

INTRODUCTION AND SUMMARY

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.

As large energy users, our members are highly exposed to movements in both gas and electricity prices and have been under increasing financial stress due to escalating energy costs. These increased costs are either absorbed by the business, making it more difficult to maintain existing levels of employment or passed through to consumers in the form of increases in the prices paid for many everyday items.

The EUAA has previously made a submission requesting that the AEMC not expedite the process under s96 of the NEL¹. We proposed that the rule change should be considered under the normal two stage review process. In the absence of a Commission decision on our earlier submission, we provide this submission on the basis that the process will be expedited.

In our earlier submission, we argued that it was appropriate to review the APC to see if it was still 'fit for purpose' but that the expedited process was unable to properly answer the question Alinta posed in their rule change of whether the 'trade-offs ...are sufficiently balanced to meet the long-term interests of consumers' (p.5).

We are being asked to express a view on a major policy change that could have potentially large impacts on consumers on the basis of very high level modelling in the Consultation Paper and a 'qualitative judgement' or intuition. The Consultation Paper agreed that 'further analysis' is required (p.14). The AEMC reported to the Forum on 17th August on progress with that modelling, encouraging stakeholders to engage with the Commission. But, in the absence of details being provided by the Commission, that is difficult to comment on. It would be a very disappointing outcome for consumers were the final expedited decision to contain additional modelling to justify the Commission's decision.

We are being asked to express a view on the basis of assessment criteria including:

Outcomes for consumers: Will consumers face lower costs as a consequence of changes to the APC?

We are unable to do this and in the absence of that modelling our only course is to oppose the rule change.

The rest of this submission comments on some specific aspects that we invite the Commission to consider. We have not been able to review the 2022 RSSR final report published today to see if that contains any relevant information.

MATTERS FOR THE COMMISSION'S CONSIDERATION

Are generators really out of pocket?

The unwritten assumption in the rule change is that the likelihood of market suspension is high in the future if

¹ <https://www.aemc.gov.au/sites/default/files/2022-08/Energy%20Users%20Association%20of%20Australia.pdf>

most, if not all, generators are not fully compensated through the level of the APC. As observers to this compensation process, we find this puzzling. The rules around the level of compensation applying during an APC period have been regularly consulted on by the Commission, most recently in 2021 to incorporate the wholesale demand response mechanism rule and fast frequency response market ancillary service rule².

On that occasion only one submission was received, from Shell. So we can only assume that generators felt that, overall, the provisions provided them with the level of compensation they thought was fair and which, in addition to the \$300/MWh cap, kept them whole for their SRMCs during an administered pricing period. Also, that the AEMC would use a process to assess and pay compensation that they considered fair.

Now it appears that generators did not have a proper understanding of this compensation procedure as the AER said in its letter reminding generators of their obligations under the National Electricity Rules³:

“Recently, the AER has observed that following the application of administered pricing in the National Electricity Market (NEM), generators are withdrawing capacity from the market. This behaviour may be motivated by generators seeking to avoid the administered pricing compensation process in favour of the Australia Energy Market Operator (AEMO) directions compensation process”

Failure to understand a market mechanism that has been around for many years and which was consulted on so recently is not a legitimate reason to increase the APC. Consumers should not have to pay for a failure of generators to be fully informed about the rules.

While we understand there may have been some difficulties in making and processing application for the compensation given this is the first time this has happened, this can be fixed by improving the efficiency of the administrative arrangements rather than increasing the APC level.

Similarly, any concerns around the delay between incurring the costs and receiving the compensation are much more efficiently dealt with by amending the administrative arrangements or perhaps a preferable rule change discussed below than by increasing the APC for every generator.

Fuel supply availability should not be a factor in assessing the APC

There were suggestions during the period of market disruption that the failure of some generators to have enough fuel may have been alleviated with a higher APC. It seems the logic was something like ‘I would have a greater incentive to source fuel were I guaranteed to cover the costs of using that fuel when the APC applied’.

We would suggest that it is the generators responsibility to source enough fuel to meet their generation obligations. Why should consumers pay for the poor fuel sourcing decisions by generators? Decisions at the recent Energy Ministers meeting will give AEMO additional powers to ensure there are sufficient gas supplies for winter 2023⁴, so an increase in APC is not required to achieve that requirement. Yes it might be expensive, but generators are kept whole by the AEMC compensation payments.

What is the optimum level of compensation?

