

8 September 2023

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Dear Mr Fox,

Cost benefit analysis guidelines and Regulatory Investment Test (RIT) application guidelines Draft amendments

PIAC welcomes the opportunity to respond to the AER's draft amendments of the cost benefit analysis guidelines and RIT application guidelines consultation paper (the draft amendments).

The draft amendments make steps in the right direction. The requirement for proponents to set out reopening triggers provides consumers some basis on which to hold proponents to account with regard to material escalations in costs.

However, the changes do not address the three fundamental dynamics driving inefficient outcomes:

- The information asymmetry between project proponents and the consumers, whose interests they are supposed to be promoting;
- The absence of any incentive or requirement for proponents to revisit RITs as a result of material changes in circumstances (MCC); and
- Consumers unreasonably bearing risks related to material changes that they have no capacity to manage or address.

There is significant contemporary evidence of material change in circumstances occurring and resulting in the large cost blowouts on projects without triggering any reopening. The proposed draft amendments do not impact the expectation that this will continue to be the case.

The draft amendments do not ensure sufficient rigour in cost estimation to allow adequate comparison between network and non-network options. This undermines their ability to contribute to more efficient planning and investment decisions which promote the long-term interests of consumers.

Reopening triggers

We understand why potential proponents of transmission and distribution projects would prefer a principles-based approach to developing reopening triggers. It is clear from the lack of material changes to date that proponents benefit from an approach that allows them to bypass a crucial backstop mechanism designed to protect consumer interests. The AER should consider the interest of potential proponents in this mechanism being less robust and place less weight on their perspective in this process.

A prescriptive approach would not preclude designing reopening triggers appropriate for each project. Prescription would simply determine for each project which of a range of pre-existing alternatives would be appropriate for each project. Such an approach would add much needed rigour to the protection measure and ensure it operates more effectively as the protection it is intended to be.

As proposed, the requirements placed on proponents are so weak that the design of the reopening triggers is rendered largely irrelevant. The positive requirement for the proponent to 'consider' if there has been an MCC that requires the reapplication of the RIT is unchanged. That is, the proponent determines whether to recognise an MCC or not. There is no mechanism by which they can be forced to recognise one, however strong the case may be.

PIAC recommended a provision to overcome this flaw – creating a mechanism for any actor to alert the AER to the occurrence of an MCC, with the onus on the AER (not the proponent) to uphold or reject that. In Appendix A, the AER responds to this proposal with the following:

The MCC rule require RIT proponents to include reopening triggers in their draft RIT reports and consult with stakeholders on these reopening triggers.

PIAC does not consider this a substantive response. It does not address the substance of the concern or offer an explanation of why the concern may be invalid or immaterial.

Proponents should consult on the selection and settings of reopening triggers but this consultation must be robust and meaningful. To avoid it being superficial or merely procedural, the requirement for consultation must be accompanied by powers for the AER and the proponents' consumer/stakeholder panels to reject the selection and settings if they are deemed inappropriate.

Cost estimation in RIT-Ts

We do not agree that mandating the AACE cost estimation classification system will increase RIT costs or delay the RIT process. On the contrary, use of a standardised system should reduce processing costs and times as the regulator and other actors will not have to learn and assess the cost estimation classification system each time they process a new RIT.

Sensitivities

We support the requirement of projects over \$100 million conducting sensitivity analyses.

Increased detail on the definition of early works

We support the increased detail on the definition of early works.

We welcome the opportunity to discuss these matters further with the AER and other stakeholders.

Yours sincerely

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