

27 May 2021

Anna Collyer
Chair
Australian Energy Market Commission
GPO Box 2603
SYDNEY NSW 2000

Dear Anna,

Re: Access, pricing, and incentive arrangements for distributed energy resources draft determination

CitiPower, Powercor and United Energy welcome the opportunity to respond to the Australian Energy Market Commission's (AEMC) draft rule determination on access, pricing, and incentive arrangements for distributed energy resources (draft rule).

We support the proposal to develop a regulatory framework that incorporates provision of export services by distributors. It recognises, and acknowledges, the growing value our customers and communities place on choice, flexibility, and participation in the evolving energy sector.

There are many challenges in developing and implementing a new regulatory framework, including potential changes in network tariffs. As such, we are supportive of a process that is well thought through, includes comprehensive customer and stakeholder engagement, includes a transitional period, and ultimately reflects customers' understanding and desire to engage in export services and change behaviour to contribute to lower costs in the future.

Our submission includes the following recommendations:

- the commencement date of the final rule and the amendments to the National Energy Retailer Rules (NERR) should align to 30 October 2021. A transitional period is proposed in the NERR to allow distributors to reach compliance with required alterations to standard retail contracts and deemed standard connection contracts. As the NERR does not apply in Victoria, without the delay in the commencement date of the final rule Victorian distributors would not benefit from a transitional period and would be required to reach compliance with the final rule on the day (or within only days) the rule is published
- a potential unintended consequence of the draft rule is a new liability on distributors regarding interruptions to exports. While we will try to address this matter with our jurisdictional regulator and government, we request the AEMC provide further clarification that the rule does not guarantee uninterrupted export service and that distributors still maintain the right to curtail exports as part of network management and efficient provision of export services
- the review of the service target performance incentive scheme (STPIS) to incorporate export services should be conducted holistically along with other incentive schemes
- data requirements related to the measurement and reporting of export services should be managed through the regulatory information notice (RIN) process. This is not only logistically appropriate but necessary to provide stakeholders with the assurance around data quality
- a transitional rule be introduced to allow Victorian distributors to undertake tariff trials in 2021/22. Due to the restriction in conducting tariff trials in the first year of the regulatory period, Victorian distributors are the only distributors unable to conduct trials in 2021/22 (including export tariff trials), which limits opportunities to meaningfully inform the tariff structure statement (TSS) for the 2026–2031 regulatory period

- there needs to be further clarification that export tariffs do not guarantee firm access.

The draft rule will have profound impact on how our customers and communities interact with energy markets. As an organisation, we want to be guided by our customers' needs and, as such, have been engaging with our Customer Advisory Panel (CAP) and other key stakeholders on these topics. Our submission includes references to CAP's feedback where relevant.

Should you have any queries about this submission please do not hesitate to contact Sonja Lekovic on 0418 166 169 or slekovic@powercor.com.au.

Yours sincerely,

A handwritten signature in blue ink that reads "Renate Vogt". The signature is fluid and cursive, with the first name "Renate" written in a larger, more prominent script than the last name "Vogt".

Renate Vogt
General Manager Regulation
CitiPower, Powercor and United Energy

Key recommendations

1. The rule commencement date should be 30 September 2021 to align with the NERR

We recommend the commencement date of the final rule should align with the commencement date in the NERR to allow all distributors equal opportunity to reach compliance with required alterations to standard contracts.

The AEMC proposed a rule commencement date of 1 July 2021 and the NERR commencement date of 30 September 2021. The three-month transitional period in the NERR allows time for required amendments to standard retail contracts and deemed standard connection contracts as per Schedule 1 of the draft rule.

However, the NERR does not apply in Victoria and as such, Victorian distributors will not benefit from the three-month transitional period. That means that with a final rule commencement date of 1 July 2021, Victorian distributors would have no time, or only days, to be compliant with the new rules. This is not a reasonable proposition.

2. Clarification is needed that distributors maintain the right to curtail exports

We seek the AEMC to provide further clarification that the rule does not guarantee uninterrupted export service and that distributors still maintain the right to curtail exports as part of network management and efficient provision of export services.

A potential unintended consequence of the draft rule is a new liability on distributors, under the National Electricity Retail Law (NERL), regarding interruptions to exports. The NERR refers to the statutory immunity from suit provided by the NERL in relation to a 'failure to supply energy' (NERL, s316). There is a concern that expanding the scope of 'distribution services' in the NER to include export services may expose distributors to additional liabilities, i.e. for failure to supply export services.

Victorian distributors do not benefit from the statutory immunity from suit provided by the NERL, as the NERL does not apply in Victoria. There is, however, an analogous immunity from suit provided by s120 of the NEL.

NERL and NEL may require amendment to ensure they appropriately cover both a failure to supply energy and a failure to supply export services. We appreciate this is outside the scope of the AEMC's rule change.

Our deemed distribution contract seeks to limit our liability by reference to the statutory immunities from suit under the NEL. We will work with the Victorian Government and the Essential Services Commission (ESC) to try and address this issue. This is one of the matters that we will try and address in the period between the publication of the final rule and the commencement date.

3. The AER should undertake a holistic review of the regulatory framework to incorporate export services

We recommend the AER be required to undertake a more holistic review of the regulatory framework which considers how provision of export services can be included and balanced with all other incentive arrangements, as well as reflected in the complementary expenditure forecasting assessment guidelines.

