

# ON THE WIRE



**November 2006, edition 10.**

Regulatory activity in the NEM is gearing up again with the [Ministerial Council on Energy](#) about to begin its next phase of consultation on the distribution and retail regulatory framework for energy. The work of the Retail Policy Working Group (**RPWG**) is perhaps of most significant concern to residential consumers, with important matters such as consumer protections, dispute resolution and issues relating to customer transfer being considered. The NEM Network and the National Consumers Roundtable on Energy will seek to have significant input into the framework as it is created. More information about the RPWG follows in this newsletter.

Also in *On the Wire*:

- regulatory developments in the NEM
- consumer advocacy and analysis of the NEM, and
- updates from NEM Network members.

We welcome feedback on the information provided in *On the Wire*, as well as its design and layout. Further, we encourage you to forward the newsletter throughout your networks. Production of *On the Wire* is funded by the National Electricity Consumers Advocacy Panel. To subscribe to *On the Wire*, please email [info@clcv.net.au](mailto:info@clcv.net.au) with "On the Wire" in the subject line. The next edition of *On the Wire* is scheduled for release in January 2006. Past and the current edition of *On the Wire* can also be found [here](#).

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## 1. Regulatory developments

### 1.1 Ministerial Council on Energy

The [Ministerial Council on Energy](#) (MCE) met in Sydney on 27 October 2006. Ministers announced that the 2006 legislative package is progressing, and the exposure draft of the National Gas Law (NGL) will be released in the next two weeks. Release of the exposure draft of amendments to the National Electricity Law (NEL) and exposure drafts of amendments to implement long-term consumer advocacy arrangements, will also occur in November 2006. A six week consultation period will be undertaken for submissions on each package. Exposure drafts of the National Gas Rules (NGR) will follow in late November and amendments to the National Gas Rules (NGR) in early 2007.

Ministers also finalised criteria which will form basis of future assessments into the effectiveness of competition in jurisdictional retail energy markets. Assessments, to be undertaken by the [AEMC](#) and the [Economic Regulation Authority](#) of WA, will feed into jurisdictional decisions to phase out retail-pricing regulation. The criteria are high-level only, and the AEMC is to determine the method of applying the criteria and flexibility in relation to indicators it may have regard. The MCE also states that the framework "makes provision for circumstances where competition is found to be not yet effective, and address such issues as those related to social and regional equity considerations". A copy of the criteria can be found [here](#).

Progress on the 2007 legislative package has continued, with the MCE establishing a Retail Policy Working Group (RPWG) to oversee the transfer of regulation of distribution (non-economic) and retail (non-price) functions to the AER and AEMC. A stakeholder reference group has been established to comment on recommendations for the national framework. Consumer representatives on the reference group are the [Australian Council of Social Service](#) (ACOSS), the [Public Interest Advocacy Centre](#) (PIAC), the [Consumer Utilities Advocacy Centre](#) (CUAC) and the [Consumer Action Law Centre](#) (Consumer Action). These representatives will consult with other organisations representing small end-users through the National Consumers Roundtable on Energy. The first consultation papers will be released shortly and it is hoped that the next edition of *On the Wire* will include detailed information on the work of the RPWG as it effects consumers.

The MCE also considered the future development of the [National Framework for Energy Efficiency](#) (NFEE). The MCE agreed to further work on new energy efficiency measures, including measures that go beyond those used so far in pursuing the adoption of cost-effective energy efficiency and greenhouse abatement measures.

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### 1.2 Energy reform implementation group (ERIG)

The [Energy Reform Implementation Group](#) (ERIG) has received a lot of media coverage, with much being expected of its recommendations. Charged with the task of determining whether further energy market reforms can yield significant efficiency and energy security benefits, ERIG's work is focussing on electricity transmission, electricity market structures and energy financial markets.

Since the first ERIG stakeholder meetings, ERIG has held a tele-conference with a number of consumer representatives. This has resulted in ERIG now prioritising user-group feedback and being much more receptive to the needs of household consumers in the marketplace. The draft report has been delayed and is now due out on November 7. For more information about ERIG, please contact Gerard Brody (Consumer Action) at [gerard@clcv.net.au](mailto:gerard@clcv.net.au) or Elissa Freeman (PIAC) at [elissa@piac.asn.au](mailto:elissa@piac.asn.au).

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### 1.3 Advocacy Panel

Due to delays in appointing new members of the [Advocacy Panel](#), current members have agreed to continue in office until 30 November 2006, or until a new Panel is appointed, whichever is earlier.

