consumer action law centre

ON THE WIRE

March 2007, edition 12.

As most Victorians would be aware, on 16 January 2006, a combination of hot weather and bushfires led to large-scale electricity supply interruptions across the state. Demand for electricity across the National Energy Market (**NEM**) reached a record high, with the wholesale price of energy reaching the cap of $10,000/MWh. Interruptions to energy supply of this nature not only greatly impact upon business productivity, but impact directly on consumers who require continued electricity supply to ensure health and wellbeing.

Three separate reviews have been established to investigate the incident – one by the Australian Energy Regulator (**AER**), one by NEMMCO and another by the Victorian Department of Primary Industries. Part of the AER's investigation considers whether market participants complied with the National Electricity Rules, particularly in relation to generator offers and rebidding on the wholesale market. We look forward to the outcomes of these reviews.

This incident has again raised issues in relation to demand management. There is no doubt that demand management initiatives are important for both social and environmental reasons. However, some commentators used this incident to suggest that demand management should include domestic consumers being given price signals about when there is high demand on the NEM – in other words, consumers should pay more when higher prices are being charged in the NEM.

It must be remembered that the energy industry is structured to allow industry participants to "hedge" against the risk of soaring prices on the wholesale market. Retailers and generators enter into contracts to manage the risks associated with high wholesale prices, meaning that in practice they do not pay the higher prices when such prices are being charged in the NEM. Industry participants are best placed to manage this economic risk. In addition, the overall costs associated with hedging arrangements are of course passed on to consumers, so consumers do, in effect, pay for the risk associated with high wholesale prices, but at least in the most efficient way – through the use of hedging contracts by industry. Passing the risk of higher wholesale prices directly onto consumers, who aren't knowledgeable about the operation of the market, and aren't able to hedge in the same way, would result in inefficiencies and poor outcomes for consumers. Further, industry would, in all likelihood, continue to use hedging arrangements to continue to avoid actually paying higher prices when such prices were charged on the NEM, even though such prices would be passed onto their customers.

We welcome feedback on the information provided in *On the Wire*. 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@consumeraction.org.au with "On the

Wire" in the subject line. The next edition of *On the Wire* is scheduled for release in May 2007. 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**) has released 4 more Energy Market Reform bulletins since the last edition of *On the Wire*.

EMR 79 relates to the release of an Information Paper on the MCE Direction on Smart Meters. As readers would be aware, in 2006, CoAG agreed to the progressive roll-out of smart meters. This follows a similar decision by the Victorian Government to roll-out advanced metering infrastructure (an alternative, perhaps less pejorative, name for smart meters) from 2008. The CoAG decision agreed 'that Governments will improve the price signals for energy investors and customers by:

a) committing to the progressive roll-out of electricity smart meters to allow the introduction of time of day pricing and to allow users to respond to these prices and reduce demand for peak power;
b) requesting the MCE to agree on common technical standards for smart meters and implement the roll-out as may be practicable from 2007 in accordance with an implementation plan that has regard to costs and benefits and takes account of different market circumstances in each State and Territory' (CoAG Communiqué, 10 February 2006).

More information is provided below about the MCE work on smart meters.

As reported in the last edition, the MCE has also recently consulted on the 2006 legislative package, which included an Exposure Draft of the amendments to the National Electricity Law, explanation of the proposed National Electricity Rule on the economic regulation of distribution networks, and an explanation of proposed changes to the AEMC's Rule change process. In responses to the consultation, consumer groups generally supported the harmonised approach to energy network regulation,

supporting the regulator being given strong information gathering powers to address information asymmetries that are inherent to monopoly energy networks. Consumer groups did raise concerns with proposed amendments to the rule-change process, which impose undue obligations on rule-change applicants, including the imposition of a fee. Submissions from organisations representing residential consumers include:

- Consumer Action;
- the Public Interest Advocacy Centre;
- the Total Environment Centre; and
- the Consumer Utilities Advocacy Centre.

The MCE SCO has also released a response to stakeholder consultation on the Exposure Draft of the National Gas Law. The response accepts a number of consumer concerns with the proposed merits review process, including those related to indemnity costs orders being made against consumer organisations. Instead, costs orders will be made in accordance with common law principles.

There are also some proposed changes in relation to the AER's information gathering powers, which appear to have been proposed at the behest of the networks who are concerned with intrusive regulatory powers. Limits on the AER's information gathering powers may have significant impact on the ability of the AER to undertake its functions appropriately, including in relation to pricing and performance reporting. This may lead to consumers being required to pay prices that are higher than the efficient cost of service delivery. Consumer representatives continue to be concerned with such proposed changes and will raise their concerns with the MCE. These concerns appear justified given the current difficulties facing the Victorian Essential Services Commission in its attempts to obtain relevant information from Alinta Asset Management regarding the costs of its service arrangements with gas distributor Multinet, including court action recently taken by Alinta, and its similar problems relating to information regarding Alinta's arrangements with United Energy Distribution last year.

