



Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235
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08 December 2011

Dear Commissioners

**Re: Consolidated Rule Request – National Electricity Amendment
(Economic Regulation of Network Service Providers) Rule 2011**

ACOSS welcomes the opportunity to respond to Rule change proposals submitted by the Australian Energy Regulator (AER) and the Energy Users Rule Change Committee (EURCC).

ACOSS is the peak council of the community welfare sector in Australia and the national voice for the needs of people affected by poverty and inequality. Our interest in energy markets is primarily the result of our interest in matters affecting low income and disadvantaged Australians. Our interests primarily concern residential ‘small’ end-users. We hold the view that electricity is an essential service and should be supplied equitably, affordably, reliably and sustainably.

ACOSS has for some time expressed concern about increases in retail electricity prices and their impacts on low income households. We define ‘low income’ as those households with equivalised disposable income in the two lowest quintiles as measured and reported by the Australian Bureau of Statistics (ABS). Amongst that 40% of all Australian households, and all Australian energy customers, is a great diversity of characteristics. The significant common characteristic is sensitivity to prices for essential goods and services and vulnerability to [further] hardship.

ACOSS is of the view that regulatory frameworks for essential goods and services should be rigorous, transparent and consistent in application. Monopoly [energy] businesses, whether owned by the private or public sectors, should be the subject of regulatory oversight that does not wily ‘promote’ efficient investment in and operation and use of... electricity services for the long term interests of consumers; the regulatory oversight should, as far as reasonably possible, guarantee efficient investment, operation and use.¹ The outcome of regulation ought to be the optimisation in the consumer interest, not the shareholder interest (even, in the case of government-owned businesses, when they are one and the same).

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¹ National Electricity (South Australia) Act 1996, see Attachment A

The rate of increase in retail electricity prices far exceeds changes in consumer prices more generally. And while household expenditure on electricity may be a relatively small proportion of total expenditure, the actual dollar outlay is significant in low income households. Rates of disconnection from supply for non-payment of bills, one metric of vulnerability to hardship, are on the rise in at least some NEM-participant jurisdictions and cause for concern to ACOSS, ombudsman and regulators alike.

The most recently published ABS data on profitability in the electricity supply industry (by sector) inform us that the profit margin for distribution businesses was 22.1% in 2006-07 and 12.4% in 2007-08.² We suggest that the former is unreasonable and the latter unsustainable. While we acknowledge that there are likely significant variations between jurisdictions and businesses and over time and that the regulatory frameworks pertaining in the 2006-07 year mostly predate AER responsibility, these numbers suggest the existence of a problem.

We share concerns expressed by both of the AER and the EURCC with regard to deficiencies in the operation of the AER, evidenced through the first round of distribution price determinations. The Rule change proposals currently the subject of consultation by the AEMC afford stakeholders a welcome opportunity to address shortcomings that have real and adverse consequences for large numbers of individuals, for the community and for the economy. ACOSS looks forward to this consultation and to subsequent and consequent reform.

We understand that this process and the parties to this process are constrained by the National Electricity Law and the National Electricity Rules, as they are currently. At Attachment A we highlight some aspects of the Law that may be regarded as facilitating deficient regulatory processes and discouraging consumer (demand side) engagement in regulatory processes. Clearly these are issues beyond the remit of the Rule change process but might be helpful for context.

We note again that the national electricity objective provides that the Law ‘promote’ efficiency. In the circumstances of economic regulation of monopoly businesses we suggest that the Law might provide for something stronger; for example to ‘assure’ if not in fact to ‘guarantee’. The revenue and pricing principles allow that “network services providers should be provided a reasonable opportunity to recover at least the efficient costs the operator incurs...”. In a similar vein we suggest that the words “at least” are redundant.

Finally we note that the Law, in detailing the “[m]anner in which the AER performs economic regulatory functions or powers”, makes no explicit provision for the AER to inform or provide an opportunity for submissions from parties other than “the ... provider to whom the determination will apply, affected Registered participants, and if AEMO is affected, AEMO”. ACOSS is firmly of the view that appropriate and appropriately resourced engagement by consumers is valuable in processes of economic regulation.

