

Submission to AER Preliminary Position Paper: NSW Distribution Framework and Approach

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About the Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is leading social justice law and policy centre. Established in 1982, we are an independent, non-profit organisation that works with people and communities who are marginalised and facing disadvantage.

PIAC builds a fairer, stronger society by helping to change laws, policies and practices that cause injustice and inequality. Our work combines:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change and public interest outcomes.

Energy and Water Consumers' Advocacy Program

The Energy and Water Consumers' Advocacy Program works for better regulatory and policy outcomes so people's needs are met by clean, resilient and efficient energy and water systems. We ensure consumer protections and assistance limit disadvantage, and people can make meaningful choices in effective markets without experiencing detriment if they cannot participate. PIAC receives input from a community-based reference group whose members include:

- Affiliated Residential Park Residents Association NSW;
- Anglicare;
- Combined Pensioners and Superannuants Association of NSW;
- Energy and Water Ombudsman NSW;
- Ethnic Communities Council NSW;
- Financial Counsellors Association of NSW;
- NSW Council of Social Service;
- Physical Disability Council of NSW;
- St Vincent de Paul Society of NSW;
- Salvation Army;
- Tenants Union NSW; and
- The Sydney Alliance.

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The Public Interest Advocacy Centre office is located on the land of the Gadigal of the Eora Nation.

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Introduction

PIAC welcomes the opportunity to share our views on the Framework and Approach for Ausgrid, Endeavour Energy and Essential Energy for the 2024-2028 regulatory control period. PIAC considers this process an important opportunity to address the role of DNSPs in providing energy products and services that deliver better outcomes for consumers.

Rethinking the role of the DNSP in providing ‘contestable’ services

Decisions relating to the implementation of new technology and services must focus on consumer outcomes. Rules and regulations which automatically apply a demarcation between ‘Regulated, monopoly’ and ‘Market-based, contestable’ services, and restrict regulated businesses from providing some services to consumers on that basis, increasingly do not reflect the long term interests, and preferences, of consumers. In any case, such rules and regulations do not prioritise consumer outcomes.

In PIAC’s view, technology related services that DNSPs are well positioned to provide should be provided by DNSPs, with commensurate cost recovery arrangements in place, especially where DNSP provided services could mitigate the potential for detrimental consumer outcomes.

The decision to require a product or service to be ‘contestable’ is increasingly made with little or no evidence of relative consumer benefit, and despite evidence of consumer detriment. The decision to make metering contestable outside of Victoria resulted in a slow, costly and inefficient rollout of smart meters with specifications below what is needed for the future network. This is a prominent example of this failure to put consumer interests and outcomes before commitment to a ‘market approach’.

PIAC contends consumer detriment is exacerbated when regulated networks are prevented from delivering services deemed contestable. In metering this has resulted in many consumers:

- lacking choice of energy retail products in regional and remote areas where retailers do not want to provide meters,
- experiencing financial losses in the case of protracted delays to metering installation for solar customers, and
- experiencing other disadvantages that would be avoidable if they (or their retailer) were simply able to choose their local DNSP as the meter provider.

Networks fully owning and operating network batteries and SAPS is in the long term interests of consumers

PIAC is concerned the approach being taken to SAPS and network batteries comes at the expense of consumer outcomes, and does not reflect their preferences and long term interests.

DNSPs, AER and other stakeholders are currently attempting to devise complicated arrangements for shared ownership and/or control of single network batteries between two

parties, one of whom is regulated and one not. This approach is unnecessary and creates further issues and problems that must then be addressed.

'Excess' capacity in a network battery is arbitrary, and hard to measure and monitor transparently. The DNSP generally will need to have full control and access of the battery when it is being used for network support services, regardless of how any aspects of the battery are demarcated. As predicting the nature and timing of network need for control could be very difficult. It is unlikely to be a viable business proposition for a third-party energy service provider to have control and access to a DNSP-owned battery.

Separating out ownership and control creates inefficiencies, complexities and risks which erode the consumer benefits that could otherwise be realised by regulated networks (or unregulated third party or ringfenced businesses) wholly owning and controlling batteries. Further, by requiring the ownership and use of 'excess' capacity to be through a ringfenced entity or third party:

- 'Contestable' revenue streams for the battery will not accrue to consumers through regulated revenue, costing consumers more,
- The inefficiencies of two owners and/or operators will increase overall cost of the operation of the asset, if not the capex of the asset itself, and
- The need for certainty of access and control to effectively monetise the various value streams is likely to reduce overall revenue, again at the expense of consumers.

