

16 August 2013



Mr Warwick Anderson
General Manager – Network Regulation
Australian Energy Regulator

By email: consumerengagement@aer.gov.au

Your Ref: 50305

Dear Mr Anderson

Draft Consumer Engagement Guideline for Network Service Providers

The Public Interest Advocacy Centre (PIAC) thanks the Australian Energy Regulator (AER) for the opportunity to provide comment on its Draft Consumer Engagement Guideline for Network Service Providers (the draft guideline). The draft guideline is being developed as part of the AER's Better Regulation program.

PIAC believes that consumers have a valuable contribution to make in informing the work of Network Service Providers (NSPs). To date, the level of consumer engagement undertaken by NSPs has generally been well below the level that would constitute meaningful participation. PIAC is hopeful that measures like the guideline, and the broader Better Regulation program, will lead to improvements in this area. Residential energy consumers are looking to NSPs to show evidence of a genuine shift in their internal culture regarding consumer engagement.

In broad terms, PIAC believes that the draft guideline will contribute to better consumer engagement, provided that NSPs actively support the spirit in which it is being developed. PIAC submits that it is extremely important that all NSPs display a sincere endeavour to reach a point where the views of consumers are genuinely informing decisions regarding network investment. To achieve this outcome, consumer engagement must become part of business as usual for NSPs, not merely a process that is undertaken in the lead up to a five-yearly regulatory price determination.

The draft guideline aims to 'give guidance on [the AER's] expectations of consumer engagement but is not binding on either gas or electricity service providers'.¹

In discussions with consumer organisations, the AER has also indicated that the guideline is an aspirational document, which details the sort of consumer engagement activities and outcomes that NSPs should be seeking to achieve.

As consumer engagement is new to many NSPs, PIAC accepts that it is unlikely that all NSPs will be able to immediately achieve the level of consumer

¹ AER, *Draft Consumer Engagement Guideline for Network Service Providers*, 2013, 5.

Level 7, 173-175 Phillip St
Sydney NSW 2000
DX 643 Sydney
Phone: 61 2 8898 6500
Fax: 61 2 8898 6555
www.piac.asn.au
ABN: 77 002 773 524

engagement desired by the AER, PIAC and other consumer organisations. However, PIAC expects all NSPs to use their best endeavours to undertake effective consumer engagement, regardless of their experience in doing so. In addition, PIAC submits that all NSPs should seek continuous improvement in their consumer engagement, even if they are starting from a relatively advanced position.

Given that the guideline is not binding, PIAC submits that the only obligation that NSPs have to genuinely engage with consumers comes from the fact that the quality of NSP efforts in this area 'will be a factor in how [the AER] assesses expenditure proposals'.² With this in mind, PIAC believes that there is merit in the AER's approach of not giving NSPs clearly-defined standards for consumer engagement, but rather assessing it on a case-by-case basis and retaining a degree of discretion in doing so. PIAC hopes that the AER will use this discretion to more heavily scrutinise any revenue proposals from NSPs that are not supported by high-quality consumer engagement. If this possibility exists, NSPs will be less likely to treat consumer engagement as simply a box-ticking exercise.

In addition to these general comments, PIAC wishes to address three key issues related to the draft guideline. These are: achieving quality consumer engagement through transparency; the resources necessary for effective consumer engagement; and, the timetable for reviewing the final guideline.

Achieving quality consumer engagement through transparency

While PIAC expects most NSPs to be genuine in their endeavours to engage with consumers, there remains a danger that some businesses will undertake engagement that suits their own purposes. Given the complexity of energy networks and network regulation, it would not be difficult for a focus group to be given information that leads them to support, for example, increased network investment to deliver more reliable supply. Similarly, a quotation from an individual consumer cannot necessarily be taken at face value in supporting a proposal from a DNSP—the context in which a comment is given is generally necessary to properly understand it.