The outcomes of regulation

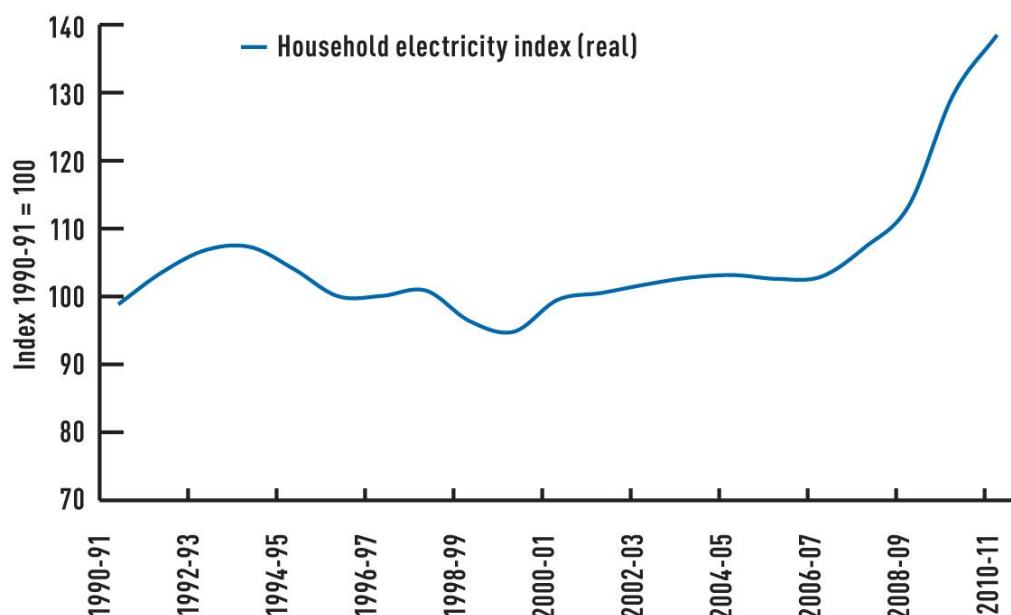
Our interest in the regulation of network service providers derives from our interest in low income households, the cost of living and the prices of essential goods and services. We are of the view that electricity is an essential service. Households that rely on low, fixed and unreliable incomes are exposed to and adversely affected by even relatively small increases in prices.

The Australian Bureau of Statistics (ABS) reports that in the period 2000 through 2010 electricity prices increased by 87.4% while over the same period the consumer price index increased by 34.4%.³ Over this same period the single age pension increased by 73.2% and the single unemployment benefit increased by 39.6%.⁴

² Australian Bureau of Statistics, 81550DO002_200708 Australian Industry, 2007-09, Canberra 2009, Table 4

³ Australian Bureau of Statistics, Catalogue 6401.0 2000-2010, Consumer Price Index Australia, Canberra 2010

⁴ Centrelink: A guide to Commonwealth Government payments, March-July 2000-2010



Source: Australian Bureau of Statistics, Consumer price index for electricity (Category 6401.0)

The ABS Household Expenditure Survey 2009-10⁵ reports on a series of indicators of financial stress experienced by respondents over the preceding year. One of those indicators is “could not pay gas, electricity or telephone bill on time”. This indicator was reported by 17.9% of respondents in the lowest quintile, by 14.9% of respondents in the second quintile and by 12.5% of all respondent households. Perhaps more disturbingly this indicator was reported by 40.0% of respondents who relied on unemployment and study payments and by 43.4% of recipients of family support payments.

The economic regulation of network service providers directly affects millions of residential customers. At 30 June 2009 there were more than 7.5 million residential electricity customers in the NEM.⁶ All households, low income households and not, are affected by increases in revenues to energy network businesses.

In research prepared for the Consumer Advocacy Panel (an extract from which is included at Attachment B) analysis by jurisdiction and by distributor demonstrates the significance of network pricing for retail pricing and the price trajectory that seems to be set for the next few years. In New South Wales retail prices increased by 20.2% to 22.1% in 2009-10. They will increase further by between 10.7% and 13.2% depending on distributor, in *each* of the next three years.

Why regulate?

Much of the public discourse concerning increasing network costs attributes the steep increases to replacement of ageing infrastructure and augmentation for increased peak demand. ACOSS is supportive of both the AER and the EURCC in their efforts to ensure that the AER is empowered and encouraged to ensure that business cases for investment are sound and that returns on investment are, genuinely and only, commensurate with legitimate regulatory and commercial risk.