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1.2 Retail Policy Working Group (RPWG)

The MCE's RPWG is continuing its development of the national framework for retail and distribution (non-economic) energy regulation. The RPWG has now released its third working paper, which considers business authorisation, ring-fencing and retailer failure arrangements. The working paper proposed the removal of licensing obligations, so that the primary obligations or retailers and distributors would be directly under the Law and/or Rules, rather than through licences. There would, however, remain a form of business authorisation (or registration) before an entity could retail or distribute energy.

Consumer stakeholders have largely supported the recommendations in the working paper, but had the following concerns:

- Consumer Action, the Centre for Credit and Consumer Law (**CCCL**) and the Total Environment Centre argued that a move away from licensing must ensure that there remains strong and flexible compliance and enforcement capabilities for the regulator; and

- Consumer Action and the CCCL suggested that a lighter form of business authorisation should not apply to distributors, who also need to be independently assessed by the regulator;

Submissions have also been made to the RPWG's second working paper on distributors' obligation to provide connection services and distributors' interface with retailers and embedded generators from:

- Consumer Action;
- the Public Interest Advocacy Centre; and
- the Total Environment Centre and Alternative Technologies Association.

The fourth working paper on the balancing regime, customer settlements and metering has recently been released. Other papers to be released are in relation to jurisdictional derogations, compliance and enforcement and the national electricity and gas objective.

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1.3 AEMC Update

The Australian Energy Market Commission (**AEMC**) has been progressing a number of rule change proposals submitted by parties who are not registered market participants. The progress of these proposals may be of interest to consumer representatives who may wish to initiate rule-changes in the future.

In July 2006, Energy Solutions Australia Pty Ltd proposed a rule which sought to oblige network service providers to establish comprehensive contact information registers of contestable service providers for distribution to connection applicants. Energy Solutions contended that incumbent network service providers presently enjoy a competitive advantage in the provision of contestable network services by virtue of their unique position, which is not available to other competitors. Specifically, since a party wishing to establish a connection must first contact the relevant incumbent provider, it is privy to information regarding potential commercial opportunities that other providers may not be. The proposed amendment was viewed as a means of reducing this informational advantage and any associated competitive advantage.

After a consultation period on the proposed rule change, on 15 February 2007, the AEMC made a draft determination that the rule change is unlikely to contribute to the national electricity market objective, and therefore rejected the rule change. The AEMC felt that there was insufficient evidence that the identified problem was a significant impediment to competition, that the current rules remove any competitive advantage that network service providers have, and that the proposed Rule would impose significant regulatory and administrative costs on network service providers.

The second rule-change proposal was from Metropolis Metering Assets Pty Ltd proposing a change to the Rules to allow Market Participants to seek offers from and enter into agreements with accredited Metering Providers to act as the Responsible Person for type 1, 2, 3 or 4 metering installations. Metropolis considers that this change will promote competition and ensure greater price transparency for contestable metering services. On 13 February 2007, the AEMC decided not to proceed with the Rule change, submitting that Metering Providers were unable to

assume the full range of roles requested due to the current operation of the National Electricity Law and Regulations.

These decisions highlight the fundamental role played by the national electricity market objective as the "rule-making test" and the need to demonstrate that new Rules promote efficient outcomes.

The AEMC has also recently released its Draft Statement of Approach for the reviews of the effectiveness of competition in the gas and electricity markets. The AEMC's reviews will be of special significance to consumers, as where competition is assessed as being effective, jurisdictions have agreed to remove pricing regulation. Further analysis of the AEMC reviews, and its approach, will be detailed in future editions of *On the Wire.* Responses to the AEMC's consultation are due on 10 April 2007.

For more information, visit www.aemc.gov.au.

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1.4 AER update

The Australian Energy Regulator (**AER**) has issued proposed guidelines and explanatory statements to assist with its regulation of electricity transmission network businesses. The guidelines are issued for public comment and relate to:

- the post-tax revenue model;
- the roll forward model;
- an efficiency benefit sharing scheme;
- a service target performance incentive scheme;
- submission guidelines; and
- cost allocation guidelines.

Stakeholder comments are due by 1 May 2007. The AER will consult on guidelines applicable to electricity distribution networks over the next year.

