

9 July 2021



Mr Mark Feather
General Manager
Australian Energy Regulator
GPO Box 520
Melbourne, Victoria, 3001

Submitted electronically to AERringfencing@aer.gov.au

Dear Mr Feather,

Draft Ring-Fencing Guideline Version 3

The Public Interest Advocacy Centre (PIAC) is a leading social justice law and policy centre. We are an independent, non-profit organisation that works with people and communities who are marginalised and facing disadvantage. We ensure basic rights are enjoyed across the community through litigation, public policy development, communication and training. The Energy + Water Consumers' Advocacy Program represents the interests of low-income and other residential consumers, developing policy and advocating in energy and water markets.

PIAC welcomes the opportunity to respond to the Australian Energy Regulator's consultation on its Draft Ring-Fencing Guideline Version 3 (the Guideline).

We support many aspects of the Guideline and consider the AER has largely found an appropriate balance between protecting consumers against the potential harms of regulated businesses operating in contestable spaces, while still ensuring the timely and efficient rollout of critical new technologies and services.

However, PIAC does not support the Guideline requiring Distribution Network Service Providers (DNSPs) to have a waiver to provide excess battery capacity to third-parties. PIAC also highlights a number of concerns around the AER's proposals for DNSP-led SAPS.

Contestable battery services

PIAC does not support requiring a waiver for DNSPs to provide excess battery capacity to a third party.

Regulated networks have an important role in facilitating the transition to a more distributed energy system and a lower carbon economy. Distribution-level batteries can play an important role in this transition and help lower the overall costs of the supply chain. Distribution-level batteries can also offer consumers a lower-cost alternative to residential energy storage systems.

PIAC acknowledges there are risks associated with distributor ownership of batteries, as raised by some stakeholders. However, we are not aware of any compelling evidence of potential detriment to consumers from the use of

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batteries by third parties accompanied by appropriate control measures. Conversely, discouraging efficient distributor investment in batteries may cause detriment in the form of higher network costs to consumers, less consumer benefit from ancillary services provided by batteries, and less wholesale market benefit.

PIAC is concerned the ring-fencing framework will restrict the prudent and efficient investment in community storage. The need for ring-fencing waivers adds time, cost and uncertainty to community scale storage projects, damaging their investment case.

Consequently, we do not support the draft Guideline's proposal to specifically require a ring-fencing waiver for the leasing of distributor-owned batteries to provide contestable services. As noted by a number of DNSPs, the need to obtain a ring-fencing waiver will very likely delay investments in community battery projects and significantly increase the regulatory uncertainty and costs for potential participants that would lease the excess battery capacity. We do not consider that the additional guidance in the AER's Explanatory Statement will materially reduce the uncertainty that the waiver process adds to community scale storage projects.

PIAC does not agree that allowing distributor-owned batteries would exclude new entry and competition in emerging markets. Rather, we consider distributor-owned batteries can help maintain retail contestability in the provision of innovative energy services to customers. Through competitive tenders, distributors can provide energy storage to the market at an efficient cost and on a non-discriminatory basis.

While there has not been any firm evidence of harm to consumers, we acknowledge there are potential risks of distributor ownership of batteries. In a joint submission in response to the AER's Preliminary Position paper, we proposed that appropriate control measures could be introduced to enable consumer benefits to be realised while ensuring competition in storage services is protected.¹ PIAC considers these additional safeguards can be introduced without also requiring distributors to obtain ring-fencing waivers to progress community scale storage projects.

As the energy storage market is still in the early stages of development, PIAC considers it is premature to overly regulate specific ownership and operational models until the costs and benefits can be properly assessed. Planned community battery trials may present an opportunity to explore the benefits and risks of different ownership models and the potential measures that can be introduced to mitigate any risks.

Generation services for DNSP-led SAPS

PIAC supports allowing DNSPs being able to transfer existing customers onto SAPS supply where it is a more efficient and preferable option to retaining traditional grid-connected supply. SAPS will be an important tool for lowering network prices for all consumers as well as improving the reliability and resilience for the customers being transitioned.

PIAC supports a DNSP being exempted from ring-fencing to provide generation services for a SAPS up to a revenue-cap, in instances where a third party is not available or it is cheaper for a DNSP to do so, and in emergency and other extenuating circumstances.

