

Orderly Exit Management Framework

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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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1. Introduction

PIAC welcomes the opportunity to respond to the NSW Office of Energy and Climate Change's (OECC) consultation paper on the proposed Orderly Exit Management Framework (the consultation paper).

PIAC does not support the introduction of an Orderly Exit Mechanism Framework (OEMF). It is unnecessary and does not promote the interests of consumers or market participants. It introduces new risks of market distortions, including impacting the exit and entrance decisions of other generators in ways that may adversely impact reliability outcomes.

The framework attempts to solve a problem that does not exist. It is already possible for state governments to enter into agreements with generators to remain available. New South Wales is currently negotiating with Eraring on the possibility of staying operational beyond the latter's previously announced retirement date.

No substantive reason has been provided for the proposition that the existing reliability and planning tools available to the Australian Energy Market Operator (AEMO), the Australian Energy Regulator (AER), the state planners, the federal government and the jurisdictional governments will not be sufficient to manage any anticipated (or unanticipated) shortfalls occurring during the transition.

There is a need for coal generation closures to be brought forward in order for Australia to meet its various emissions-reduction targets, and we acknowledge it is possible there will be delays to transmission projects required for the transition. But we see no compelling reason why the existing structures are inadequate to deal with these circumstances.

While we do not support the need for an OEMF, if a decision is made to introduce one, it must:

- Not delay the transition by incentivising unnecessary delay to coal or gas generator exits;
- Require robust consideration of the alternatives solutions before subsidising generators to delay their market exits via agreement or order;
- Provide jurisdictional ministers as little discretion as possible in their negotiations with generators; and
- Ensure transparency of process and decision criteria, and require consultation with stakeholders, including consumers, before any agreement or order to subsidise a generator using consumer money is struck.

This submission provides detail supporting our assessment that the OEMF is not warranted in any form. We then explain our recommendations regarding the design of any OEMF that may proceed, notwithstanding our position the framework itself is not warranted.

2. The OEMF is not required

2.1 The existing planning and reliability regime is more than sufficient.

The reliability regime has several arms relevant to managing shortfalls caused by generator exits. Most obviously National Electricity Rule (NER) 2.10.2.1(c3) requires scheduled and semi-scheduled generators to list their proposed closure dates and not bring them forward in the last 42 months unless granted an exemption by the AER.

The AER, in determining whether to grant or reject such an application, draws on the [Generator notice of closure exemption guideline](#). The AER has flexibility in applying the criteria stipulated in the guideline. However, in essence it is required to consider the National Energy Objective (NEO), the reliability and security impacts of the generator's exit, any plans to replace the capacity being retired, and any technical issues that might impact a generator's ability to operate. These considerations are all broadly in line with those proposed under the OEMF, though it appears that the OEMF will operate outside of the bounds of these existing powers of the AER.

The OEMF coverage therefore extends to either:

- Circumstances where a generator's exit date is being brought forward to more than 42 months from an announced exit day, or
- Circumstances where a generator's planned exit date is within 42 months, but other factors have changed so that the planned exit has more substantial reliability or security implications than was previously believed. For example, there have been delays to the commissioning of a new interconnector.

However, the existing frameworks already provide more than ample scope to avoid or deal with both these circumstances. In the case of the first of these circumstances, the tools already available to planners, regulators and governments are:

- The wholesale market settings, comprising of the Market Price Cap (MPC), Cumulative Price Threshold (CPT), Administered Price Cap (ACP) and Market Price Floor (MPF).
- The reliability standard and Interim Reliability Measure (IRM). These are operationalised by AEMO's forecasting outputs: the Electricity Statement of Opportunities (ESOO) and Projected Assessment System Adequacy (PASA). They provide investors information about specific locations and future times where demand for energy may not be served, and so where profitable investments in dispatchable energy may be made within an appropriate timeframe. The IRM is also operationalised by the Retailer Reliability Obligation (RRO), noted below.
- Jurisdictions and the Federal Government have a number of tools to provide investors in dispatchable energy with incentives and locational signals. Examples at the jurisdictional level include the NSW Roadmap, which includes both the Electricity Infrastructure Investment Safeguard, backed by Long Term Energy Services Agreements (LTESAs) and the Renewable Energy Zones (REZs). Examples at the NEM-wide level include the coming Capacity Investment Scheme (CIS), which is particularly targeted at driving new renewable dispatchable capacity. Transmission access reforms (TAR) commenced by the Energy

Security Board could also reasonably be included here as a measure aimed at increasing the security of dispatch and so increase the attractiveness of investment in new storage and generation.

- Australian governments also have the capacity to initiate and direct new dispatchable energy projects directly, as has occurred in cases like the Canberra Big Battery or Snowy 2.0.