At its October meeting, the Panel resolved to accept a [structured approach to the allocation of funding in 2007/08](#). The structured approach proposes a forward-looking allocation of funding by agreeing with applicants an advocacy agenda for the coming year. The approach means that in April, the Advocacy Panel will issue a report which outlines the work programs of regulatory organisations and policy making bodies for the coming year. Interested parties would be invited to comment on the work program and the Panel would then publish an agreed agenda. Applications for funding would then be submitted after applicants have selected the tasks they want to be involved in.

In response to stakeholder comments that there should be flexibility in how the Panel allocates its budget so it can deal with emerging issues as they arise and with new issues that advocates wish to raise, the Panel agreed to flexibility in applying the structured approach.

The Panel also recently consulted on [applications for funding and prioritisation for approvals](#). The Panel agreed that the proposed prioritisation factors continue to be used in assessing applications for funding. The factors are to be included in the Panel's revised funding criteria and funding application guidelines for the purposes of their intended review.

The Panel has also recently undertaken consultations on its:

- [funding requirement for the 2007/08 financial year](#); and
- [funding criteria and application guidelines](#).

Responses on the latter are due by 22 November 2006 and the paper is available [here](#). Roundtable participants are keenly following developments with the Advocacy Panel. For more information, please contact Gerard Brody at Consumer Action at [gerard@clcv.net.au](mailto:gerard@clcv.net.au).

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## 1.4 AEMC update

The [AEMC](#) is the body responsible for the [National Electricity Rules \(NER\)](#) and overseeing the [rule-change process](#). It is also responsible for policy advice regarding the NEM. With the transfer of distribution and retail (non-price) functions to the national framework, consumer advocates will need to further consider their role in rule changes and whether consumer groups can propose rule-changes that benefit consumers.

The AEMC is currently considering a number of proposed rule-changes, including:

- [generator performance standards](#), proposed by the National Generators' Forum;
- [metrology](#), proposed by NEMMCO; and
- [region boundaries](#), proposed by the MCE.

The AEMC is also considering rule changes relating to the [economic regulation of transmission services](#). After the closure of consultations on its second draft rule, the AEMC sought further comment in relation matters regarding the forecast of capital and operating expenditure. A number of consumer groups responded, concerned that the draft rule retained a "propose-respond" model of regulation, which places too much weight on the input of regulated businesses, and does not provide the regulator (the AER) with sufficient discretion to overrule proposals. Consumer groups are concerned that the interests of regulated businesses are being placed ahead of consumers. The adoption of a similar rule for distribution regulation may significantly impact consumers, as the impact on distribution charges on electricity prices is four times greater than that of transmission charges. Submissions to the additional consultation include:

- [PIAC](#);
- [CUAC](#);
- [ACOSS](#); and
- [Consumer Action](#).

The final rule is now due out on 16 November 2006.

The AEMC has also released its draft rule and draft determination in relation to [pricing of prescribed transmission services](#). The Draft Rule largely confirms the continued operation of current pricing methodologies while also providing scope for innovation into the future. This has been achieved through a recasted regulatory framework incorporating codification in the Rules of the key design features of the regime.

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## 1.5 AER update

On 7 September 2006, the [AER](#) released its [Electricity Distribution Regulation Guidelines – Statement of Approach](#). Although the regulatory framework for distribution regulation is still being developed, the AER believes there is a sufficient degree of certainty to commence consultation on its guidelines. The AER's statement of approach outline's AER's intention to:

- develop electricity distribution guidelines as a separate process from gas distribution and from electricity transmission;

- continue to base its expectations of the future regulatory framework on certain legislative and policy review reports, particularly those of the MCE Expert Panel and of the AEMC;
- ultimately adopt a flexible approach in order to ensure that its decisions and guidelines comply with the relevant laws and rules as they develop;
- and consult on the guidelines with interested stakeholders.

The AER has proposed that discussion papers on revenue modelling, asset roll-forward modelling, cost allocation guidelines and cost reporting templates before the end of 2007.

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## 1.6 NEMMCO update

On 25 October 2006, [NEMMCO](#) released its [2006 Statement of Opportunities](#). The Statement provides information about the adequacy of electricity supplies and the capability of the transmission network in the NEM to meet projected demand for the next 10 years.

The statement indicates the point in time when additional capacity may be needed to maintain the established level of electricity supply reliability in each of the NEM regions (the system is deemed to be reliable if, over the long-term, at least 99.998% of consumer energy demand can be met). This level of reliability should be met for all regions in the summer of 2006/07. If no additional capacity is made available, the point in time when reliability could fall below the reliability standard is:

- the summer of 2009/10 in Queensland;
- the summer of 2010/11 in New South Wales;
- the summer of 2008/09 in Victoria;
- the summer of 2007/08 in South Australia; and
- beyond the outlook period of 2015/16 in Tasmania.

