

5 February 2021

Nishana Perera
Assistant Director, Policy Development
Australian Energy Regulator

Sent via email



Dear Ms Perera,

Submission to draft guidance note – regulation of actionable ISP projects

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit legal centre based in New South Wales. Established in 1982, PIAC tackles systemic issues that have a significant impact upon people who are marginalised and facing disadvantage. We ensure basic rights are enjoyed across the community through litigation, public policy development, communication and training. The Energy + Water Consumers' Advocacy Program represents the interests of low-income and other residential consumers, developing policy and advocating in energy and water markets.

PIAC welcomes the opportunity to respond to the Australian Energy Regulator's (AER) draft guidance note on the regulation of actionable Integrated System Plan (ISP) projects.

Purpose of the guidance note

PIAC supports the draft guidance note and the need for guidance to provide transparency and predictability in delivering ISP projects. These projects are significantly different to the business-as-usual transmission projects the existing planning and regulatory frameworks were designed for and the guidance note will help engender confidence in how ISP projects are delivered.

PIAC agrees with the AER's proposed purpose for the guidance note:

To improve predictability and transparency of the regulatory process for these large transmission projects [and] to support the efficient and timely delivery of actionable ISP projects, and to ensure consumers pay no more than necessary...¹

However, achieving the long-term interests of consumers goes beyond only minimising costs. The experience with Project EnergyConnect has shown that not only can costs for actionable ISP projects increase dramatically, but the modelled net benefits can also shrink.² It is essential to consider both the cost proposed and the net benefits modelled to be delivered to consumers in determining whether a project represents a good return on investment for consumers and whether it would contribute to achieving the National Electricity Objective. PIAC recommends amending the purpose of the guidance note to explicitly reflect this.

¹ AER, *Draft guidance note – Regulation of actionable ISP projects*, December 2020, 1.

² The contingent project application showed a cost increase of 53% and a net benefit decrease of 84% from those modelled in PACR stage of the RIT-T. See PIAC, [Submission to consultation on Project EnergyConnect contingent project application](#), October 2020.

Pre-lodgement engagement

TNSPs should be required to demonstrate that their proposal meets consumer preferences and is supported by stakeholders including consumer groups and local communities. Early, meaningful engagement is a means to achieve this as well as identifying and helping to mitigate the risk of future cost overruns, delays or realising consumer benefits in delivering the project.

Therefore, while we support the need for TNSPs to conduct pre-lodgement engagement in developing Contingent Project Applications, we recommend the AER's guidance note also requires TNSPs to demonstrate how their proposal meets consumer preferences.

PIAC strongly supports requiring TNSPs to seek out and engage with a wide range of stakeholders, presenting the full range of feedback they have received as well as demonstrating how their project proposal has been informed by this feedback.

PIAC questions the AER's wording that they "expect the TNSP to promote consumer confidence in the project."³ This could suggest a process where the project is "sold" to consumers rather than the TNSP engaging meaningfully to establish what consumers' preferences are and examining whether the project achieves these. It is more appropriate to expect TNSPs to demonstrate how their proposal meets consumer preferences.

Risk

PIAC agrees it is important that the project risks are comprehensively and transparently identified and assessed. We agree that the TNSP's assessment of risk should reflect realistic expectations of the likelihood and consequence (both positive and negative) of it occurring. We also agree that it would be inefficient and inappropriate to provide an allowance for all project risks as this would reduce the incentive for TNSP to manage the risk by effectively shifting it onto consumers.

Cost estimates

PIAC supports requiring TNSPs to provide strong justification for their cost estimates including, where possible, historical data from similar projects. We also support requiring TNSPs to demonstrate how these estimates have been through the various stages of procurement.

PIAC recommends requiring TNSPs to also explain why any changes to costs have occurred. This must occur for both cost increases (such as from unforeseen issues with route selection) and decreases (such as from effective tendering). Such information will not only provide important context for the AER and stakeholders in assessing the TNSP's contingent project application but also help develop the broader body of knowledge for better cost estimates for future actionable ISP projects.

Staging contingent project applications

PIAC supports the use of staging to manage risk where it is uncertain whether a project may or may not prove to be in consumer's interests. We support using this approach to allow early design work to occur to reduce these uncertainties and make a more informed decision of whether the project should proceed as planned. PIAC agrees that a TNSP should engage early with the AER and stakeholders about whether to pursue such a staged approach to a project.

³ AER, 4.

Ex-post measures

The ex-post review process is an important tool to help ensure the costs borne by consumers are prudent and efficient given the long-lasting impacts a TNSP's Regulated Asset Base has on consumer prices.

PIAC agrees that the TNSP should demonstrate how it has proactively identified and managed project risks including the potential for any cost overruns.

PIAC considers it is appropriate to place a limit on allowed cost overruns to protect consumers and strengthen the incentive on TNSPs to make accurate cost estimates during planning stages and manage costs during project delivery. We note that the Victorian Government introduced a similar cap for the roll-out of smart meters.

Further work

This guidance note is an important early step in improving the assessment and delivery of ISP projects. However, PIAC considers further benefits can be achieved by reforming aspects of the regulatory framework for ISP projects, such as around the competitive delivery as well as the risk- and cost-sharing arrangements. PIAC looks forward to continuing to work with the AER in examining these.

Continued engagement

PIAC would welcome the opportunity to meet with the AER and other stakeholders to discuss these issues in more depth.

Yours sincerely,

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