It is extremely important that the results of any consumer engagement presented to the AER by NSPs can be properly scrutinised. The nature of the guideline means NSPs cannot be compelled to take any specific action. Nonetheless, PIAC argues that in the spirit of transparent consumer engagement, the final guideline should encourage NSPs to make underlying data and consultants' reports related to consumer engagement publicly available. This would allow consumer representatives and other stakeholders to understand the context of NSP statements regarding consumer preferences in their regulatory proposals or the consumer engagement that has informed them. This addition would represent a strengthening of the draft guideline, which states that NSPs are expected to 'credibly and openly report the input of all consumer cohorts, including positive and negative experiences and outcomes'.³ Making such information publicly available would also contribute to making engagement processes more accessible, which is one of the best practice principles outlined in the draft guideline.⁴

Recommendation 1

PIAC recommends that the final guideline encourage NSPs to make underlying data, consultant's reports and other information related to consumer engagement activities publicly available on their website.

² Ibid 13
³ Ibid 9
⁴ Ibid 8

Resources for consumer engagement

PIAC has advocated strongly for NSPs to increase their levels of consumer engagement. PIAC has argued that NSPs should be using consumer engagement to test assumptions related to their business activities with a range of stakeholders, including a diversity of residential consumer groups. While PIAC welcomes the moves to increase consumer engagement, which are being made across the energy market, consumer engagement processes that are truly in-depth and wide-ranging place significant demands on all participants. Many groups representing residential consumers, such as PIAC, are community organisations that rely on donations, government grants and project-based funding to undertake their activities. The draft guideline recognises this by stating that NSPs are expected to recognise that ‘adequate time and resources are necessary for all consumers to engage effectively’.⁵ Engaging consumers effectively will, therefore, represent a cost impost on consumer organisations and NSPs, noting that many consumer organisations can only participate in these processes where NSPs offer some compensation for their time and expertise.

While such costs would likely be passed on to consumers through energy bills, PIAC submits that the overall impact on bills would be extremely small and would be outweighed by the benefit that consultation would deliver to consumers. The issue of the appropriate cost of consumer engagement is also one without a single correct answer. PIAC suggests that this represents an issue on which NSPs could engage directly with consumers, allowing consumers to have input into the cost impact they are prepared to accept in exchange for having greater input into regulatory proposals.

As previously stated, PIAC accepts that building NSP capacity to engage in network price determinations will take some time. The same can also be said on the consumer side – many consumers and consumer organisations have no track record of involvement in energy network processes. PIAC knows from its own experience that there is an extremely steep learning curve for any group wishing to participate. While PIAC would not object to the AER showing some understanding of NSPs’ initial efforts in this area, it is also important that NSPs make strong efforts to help consumers understand the issues. PIAC, therefore, welcomes the expectation expressed in the guideline that NSPs should ‘proactively build consumers’ capacity to understand the issues, processes and potential impacts and outcomes of a decision’.⁶

Timetable for reviewing the guideline

The draft guideline states that the AER ‘may amend or replace the guideline or any part of it at any time’.⁷ PIAC supports this position for two reasons. Firstly, as previously mentioned, many NSPs are in the initial stages of their consumer engagement. As such, it is prudent for the guideline to contain a mechanism that allows the AER to be responsive to issues that emerge as network businesses increase their consumer engagement activities.

Secondly, scope to amend the guideline will place an incentive on NSPs to act within the spirit of the guideline in undertaking their consumer engagement activities. Businesses generally prefer lower levels of regulation and statutory obligation than higher levels, and the spectre of an increase in such requirements places an incentive on businesses to act in a way that does not make such an increase necessary.

However, PIAC submits that in addition to the clause outlined above, the final guideline should include a defined timetable for future review and revision. Including a timetable in the guideline will help ensure that the re-examination of the guideline is timely and falls within a set period

⁵ Ibid 10

⁶ Ibid 9

⁷ Ibid 5

that is known to all stakeholders. A schedule for revision has been included in other guidelines within the AER's Better Regulation program, such as the Rate of return guideline. PIAC, therefore, recommends that the guideline include a statement that it will be re-examined three years after the first version is given final approval.

Recommendation 2

PIAC recommends that the final guideline contain a statement that it will be reviewed three years after it first comes into effect.

If you would like to discuss any matters related to these issues further, please contact myself or Oliver Derum, Policy Officer in the Energy + Water Consumers' Advocacy Program, on 8898 6518 or oderum@piac.asn.au.

Yours sincerely

A handwritten signature in blue ink that reads "Edward Santow". The signature is written in a cursive style with a long, sweeping tail on the letter "w".

Edward Santow
Chief Executive Officer
Public Interest Advocacy Centre

Direct phone: +61 2 8898 6508
E-mail: esantow@piac.asn.au