The AER has also released its third annual report on the market impacts of transmission congestion. The indicators of the market impact of transmission congestion relate to the collection and publication of information to improve understanding about transmission congestion. The reported indicators aim to:

- Identify the causes and market impacts of transmission constraints;
- Provide information to participants that can be used as a tool to guide decisions and promote more efficient market participant behaviour; and
- Be used as a tool to develop improved service standards incentives.

The report shows total congestion costs in the NEM of $66 million in 2005/06, up from $45 million in 2004/05 and $36 million in 2003/04. The AER estimates that transmission outages accounted for around one third of total congestion costs, while the remainder were due to the inherent limitations of the transmission network. The AER will use this data to develop a new service standards incentives scheme. The scheme will link market outcomes with transmission network service providers' revenues. The AER will consult in developing the incentive scheme later in the year.

For more information, visit www.aer.gov.au.

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1.5 National Task Group on Emissions Trading

On 10 December 2006, the Prime Minister announced the establishment of a joint government-business Task Group on Emissions Trading. The Task Group has been asked to develop a workable global emissions trading system in which Australia would be able to participate, ensuring that Australia's competitive advantage (in terms of the possession of large reserves of fossil fuels) is maintained.

The Task Group released an Issues Paper, which provides the context for the work to be undertaken by the Task Group, on 7 February 2007. The Task Group's scope is considerably limited compared to the National Taskforce on Emissions Trading (**NETS**), a State and Territory Government initiative to progress a national emissions trading scheme. The NSW Parliamentary Library Research Service has also recently released a briefing paper on greenhouse gas trading – it provides a useful comparison of the EU Emissions Trading Scheme, the NSW Greenhouse Gas Abatement Scheme, the NETS proposal and the new Task Group.

The Prime Minister has asked the Task Group to report by 31 May 2007.

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2. Consumer advocacy and other information

2.1 Merger action in the energy market

As reported in the last edition of *On the Wire*, there continues to be a lot of merger and acquisition activity in the national energy market. Considering the significant benefits that fair, effective competition can bring the majority of consumers, in terms of price, quality and access to services, consumer advocates continue to be concerned about the concentration of market participants.

The Australian Competition and Consumer Commission (**ACCC**) recently opposed Santos' proposed acquisition of the Queensland Gas Company (**QGC**) on the basis that it would substantially lessen competition. Santos is Australia's second largest oil and gas exploration and production company, while QGC is a significant supplier to the south-east Queensland gas market. Santos had proposed undertakings whereby the existing QGC management would form NewCo. Santos would retain a 30 per cent stake in NewCo and NewCo would have post-acquisition rights to certain tenements, access to 100 petajoules of gas and some additional exploration and marketing support. However, these undertakings were not enough to satisfy the ACCC's competition concerns. Since this outcome, AGL has gained a substantial interest in QGC, after recently purchasing Queensland gas retailer, Powerdirect.

The ACCC will now probably not have to make a similar investigation into the proposed 'merger of equals' between AGL and Origin Energy, after Origin rejected AGL's proposal. AGL has stated it is 'disappointed' with the outcome releasing a detailed document outlining the benefits of the proposed merger for investors. Consumers, however, might not have similarly received benefits, if the number of players in the market significantly reduced competition.

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2.2 Interval meter rollouts – May Mauseth Johnston, Consumer Utilities Advocacy Centre

Interval meters, advanced metering infrastructure and smart meters all refer to electricity meters with the ability to measure consumption within short intervals (typically half hourly) throughout the day, in contrast to the standard accumulation meters used to measure most residential electricity consumption today. Interval meters can facilitate increased price differentiation, allowing prices to vary according to the time of day electricity is being consumed. Furthermore, there is an opportunity to make the meters and the associated infrastructure more advanced (to include more "smarts") to provide further benefits when first rolling out new metering infrastructure.

INTERVAL METERS IN VICTORIA

The Victorian Advanced Metering Infrastructure (**AMI**) project effectively broadens an earlier decision by the Essential Services Commission (**ESC**) in 2004 to roll out manually read interval meters, by adding the capability of two-way communication and the ability to remotely read the meters and connect/disconnect supply.

The communication functionalities that enables services such as meter readings and connections to be undertaken remotely will produce large savings (as it radically reduces the need for site visits) which should be passed on to consumers. We can also expect customer service enhancements as a result of these functionalities. For example, remote readings should eliminate the practice of issuing bills based on estimated rather than actual consumption.

Approximately 2.4 million new meters will have to be installed in Victoria between 2008 and 2012 to complete the roll out in line with the project timelines. The Government's position is that these new "smart" meters will allow Victorian consumers to better manage their energy use by providing more detailed information about their consumption and the opportunities available to save money and reduce greenhouse gas emissions.

