

Submission to the AEMC Transmission Planning and Investment - Stage 2 Draft Report

14 July 2022

Public Interest Advocacy Centre
ABN 77 002 773 524
www.piac.asn.au

Gadigal Country
Level 5, 175 Liverpool St
Sydney NSW 2000
Phone +61 2 8898 6500
Fax +61 2 8898 6555

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.

Contact

Jan Kucic-Riker
Public Interest Advocacy Centre
Level 5, 175 Liverpool St
Sydney NSW 2000

T: 02 8898 6525

E: jkucicriker@piac.asn.au

Website: www.piac.asn.au



Public Interest Advocacy Centre



@PIACnews

The Public Interest Advocacy Centre office is located on the land of the Gadigal of the Eora Nation.

Contents

- 1. **Introduction** 1
- 2. **Addressing future financeability concerns** 1
- 3. **Supporting social licence activities** 2
 - Preparatory activities and the revenue determination process..... 3
 - Costs assessed in the RIT-T and recovered under the contingent project application (CPA) process 3
 - Cost pass-through mechanism and unexpected or unavoidable costs 4
- 4. **Cost recovery of planning activities** 4
- 5. **Improving the workability of the feedback loop** 5

1. Introduction

PIAC welcomes the opportunity to respond to the Draft, *Transmission Planning and Investment Review – Stage 2* (the Draft Report). We agree with the overall objective of the review to ensure the timely and efficient delivery of the major transmission projects required to achieve our net zero target.

PIAC considers a fast and orderly transition of the energy system is in the long-term interests of consumers. We are focused on ensuring this transition occurs fairly, efficiently and at least cost. Over coming decades significant new network investment will be required to bring about the transition. It is critical this investment is subject to a robust, transparent and fit-for-purpose regulatory regime that ensures it is in the consumer interest and does not burden them with costs they do not benefit from and risks they cannot manage.

We remain concerned that existing arrangements do not support appropriately funding transmission infrastructure where the primary beneficiaries are new generators. They also do not support efficient NEM-wide investment as costs for interregional transmission cannot be fully allocated to the beneficiaries. The result is inefficient transmission investment, leaving consumers with unfair and unmanageable costs and risks and slowing the deployment of renewables. The continued failure to address these matter exacerbates these issues.

Stakeholders, particularly consumer advocates, continue to call for market bodies to address the lack of provisions requiring generators to contribute to the costs of new shared transmission. PIAC asks the AEMC to consider these matters as part of this review, or identify where they will consider these issues, as a matter of urgency.

We note that the Commission has focussed its thoughts on four reform aspects in the Draft Report:

- Financeability concerns;
- Social licence concerns;
- Cost recovery arrangements for planning activities; and
- Improving the workability of the feedback loop.

We comment on each reform area in more detail 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. Addressing future financeability concerns

PIAC does not support the proposal to vary the depreciation profile for actionable ISP projects.

We are concerned that the proposed adjustments to depreciation rates 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. Changes to depreciation should only be

made in a manner that is consistent with utilisation. That is, if straight line depreciation is not used, then the depreciation curve should be aligned with the level of utilisation. For ISP projects, this entails recovering little or no cost from consumers until a project is fully commissioned.

PIAC acknowledges the importance of timely and efficient infrastructure investment and shares the Commission's concerns around the impact of the proposed financeability changes on intergenerational equity. PIAC considers that costs are most fairly recovered on a beneficiary-pays basis with regards to who pays, where and when. Bringing forward cost recovery will not only increase consumer bills overall but shift 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.

PIAC recognises that the rapid pace of transition may create uncertainty in the timing of transmission needs and that some financeability issues may arise from incompatibility of risk tolerance, return expectations, and access to funds of current TNSP investors with the return and risk profiles, and scale, of ISP projects. These should be addressed with contestability-based solutions rather than by adjusting returns (using depreciation or rate of return mechanisms) for incumbent TNSPs.

While we acknowledge the need for frameworks that facilitate private investment, we draw attention to recent plans seeking to leverage public investment in transmission. Amongst these is the Federal Government's *Rewiring the Nation*¹ policy that sets aside \$20 billion for the construction of new transmission infrastructure and the NSW Government's \$1.2 billion plan to fast track the development of new transmission and energy storage through its Transmission Acceleration Facility². In light of these plans, we suggest a more productive approach to addressing financeability concerns may be for the Commission and the AER to provide advice to the Commonwealth and State Governments on how the existing regulatory framework can facilitate these investments while ensuring rigour around any costs that will ultimately be recovered from consumers.

3. Supporting social licence activities

PIAC supports the Commission's draft position recognising the importance and urgency of securing social licence in enabling the energy transformation and agrees that existing cost recovery mechanisms and regulatory obligations are largely appropriate.

PIAC notes that in defining social licence the Commission should consider not only 'community acceptance' but 'consumer acceptance' of major transmission projects. The interests of consumers must be taken into account in social licence considerations, particularly for major projects, given the significant socialised costs of these works. PIAC recognises tensions may arise between the interests of a specific community and those of the broader NSW community and urges the Commission, other market bodies, and transmission businesses to consider both cohorts in decisions on social licence rather than limiting concerns to only those of the former.

