18 March 2021

Claire Rozyn
Market Specialist
Australian Energy Market Commission

Submitted online

Dear Ms Rozyn,

Submission to Financeability of ISP projects derogation draft determination

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 supports no derogation being made

PIAC strongly supports the AEMC's decision not to make a derogation and supports the conclusions that:

- There are sufficient options available within the current regulatory framework to allow networks to recover efficient financing costs;
- The proposed derogation would inappropriately transfer risk from TransGrid to consumers;
- The proposed derogation would inefficiently bring forward costs to current consumers, substantially increasing costs to consumers in the near- to medium-term; and
- The proposed derogation would weaken incentives to deliver projects on time and would provide an unfair advantage to TransGrid above other proponents and similar projects.

The proposal would 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 proposed derogation would shift ISP project risk away from the Transmission Network Service Providers (TNSP) to consumers by requiring them to begin paying before any benefits are delivered. Unlike the TNSP or their investors, consumers have little ability to manage such risks and it is inappropriate for them to bear this risk.

The proposal would also amount to accelerated depreciation – a concept the AER considered and rejected previously in several determinations as not being the 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 cost recovery will definitely increase consumer bills. It shifts costs to current consumers who will not receive the full benefits of the ISP project and

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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.

Consumer engagement has been insufficient

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. As we noted in our previous submission, 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.

There is no demonstrated regulatory barrier to financing ISP projects

As the AEMC has noted, there is no evidence of a regulatory barrier to TNSPs recovering efficient financing costs for ISP projects. PIAC agrees there are a range of options within the current Rules framework that could be used to address financeability issues should they arise.

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. PIAC agrees with the AEMC's consultant analysis where:

> CEPA observed market evidence of significant funding options available in the market. This was supported by observations that networks in Australia had gained substantial debt and equity financing in 2020, fully anticipating the ISP investments would be made without a rule change.[1]

PIAC also notes that TransGrid and ElectraNet have both emphasised their modelled benefits for Project Energy Connect 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, there is a real risk that NSW bills will never be lower on balance.

Addressing the challenges to delivering ISP projects

PIAC welcomes the AEMC and other market bodies commencing a broader review to consider these matters to consider matters of financing, regulation and governance more holistically and with appropriate time to fully explore the issues and implications for consumers. Such a review is timely and far more appropriate than pursuing ad hoc derogations on project-specific issues

1 AEMC, *Information sheet on Draft determination on TransGrid's financeability participant derogation*, February 2021, 2.

which risks creating ratcheting costs for consumers as well as undermining certainty and confidence for stakeholders.

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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