



Ms. Anna Collyer

Chair, Australian Energy Market Commission

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Re: ACCESS, PRICING AND INCENTIVE ARRANGEMENTS FOR DISTRIBUTED ENERGY RESOURCES ERC0311

Dear Ms Collyer

Thank you for the opportunity to make this joint submission on behalf of TEC and ACOSS¹ to the Australian Energy Market Commission's (AEMC's) Access, Pricing and Incentive Arrangements for Distributed Energy Resources (DER) draft determination.

Summary

TEC and ACOSS reiterate our acknowledgement of the need for this reform package as outlined in our rule change proposal.² We support the intent of the draft determination to require networks to improve the electricity grid to increase uptake of energy exports and enable fair cost recovery.³ We support most elements of the draft determination. However, we are concerned it gives too much discretion to networks and the Australian Energy Regulator (AER).

Given the power, information and resourcing asymmetry between networks and consumers (and their advocates); the lack of trust many solar owners appear to have in the industry and regulators; and the considerable extra burden on consumer advocates from this reform package, we believe more of the critical consumer outcomes should be hardwired into the rules, alongside stronger consumer engagement guarantees. In particular:

1. Solar owners should have the option of whether to take up an export tariff (noting that if they choose not to, they may be subject to static export limits, as at present).
2. Networks should be explicitly prevented from banning exports (i.e., imposing zero kW static export limits) in connection agreements.
3. The rules regarding network funding for independent consumer engagement in tariff structure statement processes should be considerably strengthened.

¹ ACOSS is also making a joint submission with a number of State and Territory Councils of Social Services.

² <https://www.aemc.gov.au/sites/default/files/2020-07/ERC0309%20Rule%20change%20request%20pending.PDF>

³ See joint ACOSS and COSS submission for greater detail on why enabling fair and equitable cost recovery is important and critical for the energy transition and for ensuring people experiencing financial disadvantage are not worse off as a result of the energy transition.

Discussion

ACOSS and TEC congratulate the AEMC on a thorough and forward-looking draft determination on the DER exports rule change requests, and on the comprehensive and inclusive stakeholder co-design process that has led to this outcome. It is critical that the shift from a one way to a two-way, zero net energy system is accompanied by regulatory reforms which increase user choice and control while increasing the opportunities for users without active DER to participate and benefit, and avoiding cross subsidies from financially disadvantaged households.

In particular, we support the following proposed reforms:

- Recognising the export of energy as a service to the power system.
- Changing network incentives to effectively introduce a reliability standard for exports.
- Allowing networks to introduce tariffs that reward exports where they provide market benefits, while also allowing cost recovery where exports cause costs to all consumers.

However, we also consider that there is room for improvement. In particular, the draft determination gives a great deal of discretion to network businesses and the energy regulator in determining a range of important outcomes such as minimum static export limits, the fair allocation of existing network capacity, and above all, the suite of tariffs and rewards available to consumers.

While understandable from a regulatory perspective, this approach is inconsistent with the general lack of trust in the industry and its regulation on the part of consumers. It also places a significant burden of responsibility onto a small number of consumer advocates to engage in long and complex regulatory processes in the hope of achieving a fair outcome for their constituents, without adequate, let alone additional, resources to do so. For this reason alone, we consider it would be appropriate to hardwire options and benefits into the final determination, rather than adopting a wholly principles-based approach.

The following three recommendations are consistent with this approach.

Prescribe an option for a no export tariff

The draft determination aims to ensure that export tariff options would:

- a) be only introduced after consultation with affected consumers, and with a transition period;
- b) be balanced by rewards (e.g., for battery exports during evening peaks); and
- c) still aim to provide financial benefits for energy exports.

However, we have heard from some solar owners and solar installers that there is too much uncertainty with respect to what the final tariff options will be and how the tariff options will impact the viability of solar investment and the value the market places on their low carbon generation. This concern could flow through to lower PV installation rates and a lack of political support for the package in some jurisdictions, thereby effectively slowing the decarbonisation of the energy system.

For this reason, we are re-prosecuting the proposal from our rule change request that the final determination should contain a clause which clearly makes **export tariffs optional** for consumers as well as networks. In other words, no consumer should be required to take up an export tariff. To be clear and to avoid any cross-subsidy issues, this should be

accompanied by an explanatory note to the effect that solar and battery owners who choose not to take up the option of an export tariff may be subject to low export limits (as already occurs via connection agreements).

Recommendation 1

The AEMC insert a clause in the final determination to ensure a no export tariff option is provided to all consumers by all network businesses, noting that this option may be subject to export limits.

Our suggested wording of amendments to the National Electricity Rules (NER) is as follows:

6.18.2 Pricing proposals

(b) A pricing proposal shall:

(9) in relation to distribution service end users who are also embedded generating unit operators,* include the option of not choosing an export tariff.

Note

Any customer with DER who chooses not to take up the option of an export tariff may be subject to export limits lower than the limit specified in their connection agreement, but still non-zero (see 5A.B.2 Proposed model standing offer for basic connection services).

* i.e., DER exporters.