In relation to the second set of circumstances:

- AEMO has powers to procure capacity directly, using the Interim Reliability Reserve (IRR) or Reliability and Emergency Reserve Trader (RERT) contracts.
- AEMO further has powers to trigger the RRO to solidify demand during an anticipated shortfall event, and so de-risk new investments in generation and/or storage that impact the period.
- Finally in an operational timeframe, AEMO has powers to direct a scheduled plant or market-generating unit to take relevant actions to maintain or restore the security or reliability of the power system or instruct an action from a transmission or distribution system or non-scheduled load for the same reason.¹

Finally, given the fact that both the Victorian and New South Wales governments have recently or are currently in negotiations with coal generators to delay their exits, we should reasonably add to the list that

- Australian governments are able to directly negotiate, agree and subsidise generators to delay their retirement.

We do not consider any remaining need to further augment this extensive list of mechanisms. There is no situation that could arise over the course of the transition that energy planners, regulators and ministers are not already more than equipped to handle. Indeed, we contend the regime is already excessive and that the NEM reliability regime suffers from a ratcheting bias. That is, further elements are only ever added, with their settings increased, and redundant or excessive measures are never removed or reduced.

Any new addition to this regime must face a high standard of proof for necessity, given that consumers are already paying above what they would prefer for the marginal unit of reliability. In any case, the decision to add further measures should trigger reconsideration of other measures which could be readjusted or removed as a result.

2.2 The transition requires retirement of coal and gas generation as soon as possible.

The 2024 Draft Integrated System Plan (ISP) notes that in order for Australia to meet its emissions reduction targets, coal generators will need to retire substantially earlier than their currently anticipated closure dates.

¹ NEL Section 116; NER clause 4.8.9.

The task of facilitating the transition includes ensuring adequate reliability while enabling coal generators to close earlier than was previously planned. This requires increasing the rate at which new transmission, generation, and storage is commissioned. Government and consumer money spent prolonging the operational lives of coal generators beyond what is planned, reduces money available to support acceleration of new generation and storage, and adversely impacts the larger aims of the transition.

2.3 Prolonging the life of coal generators is the riskiest response to the supposed problem.

The reliability risks occurring as a result of old coal generators being offline for repair or servicing are:

- (a) the most common cause of reliability outages experienced in recent years, and
- (b) a type of outage that is more unpredictable and so more difficult and costlier to manage.

These increased costs should be considered when comparing solutions to an identified gap that involve prolonging the operational lives of coal generators against all other options.

2.4 Secondary impacts of the OEMF work against the aims of the policy.

The OEMF is intended as a response to the failure of the market. That is the failure of the market to provide adequate supply certainty relative to anticipated demand during a given period.

If this is indeed a problem, then any response must be predicated on the principle of maintaining the integrity of the market as much as possible. The ideal response to a market failure is one that avoids further distortions. The OEMF is likely to create unwanted secondary effects that work against the intent of the policy to address failures of the market.

The OEMF provides increased incentive for other generators to bring forward their retirement dates. They are likely to anticipate reduced earning potential as a result of the delayed retirement of the generator involved in a Voluntary Negotiated Agreement or Notice for Mandatory Operation, and act accordingly. There is also a reduced incentive for other generators to enter the market, responding to a reduced scope for anticipated earnings.

Finally, the decision to subsidise a generator to delay its exit will increase market uncertainty by diluting the market signals the system relies on and other signals from planning bodies such as AEMO. This is likely to increase the cost of investment and cause delays or abandonments of intended investment. Again, this secondary effect works directly against the intent of the market intervention. This is particularly problematic in relation to a reduced incentive for market entry, where it is likely to predominantly impact prospective storage or renewable generation projects (the alternative being new and marginal peak gas generation projects). In this case the effect is to work against the policy goal of an accelerated transition, reducing Australia's and the National Energy Market's (NEM) emissions.

3. Overall comments on the proposed OEMF

Notwithstanding PIACs rejection of the need for an OEMF, and detailing of its risks and dangers, any implementation of such a mechanism must encompass a number of key aspects.

3.1 The need for a specific emissions reductions principle

The principles for the proposed OEMF do not include contribution to emissions reductions. This must be address if the framework proceeds. Emissions reductions are included in the NEO and are the fundamental purpose of the energy system transition. They must be embodied in the principles underpinning the design and implementation of new and existing policy tools. Minimising the emissions of the NEM and hastening the transition to a renewables-based energy system should be an explicit principle of the OEMF.

Notably, page 17 of the consultation paper includes the following line:

Moreover, the decision to bring forward the closure of a generator may reflect non-economic considerations, such as emissions reduction objectives.