The statement also provides an overview of the current state and potential development of national transmission flow paths – the electricity transmission elements of the NEM. NEMMCO suggests there are potential transmission augmentation opportunities across:

- Victoria to Snowy;
- Snowy to Victoria;
- between Queensland and New South Wales in both directions.

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## 1.7 National Greenhouse and Energy Reporting

The Australian Government, states and territories have agreed to develop a nationally consistent framework for greenhouse and energy reporting by industry to meet the current and prospective reporting needs of government, business and the public.

On 14 July 2006, the [Council of Australian Governments \(COAG\)](#) considered recommendations by the [Environment Protection and Heritage Council \(EPHC\)](#) and the [MCE](#) on this matter, which were developed following a national stakeholder consultation process held during April 2006.

After considering the recommendations, COAG agreed that a single streamlined system that imposes the least cost and red tape burden is the preferable course of action. The reporting system would be based on national purpose-built legislation to provide for cost-effective mandatory reporting and disclosure at the company level. The proposed legislation will make reporting mandatory for companies with energy production/use of greenhouse gas emissions above a certain thresholds.

A draft [Regulatory Impact Statement](#) (RIS) has now been prepared by the COAG Greenhouse and Energy Reporting Group to facilitate input by stakeholders, which will inform the report to COAG. It includes a detailed description of the preferred option, including specific proposals on key design elements of the reporting system that will need to be written in the legislation such as reporting thresholds, public disclosure, data security and access, compliance and timing of implementation. Written submissions on the RIS are sought by 30 November 2006.

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## 1.8 National Emissions Trading Taskforce

State governments are currently consulting on a [National Emissions Trading Scheme](#). Following the establishment of European Union's Greenhouse Gas [Emission Trading Scheme](#) (ETS) in January 2005, and in response to the lack of action at the Federal level, the state governments established the National Emissions Trading Taskforce to develop a multi-jurisdictional emissions trading scheme for consideration by State and Territory Governments.

The Taskforce's [Discussion Paper](#) proposes that the trading scheme apply to the stationary energy sector, including electricity generation. Initially the scheme is to cover generators with an output of 30 MW. After five years of operation, the scheme would extend to other parts of the stationary energy sector such as gas, coal and oil combustions, including gas supplied by gas retailers.

The primary driver for the proposal is climate change, which threatens the world's and Australia's economic activities, communities and ecosystems (the extent of this threat has recently been analysed by the [Stern Review on the Economics of Climate Change](#)). The Taskforce views that it is in Australia's interest to promote action to reduce greenhouse gas emissions. The establishment of an emissions trading scheme in Australia will effectively give carbon a "price", which consumers will be charged in their energy bills (and respond to). It also aims to make renewable energy more competitive. This issue is one that consumers need to think about and respond to.

Stakeholder consultation is being undertaken between September – December 2006, and responses to the Taskforces' are due on 22 December 2006.

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## 2. Consumer advocacy and other information

### 2.1 Review of decision-making in the NEM

In early 2006, [CUAC](#) provided Catriona Lowe and Denis Nelthorpe with a CUAC Initiated Research Grant to examine the process by which determinations of the [Essential Services Commission](#) are reviewed. The primary task of the project was to analyse and assess whether, or how, appeal arrangements can ensure consumer standing in the process and enhance consumer outcomes through minimising the risk of 'gaming' by regulated monopolies.

The research found that judicial review of decisions-making, undertaken by a court, will:

- provide the greatest likelihood of participation by public interest organisations;
- provide for consideration of public interest outcomes in terms of issues relating to process and the legal correctness of decisions; and
- limit the ability of regulated businesses to game the process by picking and choosing elements of the decision.

The research findings have particular applicability to appeal arrangements in the NEM. In May 2006, the MCE released its decision on [Review of Decision-Making in Electricity and Gas Regulatory Frameworks](#). The MCE adopted a model described as "limited merits review", involving the Australian Competition Tribunal being given to examine the merits of the original decision, on the following grounds:

- that the decision-maker made an error of fact and that fact was material to the decision;
- that the exercise of the decision-maker's discretion was incorrect having regard to all the reasonable circumstances; or
- that the decision-maker's decision was unreasonable having regard to all the circumstances.

