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19 January 2024

Mr. Mark Feather
General Manager – Strategic Policy & Energy Systems
Innovation
Australian Energy Regulator
AERinquiry@aer.gov.au

Submitted via email

Dear Mr Feather,

Essential Energy's submission on the AER's Draft Interim Guidance Note on Export Limits

Essential Energy welcomes the opportunity to respond to the Australian Energy Regulator's (AER) Draft Interim Guidance Note on Export Limits. In doing so, we support the Energy Networks Australia (ENA) submission. Like the ENA, Essential Energy strongly supports non-binding principle-based guidance which promotes best practice capacity allocation and provision of information to consumers and stakeholders. Importantly, we note that the best practice frontier for capacity allocation and stakeholder engagement related to the implementation of flexible export agreements will evolve as technology improves and networks mature in adopting these agreements.

Therefore, Essential Energy supports a principles-based approach which provides maximum flexibility for the AER to provide regulatory oversight, while networks invest, innovate, adopt and adapt. Such an approach will enable continuous improvement in customer service offerings. A non-binding principles-based approach is also likely to provide the appropriate level of guidance and flexibility needed to account for different network's operating circumstances, as networks develop capabilities for flexible export offerings.

Essential Energy is concerned about the haste in progressing rule change reforms that would make interim principles binding, especially those pertaining to compliance measures. The compliance measures discussed in the consultation paper seek to prescribe capacity allocation methodologies and consumer/stakeholder consultation and how the AER may assess compliance with the principles in its regulatory determination processes.

The guidance note references the necessity for flexibility to take account the differences in networks but does not indicate how those differences will be accounted for in the move toward a national approach to capacity allocation and compliance with technical standards. For example, the draft guidance outlines its expectations in relation to compliance with technical standards, citing the work SA Power Networks as current best practice for networks. This analysis fails to take account of jurisdictional differences in NSW where roles and responsibilities of networks, government and installers may impact on the ability of networks to comply with AER's expectations.

Essential Energy submits that rules, and any proposed rule changes, should provide the AER with maximum discretion in its regulatory determination processes to account for jurisdictional differences and the unique circumstances of each network. Where a rule change is considered necessary, Essential Energy would support wording which sets out that networks should demonstrate that they have had regard to the guiding principles, rather than prescribing that the principles have been applied

directly. This would provide the AER with flexibility needed to account for network circumstances in its assessment process.

Best practice regulation

Essential Energy believes any rule change to introduce consumer protections should be supported by a rigorous risk analysis framework which outlines the range and implication of potential harms, the risk of those harms occurring, including corresponding evidence and the mitigation efforts required. This is a view shared by the Victorian Government in its *Towards Best Practice: A guide for regulators*, which outlined 10 'best practice' principles for regulators to follow.¹

The AER has broadly followed this approach in its:

- > Better Resets Handbook and the non-binding expectations for consumer engagement and how it would assess regulatory proposals under this guidance. The Better Resets Handbook services as a best practice guide for network's stakeholder engagement
- > Final advice report for the 'Review of consumer protections for future energy services'². The Review report provides a risk analysis outlining the potential harms and the range of possible consequences, presentation of evidence of harms occurring to consumers. It then recommends a range of reforms, including rule changes, and the development of an enforcement framework to mitigate against those harms. In particular, the report states that:

"A principles-based approach supported by consumer outcomes offers the ability to focus service providers on achieving good outcomes for consumers, while reducing regulatory complexity by overcoming the need to specify actions under a prescriptive framework."³

Essential Energy is therefore concerned that the draft interim guidance note on export limits proposes to move towards a number of rule changes without:

- > the presentation of a detailed risk analysis
- > demonstration of any evidence that potential risks/harms have or are likely to emerge due to network's implementation network capacity allocation methodologies
- > a cost benefit analysis weighing up the value of the consumer outcomes achieved through rule making versus the cost to consumers of the regulatory burden.