This fundamental dynamic of ‘correcting’ another policy or decision introduces uncertainty into the market in an unhelpful way. If another policy or decision aimed at reducing emissions errs by inadequately considering the reliability implications of that policy or decision, the place to intervene to fix that is with that policy, not a secondary instrument, in this case the OEMF. In any case, application of the framework must be required to consider emissions reduction to ensure ‘corrective’ action does not simply result in an equally ‘unbalanced’ action.

3.2 Consumers must be involved in decisions they will pay for

The jurisdictional minister entering into a prospective agreement – one that will be underwritten and payed for with consumer funds – is acting on behalf of consumers. Given this, it is necessary that consumers (among other stakeholders) are consulted before a jurisdictional minister signs a Voluntary Negotiated Agreement or Notice for Mandatory Operation.

This requirement would create two new problems:

1. a need for greater transparency than is currently proposed in the OEMF, and
2. a tension with the need for swift resolution once a system needs shortfall has been identified.

On the first problem, PIAC recommends greater transparency throughout the OEMF. This includes publishing the details of the system needs shortfall assessment, and a much higher bar in terms of ‘competitive and commercially sensitive information’ than is implied in the consultation paper.

In terms of managing the timeline between identification of system needs shortfalls and adopting a solution, be it within the OEMF or selecting an alternative solution identified in the process, it is likely that the consultation format would need to be adjusted from the current standards in the energy sector. This would likely take the form more aligned with expedited consultation processes and consultations open to pre-identified groups, including consumer representatives and other stakeholders.

The principle must be that no jurisdictional minister should enter into an agreement using consumer money without approval from both the group of stakeholders consulted as a whole and the bloc of consumer representatives within them. Should the OEMF be unable to encompass

such requirements, cost of the subsidy should be recovered through Government budget, rather than consumer bills.

3.3 Consumers should not be liable for costs of the scheme at all

Given jurisdictional ministers would be acting beyond their bounds as agents of consumers within the OEMF as proposed, it would be more appropriate for the framework to be financed with tax rather than consumer dollars. That is, the costs would be covered from the relevant jurisdictional government's budget. Where Ministers consider greater commercial confidentiality and speed of action is required, this may be the only possible alternative.

Additionally, subsidy through the Government budget would act as a balance to any perceived incentive for Ministers to act to reduce the 'political risk' of potential outages, without a transparent cost impact to their government. Ministers are likely to have a higher 'willingness to pay' to reduce the risk of potential outages than consumers have expressed. This would ensure the cost of that additional willingness is not borne directly by consumers.

3.4 Greater transparency is required throughout the framework

All key aspects of any OEMF must be transparent and available to consumers and stakeholders. The assessment of a system needs shortfall and the assessment of the alternative solutions to a Voluntary Negotiated Agreement or Notice of Mandatory Operation must be robust and transparent. Key information pertaining to these aspects of the framework must be published.

The consultation paper privileges the rights generators to keep 'competitive and commercially sensitive information' private over the rights of consumers. It is consumers money which is being used to subsidise the generator. That is, consumers are indirectly purchasing a service from the generator. Consumers have a right to adequate information to assess the need for, value and efficiency of the service generators are to provide to them.

We understand the inherent preference for confidentiality is done with the aim of maximising the scope for the generator in question to continue operating profitably in the market, and so (in theory) minimising the amount of compensation required from the OEMF to make the generator whole. This aim is mistaken. The aim should be to pay as little as possible to have the generator operate as little as possible, until adequate new generation and storage is brought online.

Any utilisation of the OEMF would, by definition, occur both outside of the market and after the commercial life of the asset. The generator does not require a commercial premium to be made whole. Rather, the costs of remaining operational and generating as required are the only costs which need to be covered.

In this context a simpler solution would be for the government to acquire the asset, mandatorily, from the day of retirement for zero dollars. They could then directly cover the costs of upkeep, insurance, and generation, and mothball the asset until it is needed during periods of high demand (being those where potential shortfall was identified).

This would ensure that asset-owners had no capacity to derisk the end-life of their generators and that consumers paid no more than necessary for the reliability benefits afforded by keeping the assets operational. It would also minimise the market distortions outlined in section 2.4,

above. Again, we reiterate that we do not consider such a response necessary, but regard it as preferable to proceeding with the mechanism as proposed.

3.5 Jurisdictional ministers should have very limited scope to act

The proposed OEMF is ambiguous and provides excessive scope for Ministerial discretion. The obligations of the jurisdictional minister to acquire analysis from AEMO or the AER and/or to then comply with the advice they receive is ambiguous. As one example, in the Gateway Process, the jurisdictional minister *can* direct AEMO to conduct a System Needs Assessment to identify whether a generator bringing forward its closure date may lead to a system needs shortfall. Then, if the jurisdictional minister (not the advice from AEMO) believes that early closure will contribute to a system needs shortfall, they can trigger stage two of the Framework. That is, it is ambiguous as to whether the minister can proceed to stage two without consulting AEMO, and further ambiguous as to whether they can trigger stage regardless of advice from AEMO that it is not necessary.

