

# Transmission Planning and Investment Review – Contestability Options Paper

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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 *Transmission Planning and Investment Review – Contestability Options Paper* (the Options Paper). We recognise the need for a regulatory framework that both supports the timely and efficient delivery of major transmission projects and ensures these investments are in the long-term interests of consumers.

If appropriately implemented, contestability could provide a proportionate response to the risk of late or non-delivery of major transmission projects. Moreover, increased contestability in the provision of certain transmission activities could provide an avenue to more equitably share the costs and risks associated with the delivery of these projects. We outline what these models of contestability might look like below.

We look forward to continued engagement with the Commission on the Transmission Planning and Investment Review and welcome the opportunity to discuss these matters further.

## **2. Contestability strawperson models**

PIAC considers a variation on Strawperson Model 1 (SM1) most likely to deliver net benefits to consumers. We depart from SM1 in separating the ‘finance and own’ component into its constituent parts. We propose that SM1 consider contestability for either ‘financing and construction’ or ‘financing’ only and that in most cases ownership remain with the Primary Transmission Network Service Provider (PTNSP).

While our variation allows jurisdictional bodies to share responsibility for planning, engagement, and preparatory activities with the PTNSP as in SM1 it does not require their involvement in these processes. We submit that concerns around creating a ‘level playing field between PTNSPs and other contestable bidders’ can be addressed in a simpler manner than that outlined in SM1. We outline this approach in Section 4.

### **2.1 Construction**

We support the proposal for bidders to compete to construct the assets required to deliver a solution identified and selected through the current planning process. As part of this process the successful tenderer would be responsible for:

- Undertaking detailed design and route selection
- Acquiring land, consents, and approvals
- Constructing assets

We consider it appropriate for the PTNSP to consider non-network solutions and alternatives to be used to meet the functional specification of the assets tendered. We agree with the Commission that where such non-network solutions are adopted the PTNSP should be responsible for contracting with non-network providers.

We consider it appropriate for the PTNSP, as the prescribed transmission service, to be responsible for the construction of network interface works connecting the new assets to the existing network.

## **2.2 Finance and own**

We consider it necessary to separate the functions of financing and ownership. This is because the most efficient party to own and operate the network asset is almost always the PTNSP.

Contestability in finance is most likely to deliver the greatest net benefit to consumers as it promises to avoid introducing new risk into the normal rate of return. We propose that SM1 be amended such that contestable provision is limited to either 'financing and construction' or just 'financing' of the network asset.

### ***Recommendation 1***

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*Amend SM1 to separate the functions of financing and ownership. Contestability under SM1 should be limited to either 'financing and construction' or 'financing only'.*

Under these variants, the selected tenderer could 'gift' the asset to the relevant PTNSP once it is constructed. To ensure this approach fits existing cost recovery arrangements, the PTNSP acquiring the asset would receive it with a regulatory asset base (RAB) value of zero.

## **3. Assessment framework for the contestability workstream**

PIAC supports the Commission's assessment criteria on the contestability workstream. We consider the six criteria of timeliness, efficiency, flexibility, accountability and transparency, implementation, and decarbonisation broadly appropriate to inform decision making.

As regards the trade-offs between these criteria we acknowledge the Commission's need to balance the demands of implementation and flexibility. We accept the importance of 'developing clear and predictable regulatory frameworks that are capable of adjusting to changing market circumstances' and accommodating uncertainty around future technological, policy, and other changes.

PIAC does not consider it appropriate to pursue flexibility for its own sake, however. It is important that the desire for flexibility not undermine more prescriptive approaches that may be better fit-for-purpose. In this sense, we encourage the Commission to consider flexibility in terms of 'efficacy of implementation' or 'overall appropriateness' of a contestability model.

### ***Recommendation 2***

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*Flexibility trade-offs should include considerations for efficacy and appropriateness. Trade-off between the flexibility and implementation criteria should include considerations for the 'efficacy of implementation' or 'overall appropriateness' of a contestability model.*

## 4. Identifying projects suitable for contestable delivery

PIAC shares the view that not all major transmission projects will be suitable to competitive delivery. We acknowledge that PTNSPs are likely to have advantages in delivering certain transmission projects, such as those highly meshed with the existing network or which involve replacement or refurbishment of existing assets. These projects are unlikely to be attractive to potential investors and may not create the competitive tension required to drive efficient bids.

We note that SM1 involves modifying the current planning process so that jurisdictional bodies—like EnergyCo in New South Wales or VicGrid in Victoria—have the discretion to adopt the competitive procurement process for a major transmission project or have the project delivered by the PTNSP under the current non-contestable arrangements.

Rather than have a jurisdictional body mediate this process we propose that the PTNSP be offered first choice to deliver the project at the regulated rate of return. Should they refuse, the project would be made contestable. In order to ensure that PTNSPs do not abuse this right we propose that a materially higher risk profile be a precondition of the PTNSP refusing to build a project at the regulated rate of return.

Should the project become contestable the tenderer with the lowest bid rate of return would be selected to deliver the project. Conversely, any project that the PTNSP is willing to build at the regulated rate of return should be delivered under non-contestable arrangements.

### **Recommendation 3**

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*Address contestability concerns through providing a PTNSP ‘right to refuse’. Offer PTNSPs the ‘right to refuse’ to deliver a project at the regulated rate of return on the condition that the project has a materially higher risk profile and use this mechanism as a trigger for the competitive procurement process.*

We note that this approach may not be appropriate for strawperson models that apply contestability considerations to a broader range of activities.