The proposed timeline, targeting the second quarter of this year for implementing the AER's suggested rule changes, as discussed in its public workshops, implies an urgent need for intervention due to a high risk of consumer harm from the development of flexible export services. Essential Energy submits that before rule changes are considered that the AER take the time to monitor the effects of the non-binding principles-based approach it has outlined in the guidance note. The AER can issue guidance regarding its expectations for network behaviour, which will achieve desired consumer outcomes, without the need for additional prescription or binding rule changes.

By allowing for the application of non-binding principles, networks and the AER will be able to assess potential harms over time, including unintended consequences where:

- > Network innovation may be constrained by a rules-based approach
- > Rules are difficult to adapt to changes in technology
- > Networks may be constrained from testing pricing and export capacity signals with consumers to optimise outcomes
- > Balancing potentially conflicting jurisdictional and national obligations may result in poor outcomes for consumers

¹ Victorian Government Better Regulation Victoria, *Towards Best Practice: A guide for regulators*, 2022, p.2.

² [AER, Review of consumer protections for future energy services, November 2023.](#)

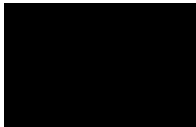
³ AER, *Review of consumer protections for future energy services*, November 2023, p.28.

Flexible exports services are still in a nascent stage of development for many networks. It is appropriate therefore that the AER set out guidance and monitor the market. If after a period of monitoring, non-binding guidance is found to be ineffective based on evidence of consumer harms, then the AER could move towards additional prescription as an appropriate response.

Detailed responses to selected consultation questions are found in Attachment A.

If you have any queries regarding this submission, please contact Essential Energy's Regulatory Strategy Manager, Adam Young on [REDACTED] or via [REDACTED].

Yours sincerely

A black rectangular redaction box covering the signature of Hilary Priest.

Hilary Priest
Acting Head of Regulation

Attachment A: AER Draft Interim Guidance Note on Export Limits – Response to consultation questions

Issue	Essential Energy Response
<p>Capacity allocation principles</p> <ul style="list-style-type: none"> • What are your views on the AER’s proposed approach for amending the DEIP capacity allocation principles? Do you have any specific views on the nature of amendments required to achieve the AER’s policy objectives? • Should the capacity allocation principles be binding, and if so, should these be codified in the National Electricity Rules or set out in a binding AER Guideline? 	<p>Binding capacity allocation methodology</p> <p>Essential Energy considers that a binding approach to capacity allocation is likely to limit innovation (i.e. potentially counter to the NER and NEL) and doesn’t consider the current and past connection practices or the inherent differences in networks that limits the ability for nationally consistent methodologies, nor does it consider that the AER is not the technical expert on each network.</p>
<p>Capacity allocation methodology</p> <ul style="list-style-type: none"> • What are your views on our proposed approach for improving transparency in DNSPs’ capacity allocation methodologies? Is the guidance provided sufficiently targeted and proportionate for achieving the AER’s policy objectives? Are there any other areas where further guidance is required? • What areas of the National Electricity Rules and National Energy Retail Rules do you consider will likely require amendment to give effect to the AER’s proposed approach for improving capacity allocation methodologies and transparency? • What time periods should DNSPs consider in allocating network hosting capacity? For the allocation model, over what timeframe should capacity allocation be considered? 	<p>Capacity allocation models</p> <p>The transparency of high level capacity allocation methodologies is a reasonable requirement. It should however be noted that past connection practices or the inherent differences in network designs will limit the ability to converge on a single combination of nationally consistent methodologies and ideal outcomes for customers.</p> <p>Time periods for DNSP allocation of network capacity</p> <p>Due to the nature and longevity of the network, the changes underway and level of unknowns, allocation principles must be time bound from the date of connection to avoid legacy equitability and fairness issues as seen on the network today.</p> <p>The time period upon which capacity allocation should apply is a balance/tradeoff between certainty and flexibility to account for varying circumstances over time. Individual customers may value the certainty of a ‘life of system’ allocation but may miss out if technological advances provide for an increased static allocation to which customers on a set lifetime allocation may not qualify.</p> <p>Further, a true lifetime approach would be difficult and costly to make work where the network is unable to clearly identify that an installation of a replacement inverter had occurred.</p> <p>An alternate version that may work for both DNSPs are customers would be a defined lifetime model.</p>