Tariffs and product offers enabled by interval metering technology are regarded as a key benefit as well as a major risk to consumers. Interval meters can enable more cost reflective tariff arrangements and many consumers may be able to benefit from time-of-use contracts, but consumers unable to change demand or consumption patterns may see steep price increases. It has not yet been discussed how regulators and government will protect and/or assist consumers disadvantaged by time varying prices.

THE COMMONWEALTH PROCESS

In January, the MCE issued an information paper outlining their policy direction for the roll-out of smart meters. It also announced the establishment of an industry–consumer stakeholder working group to further develop MCE's policy direction. As a result, the Smart Meter Stakeholder Working Group (**SMSWG**) has been established with the aim of providing ongoing advice to the process. The Department of Industry, Tourism and Resources (**DITR**) is thus convening a series of workshops on behalf of the MCE to gather stakeholders' input, develop options, and prepare advice for CoAG.

Representatives from CUAC, ACOSS, PIAC and the Total Environment Centre (**TEC**) attended three workshops convened by DITR in February. The main aim of the workshops was to gather stakeholder views on the benefits, costs and risks for a roll-out of smart meter infrastructure. The Commonwealth has produced an initial communication from SMSWG to advise CoAG and MCE in the development of a smart meter roll out. The communication attempts to synthesise the current top priorities and concerns of the different stakeholder groups, both collectively and specific to certain sectors. It is difficult to assess, however, how this Commonwealth driven process will progress as the various jurisdictions have vastly different views in regards to the benefits interval meters produce and in what manner they should be rolled-out.

May Mauseth Johnston is Senior Policy Officer, Consumer Utilities Advocacy Centre, Victoria. May can be contacted at may.johnston@cuac.org.au.

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2.3 Climate change and energy reform

Further to the smart meter debate, the Prime Minister recently reinforced the Federal Government's proposal to rapidly rollout smart meters nationally, claiming they have potential to assist in dealing with climate change:

> By enabling consumers to better manage their electricity use, smart meters can facilitate major savings and also play a role in addressing the nation's greenhouse challenge (27 February 2007).

It seems clear that climate change, and the ability of Governments to reduce greenhouse gas emissions, has become a significant political issue in an election year. In relation to demand management, the benefit more commonly attributed to smart meters is that they may assist in *load shifting* (consumers using energy at different times of the day), thus reducing energy consumption at peak demand times and slowing down the need to spend in order to increase overall system capacity to deal only with the peak times. However, how the rollout of smart meters will reduce *overall* energy consumption (and thus greenhouse gas emissions) is unclear. While there is some evidence that the increased consumer information provided through smart meters has resulted in reduced energy consumption, there is a dearth of evidence about this from Australia (see also below).

The impact of dangerous climate change will inevitably affect how and what types of energy we consume. Stationary energy accounts for around 50% of Australia's greenhouse gas emissions. However, we must ensure that policies developed to reduce greenhouse gas emissions apply fairly to energy consumers, recognising that access to energy is an essential service.

In an election year, in which climate change is shaping up to be a central issue of debate, consumer advocates will be seeking to ensure the debate does not overtake the need for fair, sensible policies to direct further energy market reform.

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2.4 Total Environment Centre research – interval meters and "D-factor" – Glyn Mather, Total Environment Centre

The Total Environment Centre (**TEC**) has received funding from the Advocacy Panel to engage consultants for research on two demand management projects, to be completed in June.

The first project, being undertaken by the Institute of Sustainable Futures, is looking at interval meters and their potential (or not) to deliver greenhouse and financial savings. There is an assumption that interval meters and time-of-use tariffs will assist with reducing electricity consumption, and hence greenhouse gas emissions, but it would be helpful to have a more rigorous assessment of the real potential. We are also asking the consultant to investigate the minimum meter and communications technology that would be required to deliver significant reductions in consumption. A related area is how tariffs could best be structured to meet both consumer expectations and reduced demand, in the context that not all consumers can pay more than they are now. We are also concerned about how this will be managed – both metering and tariffs – in the move to national regulation, particularly in the light of the recent SMSWG process.

The other project is an assessment of the D-factor and is being undertaken by Energy Futures Australia. This is a NSW instrument to promote demand management by distribution networks as an alternative to expanding their systems, by allowing full cost recovery for any DM activities or investigation. The D-factor was developed in response to the change in NSW from a revenue cap to a price cap for distribution services. The mechanism has been in place since 2004, but there has been no evaluation of the actual level of demand reduction it may have achieved. The consultant will also assess its worth in relation to potential alternatives for achieving demand management, and whether it is worthwhile to promote the D-factor up to the national level.