Some consumer groups are concerned, in light of recent successful appeals in Victoria, that the limitations proposed by the MCE will be ineffective. In particular, consumer groups are concerned that the model adopted by the MCE will allow regulated businesses to 'game' the appeal processes, allowing them to profit by appealing in certain circumstances. In light of this research, consumer groups are currently raising these issues with the MCE for further consideration.

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### 2.2 Competition in energy markets

The level of competition in energy markets continues to be an important topic in the NEM, and for consumer advocates. Competition is supposed to bring about lower prices and better offers for consumers – but is it? Assessments of the effectiveness of competition will soon begin, and where competition is assessed as effective in particular jurisdictions, there will be significant pressure to remove retail price regulation. Energy retailers are also making [strong calls](#) for the removal of retail price regulation. It is not clear why removal of price caps is needed if competition is going to reduce prices, but it is time for consumers to better understand how competition and the structure of the energy market effects them.

ERIG (see above) is currently considering whether any changes to the *Trade Practices Act* merger provisions are necessary to ensure effective competition in energy markets. Early indications suggest that ERIG will recommend that section 50 not be amended for energy-specific mergers, and that cross-ownership rules are not warranted. The Victorian Government [consulted on its cross-ownership rules](#) in 2005, but the Government has not finalised its response. In February 2006, COAG re-affirmed its objective to maintain separation between the contestable and non-contestable elements of the electricity industry. The MCE is currently considering the need for cross-ownership rules in response.

If there is a commitment to separate contestable from monopoly elements of the market, then there are still questions around the impact of horizontal mergers and generator-retailer mergers. Regulators seem to suggest that section 50 is sufficient to deal with horizontal mergers, but this will often depend upon the definition of a market. The ACCC has recently released a [Statement of Issues](#) in relation to Santos Limited's proposed acquisition of Queensland Gas Company Limited (relating to the gas market in Queensland), which may provide an example of the limits of section 50.

Generator-retailer mergers are perhaps more complex. The ACCC recently summarised some of the costs and benefits to such mergers. Benefits include:

- improved risk management – integration can be used by retailers to mitigate the risks associated with generator market power by providing a natural hedge against spot market volatility;
- reduced transaction/risk costs – integration may reduce trading costs;
- significant generation investment – most of the new peaking plants in Victoria and South Australia are being built by the large retailers.

Costs may also arise:

- loss in liquidity in hedge markets as integrated retailers hedge internally;
- barriers to new retail entry – becoming more difficult for them to secure competitively priced contracts;
- risk management problems for small integrated retailers.

There may well be further costs and benefits. Nevertheless, without the benefit of hindsight, it will be difficult for consumer advocates to determine which market structures bring about the best outcomes for consumers.

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### 2.3 Some statistics

*On the Wire* readers may find the following statistics about the NEM of interest, sourced from the Australian Bureau of Statistic's recent publication, [Electricity, Gas, Water and Sewerage Operations, Australia, 2004-05](#) (8226.0). Thanks to Tony Westmore from ACOSS for bringing this to our attention.

- Electricity consumption
  - has increased by 4.3% from 2003-04 to 2004-05 (from 242,744 GWh to 253,117 GWh)
  - Victoria has the largest increase of 6.7%
- Prices
  - the Consumer Price Index (CPI) indicates that electricity prices for household consumers were 2.8% higher in 2004-05 than in 2002-03.

- Profitability and earnings – most indicators of profitability for the industry either increased slightly or were stable during 2004-05
  - trading profit rose by 6% (or \$703 million)
  - earnings before interest and tax increased by 4% (or \$299 million)
  - operating profit before tax increased by 6% (\$3.7 billion).
  - the estimated profit margin of the industry declined marginally from 11.0% to 10.9%.
- Capital expenditure
  - net capital expenditure for the electricity supply industry in 2004-05 increased by \$1.7 billion (35%) to \$6.4 billion, reflecting substantial investment in upgrading networks, increasing capacity, and improving reliability of supply.

The NEMMCO release (above) suggests that capital expenditure will continue to increase to maintain acceptable levels of reliability of supply.

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### **3. Network Member updates**

#### **3.1 Victorian update (contributed by Consumer Action Law Centre)**

The Consumer Law Centre Victoria (**CLCV**), which has published *On the Wire* since its inception, has recently merged with the Consumer Credit Legal Service (Vic) to form the Consumer Action Law Centre. The Consumer Action Law Centre is an independent, not-for-profit, campaign focussed, casework and policy organisation. Consumer Action will continue CLCV's work on NEM-related issues, including publication of *On the Wire*.

