

Harmonising the national energy rules with the updated national energy objectives (gas and electricity)

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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 this opportunity to respond to the draft rule determination (the Draft) from the Australian Energy Market Commission (AEMC) on the harmonisation of the national energy rules with the updated national energy objectives. In this submission we are responding to the draft rule changes for both gas and electricity.

PIAC supports prioritising consequential rule changes concerning network planning, infrastructure spending and revenue determinations in the National Electricity Rules (NER) and National Gas Rules (NGR). We welcome the updated requirement to consider emissions reduction, alongside existing aspects of the long-term interests of consumers.

However, we continue to have concerns about the changes exacerbating the bias towards network options in the planning and regulatory approval systems. There is a risk that the addition of emissions reductions as a class of market benefit will inflate the benefits of potential projects in a way that privileges network over more efficient non-network options. We propose changes to strengthen the consideration of alternatives to expenditure on further network infrastructure.

While we understand the interim value of emissions reduction (VER) is out of scope for this consultation, we make recommendations on the VER here as it is relevant to the implementation and operation of the new emissions reduction objective.

2. PIAC supports the harmonisation of the NER and NGR with the updated objectives

PIAC commends the speed at which the updated objectives are being integrated into the rules.

It is important the updated objectives are applied to all investment decisions and revenue determinations as quickly as possible. The requirement for the updated objectives to be applied to revenue determinations and access arrangements that are currently in train is very welcome.

PIAC supports the proposed amendments in the Draft which together ensure that emissions reductions are considered in ISP planning, revenue determinations, and regulatory investment tests, for both opex and capex in electricity transmission and distribution services.

We also support the proposals in the Draft ensuring emissions reductions are considered for revenue determinations for both opex and capex in relation to gas services. In particular, we support the inclusion of the words 'in a manner that contributes to meeting emissions reduction targets' in rule 79(1)(a) and 91(1) as a way of ensuring impact on emissions reduction is considered in all new capital expenditure and operating expenditure proposals.

3. A distinction between the rules and their application

Changes to the NER and NGR are needed to require proponents to demonstrate expenditure will contribute to the achievement of emissions reductions targets in the most efficient way. This

requires that the consideration of emissions impacts is compulsory for all project proposals and that all available alternatives are considered in the planning and regulatory approval processes.

Importantly, the rule changes must be drafted in a way that acknowledges the existing biases in the application of the rules as they currently stand.

The intent of the Act

We highlight the intent of the legislators of the *Statutes Amendment (National Energy Laws) (Emissions Reduction Objectives) Act 2023* (South Australia) (the Act). This focuses on consideration of the achievement of specific emissions reduction targets by market bodies exercising their functions and powers.¹ The intent goes beyond the consideration of emissions reduction generally.

The NEO and NGO as amended also require consideration of the achievement of targets of participating jurisdictions.²

Finally, the NEL and NGL require that there is at a minimum, consideration of the achievement of specific targets which are set out in the AEMC targets statement.³

As detailed in the 2nd Reading Speeches and parliamentary debates introducing the Act, the intent was that the achievement of emissions reduction targets is to be considered by market bodies exercising their functions and powers in respect of *all* proposals, as opposed to allowing proponents to choose to include emissions considerations as a justification for expenditure.⁴

The risk of inflating project benefits and so causing inefficient investment

PIAC supports the addition of a VER to the cost benefit analyses (CBA) conducted in the integrated system plan (ISP), and regulatory investment tests for transmission and distribution (RIT-T and RIT-D). However, we are concerned that adding emissions reductions as a class of market benefit and leaving other regulatory settings broadly unchanged risks artificially inflating the benefits of network solutions and leading to inefficient investment.

Planning and regulatory processes currently implicitly privilege network options. The ISP is notionally a whole-of-system plan for the electricity system, but in practice it operates as a transmission development plan with augmentations.

AEMO has limited capacity or apparent inclination to conduct co-ordination of the transformations of both the supply and demand sides of the energy system, or assess decisions that may promote it. This is not necessarily due to the rules.

The NER already empowers AEMO to make recommendations on non-transmission options in the ISP. In their construction of the optimal development path, AEMO must ‘identify the

¹ 2nd Reading SA House of Assembly 14 June 2023, Hansard pp.4378-4379, 4381-4382; 2nd Reading SA Legislative Council 31 August 2023, Hansard pp.3544-3545.

² See s. 7, *National Electricity Law - schedule to the National Electricity (South Australia) Law 1996 (NEL)*; s. 23, *National Gas Law – schedule to the National Gas (South Australia) Law 2008 (NGL)*

³ s. 32A(5) NEL; s. 72(A(5) NGL.

⁴ SA House of Assembly 27 June 2023, Hansard p.4509.

actionable ISP projects, future ISP projects and ISP development opportunities'.⁵ The definitions of these three terms indicate that alternatives to transmission network connections should be considered.

