Public Interest Advocacy Centre

Pipeline regulatory determinations and elections guide

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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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Public Interest Advocacy Centre

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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 Australian Energy Regulator's (AER) Pipeline Regulatory Determinations and Elections Guide (the Guide).

We support the AERs role reviewing the level of regulation applying to gas pipelines operating in Eastern Australia. Reviews of pipeline regulation should be carefully targeted with stringent guidelines and high evidentiary requirements, particularly in the case of pipeline reclassifications, which carry higher risks for end users. PIAC recommends the AER guidelines for these reviews focus on likely outcomes for consumers, rather than more theoretical assessments of the exercise of market power.

Self-initiated reviews should serve to promote competitive pricing and ensure risks associated with pipeline investment are appropriately managed by those best placed to do so, and that unreasonable costs and risks are not transferred to consumers. In the following sections, we outline the need for a greater focus on consumers experiencing vulnerability or disadvantage, the issues associated with substitutes and demand for pipeline services across consumers classes, and general considerations to inform the AER's approach to assessing form of regulation determinations.

2. Self-initiated pipeline determinations should provide additional consideration for consumers experiencing vulnerability or disadvantage

The AER may initiate a form of regulation review for a pipeline without an application. As part of this review, the AER may either increase or decrease the level of regulation of a gas pipeline where the existing level of regulation may not be appropriate. For example, the AER may initiate a review of a non-scheme pipeline where there is evidence to that a service provider or may be exercising market power in a way that impacts costs for consumers.

The reasons for a form of regulation determination will differ. However, the consideration of the AER should have regard to outcomes for consumers, rather than assumed benefits or impacts. For instance, we question the assumption that material cost-savings are lilkey to result from reclassifying existing scheme pipelines (particularly with regards to distribution pipelines serving end-users) simply through a reduction in the 'cost of regulation'. More importantly, such reclassifications are likely to disproportionately and negatively impact consumers experiencing vulnerability or disadvantage given they have fewer means to mitigate the impacts of changes to the level of expected services, reliability, or the affordability of prices.

Consumers do not have an equal capacity to reduce dependence on gas, particularly in the short term. As such, we caution against assumptions of gas substitutability and recommend special consideration be given to consumers experiencing vulnerability or disadvantage in any reclassification decisions which are likely to materially impact consumers.

3. Form of regulation determinations should focus on outcomes for end users

As part of the regulatory determination test the AER must consider the costs end users are likely to incur under different forms of regulation. While the Guide states the AER 'will also consider any other burdens which may be felt by end users under the two forms of regulation' it does not specify what these burdens might be. We recommend that this include consideration of the risks to end users associated with full regulation, particularly in processes considering more stringent regulation. For example, 'other burdens' should include the risks consumers assume in guaranteeing a return for a regulated pipeline where the continued existence or operation of the pipeline may be increasingly uncertain. Where a pipeline is already regulated, this risk is established. However a process to consider new regulation of an existing pipeline should consider the shift in share of risk and the impact on end consumers which may result from a change.

Similar considerations apply to the form of regulation factors as they relate to 'countervailing market power' and 'substitutes and elasticity of demand'. These factors should account for the limitations end users face in switching away from a gas service. Just because it is technically possible for households to get off gas does not mean it is feasible to do so. Put differently, the elasticity of demand for gas services varies across consumer classes, particularly in the short-medium term. Since the role of gas is set to decline over the next decade, the consumers least able to switch are at greatest risk of experiencing entrenched disadvantage from reclassification decisions given costs will increasingly be recovered from a smaller pool of users. The AER should explcility consider these issues and the impacts on various consumer classes, as part of any reclassification process.

4. Different considerations should guide regulatory decisionmaking on distribution and transmission pipelines

Our general view is that existing distribution pipelines should remain at their current level of regulation, at least in the medium-term. We consider full regulation better suited to existing distribution pipelines due to the inability of most consumers to mitigate their costs, choose alternatives, or otherwise discipline market actors. Retailers and other users have little incentive to negotiate lower prices for distribution pipeline services since they pass these costs through to consumers. Given retailers cannot negotiate individual prices, extracting such concessions is of little value to them since they do not confer a competitive advantage.

We however caution against reclassifying existing non-scheme distribution pipelines given such changes stand to shift long-term costs and/or risks onto consumers by potentially inflating the regulated asset base (RAB) of pipeline service providers. Furthermore, access obligations and competitive safeguards are less applicable to distribution pipelines since providers have an inherent incentive to promote access to their pipeline.

Transmission pipelines raise a different set of concerns and should be treated accordingly. Our general view is that transmission pipelines (and newly commissioned transmission pipelines in particular) should be lightly regulated. We consider light regulation better suited to transmission pipelines due to the greater scope and incentive for retailers and other users to negotiate agreements around transmission pipeline services. In contrast to distribution pipeline services organised around retail contracts, transmission pipeline services tend to be linked to shipping and volumetric purchase agreements. These arrangements typically involve larger parties that are better equipped and incentivised to negotiate price and non-price terms given such concessions stand to reduce their underlying costs.

Full regulation of transmission pipelines raises similar issues related to RAB value and the transfer of long-term risk to end users. We do not consider it appropriate for gas consumers to carry the risk of asset stranding and view the inherent incentive for transmission pipeline service providers to facilitate ongoing use of their asset as mitigating the potential need for full regulation. The AER should accordinaly set a very high bar for any reclassification of transmission pipleines to ensure consumers are not not effectively assuming an unreasonable level of cost and future risk as a result.

5. Further engagement

PIAC would welcome the opportunity to discuss these matters further with the AER and other stakeholders. If you have any queries about this submission or would like more information about our advocacy and research work, please contact Douglas McCloskey, Program Director, Energy and Water at dmccloskey@piac.asn.au