The potential harm arising from DNSPs providing the generation component of a SAPS is trivial compared to the potential harm (to both the quality of supply received by the prospective SAPS

¹ PIAC, Ausgrid, Simply Energy, March 2021. Submission to Ring-Fencing Guideline Consultation. <https://www.aer.gov.au/system/files/PIAC%20-%20Simply%20Energy%20-%20Ausgrid%20-%20Letter%20to%20AER%20-%20Electricity%20distribution%20ring-fencing%20guideline%20-%2015%20March%202021.pdf>

customer and network costs for all customers) from not being able to efficiently transition customers to SAPS. The Guideline should reflect this.

Exemption threshold

The AER's proposed exemption for SAPS up to a certain revenue threshold is a satisfactory approach for ringfencing in the current environment. It balances the need to rollout SAPS quickly and at lowest cost while also allowing the opportunity for third parties to enter the market.

While we support the AER's proposal for a revenue cap based on the expected number of SAPS in a network, we recommend the AER consult with DNSPs on up-to-date estimates for their network. In its submission, Endeavour Energy notes its estimate of expected SAPS was derived during a separate consultation in 2017 and they were not anticipating it would be used for determining a revenue cap. However, it also notes an accurate estimate of SAPS is difficult before the DNSP-led SAPS framework is implemented and that estimates may change over time. All networks should be given the opportunity to provide up-to-date, robust estimates of expected SAPS, which they are comfortable informing their revenue caps, and for these estimates to be able to be adjusted over time.

PIAC considers the proposed generation revenue cap for Category 3 networks may be impractically low. Where a DNSP is only permitted to deploy a few SAPS under the exemption threshold it may disincentivise investment in identifying and building SAPS opportunities and business capabilities. In the interests of encouraging timely, beneficial SAPS provision, and given the current uncertainty around estimates, PIAC recommends a slightly higher revenue cap for Category 3 networks, for instance 0.01% as suggested by Endeavour.

We support DNSPs being able to alter their revenue cap if they expect to exceed it. However, we do not support a waiver for this being subject to consultation, particularly as the Guideline requires DNSPs to provide evidence of market testing in applying for it. Requiring consultation for a waiver application to adjust a revenue cap introduces unnecessary uncertainty and could delay the rollout of SAPS to the detriment of consumers.

Certainty for SAPS assets

We support the exemption framework allowing DNSPs to provide generation services for a SAPS regardless of whether the revenue cap changes, and for waivers being granted for the life of an asset and not being linked to a regulatory period. Both these measures ensure continuity of service over existing SAPS and provide certainty both for DNSPs and SAPS customers.

Other circumstances

PIAC supports the provision to allow DNSPs temporary provision of SAPS in response to an emergency and excluding this provision from the revenue cap.

As noted in our submission to the Issues Paper, we consider certain circumstances should be subject to an exemption and that revenue earned in these circumstances should not contribute to the revenue cap. These are:

- To allow a DNSP to act as a provider of last resort for DNSP-led transition to a SAPS where there are no third-party providers for the generating systems or where they are materially more expensive than what the DNSP can offer.
- To allow a DNSP to take over a SAPS should the current owner leave the market. This is critical to ensure SAPS customers continue to be supported and receive essential energy supply. We recommend this exemption should apply for the remaining life of the SAPS and not just for a limited period.

- To allow a DNSP to maintain supply to customers during planned network outages.
- To allow a DNSP to perform emergency repairs on a SAPS generating system including, where necessary, replacing components. While third-party SAPS providers will typically be able to conduct scheduled maintenance, the local DNSP's field staff may be the best option to provide unscheduled or emergency response for remote customers in a timely manner.

Review

PIAC recommends the AER commit to a review of the guidelines. We appreciate uncertainty around the implementation of the SAPS rules and regulations and the newness of the draft guideline approach makes providing a review timeframe risky, we consider the AER should commit to review at a minimum.

This post-implementation review should be triggered by either: a specified period (we recommend two years) after the DNSP-led SAPS frameworks is implemented; an unexpectedly high number of SAPS installations; an unexpectedly low number of SAPS installations; or the emergence of an unexpected issue that materially impacts outcomes for energy consumers.

We welcome the opportunity to discuss these matters further with the AER.

Yours sincerely

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