Like the planner, project proponents are notionally required to consider all credible options to an identified problem in their RIT-Ts or RIT-Ds. However, project proponents (transmission and distribution service providers) are experts in network solutions and lack the expertise or strong incentive to adequately examine non-network options. In any case, project proponents are often not positioned to deliver non-network and demand-side solutions. Together, these result in a strong implicit bias towards network options.

If the emissions reduction objective is applied in CBAs as they currently stand – requiring the proponent to show that there is a net benefit from the perspective of consumers – it's likely the number of network solutions that pass the test will increase. Some marginal projects that would be considered inefficient under an unamended NEO would be considered efficient under an amended NEO. However, there may be non-network options which would be cheaper, able to be delivered sooner, and provide emissions reductions outcomes that are greater in volume or cost-efficiency. Instead of establishing net benefit alone, the proponent should need to demonstrate that the preferred option provides the greatest net benefit to consumers when compared to all credible options, and that this net benefit is positive.

More robust requirements for the assessment and justification of solutions on relative bases must accompany the addition of emissions reductions to the NEO to avoid the amended NEO leading to inefficient network build decisions. This should include strengthening AEMO's obligations in the rules to co-optimize investment in non-network options alongside network options in the recommendations that appear as outputs of the ISP.

With regard to CBAs conducted by proponents themselves, the rules should be drafted to acknowledge the biases of project proponents noted above. This implies increased rigour with respect to non-network options in the expectations set by the AER guidelines. Importantly, the onus to ensure that the assessments of all credible alternatives are thorough and robust must be placed on both the proponent and the AER.

Emissions reductions in relation to gas expenditure

The explicit requirement in the objectives to consider achieving emissions reductions targets alongside other long term consumer interests underlines the importance of proper consideration of all available solutions. It requires, for example, consideration of electrification as a more efficient, emissions-reducing alternative to continued gas network capex investment.

Capital expenditure on gas pipelines maintains or increases emissions rather than reduces them, given that both the transport and end use are both emissions intensive (and, increasingly, relatively more emissions intensive than an electric alternative). On this basis we propose the addition of a mechanism in the gas capital expenditure rules to assess the relative emissions

⁵ See also Clause 5.22.10(5)(i) NER. Note - the current cost benefit analysis used by AEMO in developing the optimal development pathway does not consider ISP development opportunities, and consequently these are weighed against transmission projects or an output from this CBA. See AEMO, ISP Methodology, June 2023, p.78; AER Cost benefit analysis guidelines: Guidelines to make the Integrated System Plan actionable, October 2023, section 3.3.

impact of the proposed capital expenditure. This should include a comparison against all other options to meet the needs of the relevant consumers, which may include options other than servicing those consumers with reticulated gas. The rules should allow for expenditure which contributes to achieving emissions reduction targets by contracting the network or preparing for decommissioning of the network.

Increasing the rigour of the AER's assessment of project proposals

The rule changes proposed do not address the increased need for robust assessment by the AER of whether spending remains justified, in the context of the required consideration of the achievement of emissions reduction targets.

The AER is required under the National Electricity Law (NEL) and National Gas Law (NGL) to consider the achievement of the NEO and NGL in exercising its functions, and has the power to decline approval for spending. The 2nd reading speeches in respect of the Act made clear the requirement on all market bodies including the AER to 'explicitly consider the achievement of emissions reduction targets alongside the existing components, when they use their respective powers and functions.'⁷

There will arise instances when investment in traditional poles and wires, and gas pipelines is not justifiable, relative to alternative investments. The rule changes should ensure that the AER have sufficient information on all the alternatives, and reliable emissions calculations for all options.

The AER in its decision making must consistently, on all proposals, assess whether approving expenditure will mean emissions and related targets (for example the achievement of 82% renewables in the NEM), will be met or missed. This will require accounting for the compound effect of its multiple spending approvals, as well as each instance of expenditure. Further, rule changes are needed to address this.

4. The interim VER must be high in order to drive meaningful emissions reduction

The VER must be high enough to drive meaningful emissions reduction in line with what is required by our targets and commitments. It will need to be revised on a regular basis to ensure it adjusts to progress (or lack of progress) in emissions reduction.

The addition of emissions reduction as a class of market benefit must be accompanied by a well-designed VER which:

- Is 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 not only be able to achieve a percentage of emissions reduction by 2030, but also ensure the total number of emissions between now and 2030 does not exceed the Australian NDC commitment to a maximum number of 4381 CO₂ equivalent emissions in the period 2021 to 2030,

⁷ 2nd Reading SA House of Assembly 14 June 2023, Hansard p.4378; 2nd Reading SA Legislative Council 31 August 2023, Hansard pp.3544-3545.

- Includes a weighting of emissions reductions such that avoidance and reduction are preferred over the use of offsets,
- Weights emissions reductions according to when they occur. That is, the greater value of earlier emissions should be recognised, and the rate of discount should be substantial, and
- Is annually revised and adjusted to ensure that the emissions pathway remains viable to meet the total allowable maximum emissions.

5. Continued engagement

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