Glyn Mather is NEM Advocate, Total Environment Centre, New South Wales. For further information about either of these research projects, please contact Glyn at glyn.mather@tec.org.au.

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2.5 Electricity Matters in Queensland - Centre for Credit and Consumer Law (CCCL) and Queensland Consumers Association (QCA)

Most of Queensland's very limited consumer research and advocacy resources continue to be employed on the implementation of Full Retail Competition (**FRC**), scheduled to start on 1 July 2007.

As the FRC consultation comes to a close in Queensland it is apparent that the Government set itself far too tight a time line for implementation, which was complicated by its decision (without any prior consultation with stakeholders) to also:

- sell its South East Queensland energy retailer Energex Retail and part of the rest of state retailer Ergon (sold to Origin and AGL), and
- change the formula for annually adjusting the state-wide regulated Uniform Tariff (from 1 July 2007 to be related to changes in costs rather than the CPI).

As a result, there is much confusion about what is being done and what it will all mean. Plus, the statutory bodies that look after the broader welfare of Queenslanders – noticeably the Queensland Competition Authority (with wider responsibilities) and the new Energy Ombudsman – are still grappling with their new roles and responsibilities.

In addition, the impending Government consumer education campaign has a difficult task. For example, how do you explain to a consumer that you don't pay your bills to the government anymore but a private retailer – but only if you live in south-east Queensland – and if you don't live in south-east Queensland nothing has really changed - but for some large regional centres in the future it might – if retailers can identify a profit.

The FRC consultation process highlighted the need for consumers to have their own representatives at the negotiation table. If we had left it to the Government to act in the best interests of consumers or the public interest the outcomes would not have been as consumer friendly on many issues. The clear lesson for consumers in any other jurisdiction likely to be involved in an FRC implementation consultation process is to ensure that they have the necessary resources to do the job.

A survey CCCL conducted recently with sixty residential users and advocates in Queensland indicated a very poor understanding of what full retail competition actually meant and, furthermore, participants expressed very little interest in anything remotely to do with advocacy in relation to State Issues or the National Energy Market. Put simply, residential users just want to pay a reasonable price for their electricity, have reliable power and a robust complaints handling process. Which raises the perennial question of what is an appropriate mechanism for consumer voices to be heard in the National Energy Market? The Roundtable of Energy Advocates which brings together utility advocates from across Australia is one key mechanism. It is still in its infancy but already results are apparent in a more cohesive consumer response to national energy market issues while also allowing for differences in State based responses.

The jury is still out on what will be the overall benefits of FRC in Queensland relative to the costs, especially for small end-users. However, there will definitely be some side benefits, for example, in the establishment of a reasonably strong Energy Industry Code and new opportunities for Queensland consumer advocates to sit at advisory tables. The latter is mainly through the establishment by the regulator of a customer consultative committee and a monitoring panel, and an Advisory Council for the new office of Energy Ombudsman.

It remains to be seen how FRC will unfold in Queensland compared with the experience of other States. However, some experiences are jurisdiction specific. In Queensland, mainly due to the zoning system for distribution charges, only consumers in South East Queensland are likely to be offered market contracts as an alternative to the uniform tariff. In the rest of the state consumers will have to stay on the uniform tariff and in the remoter areas this will be subsidised by the government and by cross subsidies from urban consumers in regional areas.

The new methodology for the new annual indexation of the uniform tariff could well result in major increases in the uniform tariff this year. If this occurs, there will be

greater incentives for South East Queensland consumers to switch to market contracts but this could put pressure on vulnerable customers who tend to be relatively unattractive to new entrant retailers (high transaction costs, poor credit history, etc.), making it difficult for them to access market contracts. So, these consumers may well be much worse off under the new arrangements and if so there will be increased pressure for better provisions for those experiencing difficulty paying bills due to financial hardship. Consumer advocates lost this debate during the FRC consultation process.

The FRC 'horse' will be out of the starting box on the 1st of July. Finally, the Queensland media is starting to ask questions about the implications of these changes for Queensland consumers. The answers will unfold. It will be interesting to see how much Queensland matches the experience of other states. Hopefully, the media will continue to ask questions and consumer advocates will be able to continue to monitor and comment on developments and needs.

This contribution is by Dr Tenzin Bathgate (CCCL) and Ian Jarratt (QCA). For CCCL's and QCA's submissions on FRC go to www.energy.qld.gov.au/ecc.cfm. For a copy of the report 'Electricity Matters: Interviews with Queensland small end-users and their advocates', 2006 contact Tenzin at t.bathgate@griffith.edu.au.