The Consultation paper refers a number of times to not wanting to place ‘undue’ reliance on compensation, but no definition is provided. The implication of the discussion on the high level modelling in Section 5 is that the optimum is not zero which would require an APC of \$800/MWh. This is the key part of the modelling that has not been

² <https://www.aemc.gov.au/market-reviews-advice/review-compensation-guidelines-include-wholesale-demand-response>

³ https://www.aer.gov.au/system/files/correspondence-to-market-participants-clare-savage-14-june-2022_0.pdf

⁴ For example, the current rule change to improve gas supply reliability in Victoria from winter 2023 <https://www.aemc.gov.au/news-centre/media-releases/aemc-consults-interim-lng-storage-measures-victorias-declared-wholesale-gas-market>

presented by the Commission.

It seems we are being asked to accept a qualitative judgement that compensation to a few generators is ‘bad’ and a higher APC for all generators irrespective of their SRMC is ‘good’ because consumers (C&I directly, residential and small business through their retailer) can hedge. Yet no evidence has been presented that the increase in hedge prices for all consumers/retailers from a higher APC is less costly than the flow-through compensation costs for just those dispatched generators which had SRMC above \$300/MWh.

The cost of AEMO’s directions and market suspension around the period of market suspension ended up significantly below some earlier market estimates⁵. There is no public information on the costs of APC compensation but this is known to the Commission as it considers its decision. We would have thought it would be relatively low outside of NSW, but it may depend on how ‘opportunity costs’ are measured. Public knowledge of those compensation costs is required to have a proper transparent discussion of the balance between the level of compensation and the level of APC.

The linkage between the electricity and gas markets

One key factor that the expedited process has not provided is the opportunity to explore the interaction between the level of the APC and the level of gas price cap. AEMO is about to start its five yearly review of the gas price cap with the objective of being complete prior to winter 2023, well after this rule change is meant to apply.

The driver for the rule change is the potential for gas-fired generators to decide not to bid because it does not cover its SRMC when gas prices at or close to the gas price cap eg \$40/GJ in Victoria set by AEMO and \$40/GJ in NSW set by ministerial direction. We would argue that a major reason for the gas price getting to the cap was the lack of competition in the domestic gas market that is regularly highlighted in ACCC reports. We do not think it is in consumers interests that the ‘tail is wagging the dog’. We do not support a higher APC that just enables gas suppliers to continue exercising market power knowing that the higher gas prices are recovered by generators at consumers’ expense.

A normal two stage process would have provided the opportunity to examine options for perhaps a rule change around the AEMC role in setting the gas price cap to ensure consistency across gas and electricity markets.

Retailers likely to pass through costs to all consumers

Our experience is that retail contracts have change of law clauses that allow retailers to pass through cost of changes like a higher APC. It is difficult for consumers to contest this cost pass through as they have no guidance on what an efficient cost might be and they do not really have the option of breaking a hedge and going to an alternative supplier. How is the Commission proposing to give consumers confidence there will not be any exercise of market power in setting these pass through costs?

Social licence in an emergency situation

As we noted above, the AER wrote to all generators to make clear their obligations under the National Electricity Rules. Aside from any explicit legal obligations, we would emphasise the implicit social licence obligation that generators have in the provision of an essential service. We think the ‘quid pro quo’ for generators meeting that obligation is for consumers to ensure that all no generator is out of pocket for their SRMCs.

We think that this is best achieved by keeping the APC at its current level and providing timely compensation for those whose SRMC is greater than \$300/MWh. We struggle to see why that ‘quid pro quo’ should involve

⁵ <https://aemo.com.au/newsroom/media-release/nem-suspension-costs-lower-than-expected>

consumers paying a higher APC to a brown coal generator with fuel costs of well under \$1/GJ⁶.

The option of making a preferable rule

Given our arguments in the earlier submission about the events leading up to the potential application of the APC are not 'imminent', it seems to us that there is a false sense of urgency driving the need to respond to the perceived risk in just one way – increasing the APC. We would encourage the Commission to consider alternative rule changes that consider the issues raised above eg:

- To review the administrative provisions of the APC compensation eg option of automatic payment by AEMO to qualifying generators based on some benchmark for gas, coal and diesel prices and then a subsequent reconciliation by the AEMC for those generators that can demonstrate the pool revenue did not cover their direct costs
- To align the gas and APC price cap reviews and methodologies for setting
- Consider the option of different APCs for different NEM regions.

How long is 'temporary'?

Alinta has proposed the increase apply to (p.4):

“...a sunset period of 12 months (or a suitable period as determined by the AEMC with consideration of other processes underway, such as the 2022 Reliability Standard and Settings Review)”

We look forward to guidance from the Commission on how the APC will be set at the end of the temporary period to 30th June 2025.

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

Kind regards,



Andrew Richards
Chief Executive Officer

⁶ The assumed brown coal costs in the 2022 ISP are \$0.66-7/GJ; see Inputs Assumptions and Scenarios Workbook Fuel Price Summary tab <https://aemo.com.au/en/energy-systems/major-publications/integrated-system-plan-isp/2022-integrated-system-plan-isp>