This is not appropriate. There is no reason why the jurisdictional minister would be better placed than AEMO to make this assessment. There must be an obligation for the jurisdictional minister to seek advice from the most expert body (namely AEMO and the AER) where appropriate, and to follow the advice received.

In order to ensure that this happens, any advice sought by a jurisdictional minister from one of the market bodies should respond to clearly established, robust parameters, and be published.

3.6 The consideration of alternatives must be robust and transparent

The OEMF must only be a last resort, to be used where genuine need is demonstrated and all other options have been exhausted.

In order to ensure this, the analysis of alternative solutions to an identified need must be exhaustive. It must include measures such as investment in distributed energy resources and demand management, alongside directly funding or subsidising the entry of new storage or renewable generation, as well as combinations of these options.

The alternatives should be assessed using a set of robust (and consistent) criteria that is constructed before the framework is employed. These criteria should set out the trade-offs clearly and formulaically, for example between the increased costs of new generation and the benefits of the anticipated lifetime (and reduced emissions) of a new asset stretching far beyond the (extended) life of the retiring (emissions intensive) generator. These criteria should include and value impacts of each alternative on emissions. The development of the assessment criteria should be subject to further public consultation.

The process evaluating the alternative solutions, and the proposed Voluntary Negotiated Agreement, or the Notice of Mandatory Operation must be published. They should be available to the stakeholders whose approval is needed in order for a jurisdictional minister to enter a Voluntary Negotiated Agreement or Notice of Mandatory Operation.

3.7 Voluntary Negotiated Agreements are unlikely to minimise consumer costs

Given that, by definition, the OEMF is only triggered when there is a demonstrated system needs shortfall and no other solutions are possible beyond subsidising the generator to delay retirement, there is limited scope for the jurisdictional minister to negotiate or refuse demands made by the generator. As proposed, the OEMF notionally makes a number of steps to reduce the possibility of generators taking advantage of this situation. However, it is unlikely any generator would accept any agreement in which they received less than they would under a Notice of Mandatory Operation. Therefore, a Voluntary Agreement would only be likely where a generator secured agreement to a higher return than is necessary, in which case consumers would be paying more than necessary. From the perspective of the consumer, it is unlikely there will be any benefit from entering into a Voluntary Negotiated Agreement rather than a Notice of Mandatory Operation.

The proposed OEMF, in contrast to good regulatory and negotiation practice, aims to increase the discretion of the jurisdictional minister at every point. This is both inappropriate and likely to reduce effectiveness of the framework. Any OEMF should be redesigned in line with the aim of minimising, rather than maximising the discretion of the negotiator so as to maximise reference to, and promotion of, consumers' interests.

4. Conclusion

PIAC accepts there is some possibility of system needs shortfalls during the transition. This possibility may arise from the coincidence of delays to new generation coming online, delays in commissioning new transmission projects, and coal generators bringing forward their retirement dates due to increasingly uneconomic operation.

However, we contend the existing reliability and planning structures already in place are more than adequate to manage such eventualities. The consultation paper does not provide robust demonstration of additional risk and prosecute the case that the existing structures are inadequate. Nor does the consultation paper consider the implications of the new tool interacting with the exiting framework, and suggest changes to the existing structures beyond the addition of the new tool.

If indeed a strong case is made, and new measures are required to augment the existing reliability and planning structures, the OEMF is not the form these should take. The Institute for Energy Economics and Financial Analysis has suggested two alternative mechanisms:

- A competitive auction process to build upon the RERT and increase the existing stock of demand reduction and reserve supply, or
- The requirement for system significant generators to hold financial bonds with the federal government. These would be ceded in the event of a decision that results in the generator failing to provide agreed generation and security outputs (i.e. increasing the cost on these generators of system-impacting early retirement, rather than increasing the benefits of foregoing system-impacting early retirement).

These, alongside the obvious options of governments directly procuring new generation and storage or increasing incentives for new entry via financial underwriting, are preferable to the OEMF on the bases that they:

- (a) do not produce market distortions or undermine the integrity of the market, and
- (b) are not susceptible to being gamed by generators to de-risk the final stages of their assets.

We strongly recommend that implementation of the OEMF not proceed in its proposed form. More work should be done to consider the operation of the reliability framework as a whole, and ensure any new mechanisms do not impose unnecessary additional cost to consumers.

Continued engagement

We welcome the opportunity to meet with the AEMC and other stakeholders to discuss these issues in more depth. Please contact Michael Lynch at mlynch@piac.asn.au regarding any further follow up.