

8 December 2011

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



Your Ref: ERC0134

Dear Mr Pierce

Rule change proposal – Economic Regulation of Network Service Providers

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 thanks the Australian Energy Market Commission (AEMC) for the opportunity to provide input to the process of considering a change to the Rules on the Economic Regulation of Network Service Providers (NSP). This letter will focus on the proposal put forward by the Australian Energy Regulator (AER),¹ specifically discussing submissions received during a determination process and the identification and use of confidential information.

PIAC engages in regulatory price determinations in the belief that these processes represent an opportunity to ensure that only efficient costs are passed on to consumers. The stakes are high and so is the cost of engagement. As such, we want Rules that facilitate processes that are transparent and accessible, allowing organisations like ours to provide consumers with value for the money we invest in this work.

PIAC believes the AER's proposed changes to the National Electricity Rules (NER), with respect to confidentiality and the ability of NSPs to lodge submissions about their own proposals, are in the long-term interests of consumers. We hope that when we begin to engage in the regulatory process for setting NSW network charges, the Rules will allow reasonable access to the information needed to provide valuable advocacy for the residential consumers of NSW.

The AER proposes changes to the NER which would limit the ability of a NSP to make a submission on its own regulatory or revenue proposals and also to allow the AER to ignore submissions that do not adhere to these restrictions.² According to the AER, this would overcome problems that arise where NSPs use these submissions to provide substantial information that should be contained in their proposals.³ This practice impedes the ability of those engaged in the process to consider and respond to the material, especially if it is lodged just prior to the end of the relevant consultation period. The AER also notes this practice leaves it less time to undertake a proper assessment of the information.⁴

¹ Australian Energy Regulator, *Rule change proposal Economic regulation of transmission and distribution network service providers*, 2011 <www.aer.gov.au>.

² Ibid, 88.

³ Ibid.

⁴ Ibid, 87.

Furthermore, the AER has proposed changes to the Rules that would allow it to apply a level of discretion to the weight they give to confidential information contained in revenue or regulatory proposals provided by NSPs.⁵ PIAC believes that this would reduce the incentive for NSPs to claim confidentiality and contribute to a more transparent process. Additionally, the amended Rules would allow the AER to apply discretion in the weighting of confidential information contained in submissions and proposals equally.⁶

The AER's proposals are likely to provide enhanced transparency and greater accessibility to the information required to effectively and efficiently engage in network price determination process and PIAC supports them.

PIAC's Energy + Water Consumers' Advocacy Program operates on a two-year funding cycle with a grant provided by the NSW Government. Advocating for access to affordable essential services, such as energy, is not only a key focus of its work, it has the highest priority. Distribution network charges make up 40% of the price NSW consumers pay for electricity.⁷ Due to the need to replace ageing assets and manage peak demand, NSW distribution network charges are forecast to make up 60% of the price NSW consumers pay for electricity by 30 June 2013 – 19% above the national average.⁸ Given the impact that distribution costs have on the retail price of electricity, particularly in NSW, it is vital that network charges are determined in a setting that fosters high transparency and where barriers to meaningful consumer engagement are kept to a minimum.

There is no doubt that the economic regulation of NSPs is highly technical and complex. During EWCAP's 2011 conference, Rod Sims, who was Chairman of the NSW Independent Pricing and Regulatory Tribunal at the time, noted that while consumers could play a vital role in regulatory processes, these processes had become 'increasingly technical and impenetrable to outsiders'.⁹ Mr Sims also noted that this complexity gave rise to processes that were

dominated by the well resourced industry participants, who can effectively engage in matters of technical detail that are beyond the expertise and resources of consumer groups.¹⁰

The NSW Distribution Network Price Determination process will begin in 2012. It is highly likely that PIAC will need to engage external expertise to meaningfully participate in this process. Based on the experiences of other consumer advocates, PIAC estimates that consultancy fees will run into the tens of thousands, to say nothing of staff and other internal costs of managing the project. By way of illustration, in the 2009/2010 financial year, the Consumer Action Law Centre (CALC) received a grant of \$52,000 from the Consumer Advocacy Panel to engage in the Victorian network distribution 2011-2015 price review.¹¹ PIAC understands that this grant was used solely to pay a consultant with the necessary expertise to comment on the technical material.

⁵ Ibid, 91.

⁶ Ibid.

⁷ Industry & Investment NSW, *NSW Network and Prices Inquiry: Final Report*, 2011, 15 <<http://www.dpc.nsw.gov.au>>.

⁸ Australian Energy Market Commission, *Future Possible Retail Electricity Price Movements: 1 July 2010 to 30 June 2013*, 2010, 6 <www.aemc.gov.au>.

⁹ Rod Sims, *Speech to the PIAC Conference, Competition & Consumers* (27 June 2011) <<http://www.ipart.nsw.gov.au>>.

¹⁰ Ibid.

¹¹ Consumer Advocacy Panel, *Grant Applications and Approvals* (29 June 2010) Grant 391 <<http://www.advocacypanel.com.au/documents/Grantapplicationsandapprovalsasat29June2010.pdf>>.

PIAC does not supply this information to question the value of the rates consultants charge in this arena. This is a technical area requiring high-level and specific expertise, and it is reasonable that a premium applies to these skills. The point is that without access to all of the information, because it is rendered confidential or is provided in a submission rather than the NSPs' proposals, these skills cannot be efficiently directed for maximum benefit. Where the NSP provides substantial information in a submission, rather than the initial or revised proposal, neither PIAC nor the consultant can make an informed decision on how to best target the resources needed to engage in the price determination process. This means that the scarce resources of consumer advocates and advocacy grants cannot be used in the most cost effective and efficient manner.

Contributing to processes set up to determine whether the network services are being provided in an efficient manner, represents an opportunity for consumers, and their advocates, to have a real impact on the final price of electricity. Maintaining downward pressure on the cost of essential services has the potential for widespread social good and the reduction of disadvantage. PIAC supports the Rule changes proposed by the AER, with respect to confidentiality and the ability of NSPs to lodge submissions about their own proposals, and believes that these changes will enhance its ability to work effectively toward this goal.

Should you require any further information please don't hesitate to contact Carolyn Hodge, Senior Policy Officer, via email (chodge@PIAC.asn.au) or telephone (02 8898 6520).

Yours sincerely



Edward Santow
Chief Executive Officer
Public Interest Advocacy Centre

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