

16 April 2012

Mr John Pierce  
Chair  
Australian Energy Market Commission  
PO Box A2449  
SYDNEY SOUTH NSW 1235



Your Ref: ERC0134

Dear Mr Pierce,

### **National Electricity Amendment (Economic Regulation of Network Service Providers) Rule 2012**

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit, law and policy organisation that works for a just and democratic society by taking strategic action on public interest issues. PIAC has, as a key area of work, energy and water policy. The Energy + Water Consumers' Advocacy Program (EWCAP) represents the interests of low-income and other residential consumers of electricity, gas and water in New South Wales.

PIAC welcomes the opportunity to provide comment on the Australian Energy Market Commission's (the Commission) directions paper, *Economic Regulation of Network Service Providers and Price and Revenue Regulation of Gas Services* (the directions paper). The directions paper outlines the Commission's initial consideration of the Australian Energy Regulator's (AER) proposed changes to the National Electricity Rules (NER) in relation to the economic regulation of network service providers (NSPs). This submission will focus on two aspects of the proposed rule change:

- an NSP's ability to make a submission on its own initial and revised regulatory proposal; and
- the classification of information from an NSP as confidential and the weight the AER can place on that content when it forms part of a regulatory proposal.

These are the same issues that PIAC addressed in its initial submission to the current rule change process.<sup>1</sup>

#### **NSP submissions on their own regulatory proposals**

PIAC believes that the NER should facilitate transparency and efficiency in the regulatory determination process and seek to prevent an NSP from withholding important information until it makes a submission on its own proposal. The Commission's directions paper accepts that there is a problem with 'the current regulatory determination process in that the process is not providing an opportunity for all stakeholders to effectively scrutinise material provided by the NSPs'.<sup>2</sup> The Commission discusses a number of options to address this problem, including creating a new consultation step in the regulatory process, extending phases of the process, or commencing earlier—and thereby extending—the process as a whole.

<sup>1</sup> PIAC, 2011, *Rule change proposal – Economic Regulation of Network Service Providers*, PIAC, Sydney.

<sup>2</sup> Ibid 129.

However, PIAC's view is that none of these approaches would overcome the problem of NSPs providing important information in submissions rather than proposals, meaning stakeholders such as PIAC have much less time to examine that information. The Commission also acknowledges that these options may be ineffective, stating that 'none of these options would necessarily discourage late submissions or revised regulatory proposals'.<sup>3</sup>

PIAC also sees problems with the fourth option proposed by the Commission—to delay the publication of the final regulatory determination until a specified number of days after the last material submission is received.<sup>4</sup> From PIAC's perspective, this approach would similarly not overcome the issue of NSPs providing important information in stages over the course of the process. Organisations such as PIAC generally need to engage external consultants to provide assistance on the more technical aspects of regulatory determinations, and have limited resources with which to do so. The gradual flow of important information from NSPs reduces the value of these submissions, as not all relevant information is available for a consultant to use when they are engaged at the submission stage of the regulatory determination process. One of the Commission's stated objectives for the regulatory determination process is that it provide an NSP and other stakeholders with a 'reasonable opportunity ... on an equal footing' to 'comment on and scrutinise material submitted by each party'.<sup>5</sup> Ensuring that an NSP submits all relevant information in its regulatory proposals, rather than in its submission on that proposal, would go some way to achieving this goal.

PIAC therefore continues to support changing the NER in line with the AER's proposal to restrict the scope for an NSP to make submissions on its own regulatory proposal.<sup>6</sup> PIAC believes that ensuring all relevant information is supplied by an NSP as early as possible would promote a more effective regulatory determination process through allowing the AER and all other stakeholders time for proper examination and comment. Given the Commission's acknowledgement that three of its options may be ineffective, as well as its statement that 'most other [non-NSP] stakeholders support the AER proposal',<sup>7</sup> PIAC urges the Commission to strongly endorse the option of restricting the scope of NSP submissions. This approach would be the most effective in promoting a regulatory determination process in which all stakeholders can meaningfully participate.