¹ See https://alp.org.au/policies/rewiring_the_nation

² See <https://nswliberal.org.au/Shared-Content/News/2022/Fast-tracking-renewable-energy-zones>

PIAC believes that communities, landowners, and consumers must be at the centre of social licence processes and agrees that the quality of stakeholder engagement could be improved by:

- tailoring engagement to meet community needs
- involving stakeholders more and providing greater transparency around decisions, and
- improving the timing of stakeholder engagement, bringing it forward where possible so that stakeholders can engage more effectively.

We commend those TNSPs that are taking genuine action to improve their engagement efforts and point to the guidance set out in the AER's *Better Resets Handbook* and the International Association for Public Participation (IAP2) Spectrum to further refine these processes and shift engagement from "inform, consult, or involve" to active collaboration with and empowerment of local communities.

Preparatory activities and the revenue determination process

While PIAC supports bringing forward stakeholder engagement activities as a means of securing social licence and providing stakeholders with greater influence over project direction, we reject calls for the earlier recovery of the costs associated with these activities. Although PIAC considers the existing framework fit for purpose, we acknowledge that more could be done to integrate different jurisdictional policies and state planning processes under the National Electricity Rules (NER).

PIAC encourages the Commission to continue to improve clarity on the cost recovery of social licence activities in order to foster a consistent approach across the NEM and to push project proponents to adopt best practice principles.

Costs assessed in the RIT-T and recovered under the contingent project application (CPA) process

PIAC acknowledges that the overlap of jurisdictional instruments and NER guidelines complicates decisions regarding the amount of compensation impacted parties receive and makes estimating efficient costs challenging. PIAC suggests that the Commission provide further clarity as to how it assesses 'efficient costs' to assist TNSPs with developing cost estimates under the contingent project application process and to provide greater certainty about the nature and extent of social licence costs that can be recovered.

PIAC considers that the approach to landowner compensation taken by wind farm generators sets a useful precedent and could provide lessons to guide TNSPs in earning social licence for major transmission projects. To promote the acceptability of such works PIAC encourages TNSPs to negotiate compensation arrangements not just with landowners but local communities that are impacted by these projects. These efforts may also include extending existing community development and partnership programs, and sharing benefits with landowners that do not host the infrastructure but are in close proximity to those that do. PIAC agrees that negotiated settlements to acquire necessary property and easements are preferable to compulsory acquisition but remains concerned about the potential for NSW consumers to bear costs above market price for such negotiated outcomes.

Determinations around how compensation agreements are negotiated and who is eligible for compensation should be the subject of the regulatory reset process where community preferences and interests can be clearly established and balanced with those of consumers.

Cost pass-through mechanism and unexpected or unavoidable costs

PIAC shares the Commission's view that costs incurred as a result of changes to route alignment and/or planning processes, while not insignificant, are not appropriate to treat as pass-through. The Commission highlights that TNSPs are well positioned to manage the uncertainty associated with such changes given that:

- Risks of this nature can be quantified, and should be managed as part of the risk allowance for major transmission projects
- Uncertainty of these costs could be managed through the staged CPA process (such as earlier and improved engagement with potentially impacted communities).

PIAC believes these mechanisms provide TNSPs with sufficient flexibility to recover unexpected or unavoidable costs.

4. Cost recovery of planning activities

PIAC supports the Commission's effort to reduce uncertainty around how different types of planning activities are distinguished and how the associated costs are recovered. We agree that current arrangements could create confusion over whether certain planning activities fall into the category of preparatory activities or early works, or both. We note the Commission's intention to give effect to these changes by:

- amending the definition of 'preparatory activities' in the NER to further clarify that their purpose is to inform the selection of a preferred option.
- removing the term 'early works' from AER and AEMO documentation and replacing it with consistent language that characterises activities as either preparatory or not, based on their purpose. That is, whether an activity relates to the selection of a preferred option (in which case it is a preparatory activity) or delivery of a preferred option (in which case it is not a preparatory activity).

We support the Commission's proposal to distinguish between preparatory activities and early works through:

- Clarifying, through amending the definition in the NER, that expenditure on preparatory activities relates to the selection and identification of the preferred option.
- Clarifying that expenditure relating to the delivery of the preferred option is recovered through the CPA process, as is the intention under existing rules.
- Removing use of the term 'early works', which would no longer be required.

PIAC supports the Commission's recommendation that the cost pass-through materiality threshold continue to apply to preparatory activities as there is no reason for these activities to be treated any differently from other pass-through events.

We also note our opposition to consumers funding preparatory activities as some of these projects inevitably do not go ahead, meaning they are costs with no benefit. Accordingly, we draw attention to the potential for expanding the role of government in funding these activities. This would have the benefit of bringing forward preparatory activities and providing more time for community engagement. Moreover, having the government play a larger role in planning would remove incentives for network businesses to overinflate the benefits and underestimate the costs of these projects.

5. Improving the workability of the feedback loop

PIAC agrees with the Commission that aligning feedback loop assessments with a draft or final ISP will improve workability. We support Commission's draft recommendation to implement a feedback loop and project assessment conclusions report (PACR) exclusion window between the final inputs, assumptions and scenarios report (IASR) and draft integrated system plan (ISP) as this will ensure that projects are assessed against the latest IASR and ISP optimal development path. PIAC supports the Commission's recommendation to give effect to this window through amending the AER's Cost Benefit Analysis (CBA) Guidelines.