

AER guidance on amended National Energy Objectives

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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

Michael Lynch
Public Interest Advocacy Centre
Level 5, 175 Liverpool St
Sydney NSW 2000

E: mlynch@piac.asn.au

Website: www.piac.asn.au



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 AER guidance on applying an emissions objective to processes under way when the amendments take effect.

The intent of the authors of the Bill amending the national energy objectives (NEO) is clearly that it be applied to regulatory processes as soon as is reasonably possible. This intent, and the urgency of the emissions reduction task and achieving deep emissions by 2030, dictates that the starting assumption must be that the AER applies the amended NEO to all processes underway. Any exemption to this assumption should require the AER to demonstrate this is reasonable.

PIAC supports the direction that the amended NEO applies to a ‘relevant revenue determination’ from the date of the commencement of the amendments to the National Electricity Law (NEL).¹ This includes the revenue determinations for Ausgrid, Endeavour Energy, Essential Energy, Evoenergy, TasNetworks Distribution, TasNetworks Transmission and Power and Water Corporation (NT). PIAC provides comments below in section 3 on the AER proposed guidance on how it is likely to consider or apply the amended objective in respect of a ‘relevant revenue determination’.

2. AER’s Guidance on whether to apply the amended energy objectives

2.1 Matters to which the AER is likely to have regard

The list of considerations in section 2.1 of the guidance is extensive.

We are concerned that some of these considerations suggest the AER intends to take a proponent- or stakeholder-led approach to implementing the amendment of the NEO.

We are particularly concerned about considerations of the ‘readiness and willingness of relevant parties to take steps to meet relevant government targets or otherwise achieve emissions reduction outcomes’ and the ‘readiness of relevant parties to have the emissions reduction element of the objectives applied as part of the AER’s decision-making process’. The approach in these considerations is not appropriate and does not conform to the intent of the Bill. It is also poor regulatory practice. Some proponents, who are both ready and willing to engage with the changed regulatory conditions, will face different treatment from those who are not.

We are also concerned that the guidelines propose the ‘materiality’, and the ‘likelihood’ of a long-term impact as considerations in applying the amended NEO. These criteria suggest the AER will prejudge the impact of applying the amended NEO and whether emissions reduction can be realised.

The starting assumptions for all processes underway should be that the amended objectives will impact the AER’s decision-making and the amended NEO will be applied in all instances. The bar

¹ See amended NEL s 39(3) as set out in the *National Energy Laws Amendment (Emissions Reduction Objectives) Bill 2022* (the Bill)

to exempt a process from this should be relatively high. Any exemption could also apply to a specific part of a proposal, not the proposal as a whole.

3. Quantifying emissions reductions and their value

3.1 The value of emissions reduction

We are aware that the VER is being developed by the Commonwealth Government. Given the importance of this metric or guidance, and the short time frame for implementing it, we are extremely concerned that no consultation process has been initiated.

As noted in the Guidance, the Bill provides for the possibility of the AER developing its own metric or method of working out a value for the VER. We consider the following principles relevant to the design of any VER, whether an interim measure derived by the AER or the enduring measure to be developed subsequently. A well-designed VER must:

- Be set high enough to create meaningful emissions reductions. The VER must be set following close examination of the emissions reduction pathway required by the energy sector. It must be able to achieve a percentage of emissions reduction by 2030 as well as ensure the total emissions between now and 2030 do not exceed the Australian Nationally Determined Contributions (NDC) commitment to a maximum of 4381 CO₂ equivalent emissions in the period 2021 to 2030.
- Include a weighting of emissions reductions such that avoidance and reduction are valued over the use of offsets.
- Weight emissions reductions according to when they occur. That is, the greater value of earlier emissions must be recognised, and the rate of discount should be substantial.
- Be revised annually and adjusted to ensure that the emissions pathway remains viable to meet the total allowable maximum emissions.

A process to consult on and determine the form of the VER must be initiated as soon as possible. Participants anticipating final revenue determinations in April 2024 need to adjust their proposals in light of the amended objective which leaves no time for delay. Knowing the form of the VER would allow participants some capacity to begin preparing the alterations to their revenue proposals. The form is derived primarily from principles and could reasonably be confirmed relatively quickly. The actual value(s) in the VER, which must be derived from the emissions reductions commitments made by the relevant governments and could be a more complicated technical task, could then be released at a later date.

3.2 Estimating the emissions reduction impacts of investments

To be applied, the VER will need to be accompanied by a clear, transparent, and robust guidance to participants on how to estimate the emissions reductions (or increases) which result from their investments.

We are aware that guidance on this is being developed by the AEMC in conjunction with the Commonwealth Government. The AER has given no indication it intends to produce transitional

guidance on this for processes already under way at the time the amendments take effect. We will comment on this when consultation for that work is opened. However, it will not be sufficient to leave market participants responsible for developing their own methodologies to calculate the emission reductions associated with proposed projects or programs.

4. A streamlined approach to updating AER guidance

It is reasonable to consolidate consultation on updates to the AER guidance incorporating emissions reduction. This will allow for expedited implementation of the amended NEO and incorporation of the emission reduction criteria.

However, it is important to prioritise amendment of guidelines which relate to the current consequential rule change proposals concerning network planning and investment. For example, changes to the Cost Benefit Assessment Guidelines must be prioritised. This will allow the current rule change amendments being considered by the AEMC, which the energy ministers have identified as priority amendments, to be effectively implemented as soon as possible.

The consolidated guideline consultation should also begin as soon as possible.

5. Continued engagement

We welcome the opportunity to meet with the AER and other stakeholders to discuss these issues in more depth. Please contact Michael Lynch at mlynch@piac.asn.au regarding any further follow up.