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Australian Energy Market Commission

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Submission in response to the Directions Paper on the energy network rule change proposals

The Consumer Utilities Advocacy Centre (CUAC) would like to thank the Australian Energy Market Commission (AEMC) for the opportunity to respond to the Directions Paper in relation to the rule changes being proposed by the Australian Energy Regulator (AER) and the Energy Users' Rule Change Committee (EURCC).

CUAC is a specialist consumer organisation established in 2002 to represent Victorian energy and water consumers in policy and regulatory processes. As Australia's only consumer organisation focused specifically on the energy and water sectors, CUAC has developed an in-depth knowledge of the interests, experiences and needs of energy and water consumers.

In this brief submission, CUAC would like to highlight a few salient issues that we hope guide the AEMC in its further consideration of the issues. We note, however, that there is little by way of additional evidence that a consumer organisation like CUAC can provide in relation to this review process. Small consumer organisations such as CUAC are simply not privy to the data and technical expertise that is available to both distribution businesses and the AER. We rely upon the AEMC to both examine the arguments put forward by rule proponents and detractors and also to seek evidence from independent and international sources to achieve best practice outcomes.

As outlined in our previous submission to the directions paper, CUAC strongly supports reform to the current rules. It is, in our view, necessary to deliver more efficient outcomes for Australian energy consumers. We believe that the rule proponents and others have clearly identified the need for change and provided evidence that the existing system is not meeting the national energy objectives.

Energy affordability and the contribution of the energy networks

"The increase in the cost of network services, particularly distribution services, is the most significant driver in the increasing residential electricity prices..."¹

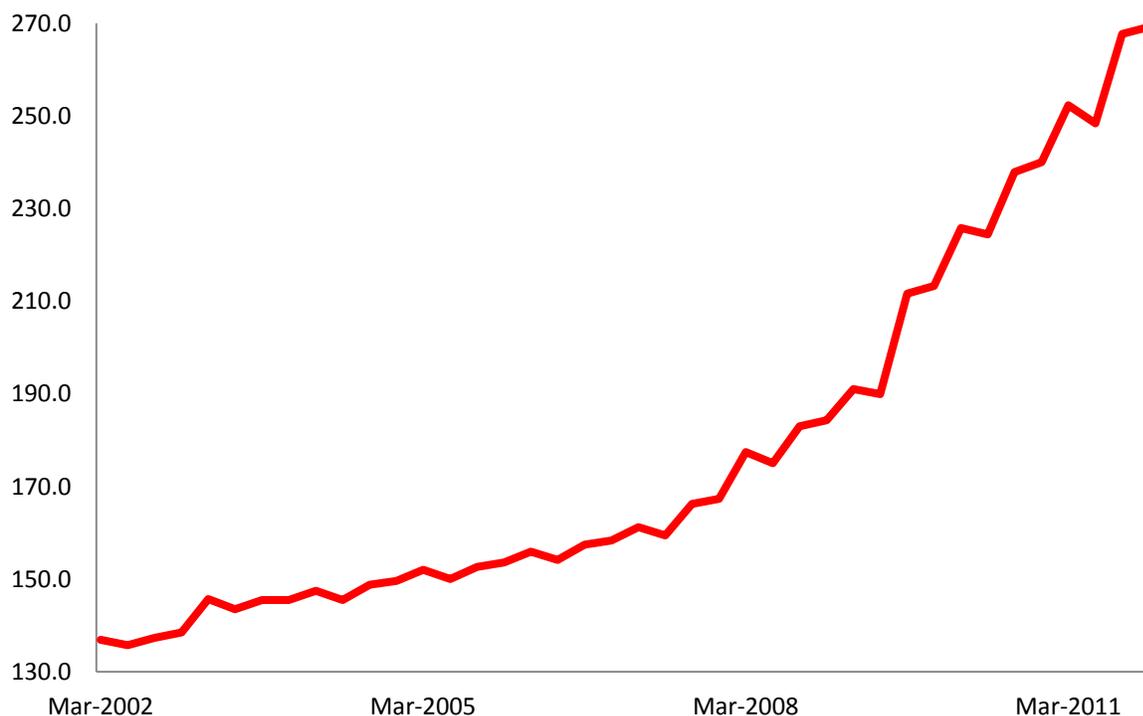
AEMC, 2010

¹ Australian Energy Market Commission (2010) Future Possible Retail Electricity Price Movements: 1 July 2010 to 30 June 2013, Sydney, p. 6

Energy affordability is declining as prices increase. While for many Australians rising incomes have offset the impacts of rising prices, the reality for many of Australia's most vulnerable consumers is different. This is reflected in data from Victoria. For example, disconnections from electricity supply for failure to pay increased by 33 per cent in electricity in 2010-11. In 2010-11, the number of customers disconnected from the electricity supply was 17,871. This compared to 6,968 disconnections in 2006-07. Alarming, increasing numbers of customers who were disconnected were also reconnected at the same addresses. This is normally an indicator that customers are being disconnected because they are struggling with their payments.²

The AEMC's own paper on the retail electricity prices projected nominal price increases of 20-40 per cent for most states and territories over the period 2009-10 – 2012-13. This will only add to the significant price increases that have occurred in recent years. This is evidenced by the following graph of the electricity component of the Australian Bureau of Statistics' Consumer Price Index. This data indicates that electricity prices have doubled in 10 years.

