



public interest
ADVOCACY CENTRE LTD

**Response to the Australian Energy Regulator
draft distribution determination 2009-10 to
2013-14**

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Introduction

The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit law and policy organisation that works for a fair, just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues.

PIAC identifies public interest issues and, where possible and appropriate, works co-operatively with other organisations to advocate for individuals and groups affected. PIAC seeks to:

- expose and redress unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate on issues affecting legal and democratic rights;
- promote the development of law that reflects the public interest;
- develop and assist community organisations with a public interest focus to pursue the interests of the communities they represent;
- develop models to respond to unmet legal need; and
- maintain an effective and sustainable organisation.

Established in July 1982 as an initiative of the Law Foundation of New South Wales, with support from the NSW Legal Aid Commission, PIAC was the first, and remains the only broadly based public interest legal centre in Australia. Financial support for PIAC comes primarily from the NSW Public Purpose Fund and the Commonwealth and State Community Legal Services Program. PIAC also receives funding from the NSW Government Department of Water and Energy for its work on utilities, and from Allens Arthur Robinson for its Indigenous Justice Program. PIAC also generates income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions.

Energy + Water Consumers' Advocacy Program (EWCAP)

This Program was established at PIAC as the Utilities Consumers' Advocacy Program in 1998 with NSW Government funding. The aim of the Program is to develop policy and advocate in the interests of low income and other residential consumers in the NSW energy and water markets. PIAC receives policy input to the Program from a community-based reference group whose members include:

- Council of Social Service of NSW (NCOSS);
- Combined Pensioners and Superannuants Association of NSW (CPSA);
- Park and Village Service;
- Ethnic Communities Council NSW;
- Rural and remote consumers; and
- Institute of Sustainable Futures, University of Technology

The current inquiry

PIAC welcomes the opportunity to respond to the Australian Energy Regulator (AER) draft distribution determination 2009-10 to 2013-14. In August 2008, PIAC made a submission to the AER on the NSW Distribution Network Service Provider (DNSP) 2009-2014 Regulatory Proposals, raising the issues of:

- demand management;
- the impact of the increase to individual bills;

- the ability to complete capital works programs;
- increased reliability requirements; and
- maintenance costs of power poles on private lands

Upon reviewing the AER draft distribution determination 2009-10 to 2013-14, PIAC would like to comment further on the following issues:

- the impact of the increase to individual bills;
- revised demand forecasts; and
- capital allowances in the previous regulatory period.

The impact of the increase to individual bills

PIAC's *Submission on NSW Distribution Network Service Providers 2009-2014 Regulatory Proposals* stated that

PIAC is concerned about the sudden impact of these increases on low-income households, particularly households with little discretionary spending and little ability to absorb this rise in household costs.¹

The DNSP revised proposals will lead to bill increases that will cause significant financial distress to many vulnerable households.

According to the January 2009 Access Economics *Business Outlook Report*, NSW is already in recession and 10,000 job losses can be expected over the 2008-09 period.² If implemented, the DNSP revised proposal price rises will hit at the same time as many NSW households face loss of or reduced income.

This impact will add to the financial distress faced by the many households that already struggle to meet the costs of energy. It is also in addition to retail price rises and [the impact of](#) various new sustainability and energy policies. The most recent IPART figures indicate there were over eighteen thousand residential electricity disconnections in NSW over the 2006-07 period.³

If implemented, the EnergyAustralia revised proposal would require an increase in household network charges above 170% by the end of the regulatory period. Based upon figure 2.1 in Part III of the EnergyAustralia revised submission⁴ and using the average Sydney electricity consumption for a one to two person household for 2006 given by IPART⁵, this would see an average cost increase in excess of \$500 for this class of customer. With this customer class tending towards lower than average electricity use and this figure being an average, [it is reasonable to anticipate](#) deviations higher than this for most households.

This result is based on PIAC's calculations using the above data, and does not include increases associated with purchase of carbon permits under the Carbon Pollution Reduction Scheme or through other sustainability

¹ Joel Pringle, *Submission on NSW Distribution Network Service Providers 2009-2014 Regulatory Proposals* (2008) [2] <http://www.piac.asn.au/publications/pubs/sub2008080_20080806.html>.

² Siobhan Ryan, *NSW already in recession, Access Economics report finds* (2009) The Australian <<http://www.news.com.au/business/story/0,27753,24930532-462,00.html>> at 16 February 2009

³ Independent Pricing and Regulatory Tribunal (IPART), *Electricity retail businesses' performance against customer service indicators for the period 1 July 2002 to 30 June 2007* (2008) [3] <http://www.ipart.nsw.gov.au/electricity/licensing_further_information_8.asp> at 16 February 2009.

⁴ EnergyAustralia, *Revised Regulatory Proposal and Interim Submission* (2009) [190] <<http://www.aer.gov.au/content/index.phtml/itemId/726067>> at 16 February 2009.