A current project of Consumer Action is a research paper relating to consumer protections in the NEM. The MCE, through the RPWG (see above), is currently consulting on consumer protections. Previous consultations on the framework for national retail regulation have seen suggestions that energy-specific consumer protections be curtailed, and that generalist consumer protections (the *Trade Practices Act* and state *Fair Trading Acts*) be relied upon. By analysing the extent of protection provided by industry-specific regulation, the paper argues that energy-specific protections complement generalist consumer protections, and do not duplicate them. Furthermore, these protections contribute to the efficient operation of a competitive energy market for the long-term interests of consumers. The paper will be released shortly.

Consumer Action has also received funding from the Advocacy Panel to update the "Comparison Document", a document produced in 2004 that compares energy retail consumer protections in NEM jurisdictions. This document should be finalised over the coming months, and will be an important input into work being undertaken by the RPWG.

For further information about Victorian energy issues, please contact Gerard Brody at [gerard@clcv.net.au](mailto:gerard@clcv.net.au).

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### 3.2 Queensland update (contributed by the Centre for Credit and Consumer Law and the Queensland Consumers Association)

The Centre for Consumer and Credit Law (**CCCL**) and the Queensland Consumers Association continue to participate in stakeholder forums surrounding the introduction of Full Retail Competition (**FRC**) in SE Queensland on the 1st of July 2007 with the help of Advocacy Panel funding. It's a bit of a David and Goliath scenario at the stakeholder meetings with well resourced retailers far outnumbering the one or two Queensland consumer representatives fronting up, but in spite of this numerical and resource disadvantage some gains have been made.

Fortunately, Advocacy Panel funding has enabled the presentation of two substantial submissions on legislation/codes and the Energy Ombudsman scheme respectively. We also welcomed the contribution of ANZEWON which also made a welcome submission on the proposed ombudsman scheme. Final changes to the energy legislation bill are now being completed by Parliamentary Counsel and a revised Electricity Industry Code is due to be presented for comment at the end of October.

There is a great deal of concern at present that there will be insufficient protections in place prior to the introduction of FRC as retailers jostle for market advantage with customers. This is because the Electricity Industry Code will not come into effect until the 1st of July 2007. Which is all the more reason for a robust consumer protection framework to be in place before that time. It is also vital for Queensland consumers that prior to the transition to a national regulatory regime that the [Queensland Competition Authority](#) has sufficient enforcement and monitoring powers with respect to FRC and that the Energy Ombudsman Scheme meets national benchmarks for Industry-Based Customer Dispute Resolution Schemes.

The Bill to sell the retail arm of [Energex](#) and [Ergon](#) (above 100 megawatts) was introduced to the Queensland Parliament earlier this month. The sell off of the retail arm of Energex in particular is crucial to the introduction of FRC in SE Queensland for residential customers and small business. Energex retail (now Sun Retail) will be sold off in two parts possibly along geographic lines and the retailers at the FRC stakeholder meetings are also in the running for purchasing these retail arms. Planning for the introduction of FRC within a very tight time frame has led to a compromise in the quality of consultation that can reasonably occur and the capacity for Queensland community organisations to respond substantially to this issue is low due to a lack of awareness and resources. The sell-off of the retail arms also compromises this discussion as some elements of debate are simply off-limits due to client-in-confidence issues. However, the introduction of FRC is also an opportunity for positive changes to be made in the consumer protection framework there is now an Electricity Industry Code and it is anticipated that ultimately the proposed Energy Ombudsman scheme for Queensland will meet national benchmarks. These are both firsts and the direct result of FRC being introduced.

As part of the NEM reforms the Queensland Government has also upped their contribution to the AEMC with a further allocation of \$1.95 million for 2006-07. The flow on effects of this sale will be felt for some time to come – not only in terms of competition but how the non-FRC non-profitable energy sector will be subsidised. With the retail sale the cross-subsidy arrangement between the SE/Energex corner of Queensland and the rest of the state will dissolve. The question remains – what are the financial implications of FRC being introduced in one part of Queensland for the

other parts of the State? Electricity is an essential service. What is the relationship between competition and essentiality and what balance needs to be achieved? Meanwhile SE Queenslanders are being asked to limit their air conditioning use as summer approaches due to a lack of capacity in the network. Now that's a whole other 'demand management' story! And then there is the drought. What impacts will that off on the national network? Big questions with big answers. Stay tuned.

For more information on go to [www.griffith.edu.au//centre/cccl/](http://www.griffith.edu.au//centre/cccl/). Alternatively, contact Tenzin Jane Bathgate at CCCL at [tenzin.bathgate@griffith.edu.au](mailto:tenzin.bathgate@griffith.edu.au).

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