### **Confidentiality of content in regulatory proposals**

The second issue that PIAC wishes to comment on is NSPs claiming that aspects of their initial and revised regulatory proposals are confidential. The AER argued in its initial rule change proposal that allowing some information to be rendered confidential prevents other stakeholders from scrutinising and making informed comment on that content.<sup>8</sup> The AER has proposed changes to the NER that would put a greater onus on NSPs to identify (rather than 'indicate', the meaning of which the AER considers is unclear<sup>9</sup>) which parts of regulatory proposals are confidential, and allow the AER the same discretion in weighing the significance of the confidential information it currently has in relation to any confidential information contained in submissions.<sup>10</sup>

---

<sup>3</sup> Ibid 131.

<sup>4</sup> Ibid 130.

<sup>5</sup> AEMC, 2011, *Economic Regulation of Network Service Providers and Price and Revenue Regulation of Gas Services, Direction Paper*, AEMC, Sydney, 130.

<sup>6</sup> AER, 2011, *Economic regulation of transmission and distribution network service providers – AER's proposed changes to the National Electricity Rules*, AER, Melbourne, 88.

<sup>7</sup> AEMC, 2011, *Economic Regulation of Network Service Providers and Price and Revenue Regulation of Gas Services, Direction Paper*, AEMC, Sydney, 128.

<sup>8</sup> AER, 2011, *Economic regulation of transmission and distribution network service providers – AER's proposed changes to the National Electricity Rules*, AER, Melbourne, 90.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

The Commission states in its directions paper that ‘it is important that the probative value of as much of a NSP’s initial or revised regulatory proposal as possible is able to be tested with stakeholders’.<sup>11</sup> PIAC strongly endorses this position. As stated above, PIAC believes that ensuring all relevant information from NSPs is made available for examination and comment as early as possible is key to maximising the effectiveness of stakeholder engagement in the regulatory determination process.

PIAC accepts that NSPs may need to include a limited amount of confidential information in their regulatory proposal. However, PIAC also agrees with the Commission that ‘only relatively small parts of initial or revised regulatory proposals should be claimed to be commercially sensitive, and therefore confidential’.<sup>12</sup> The NER should therefore discourage NSPs as much as possible from making parts of their regulatory determination proposals confidential. PIAC’s view is that the most effective way of achieving this aim is to amend the NER to give the AER discretion in weighing the significance of any confidential information in an NSP’s initial or revised regulatory proposal. As stated in our previous submission, PIAC believes that this would create an incentive for an NSP to minimise the amount of information that is deemed confidential and therefore contribute to a more transparent process.<sup>13</sup> Such a change would also provide consistency between how the AER can weigh confidential information in regulatory proposals as compared with submissions on those proposals. PIAC considers such consistency to be an integral feature of best practice regulation.

Meaningful participation in network price determinations represents an opportunity for consumer advocates to have a real impact on the final price of electricity. Such participation is all the more important in light of the recent sharp price rises that have left an increasing number of consumers unable to pay their bills or having to make extremely troubling sacrifices in other areas of consumption in order to do so. PIAC supports the changes to the NER proposed by the AER in relation to both NSP submissions on their own regulatory proposals and the classification and consideration of confidential information in those proposals. PIAC believes that these changes would contribute to a regulatory framework that maximises the potential for consumer advocacy groups to promote and contribute to a fair outcome for all consumers.

Should you require and further information please, contact Oliver Derum, Policy Officer, via email ([oderum@piac.asn.au](mailto:oderum@piac.asn.au)) or telephone (02 8898 6518).

Yours sincerely



**Edward Santow**  
**Chief Executive Officer**  
Public Interest Advocacy Centre

Direct phone: +61 2 8898 6508  
E-mail: [esantow@piac.asn.au](mailto:esantow@piac.asn.au)

---

<sup>11</sup> AEMC, 2011, *Economic Regulation of Network Service Providers and Price and Revenue Regulation of Gas Services, Direction Paper*, AEMC, Sydney, 135.

<sup>12</sup> Ibid 136.

<sup>13</sup> PIAC, 2011, *Rule change proposal – Economic Regulation of Network Service Providers*, PIAC, Sydney, 2.