The draft rule requires the AER to undertake several reviews to produce guidance on the appropriateness of updating the existing service target performance incentive scheme (STPIS) to extend to export services. The regulatory framework needs to be reviewed to consider a balance of incentives for export and import services however this cannot be done in isolation of other incentive schemes, specifically expenditure incentive schemes.

Our CAP supports a holistic review of the regulatory framework to ensure customers do not end up paying twice for services or fail to receive the export services they have funded. The CAP also voiced concern at the growing complexity around incentives, especially in such a rapidly evolving market. We agree with the CAP that

consulting on these issues separately is not in the interests of our customers and that any changes to incentive arrangements must be justified to customers as being in their interests and relatively transparent.

We support the 18-month timeline proposed by the AEMC for the AER to conduct the review.

4. Data requirements related to export service performance are better managed through the annual RINs

We recommend the AEMC require the performance reporting requirements be set by the AER in their holistic incentives and expenditure guideline review and be reported through the annual RIN process. This ensures reporting is limited to data that is fit for purpose, based on actuals, and audited to provide stakeholder assurance. In developing a reporting framework, the AER should work through the definitions for each of the data items to ensure there is consistent reporting across all distributors.

The draft rule places a requirement on distributors to report annually on a range of metrics, intended to be related to their export service performance, in their Distribution Annual Planning Reports (DAPR). We oppose this approach for the following reasons:

- by mandating reporting requirements at this time, the AEMC is pre-empting the data the AER may require for their incentives review. This gives rise to the potential for duplication of performance data reporting or collection of data that may prove irrelevant for the AER
- the draft rule reporting requirements do not reflect the intent of the DAPR, which is to provide forecast network constraints for the purposes of network planning and provision of non-network solutions (as opposed to tracking historical performance data as proposed in the draft decision)
- the DAPRs are reported on calendar year basis in Victoria, whereas incentive scheme data is reported on a financial year basis
- data reported in the DAPR is not audited or subject to a Chief Executive Officer statutory declaration. It is therefore unlikely that stakeholders could have sufficient assurance the data being collected for any potential incentive scheme is sufficiently robust.

5. Tariff trials will play an important role in engagement on the TSS

We support the need for, and the benefit of, extensive engagement and collaboration as part of the TSS process. We have already begun the conversation on export with our CAP in response to the draft rule and will continue to engage with them on this topic over the next four years (among other stakeholders). Any changes we make to our tariffs post 1 July 2026 will be guided by our customers' and stakeholders' preferences, including preferences for the length and speed of a transitional period towards the desired tariff design.

We support the deletion of clause 6.1.4 in the Rules as this change is required to allow us to trial export tariffs with willing participants. As the next five years will be characterised by rapid technological advancements in DER and new customer participation models, it will be paramount to test, trial, and evidence the impact and viability of innovative tariffs (including export tariffs). It will be important to evidence customer behaviour and impacts on customer bills if there is going to be any consideration of export tariffs in the future.

We support the draft rule to increase the individual threshold for tariff trials from 0.5 per cent to 1 per cent of the distributor's annual revenue requirement, and the cumulative threshold from 1 per cent to 5 per cent. This will allow us to trial a much wider range of tariffs that will inform the engagement and changes as part of our next TSS. We already have several tariff trials that we are scoping or developing, including a community battery local use of system (LUOS) tariff and a dynamic tariff electric vehicle charging. We expect other possibilities will emerge.

We also support the changes to the pricing principles that provide more flexibility in evaluating the impact of tariff design in a way that acknowledges the role retailers and aggregators will play in managing customers DER

in the future NEM. Should this change in the pricing principle be maintained in the final decision, we will engage with the CAP and our customers on whether tariff design should be more targeted at managers of DER or customers directly.

We recommend the AEMC introduce a transitional rule to allow Victorian distributors to undertake tariff trials in 2021/22, which is the first year in our regulatory period. Clause 6.18.1(C)(a) of the Rules, which does not allow tariff trials in the first year of the regulatory period, is an unnecessary restriction that contradicts the intent of the increase in the threshold of tariff trials as a percentage of annual revenue and prevents longer trials to play out. Additionally, as our TSS needs to be prepared about two years prior to the start of the relevant regulatory period, the first year restriction leaves only about two years for tariff trials. As mentioned above, we already have a number of tariff trials that we could start implementing with interested customers from 1 July 2021 if this restriction was removed.

6. Export tariffs should not be linked to firm access

We recommend the AEMC makes clear in its final determination that distributors are not expected to provide firm access under the current regulatory framework even if export tariffs are introduced.

While the AEMC did not make provisions for firm access in the draft rule, there have been some questions raised among stakeholders regarding export tariffs and how they link to access on the network—i.e. there is concern customers will be charged export tariffs but will not be allowed to export at all times, or that customers will be curtailed more if they opt-out of export tariffs.

We do not consider it appropriate to link export tariffs and firm access. Applying firm access to residential customers for solar export is inconsistent with open access for consumption and raises competitive neutrality concerns with large generators that currently do not have firm access.

However, in the future, distributors may offer different export tariffs for different levels of ‘firmness’ based on capacity (i.e. some networks may offer free export up to a certain level of capacity, and charge for anything higher). An alternative, and one being considered by us, is the introduction of dynamic connection agreements that would customers to export above their default capacity limits when network capacity is available.