



Ethnic Communities' Council of NSW Inc.

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Submission to Australia Energy Market Commission's Draft Decision on changes to the National Electricity Rules proposed by the Australian Energy Regulator and the Energy Users Rule Change Committee

The Ethnic Communities Council of NSW (ECC) welcomes the opportunity to comment on AEMC's Draft Decision on changes to the National Electricity Rules proposed by the Australian Energy Regulator and the Energy Users Rule Change Committee. The ECC is the peak body for culturally and linguistically diverse (CALD) community members and representative organisations in NSW. It is a member of the Federation of Ethnic Communities Councils of Australia (FECCA).

In its Draft Decision, the AEMC has made three main decisions on changes to the National Electricity Rules proposed by the AER and the EURCC:

1. It rejected the EURCC's proposal that Government-owned service providers should receive a return on debt based on the cost of debt.
2. If the AER rejects an NSP's capex or opex proposal, it is no longer required to determine a substitute amount "only to the extent necessary" and "on the basis of the regulatory proposal".
3. The AER has discretion to determine the allowed rate of return subject only to the principle that it should reflect the cost of capital of a benchmark efficient firm.

On the first decision, if the AEMC had accepted the EURCC's proposal, it is likely to have reduced the revenue recovered by government-owned electricity network service providers by around \$1bn per year. Assuming this change had taken effect in 2010, the average prices charged by those service providers would have been around 14% lower than they were.

The AEMC has rejected the EURCC's proposal for a number of reasons the main reason being their view that it contravenes the Competition Principles Agreement, as the state governments have chosen to implement it. We disagree with the AEMC's reasoning, as set out in this report.

¹ AEMO *Electricity Statement of Opportunities* 09 August 2012

The AEMC's second decision (listed above) is a useful elimination of an ambiguity and we suggest helps to ensure that the AER will feel less constrained by NSPs' proposals, in setting capex and opex allowances.

The third decision would be significant if it was the case that the AER was significantly constrained by the Rules in setting the Weighted Average Cost of Capital (WACC). However, other than with respect to the determination of the risk free rate and debt risk premium for electricity network service providers, we do not believe this to be the case.

This is because the evidence shows that the AER made similar WACC decisions when it was unconstrained by the Rules, as it did when it was subject to the constraints in Chapters 6 and 6A in the Rules. Specifically the AER has had full discretion in setting the WACC for gas pipelines and gas distributors, and the ACCC had similar discretion in the determination of the WACC for transmission network services providers (before 2006).

Therefore we can not conclude that additional regulatory discretion for the AER in the determination of the WACC will *necessarily* make any difference to future decisions by the AER, on the level of the WACC.

In addition to these three decisions, the AEMC has also decided a number of less significant changes (elimination of a debateable ambiguity in relation to benchmarking, allowing ex-post adjustment of capex allowances, requiring the AER to publish seven new guidelines on various issues, lengthening the regulatory decision process and putting additional steps into the process, requiring greater transparency on late submissions and the withholding of information claimed to be confidential, and encouraging the AER and NSPs to provide more information to consumer advocates).

Our assessment of these less significant decisions is as follows:

- We do not expect that the elimination of (debatable) ambiguities in the Rules' obligation in relation to benchmarking will make much difference – the Rules already say clearly that the AER must have regard to benchmarks in setting expenditure allowances.
- The merits of ex-post adjustment of capex are debateable. On balance we are not convinced that it is helpful.
- Our expectation is that the publication of additional guidelines and the lengthening of regulatory decision processes will not simplify regulatory decisions and will not necessarily lead to better decisions.

Consumer Engagement

While neither the AER nor the EURCC proposed changes to the Rules to empower consumers, the ECC is very concerned about the empowerment of consumers to participate in the processes. It is the ECC's assessment that the provisions that the AEMC has made to encourage greater engagement by the AER and NSPs with consumers, are unlikely to empower consumers, particularly those from a non English speaking background, to participate in regulatory processes to any significant extent.

The Executive Summary of the Draft Decision has a section entitled "consumer engagement and participation" that describes various actions that the AEMC suggests should be taken "*to attempt to address a lack of focus on consumer engagement and participation*". There is no section of the Draft Decision specifically dealing with this, but it is covered within a section entitled "regulatory determination process".

The AEMC's proposals are that:

- NSPs must say how they have engaged with customer representatives in their regulatory proposals, and the AER must take this into account when setting the extent to which NSPs have engaged with consumers in preparing their forecasts;
- The AER should publish an Issues Paper after receiving the regulatory proposal to “assist consumer representatives to focus on the key preliminary issues”;
- The AER must publish a benchmarking report to inform consumers on the relative efficiency of NSPs.

Neither the EURCC nor the AEMC made proposals to change the Rules to improve consumer engagement. These proposals have therefore been developed by the AEMC independently of any rule change proposals.

The first area – requiring NSPs to report on customer engagement and then requiring the AER to take account of this - is potentially meaningful. It is possible to imagine an outcome consistent with this proposal, in which NSPs and user representatives engage with each other with a view to reaching a negotiated settlement on prices and services. The AER's task would then be to verify that this was a fairly negotiated settlement, that the parties to the negotiation represented their respective constituencies, and that the resulting settlement served the public interest. This “negotiated settlements” approach is commonly used in the regulation of NSPs federally in Canada and the U.S, and in some states of the U.S. and provinces in Canada (for example Florida, California and Alberta).

However, it is not clear that this is what the AEMC has in mind. The ECC assumes that the AEMC's intention is that the consumer engagement it would like to see the AER and NSPs undertake is really about “consultation” and the provision of information so that consumers are better informed about the NSPs' proposals and the AER's decisions, presumably so that the resulting decisions (and price rises) win greater acceptance amongst consumers. If this is the AEMC's intention then this proposal is perhaps useful. But it should not be imagined that this constitutes what might be considered to be “empowerment” in the commonly accepted meaning of the word.

The second and third areas seem innocuous, if patronising. Perhaps it would be better to require the AER to demonstrate that it has sought to understand consumer preferences and their willingness to pay, rather than to require them to “assist” consumers to focus on what it, the AER, considers to be the key issues. Similarly, while asking the AER to produce annual benchmarking reports is useful, would it not be better to focus on ensuring that consumers are resourced to do this themselves?

In fairness to the AEMC, the arrangements for the empowerment of consumers in regulatory processes is an issue for policy makers not regulatory institutions. Genuine empowerment of consumers will inevitably change the roll that regulators play, and regulators should not be the decision-makers in evaluating fundamental changes in this area.

Conclusion

In summary the ECC's assessment is that the AEMC's Draft Decision is unlikely to result in noticeable differences in the decisions that the AER will make in future, compared to what they would have made if the Rules were left unchanged. The ECC

therefore consider that these changes will not necessarily reduce electricity prices in future compared to what they otherwise would be under the existing Rules.

If you have any questions about this submission, please do not hesitate to contact Helen Scott on 02 9319 0288.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Mark Franklin", with a small flourish at the end.

Mark Franklin
Executive Officer
Ethnic Communities' Council of NSW Inc.