Alternately, the same objective could be met by amending **6.18.3 Tariff classes** or **6.18.5 Pricing principles** of the NER with similar wording.

Response to potential objections

We foresee several potential objections to the inclusion of this option, which are addressed as follows:

- *The reforms are intended to create a complementary regulatory regime for consumption exports, and this would distort that outcome.*

The draft determination removes the only two protections for small scale generators in the current rules (clauses 6.1.4 and 6.18.4(a)(3)), so it is only fair that this option be included in the final determination, despite being a less neat or symmetrical outcome.

- *This proposal would force users who choose export tariffs to bear more of the costs associated with upgrading DER-related network expenditure.*

Since users who do not choose an export tariff may be subject to static export limits to avoid causing additional network expenditure, the net result should be no different from a network perspective.

- *There are no material costs caused by DER exports, so the question of introducing export tariffs remains irrelevant.*

While network expenditure related to the integration of DER is relatively minor at this point, it is likely to increase substantially as the uptake of DER increases over time. If that proves not to be the case, then the case for export tariffs would obviously diminish. If it does prove to be the case, export tariffs are a way of equitably recovering those costs while also rewarding network benefits (especially to battery owners).

Note on existing systems

As worded above, the owners of existing solar systems could choose not to take up an export tariff but still retain their current export capacity – i.e., to be grandfathered. This is not the most economically efficient solution, since it applies different rules to different classes of users. However, allowing grandfathering would be simple and politically palatable to existing owners. There are equity arguments both for and against grandfathering, since it entrenches the creation of two classes of solar owners – early and late adopters.

Solar owners who wish to stay put and not touch their system (e.g., many pensioners) would be able to remain on their current export limit. However, as a result they may be prevented from exporting the full capacity of their system more frequently over time as the local network becomes more congested.

As with consumption tariffs and some previous government feed-in tariffs, a change to the new pricing regime could be triggered by a system upgrade (e.g., the addition of a battery, more panels, a new inverter, etc.) or by moving house. Combined with the fact that export tariffs would not begin to apply until 2025, this would ensure a very gradual transition.

Those who opt in to an export tariff, on the other hand, would avail themselves of the benefits of the new reliability standard for exports, including guaranteed service level (GSL) payments where the standard is not met by networks.

Finally, as with the transition to cost reflective consumption tariffs, “new” home owners inheriting an existing solar system would be able to opt out of an export tariff, as long as they’re happy to be constrained off at random without compensation. And if the current export limit in the connection agreement is less than the system capacity, to increase it they would need to take up an export tariff.

Prescribe a ban on zero static export limits

While the draft determination includes elements which are likely to disincentivise networks from offering zero export limits, it does not explicitly prevent them from doing so. With the same aim of recommendation 1 of improving consumer confidence in the outcome, the final rule should include a prohibition on networks imposing zero export limits in basic connection agreements.

We accept that there may be problems associated with mandating a minimum level of exports, including the different network conditions within and between network businesses (Distribution Networks Service Provider (DNSPs)), the risk of inefficient investment (i.e., gold-plating), and the argument that this amounts to creating a firm access right (which does not exist either for load or for large scale generation).

On the other hand, there is an inherent level of export capacity in the existing grid which it would be fair for all users to have access to, even if they choose not to take up an export tariff (noting that estimates of this inherent capacity range from about 1 to 3 kW, and that SA Power Network (SAPN) is proposing a minimum of 1.5 kW).

Recommendation 2

The AEMC insert a clause in the final determination to prescribe an obligation to provide a non-zero level of exports. This requirement could be included in rules relating to the model standing offer for basic connection services, potentially by adding a new subsection:

5A.B.2 Proposed model standing offer for basic connection services

(b) The terms and conditions of the proposed model standing offer must cover:

(8) in relation to a basic micro embedded generation connection service, a non-zero level of export.

Note

Non-zero means a minimum of 1 kW,⁴ with any higher minimum to be specified by the AER.

To support this provision, it would be appropriate for all basic connection agreements to be for a range of export capacities, from a low of 1 kW up to the maximum capacity of the relevant inverter/s (e.g., 1-5kW).⁵ The actual export limit that a user would be subject to would then be determined by the relevant tariff choice as well as the availability of dynamic operating envelopes. (A user who chooses not to take up an export tariff may consequently be export limited to as low as 1 kW.)

Strengthen consumer engagement

We would also encourage the AEMC to closely consider how consumer advocates could be properly resourced for the considerable additional engagement required during tariff structure statement (TSS) processes pursuant to these reforms. The “new requirements that reinforce the need for continued consultation and collaboration” are inadequate in two main respects:

- Consultation is no guarantee that consumer voices will be given sufficient weight (see, e.g., the IAP2 spectrum of public participation, which runs from “inform” to “empower”).
- Consumer advocates are already overstretched and under-resourced, and this reform package will greatly increase their workload during the TSS processes for each DNSP.

We therefore recommend that the rules regarding network funding for independent consumer engagement in tariff structure statement processes should be strengthened. What follows relates primarily to the second of the two points above, bearing in mind that adequate resourcing will also contribute to stronger consumer voices. However, the *quality* of public participation goes beyond the scope of these reforms.