In the case of SAPS, a focus on mirroring the arrangements in the NEM creates complexity and undermines the potential for better consumer outcomes. The efficiency gains that could be shared between all consumers on a network by the deployment of SAPS, as an alternative to network repairs and upgrades, are at risk due to barriers created by the requirements for contestable SAPS generation and retail that mimics the NEM. (In NSW the AER has waived ringfencing requirements for the generation component for a limited number of SAPS, however in the long run arrangements that do not require waivers are preferable).

Separating battery and SAPS ownership and/or operation between multiple parties does not support consumer interests and undermines the scope for consumer benefit.

Consumer and community preferences support networks fully owning and operating batteries and SAPS

Consumer preferences are not reflected in the delineation between 'Regulated, monopoly' and 'Market-based, contestable' services.

DNSPs are expected to embed consumer preferences in their regulatory proposals and business decisions. To this end NSW DNSPs have been engaging with consumers, communities and their representatives in the development of their revenue proposals. These stakeholders generally recognise the potential for network batteries to support innovative energy services that will contribute to resilience and emissions reduction and reduce the cost of energy across the network. They have expressed strong and consistent support for DNSPs deployment of batteries and SAPS and maximising their value to consumers, networks and the wider energy system.

PIAC does not consider consumer preferences support separating battery and SAPS ownership and/or operation between multiple parties, due to the impacts on cost, revenue and ability to monetise value chains discussed above.

Common Distribution Services

Regulated Stand Alone Power Supplies (SAPS)

Noting our comments above on the delineation between “Regulated, monopoly” and “Market-based, contestable” services, where a SAPS is replacing an extant grid connection, in PIAC’s view

- The SAPS should be owned and operated in entirety by the DNSP. All related capital expenditure (capex) should be included in their regulated asset base (RAB). The DNSP should not be required to lease generation components of the SAPS, as doing so creates inefficiencies and barriers to the deployment of SAPS without providing any benefits or removing any risk. This imposes an unnecessary cost on all of the DNSP’s consumers.
- The DNSP should be able to provide retail services for consumers in the (likely) event the consumers are unable to access a full suite of competitive retail options. This may be beyond the scope of the Framework and Approach consultation, but given SAPS customers are unlikely to have access to competitive market offers, in coming years it is likely a rule change, jurisdictional intervention or other measure will allow networks to step in to provide energy retail services to ensure consistent consumer protection.
- All associated expenses and revenue associated with the above activities should be treated as a Standard Control Service.

PIAC supports AER’s proposal to use the term ‘regulated SAPS’ instead of ‘distributor led SAPS’.

PIAC supports making clear that ‘fault and emergency’ works are allowed. However the proposed modification to ‘operation (fault and emergency)’ suggests operation (or repair) works would be limited to where there is a fault and emergency. PIAC recommends instead saying ‘operation (including fault and emergency repairs)’. An alternative could be to leave ‘operation’ unchanged and instead add ‘(including fault and emergency repairs)’ to ‘maintenance’.

PIAC notes deploying SAPS may from time to time involve access and/or modification to privately owned buildings and/or wiring, and suggests the AER and DNSPs consider if the proposed wording is sufficiently broad to include such works.

Provision of temporary SAPS after an emergency

DNSPs should be able to readily deploy SAPS without requiring the participation of energy retailers for metering and billing, or third parties to lease components. This should be possible whether they are connected directly to consumers premises or via the local network.

It may be appropriate and clearer to add ‘temporary SAPS after an emergency’ as suggested by Ausgrid and Endeavour.

There may be aspects of emergency SAPS provision and operation that are fundamentally different to the existing network activities noted in part 2.2.1.1 of the Paper. This may include installation, maintenance, repairs, refuelling and remediation, requiring access to private land and differently specialised staff and contractors.

Some temporary SAPS installations may later become permanent SAPS, with some parts being installed, upgraded, reinforced, reconfigured and/or removed in the process.

The Paper appears to suggest NSPs would be unable to connect emergency SAPS to private customers; if this is the case it does not support the interests of consumers and needs to be addressed.