Electricity price increases – Australia 2002-2012



Source: Australian Bureau of Statistics (2012) Consumer Price Index, TABLE 7. CPI: Group, Sub-group and Expenditure Class, Weighted Average of Eight Capital Cities, Cat 6401.0, Canberra

The latest reports from the Energy and Water Ombudsman (Victoria) (EWOV) also indicate the increasing pressure on households arising from energy affordability. This is demonstrated by the below quote from the Ombudsman in the 2011 EWOV annual report.

The issue of customer financial hardship is still very obvious in our cases. Given energy and water are essential services, this is of great concern. Our Credit issues category is about customers

²

Essential Services Commission 2011 Victorian retail energy market overview 2010-11 December 2011, Melbourne

being able to pay their bills and stay on supply. In 2010-11, 8,566 customers raised Credit as their main issue of complaint and a further 6,029 customers raised Credit as an associated issue. Electricity, gas and water prices are up. People are facing other cost of living pressures. Many of the customers who contacted us were concerned about paying their bills and making ends meet. It was also evident that energy retailers were taking a harder line on account arrears and pursuit of energy debt.³

Energy is an essential service that is necessary for social and economic participation in the 21st century. If access and affordability is compromised the costs will be significant. Inefficient expenditure by network businesses as a result of an insufficiently robust regulatory regime compromises affordability and has significant detrimental impacts on some of the most vulnerable in our society. Additionally, it imposes economic costs on businesses that rely on energy as an input to their processes. Given this, CUAC urges the AEMC to consider strong approaches to contain network costs to an efficient level. We note that the role of the rule maker should go beyond acting as an arbiter between rule proponents and opponents. Instead, it should seek out the best available information to identify the right approaches to regulatory reform in the interests of Australian consumers. We are concerned that the directions paper does not sufficiently address the flaws in the current regime and identify approaches to correct them.

Regulator discretion and the importance of heeding the AER's views

CUAC notes that the AER's opinion on the limits of its powers and discretion has been contested in submissions and in the expert reports to the review. The AER argued in its rule change proposal that it was constrained, to some extent, by the prescriptive nature of Chapter 6 of the rules. It proposed rules to allow it greater flexibility to substitute its own forecasts in place of the forecasts of the regulated businesses. It also proposed rules that would give it greater flexibility in relation to capex incentives and the use of benchmarking. It seems that many respondents to the AEMC's issues paper took issue with the AER's characterisation of the problem. Network businesses suggested that the AER had sufficient discretion and was using it extensively.⁴ Others, including the Energy Users' Association of Australia have suggested that the "rules have, to some extent, restricted the ability of the AER to determine efficient expenditures objectively."⁵

CUAC supports further analysis by the AEMC of the constraints on regulatory discretion and the impact that this may be having on network prices. Nonetheless, we would make the point that it is clear that under the current rules the AER feels constrained in making the decisions that it thinks are in the public interest. It has, most likely, come to this conclusion as it acts on legal advice to ensure it makes the best decision, within the constraints of the rules, while minimising the chance of a costly appeal. Given that Australian economic regulators are usually conservative in their approach, and given that the AER clearly feels constrained in their ability to make the best decisions possible, CUAC is of the view that the AER should be given the benefit of the doubt on some its proposals regarding its discretion. We note the risk of serious regulatory failure is extremely remote even with wider powers for the AER.

Of the proposed rules, CUAC is supportive of the amendments to remove the requirement of the AER to vary expenditure on the basis of the original proposal from the regulated business. Furthermore, we

³ Energy and Water Ombudsman (Victoria) (2011), Annual Report 2010-11, Melbourne, p. 7

⁴ Energy Networks Association (2012) Submission to the rule change process, p. 17

⁵ Energy Users' Association of Australia (2012) Submission to the rule change process, p. 20

support reform to the burden of proof requirements that make it difficult for the AER to reject network business proposals.

We note that greater discretion is also desirable in the context of the current appeals mechanism which, because of its one-sided nature, encourages considerable caution on behalf of the AER.⁶

Regulatory process and the need for change

The directions paper outlines some possible reforms to the regulatory process to ensure that the AER gets the best available information early to make the best determination possible. The AER in its rule change proposals had sought to restrict the ability of network businesses to make submissions on their proposals/previous submissions. CUAC believes that if there is an incentive to “game” the regulatory framework through the provision of late information then this should be corrected. However, the AER needs to also have the best available information upon which to base their decision and if this, because of some unforeseen circumstance, comes to light late, then it should not be discounted from a decision.

One possible approach to overcoming this issue would be the imposition of some sort of pecuniary penalty that is levied on regulated businesses if they provide information after their submission deadlines. The pecuniary penalty could cover the cost of assessing the additional information and incorporating it into the regulatory determination. Such an approach would provide a dis-incentive to “game” but acknowledges that it may be appropriate for information to be considered after a particular deadline in the interests of robust regulatory outcomes. Obviously, the size of the penalty would need to be of sufficient size to deter any “gaming.”

Other consumer submissions

CUAC understands that many other small end user organisations have considerable interest in this process because of the significant implications the outcomes will have on energy affordability. CUAC urges the AEMC to ensure full consideration of other consumer submissions.

Once again we would like to thank the AEMC for this opportunity to comment on this important review. We look forward to further engagement throughout the process. If you have any queries or would like to consult further with us do not hesitate to contact me.

Yours sincerely,



Jo Benvenuti
Executive Officer

⁶ Further information on CUAC’s perspective on the appeals mechanism can be found in our recent submission to the Review of the Limited Merits Review that can be found on the CUAC website at http://www.cuac.org.au/index.php?option=com_docman&task=doc_download&gid=245&Itemid=26