IMPROVING ENERGY CONSUMER REPRESENTATION
SUPPLEMENTARY SUBMISSION TO SENATE INQUIRY INTO ELCTRICITY PRICES
TOTAL ENVIRONMENT CENTRE

SUMMARY AND RECOMMENDATION

Consumers have inadequate representation and rights in regulatory processes including network revenue determinations — currently the main driver of higher retail prices. Government, regulators and consumer groups are considering two proposals that would help remedy this situation:

- A Consumer Challenge Panel to provide a stronger consumer voice in regulatory processes.
- A move towards 'negotiated settlements' for determining network revenues.

TEC regards these proposals as complementary. However, bearing in mind that a move to negotiated settlements would probably require Rule changes and therefore take some years to implement, we recommend the immediate introduction of a Consumer Challenge Panel (which could likely be implemented without changes to the existing National Electricity Law or Rules) to guarantee consumers greater representation in regulatory processes affecting their long term interests.

BACKGROUND

It is now widely acknowledged that the current regulatory regime for the Australian energy sector gives inadequate attention to the long term interest of consumers (as defined in the National Electricity Objective). This has been recognised of late by the AEMC in its Power of Choice Draft Report, in the Limited Merits Review draft report (undertaken under the auspices of SCER), and in the Productivity Commission's Electricity Networks Regulatory Framework draft report.

However, ideas for reform to increase consumer representation and input into regulatory processes seldom go beyond recommending the creation of a national body to represent energy consumers. A process is currently underway to create such a body, tentatively called Energy Consumers Australia (ECA), with the support of Minister Ferguson. This submission assumes that ECA will be established shortly. It also assumes that there will be greater appeal rights to the Australian Competition Tribunal (or similar) for consumer groups pursuant to the implementation of the Limited Merits Review process. It therefore does not deal with either of these.

Once ECA is operating, it is expected to have a greater role in regulatory processes (especially AER 5 yearly network revenue determinations, AEMC rule changes and market reviews, and AER regulatory investment tests for individual network projects) than individual small consumer groups currently have. That is, government, regulators and industry are all expected to find it easier to negotiate with ECA than with a plethora of small consumer groups with diverse views and interests.

While the establishment of ECA should help to improve regulatory outcomes, more needs to be done to maximise consumers' capacity to influence regulatory and market reform processes and further reduce retail prices. This submission therefore considers how more of the former might lead to the latter.

The spectrum of involvement could range from the kind of informal and piecemeal engagement small consumers currently have in such processes, right through to giving them statutory rights to determine outcomes. But the two main proposals to date are as follows:

1. Introducing a system of negotiated settlements (aka 'constructive engagement'),[i] whereby revenue is determined through a process of negotiation between networks and consumers, with the regulator playing a supporting role (e.g., by providing research to consumer groups). This could involve either of two options:

   (a) The current 'propose-respond' model for network revenue determinations that has been in place in the NEM since 2006, whereby the network proposes its revenue for a 5 year period, and the AER's role is to assess whether it is reasonable, being replaced by a dedicated negotiated settlement regime (similar to the one that operates in California and elsewhere, with consumers there represented by the Division of Ratepayer Advocates [DRA]).

(b) Alternately it could be instituted as a voluntary initiative that is an alternative to the formal 2 year process that is currently undertaken to determine revenues for the next regulatory period, should there be enough goodwill for both parties agree to go down this path.
In either case, the AER need only make a determination on matters that the networks and consumers can't reach accord.

The main *advantages* of this option are that it has been proven to work in other jurisdictions (eg California, through the DRA, which calculates that its interventions have saved consumers $167 for every $1 it has cost); that the likelihood of speedy decisions provides an incentive for networks to participate in good faith; and that consumers are likely to see lower prices as a result. The main *risks* are that option (a) would require substantial changes to the National Electricity Law or Rules, while the success of option (b) depends upon a high degree of goodwill between consumers and networks.

2. Creating a formal role for consumers in the existing regime of revenue determinations and other regulatory processes. This could take either of two forms:

(a) An *advisory* role for consumers similar to the UK regulator Ofgem's Consumer Challenge Group (CCG), an Ofgem-appointed non-stakeholder expert panel which provides informal input into regulatory processes on behalf of consumers (without replacing other existing avenues for consumer input). Ofgem and the CCG both appear to have found this model very useful. It could constitute either a panel of independent experts (like Ofgem's CCG) providing informal advice and complementing rather than supplanting existing consumer input via stakeholder group, or informal advice from consumer groups, either via a panel or singly via Energy Consumers Australia.

(b) A *statutory* role guaranteeing consumer rights in regulatory processes, such as a direction to the AER and AEMC:
- to re-establish the primacy of the NEO — ie, the long term interest of consumers — in all regulatory processes;
- to involve consumer representatives (possibly directly nominating ECA) to the same degree as market participants in all such processes from the outset, with full transparency;
- to provide all necessary expert input and data to consumer reps in such processes; and
- to explain why, when it has varied from the consumer position in its decisions.

The main *advantages* of this option are that option 2(a) would be relatively cheap and quick to implement, and (in Ofgem's case) is regarded by all major stakeholders to have been successful; and of option 2(b) that its statutory role provides a greater long term guarantee of consumer rights. The main *risks* of option 2(a) are that it depends largely on the goodwill of regulators, government and industry not to water down over time or ignore consumer input; and that the potential legal mechanism for its impementation is unclear. The latter applies to 2(b) as well. The risks of both 2(a) and 2(b) would be if they are seen to supplant other consumer voices; if they are not properly resourced; and that they might be seen to be a cheap and easy way for governments and regulators to be seen to have fulfilled their obligations to consumers without instituting substantial regulatory reform.

Whichever option is chosen, there are a number of issues that would need to be resolved – eg:
- Funding.
- Composition or membership.
- Legal mechanisms for implementation, and avoiding conflict with the existing Rules and Law (unless the preferred option involves amending them).
- Ensuring all classes of consumers are represented – ie large C&I users as well as small residential and business consumers.

TEC's current preference is for a relatively simple solution that requires the minimal changes to the existing Law and Rules. Recognising that an advisory role is no guarantee of better outcomes for consumers, but that negotiated settlements may take several years to implement, we recommend the following 2 stage approach:

Short-term: option 2(a) above, ie an advisory role for consumers in all regulatory processes, but with consumers represented by ECA or stakeholder groups rather than (or as well as) an expert panel chosen by government; and with a strong (if not legally binding) mandate such as that provided by the 4 dot points under 2(b) above.

Long term: option 1(b) above, ie negotiated settlements to be introduced as an optional alternative to the current propose-respond model for revenue determinations.

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[i] Negotiated settlements were the subject of a recent paper to SCER from Carbon Market Economics. CME is also shortly to begin a study, funded by the CAP, of how consumer groups might best be involved in a negotiated settlement regime.