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19 October, 2006

Dear Dr Tamblyn

### **Transmission services: request for further comment**

This letter is in response to the request from the Commission for further comment in relation to the Draft Revenue Rules for transmission services. We welcome the decision by the Commission to seek further input from stakeholders in relation to the treatment of expenditure forecasts by network operators.

In the view of the Public Interest Advocacy Centre (**PIAC**) the origin of concerns held by many stakeholders lies with the decision of the Commission to retain its propose-respond approach, albeit in a modified form. For end-user groups this approach always has appeared to place too much weight to the input of regulated businesses in relation to determinations of regulated revenue. We note that the distribution of the detailed advice obtained from the Australian Government Solicitor by the Commonwealth (Department of Industry, Tourism and Resources) does improve our understanding of the background to that decision by the Commission.

PIAC accepts the difficulty faced by regulators in assessing the cost estimates provided by the regulated businesses. We also accept the difficult task facing any regulator such as the Australian Energy Regulator (**AER**) that might seek to develop its own assessment of the costs of supply incurred by a network operator. What we have tried to point out to the Commission and to the supply industry is that for end-users the task of assessing cost estimates, let alone developing alternatives, is not so much difficult as it is impossible.



In this context we have taken particular note of the view of the Australian Government Solicitor that the *National Electricity Law* (NEL) and the pricing principles for network service providers place considerable weight on protecting the interests of the service providers rather than those of end-users

Thus, PIAC is left in a situation of relying on the work of others to help us understand the costs of supply and what might be the appropriate tariffs to be charged to end-use customers. In this we appear to have a choice between the regulated businesses and the AER.

As PIAC previously has stated to the Commission, we believe the Draft Revenue Rules provide some important opportunities for consumers to raise or support challenges to the costs submitted by the regulated businesses

PIAC supports the Rules giving to the AER the discretion to reject forecast costs submitted by the regulated businesses. It is important that this discretion be made clear in the Rules.

Such an exercise of discretion would mirror what we observe is the current arrangement for at least some of the jurisdictional regulators. For example, in past determinations of distribution network revenues the NSW Independent Pricing and Regulatory Tribunal (IPART) has used its discretion to approve costs which vary from those submitted by the network operators.

Our experience is that this exercise of discretion by the regulator has resulted in determinations which we, and we believe the regulated businesses, regard as being reasonable. Importantly, the exercise of discretion appears to us to have the effect of assisting these determinations being made in a timely manner. We understand this is a key element of the revenue determination framework devised by the Commission.

PIAC does not believe the AER should have less discretion in this area than has been exercised by the jurisdictional regulators. In our view the retention of this discretion in the new national regulatory arrangements is an important element of providing for a balance between the long-term interests of consumers. We are yet to see a compelling case to the contrary.

Further, we support the AER having the discretion to substitute its own estimates in place of those submitted by the network businesses. As has been pointed out in the advice of the Australian Government Solicitor, the AER essentially will be required to undertake a similar level of analysis whether it is assessing the forecasts submitted by the network businesses or formulating its own 'reasonable estimate' as a substitute. PIAC can only agree with the Australian Government Solicitor when it expresses the view that:

The AER's discretion both to accept a total as a best estimate, or impose a best estimate, will result in more symmetrical review rights for users and service providers as opposed to a test based on a reasonable estimate.

PIAC understands the implications of an exercise of this discretion in terms of the possibility of challenges being made to the decisions of the AER. The potential use of reviews of regulatory decisions such as the exercise of discretion around cost forecasts should be regarded as another possible step to achieving an appropriate balance between the interests of the supply businesses and end-users.

The potential for challenges no doubt will concern the AER in determining a better estimate of costs. However, the mere possibility, or even the likelihood, of a decision being challenged is not grounds to withhold the exercise of discretion from the AER.

Yours sincerely  
Public Interest Advocacy Centre Ltd

A handwritten signature in black ink, appearing to be 'JW', with a long horizontal flourish extending to the right.

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Senior Policy Officer

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