Leasing of ‘excess’ battery capacity

PIAC strongly supports deployment of batteries by DNSPs¹ where this delivers better consumer outcomes. Noting our comments above on the delineation between “Regulated, monopoly” and “Market-based, contestable” services. PIAC is very concerned that dividing these assets in two for regulatory purposes will lead to sub-optimal outcomes. Allowing regulated network businesses to fully own and operate all aspects of a network battery and related services, and using ‘excess’ capacity to participate directly in contestable markets (like frequency ancillary services and RERT) would improve competition in those markets and reduce network charges for customers of those networks.

In PIAC’s view, rather than treat ‘excess’ battery capacity as a non-regulated service

- Batteries should be either wholly owned and operated by the DNSP (as direct control services) or a non-regulated third party, but not both
- For DNSP owned batteries
 - services that bring benefits to all consumers (eg broader network opex and capex savings, and participation in markets such as frequency ancillary services) should be treated as Standard Control Services, and
 - services that bring benefits to only some consumers - such as management of export of energy arbitrage – should be treated as Alternative Control Services.
- For third party owned batteries, the DNSP should be required to
 - provide a suitable network tariff, and
 - provide payments commensurate to the value (to the network) of any network services the battery is capable of providing, and fully recover these payments through their normal review.

If the AER chooses not to take the above approach, leasing ‘excess’ battery capacity should be treated as a negotiated distribution service, rather than an unregulated service. This would provide a means of recourse for the AER arbitrating disputes if and when needed.

¹ Including batteries sometimes referred to as ‘Community batteries’ but that are owned and operated, as least in part, by DNSPs.

Facilitation services for battery leasing

Facilitation services for battery leasing should not be a service. As noted previously, PIAC does not support separating the ownership and/or control of batteries between regulated businesses and other parties. In the case noted for Ausgrid, the batteries should be wholly owned by Ausgrid's regulated business, with Ausgrid permitted to provide 'contestable' services that return regulated revenue, or wholly owned by another party such as Ausgrid's ringfenced business.

In any case, facilitation services for battery leasing is comparable in nature to application for a negotiated grid connection for an embedded generator. The primary beneficiary is the party receiving or using the excess capacity. Accordingly, it should be treated as an Alternative Control Service and recovered via an application charge (or equivalent) to that party.

System support services

In PIAC's view, the system support services noted should be treated as Alternative Control Services and billed to the recipient of the services. It is not appropriate to treat them as inputs to the common distribution service, as benefits accrue to parties who are not consumers of a given DNSP.

Export support services classification and scope

PIAC supports classification of export services as part of the common distribution service where they are linked to providing the minimum level of export (ie the 'basic' services) allowed to all consumers (ie without export charges). These export services should be limited to where there is no material cost imposed on non-solar consumers. These costs are appropriate to recover on a 'postage stamp' basis.

PIAC supports 'additional export' services, and any customer request for export services beyond this threshold being classified as an Alternative Control Service. This supports a beneficiary-pays approach to cost recovery, and avoids cross subsidy by people without access to solar. These costs are appropriate to recover on a more location-specific basis, reflecting the capacity for exports in different parts of the distribution network.

PIAC does not support a single SCS classification that covers all export services. The underlying assumption that 'all customers also benefit from any network augmentation... that exceeds the 'basic export level' is incorrect, as clearly this augmentation would disproportionately benefit consumers with 'additional exports'.

RERT and market ancillary services

PIAC strongly supports networks providing RERT and market ancillary services, and doing so as part of the activities of regulated businesses. The provision of RERT and market ancillary services is another instance where a contrived delineation between 'Regulated, monopoly' and 'Market-based, contestable' services does not deliver good consumer outcomes.

We share the AER's concern that networks should not create cross subsidies through unregulated revenue providing RERT. We recommend RERT and market ancillary services be provided as Alternative Control Services, with costs recovered from the market operator accordingly.

This approach benefits all consumers through reliability and security being maintained at lowest cost, and the consumers in a given network through the associated revenue stream.

Network Ancillary Services

PIAC support Ausgrid's intent regarding rectification works, but agrees with the AER's view the addition is not necessary.

Other Framework and Approach topics

Control mechanism

PIAC supports the AER's proposed approach to control mechanism.

Incentive schemes

PIAC supports the AER's proposed approach to incentive schemes.

If, as PIAC recommends, network batteries are fully regulated, it might be appropriate to develop (or extend) an incentive scheme to reward DNSPs for providing market services (such as RERT) that benefit all their consumers through increased revenue that offsets some consumer costs.

Depreciation

PIAC supports the AER's proposed approach to depreciation.

Dual function assets

PIAC supports the AER's proposed approach to dual function assets in NSW.