

4 December 2020

Alex Oeser
Senior Adviser
Australian Energy Market Commission

Submitted online



Dear Mr Oeser,

Submission to Financeability of ISP projects derogation

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit legal centre based in New South Wales. Established in 1982, PIAC tackles systemic issues that have a significant impact upon people 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 AEMC's consultation paper.

PIAC does not support the proposed rule changes

PIAC does not support the rule change proposals from TransGrid and ElectraNet. We do not consider the proponents have demonstrated their proposals are necessary, supported by consumer preferences or in the long-term interests of consumers.

PIAC also supports the AEMC decision to not expedite this process. Any change as substantial as the ones proposed here must be subject to thorough scrutiny and transparency.

The proposals significantly change the allocation of risks and costs

PIAC agrees with the AEMC that "risks should be borne by, or allocated to, parties who are in the best position to manage them." This rule change proposal shifts ISP project risk from the TNSP to consumers by requiring them to begin paying before any benefits are delivered and before the project is even commissioned. Consumers, unlike the TNSP or their investors, have very little ability to manage such risks and it is inappropriate for them to bear this risk. The proposal also amounts to accelerated depreciation – a concept that the AER has considered and rejected in several determinations previously as not being in the long-term interests of consumers.

PIAC also considers that costs are most fairly recovered on a beneficiary-pays basis with regards to who pays, where and when. The temporal aspect is most relevant here as bringing forward costs (including some before projects are even commissioned) will definitely increase consumer bills. It shifts costs to current consumers who will not receive the full benefits of the ISP project and effectively cross-subsidise future consumers who will not be exposed to the full costs.

Such a transfer of risks and costs would be a substantial change to the current arrangements and would require detailed, specific engagement to establish whether it is in the interests of consumers and in accordance with their preferences.

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Consumer engagement has been insufficient

PIAC is very concerned by the lack of specific, informed and quantitative consumer engagement conducted by TransGrid in the process of developing this rule change. Any substantial shift to the type and quantum of risks consumers are expected to bear must reflect consumer preferences and interests revealed through robust engagement with consumers and their advocates.

While network businesses, including TransGrid, have made improvements in their consumer engagement in general, we are disappointed that has been lacking in this case. PIAC, as a member of TransGrid's Advisory Council, was briefed on the proposal before it was lodged with the AEMC, but this was after the problem definition and many aspects of the proposed solution had been established, leaving little opportunity to influence the rule change proposal. Not only was this last minute, we understand this briefing was limited to a narrow selection of groups. This is closer to the 'inform' end of the IAP2 spectrum of engagement than 'collaborate' or 'empower'.

The counterfactual has not been well-established

PIAC is not convinced the proponents have made a convincing case that ISP projects would not be financed without the proposed derogation. At the AEMC's public forum on the financeability of ISP projects rule change,¹ TransGrid's spokesperson stated there is no evidence but we would have to take his word regarding investor preferences. Such anecdotal evidence is grossly insufficient to warrant a rule change or derogation.

Global investors make decisions based on a range of factors, of which credit ratings (either actual or those assumed by the regulator) is just one metric. Arguably global financial markets have long considered Australia's energy sector an attractive opportunity. Regulated businesses have made similar warnings over the years yet these fear have not come to fruition. We do not consider sufficient evidence has been put forward to suggest investors would be unwilling to back ISP projects under the current arrangements.

Even if the proposals had merit, it would be premature to implement them now as there is no credible evidence established of a financeability problem. If the TNSP's current investors are unwilling to back ISP projects, the problem would be better solved by finding other investors rather than shifting risk and cost to consumers.

PIAC also notes that TransGrid and ElectraNet have both emphasised their modelled benefits for Project Energy Connect (PEC) in justifying this rule change (particularly at the AEMC's public forum). However:

- project benefits are, as noted by ElectraNet's spokesperson at the public forum, out of scope of the proposed rule change;
- the modelled benefits come with a great deal of uncertainty; and
- in any case, significant portions of the modelled benefits do not accrue to the consumers that will pay for them, for example, large bill reductions in SA will be paid for by NSW consumers. Given the cost blowout to \$1.9B for the NSW component of PEC, there is a real risk that NSW bills will never be lower on balance.

¹ AEMC public forum on the financeability of ISP projects rule change, held via webinar on 26 November 2020.

There are broader challenges to delivering ISP projects

Like the AEMC, PIAC considers risk is most efficiently allocated to those best parties placed to manage them. Further, we consider costs are best recovered on a beneficiary-pays basis such that costs are recovered from those parties who directly receive the benefits of the investment.

However, the current regulatory framework was not designed for the unique characteristics of ISP projects. They are also driven by different types of benefits that accrue to a range of parties across multiple jurisdictions. Current risk allocation and cost recovery approaches can be inappropriate for ISP projects. Some of the issues raised by the proponents of this rule change and other stakeholders highlight this fact.

PIAC considers that pursuing derogations from the Rules without considering the need for complementary changes risks creating unintended consequences. For instance, an important feature underlying many aspects of network regulation is that, while there may be small deviations or mismatches in particular aspects or from year to year, there is no inherent structural bias (i.e. swings and roundabouts).

Seeking derogations for some projects or some aspects of regulated settings can cause a ratcheting of costs for consumers. Further, it can undermine certainty for stakeholders and investors regarding the treatment of future ISP and even non-ISP transmission projects as other network businesses may seek similar, ad hoc derogations. None of these outcomes would contribute to meeting the long-term interests of consumers.

Continued engagement

PIAC would welcome the opportunity to meet with the AEMC and other stakeholders to discuss these issues in more depth.

Yours sincerely,

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