial premises

In our previous submission, we highlighted a range of network pricing concerns with the proposed flexible trading arrangements for household premises. Those network pricing concerns apply equally to commercial premises. Resolving network pricing concerns for commercial flexible trading will involve risk to both customers and primary retailers, or additional administrative and regulatory burden. We reiterate all the network pricing related considerations provided in that submission:

- It is unclear how a distributor's efficient costs would be allocated if the customer's load were split over multiple retailers at a single premise (unless under the second settlement point approach described under chapter 3 of AEMC's directions paper).

- Charging network tariffs only to the primary retailer would undermine the effectiveness of network tariffs in guiding network use, contradict the network tariff reform program, and potentially lead to more costly network investment passed on to all consumers.

- Most distributors would likely have to reconfigure (or renew) their billing management systems to accommodate multiple network tariffs.

- The above costs would be borne by all customers through higher network tariffs. Similar billing system upgrades may be required by retailers, again putting upwards pressure on customer bills.

4. The option of using the embedded networks framework to enable flexible trading of CER

We reiterate our concerns regarding the use of the embedded networks framework as a means to obtain a separate connection/settlement point. We believe it could potentially limit consumer choice, inhibit fair competition within the energy market, and introduce further complexities in pricing structures and billing processes.

Our previous submission, which we maintain, put forward the view that flexible trading arrangements should not be managed under the embedded networks framework given concerns expressed by AEMO in the draft rule change request[11] (i.e., it is contrary to the intended purpose of embedded networks – the incidental on-selling of energy to customers, and poses potential risks and harms to settlement integrity and customer protections). As previously identified in the AEMC's review into embedded networks, the existing framework may not accord the adequate protections for customers located within embedded networks. Utilising an embedded networks framework could therefore, under the current regulatory framework, potentially result in poor consumer outcomes and undermine confidence in the benefits of future energy services – whether due to limited dispute resolution, access to competition, or risks to market settlement. On this basis, we continue to urge the AEMC to consider clarifying the appropriate use of embedded networks for the purpose of flexible

[11] AEMO, Rule change request – Flexible Trading Arrangements (Model 2) and Minor Energy Flow Metering in the National Electricity Market, AEMC, 6 May 2022, pages 13-15.

trading under the National Electricity Rules, noting this will likely result in consequential amendments to the AER's Network Exemptions Guideline.

5. Interaction with AER's Flexible Export Limits review

As noted in the AEMC's directions paper, there are several key reforms being progressed that are relevant to or intersect with this rule change.[12] This includes the AER's review of the regulatory framework for flexible export limit implementation, for which we have published a final response paper.[13] The AEMC's directions paper also notes flexible export limits as one of the technical challenges associated with the FTM2 model, alongside other technical issues that the AEMC will consider in any implementation model.[14] We support the AEMC's proposal to consider those technical issues in any implementation model that the AEMC looks to progress for flexible trading with multiple service providers for large customers. Additionally, we encourage the AEMC to consider the relevant flexible export limit matters outlined in our previous submission, alongside the technical issues.

As noted in our previous submission, if the AEMC seeks to allow the introduction of any flexible trading arrangement model (whether for small or large customers), it will have to identify how signals regarding network capacity are passed on to the party able to manage this at the secondary connection point. The AER's Flexible Export Limits issues paper[15] identified that the current primary use case for flexible export limits is to manage network capacity. In this paper, we apply the capacity allocation principles from the Distributed Energy Integration Program's Dynamic Operating Envelopes Working Group Outcomes Report.[16] One of these principles is that capacity allocation for flexible export limits is to be measured at the customer's connection point to the network. This enables networks to manage network capacity, ensuring reliability and stability of the network.

As noted above, the AER recently published the Flexible Export Limits final response paper. We are currently developing a rule change request which will seek a mechanism to enable the AER to review and approve DNSPs' capacity allocation methodologies to ensure consistency with the capacity allocation principles and have regard to any other matter the AER considers relevant, as part of DNSPs' distribution determination processes. The AER is concurrently developing an interim export limit guidance note to provide non-binding guidance to DNSPs on the AER's expectations.

6. Undertaking a cost-benefit analysis of increased integration of CER flexibility

We support the AEMC's decision to assess the costs and benefits of increased integration of CER flexibility – both to consumers and the system,[17] and stress the need to ensure that the modelled system and consumer benefits do not overlap. A well-executed cost-benefit analysis is a valuable tool that promotes informed and transparent decision-making. We offer

[12] AEMC, Directions paper National Electricity Amendment and National Energy Retail Amendment (Unlocking CER benefits through flexible trading) Rule 2023, 3 August 2023, section 2.4.1.
[13] AER, Flex ble Export Limits Final response and proposed actions, July 2023.
[14] AEMC, Directions paper National Electricity Amendment and National Energy Retail Amendment (Unlocking CER benefits through flexible trading) Rule 2023, 3 August 2023, page 40.
[15] AER, Flex ble Export Limits Issues Paper, October 2022.
[16] Distributed Energy Integration Program, Dynamic Operating Envelopes Working Group Outcomes Report, Australian Renewable Energy Agency, March 2022.
[17] AEMC, Directions paper National Electricity Amendment and National Energy Retail Amendment (Unlocking CER benefits through flexible trading) Rule 2023, 3 August 2023, paragraphs 47-48.

our comments on the methodology employed in Energeia's cost-benefit analysis for AEMC's consideration.

We encourage the AEMC and Energeia to consider drawing on consumer research when undertaking Phase A.2 of the cost-benefit analysis.[18] Care should be taken to ensure that any assumptions closely reflect specific products, services and benefits that consumers will receive, rather than potential services or benefits that may eventuate in the market. For example, section 3 of the draft methodology report (particularly 3.2 on data sources and assumptions)[19] appears to suggest that those assumptions will be based on potential load flexibility (in some cases using data from the United States), rather than actual evidence of consumer responses (e.g., to tariffs or load control).

We acknowledge the challenges and time-consuming nature of gathering actual consumer data, particularly where many future products and services have not yet been developed.

We also wish to reiterate that an alternative approach to investigate CER flexibility and flexible trading arrangements could be through trials run through the Regulatory Sandbox arrangements that have been recently established.[20]

[18] Energeia, Benefit Analysis of Load-Flex bility from Consumer Energy Resources: Methodology Report, AEMC, 3 August 2023, page 18.
[19] Energeia, Benefit Analysis of Load-Flex bility from Consumer Energy Resources: Methodology Report, AEMC, 3 August 2023, section 3.2.
[20] AER, Regulatory Sandboxing – Energy Innovation Toolkit, AER, 25 January 2023.