⁵ IPART, *Residential energy and water use in the Hunter, Gosford and Wyong* (2008) [18] <http://www.ipart.nsw.gov.au/files/Residential_energy_and_water_use_in_the_Hunter_Gosford_and_Wyong_-_Results_from_the_2008_household_survey_-_19_December_2008_-_APD_Website.PDF> at 16 February 2009.

programs, increases in transmission and retail charges, or the costs of drawing wholesale electricity from more expensive peaking power plants. PIAC encourages the AER and the DNSPs to model the full cost increase to different household classes, using up-to-date inputs and to make this data available in the NSW DNSP 2009-14 Regulatory Decision.

If implemented, bill increases as outlined above will have harmful impacts on the finances of low-income households and associated disconnection rates.⁶

Revised demand forecasts

The EnergyAustralia revised regulatory proposal and interim submission contains revised demand forecasts that incorporate an expected decrease in demand of up to 10% over the regulatory period.⁷ It states that:

The two most significant factors impacting the forecast are the introduction of the CPRS by the Federal Government in 2010 and the change in forecasts for economic growth as a result of the global financial crisis.⁸

Whilst these two events are likely to have significant impacts on electricity demand, PIAC believes that their inclusion in demand forecasts should not be exclusive. To get a realistic projection of energy demand it would be prudent to include other government policies that are explicitly intended to reduce energy demand, such as the recently announced Commonwealth program to increase the rate of installed household insulation, the Commonwealth proposal to phase out electric storage hot-water heaters, the impact of various Federal and state rebates for solar hot-water systems and solar [photovoltaic \(PV\)](#) units, and the impending NSW Government decision on whether to increase distributed generation through the introduction of a Feed-in Tariff scheme. The impact of increased electricity tariffs on demand should also be factored in.

It is acknowledged that there is currently much uncertainty about how these policies will be finalised, and therefore PIAC recommends that the pricing determinations and associated demand forecasts be re-opened at a later date when more information is available.

Similarly, whilst demand forecasts should be reviewed, peak demand forecasts and the resulting impact on capital expenditure should be reviewed. PIAC is concerned about the result of reducing demand forecasts without adequately reducing capital expenditure by revising forecasts for peak demand. The result of this action would be increased unit prices for electricity without savings through deferred network augmentation, resulting in even higher individual household electricity bills and the possibility of over-recovery by DNSPs.

Whilst the EnergyAustralia demand forecasts are [specifically](#) referred to in the discussion above, this is relevant to all the DNSPs in this regulatory decision, and the suggestions above are to be read as recommendations for Integral Energy and Country Energy as well.

Capital allowances in the previous regulatory period

The NSW draft distribution determination 2009-10 to 2013-14 states that:

In aggregate, the NSW DNSPs are expected to exceed their combined regulated capex allowance by approximately \$1271 million (2008-09) or 19 per cent of the allowances set by IPART and the ACCC.⁹

⁶ Urbis, *Cut-off II: The experience of utility disconnections* (2009) [20] <http://www.piac.asn.au/publications/pubs/cutoffii_20090130.html> at 18 February 2009.

⁷ EnergyAustralia, *Revised Regulatory Proposal and Interim Submission* (2009) [121] <<http://www.aer.gov.au/content/index.phtml/itemId/726067>> at 16 February 2009.

⁸ Ibid 7.

Earlier in the same document, the AER stated that:

An outcome of the AER's draft determination will be significantly higher prices for electricity consumers in NSW. The percentage increase will be the greatest in 2009, reflecting the fact that the NSW DNSPs overspent their capital allowances in the previous regulatory control period.¹⁰

PIAC accepts that some deviation from the forecasts may have been outside the DNSPs ability to plan. However, the justification of significantly higher than determined capital expenditure, in this case by 19 per cent, due to 'allowances approved by the ACCC and IPART tending to be at the lower end of the plausible range, or generally insufficient'¹¹ will always be given when the regulator allows capital expenditure below DNSP proposals.

PIAC questions why the DNSPs are able to reclaim funds spent above the regulatory allowance in a regulatory period, in the following regulatory period. Firstly, this suggests that the previous regulators decision was not binding and expresses a lack of faith in that regulator. Secondly, this provides no incentive for the DNSPs to stick to the NSW distribution determination for 2009-10 to 2013-14, in the knowledge that they will be able to reclaim the over-spend in the following regulatory period. This has the effect of undermining the regulatory process entirely.

Conclusion

The NSW draft distribution network service providers determination 2009-10 to 2013-14 and the DNSPs revised submissions, if implemented, will create considerable financial strain on many vulnerable households, including many households that have not before found themselves in such a position. Because of this, it is important the AER ensure the capital programs approved are efficient, and must include demand management alternatives in their assessment.

Demand forecasts must include up-to-date information not just on economic activity and the CPRS but also other Government policies that will effect how electricity is generated and distributed, or even to mitigate electricity demand.

The AER determination must be binding. In the case of capital expenditure plans changing due to a change in circumstances, the regulator must be included in the approval of this alteration.

⁹ Australian Energy Regulator, *New South Wales draft distribution determination 2009-10 to 2013-14* (2009) [122] <<http://www.aer.gov.au/content/index.phtml/itemId/723822>> at 16 February 2009.

¹⁰ Ibid xiv.

¹¹ Ibid 123.