⁵ Australian Bureau of Statistics 2011, Household Expenditure Survey, Summary of Results, Catalogue 6530.0, 2009-10, Canberra, Table 11 p25 and Table 30 p 59

⁶ Energy Supply Association of Australia 2010, Electricity Gas Australia 2010, Melbourne pp 26-27

In *State of the Energy Market 2010*, the AER observes that “[i]n Australia, the networks are regulated to manage the risk of monopoly pricing”.⁷ The AEMC summarises the “AER’s key purpose of [its] proposed changes” as “to ensure that customers pay no more than is necessary for energy services”.⁸ We have become increasingly concerned that the risk of monopoly pricing has been realised and that customers are paying more than is necessary for [basic, essential] energy services.

We would be happy to discuss any aspect of this letter with you. Please contact me on 02 9310 6200. We wish you well for the project.

Yours sincerely
Australian Council of Social Service

Tony Westmore
Senior Policy Officer

⁷ Australian Competition and Consumer Commission 2010, Australian Energy Regulator, *State of the Energy Market 2010*, Melbourne

⁸ Australian Energy Market Commission 2011, *Information – Network regulation rule changes from the AER*, Sydney October 2011

Attachment A

National Electricity (South Australia) Act 1996—1.1.2010

7—National electricity objective

The objective of this Law is to **promote** efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to—

- (a) price, quality, safety, reliability and security of supply of electricity; and
- (b) the reliability, safety and security of the national electricity system.

7A—Revenue and pricing principles

- (1) The revenue and pricing principles are the principles set out in subsections (2) to (7).
- (2) A regulated network service provider should be provided with a reasonable opportunity to recover **at least** the efficient costs the operator incurs in—
 - (a) providing direct control network services; and
 - (b) complying with a regulatory obligation or requirement or making a regulatory payment.
- (3) A regulated network service provider should be provided with effective incentives in order to **promote** economic efficiency with respect to direct control network services the operator provides. The economic efficiency that should be promoted includes—
 - (a) efficient investment in a distribution system or transmission system with which the operator provides direct control network services; and
 - (b) the efficient provision of electricity network services; and
 - (c) the efficient use of the distribution system or transmission system with which the operator provides direct control network services.
- (4) Regard should be had to the regulatory asset base with respect to a distribution system or transmission system adopted—
 - (a) in any previous—
 - (i) as the case requires, distribution determination or transmission determination; or
 - (ii) determination or decision under the National Electricity Code or jurisdictional electricity legislation regulating the revenue earned, or prices charged, by a person providing services by means of that distribution system or transmission system; or
 - (b) in the Rules.
- (5) A price or charge for the provision of a direct control network service should allow for a return **commensurate** with the regulatory and commercial risks involved in providing the direct control network service to which that price or charge relates.
- (6) Regard should be had to the economic costs and risks of the potential for under and over investment by a regulated network service provider in, as the case requires, a distribution system or transmission system with which the operator provides direct control network services.
- (7) Regard should be had to the economic costs and risks of the potential for under and over utilisation of a distribution system or transmission system with which a regulated network service provider provides direct control network services.

16—Manner in which AER performs AER economic regulatory functions or powers

- (1) The AER must, in performing or exercising an AER economic regulatory function or power—
 - (a) perform or exercise that function or power in a manner that will or is likely to contribute to the achievement of the national electricity objective; and

- (b) if the function or power performed or exercised by the AER relates to the making of a distribution determination or transmission determination, ensure that the regulated network service provider to whom the determination will apply, any affected Registered participant and, if AEMO is affected by the determination, AEMO, are, in accordance with the Rules—
 - (i) informed of material issues under consideration by the AER; and
 - (ii) given a reasonable opportunity to make submissions in respect of that determination before it is made.