The current rules allow DNSPs to recover costs associated with consumer engagement on the regulatory proposal and tariff structure statement. Clause **6.5.6 Forecast operating expenditure** of the NER includes:

6.5.6 (e) In deciding whether or not the *AER* is satisfied as referred to in paragraph (c), the *AER* must have regard to the following (the *operating expenditure factors*):

(5A) the extent to which the operating expenditure forecast includes expenditure to address the concerns of electricity consumers as identified by the *Distribution Network Service Provider* in the course of its engagement with electricity consumers;

The existence of this clause has not substantially ameliorated the resourcing problem that consumer advocates have been highlighting, to little apparent effect, for many years. Stronger provisions are required, especially considering the rapid increase in DER uptake

⁴ 1kW would be the minimum, to prevent non-zero being interpreted as little as 0.1 kW. Note that this does not amount to a firm access right, because exports could still be curtailed to ensure system security. If the minimum level is not set out in the rules, it should be specified in the relevant AER export tariff guideline

⁵ As opposed to the current practice whereby basic connection agreements specify the maximum export capacity.

and therefore the likelihood that export tariffs will require significant consumer input in future TSSs.

Indeed, between consumption and export tariffs, we estimate that consistent engagement with all 13 DNSPs in the NEM over the entire 12 months plus TSS process would require one full-time advocate per consumer group (noting that this is only for the TSSs; the entire regulatory reset process requires considerably more resources). This is a long way from the current practice of DNSPs only paying sitting fees (and even then, not on a consistent basis), which does not consider the time required to review proposals and prepare submissions, let alone to engage consultants or researchers to provide expert input.

Recommendation 3

In the final determination, the AEMC make amendments to the rules regarding network funding for independent consumer engagement in tariff structure statement processes to ensure greater consumer consultation.

This could be done by simply adding an explanatory note to clause **6.5.6 Forecast operating expenditure** of the NER, as follows:

6.5.6 (e) (5A)

Note

Expenditure includes that required to support groups representing end users, such as sitting fees, pro-rata salaries and related consultant and research costs.

Alternately, a similar outcome could be achieved by including the following clause in the rules relating to the regulatory proposal and proposed tariff structure statement, as follows:

6.8.2 Submission of regulatory proposal, tariff structure statement and exemption application

(c1)(2)(iv) how the *Distribution Network Service Provider* has provided sufficient funding to relevant stakeholders including *distribution service end users* or groups representing them to enable these stakeholders to effectively represent *distribution service end users* in these processes.

Implementing a minimum funding level

What these proposals do not include is the minimum level of funding required. We consider that 0.05-0.1 percent of total revenue would be appropriate to allocate for this purpose. This would amount to \$2.5-5million for a large DNSP with a five yearly regulatory proposal totalling \$5 billion, or \$0.5-1 million for a small DNSP.

This amount would need to be divided between direct end user consultations (via a range of mechanisms including polling, focus groups, research and testing) and supporting advocacy groups employing specialist staff. When multiplied by 13 DNSPs, this would be considerably more than the total amount of money available to consumer advocates for all research and advocacy projects in the NEM through ECA's grant fund, which has a total budget of just over \$2 million per year.

Alternately, a smaller percentage could be allocated specifically for consumer advocates, since DNSPs are arguably already spending an appropriate amount of money on direct engagement with customers in their TSSs.

It may not be necessary for this minimum amount to be mandated in the rules; but if not, it should be included in the relevant AER guidelines: either the new export tariff guidelines or an updated version of the 2013 consumer engagement guideline.

We recognise that this proposal raises questions such as which groups should be eligible for TSS engagement funding, and whether this funding should be overseen by an independent body such as ECA. This could achieve three objectives:

1. Having consumer engagement funding managed by ECA could help to avoid conflicts of interest related to consumer advocates accepting money from the companies they are expected to critique.
2. Consumer advocacy groups could then apply to ECA to participate in relevant TSSs, rather than having DNSPs handpick which groups they chose to engage with.
3. ECA could also play a role in capacity building by upskilling new advocates.

However, we regard these as second order issues which could be addressed by the AEMC in the final determination after consultation with the AER and other stakeholders. The final determination could, for instance, require the AER to update its consumer engagement guideline, including setting a minimum percentage of network revenue for consumer advocacy. The final determination should also address our proposal for ECA to administer a fund for consumer advocacy in TSSs (noting that this fund may also be appropriate for the broader revenue determination processes.)

Conclusion

Being more prescriptive in the rules should give consumers more confidence they will have choice in how they manage their solar exports. There is a risk that if the first two recommended amendments are not included in the final determination, these reforms will continue to face opposition from some, jeopardising the whole package. A failure to remedy the consumer engagement resourcing issue in the final determination would likewise jeopardise its implementation in coming years.

Nevertheless, we are hopeful of working with the AEMC to progress these proposals in the last stage of what has been a very open and collaborative process over the last 18 months.

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