Attachment B

Nominal electricity prices over time, and causes of price increases

New South Wales												
	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12f	2012-13f
Residential User												
general usage	8000	kWh	Annual consumption									
off peak 1 (HW load)	1200	kWh										
off peak 2 (HW load)	0	kWh										
Tariffs (ex-GST)												
EA Standing Offer		989.99	928.63	986.38	1034.58	1082.70	1161.25	1266.20	1545.75	1717.65	1913.46	2116.29
Cheapest offer in EA area										1631.77	1817.79	2010.47
IE Standing Offer	972.03	1008.17	1043.38	1105.32	1150.33	1197.06	1290.66	1400.62	1697.75	1814.82	1989.04	2032.80
Cheapest offer in IE area										1724.08	1889.59	1931.16
CE Standing Offer						1454.13	1562.37	1622.56	1949.61	2198.23	2486.19	2762.16
Cheapest offer in CE area										2088.32	2361.89	2624.05
<i>source of cheapest offers: IPART, http://www.myenergyoffers.nsw.gov.au/?utm_source=ipart&utm_medium=banner&utm_campaign=launch</i>												
Percentage change from previous period (nominal)												
EA			-6.2	6.2	4.9	4.7	7.3	9.0	22.1	11.1	11.4	10.6
IE		3.7	3.5	5.9	4.1	4.1	7.8	8.5	21.2	6.9	9.6	2.2
CE				7.4			7.4	3.9	20.2	12.8	13.1	11.1
Real tariffs (inflation-adjusted) (base period = June 2007)												
EA		1103.50	1010.08	1046.87	1056.04	1082.70	1111.16	1194.17	1414.62	1518.78		
IE	1112.60	1123.75	1134.90	1173.10	1174.19	1197.06	1234.99	1320.94	1553.72	1604.70		
CE						1454.13	1494.98	1530.26	1784.21	1943.71		
Percentage change from previous period (real)												
EA Standing Offer			-8.7	3.7	2.3	0.6	5.1	4.3	20.3	7.8	7.6	7.9
IE Standing Offer			0.8	3.4	1.5	0.1	5.6	3.8	19.5	3.7	5.9	-0.3
CE Standing Offer				4.8			5.3	-0.6	18.4	9.4	9.3	8.4
Cause of increase - nominal												
EA												
Network				5.0	2.2	2.2	2.2	2.8	10.8	9.3	9.5	9.4
Wholesale (ex-CPRS)				0.5	1.1	1.0	1.7	2.1	6.0	0.7	0.9	-0.5
Retail				0.7	1.6	1.5	3.3	4.1	5.3	1.1	1.2	1.7
Total				6.2	4.9	4.7	7.3	9.0	22.1	11.1	11.6	10.7
IE												
Network				2.6	0.8	0.8	2.2	2.4	9.3	6.4	7.3	1.3
Wholesale (ex-CPRS)				1.2	1.2	1.2	2.7	2.9	6.0	-0.5	1.5	0.0
Retail				2.1	2.1	2.1	2.9	3.2	5.9	0.9	1.0	0.9
Total				5.9	4.1	4.1	7.8	8.5	21.2	6.8	9.8	2.2
CE												
Network							4.5	2.3	12.0	10.0	10.9	9.3
Wholesale (ex-CPRS)							-1.3	-0.9	3.0	1.5	1.2	0.3
Retail							4.3	2.2	5.1	1.2	1.2	1.5
Total							7.4	3.7	20.2	12.7	13.2	11.1
Cause of increase - real												
EA												
Network				2.9	0.4	1.2	0.8	2.3	9.0	6.2		
Wholesale (ex-CPRS)				0.3	0.2	0.5	0.6	1.7	5.0	0.5		
Retail				0.4	0.3	0.8	1.2	3.4	4.4	0.7		
Total				3.6	0.9	2.6	2.6	7.4	18.5	7.3		
IE												
Network				1.5	0.0	0.4	0.9	1.9	7.7	3.0		
Wholesale (ex-CPRS)				0.7	0.0	0.6	1.1	2.4	5.0	-0.2		
Retail				1.2	0.0	1.0	1.2	2.6	4.9	0.4		
Total				3.4	0.1	1.9	3.2	6.9	17.6	3.2		
CE												
Network							1.7	1.4	9.9	7.0		
Wholesale (ex-CPRS)							-0.5	-0.5	2.5	1.0		
Retail							1.6	1.3	4.2	0.9		
Total							2.8	2.2	16.6	8.9		

Analysis undertaken by Luke Berry Engineerom Infrastructure Consulting Pty Ltd
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