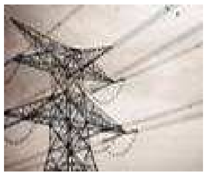
# ON THE WIRE



**January 2010, edition 22.**

## The cost of smart meters is now hard to ignore

The rollout of Victoria's new smart meter technology has so far been an exercise in avoiding publicity on the part of the State Government. However, when hefty new smart meter charges start to appear on electricity bills from this month, Victorians electricity consumers will find the harsh reality difficult to ignore.

These charges, coupled with the substantially higher energy tariffs to be progressively introduced for homes that have been switched to the new meters, will leave many consumers facing an electricity affordability crisis.

Changes to how electricity is metered and billed mean adequate protections must be in place to protect the interests of consumers, particularly the financially vulnerable. Issues such as what will be disclosed on customer bills, loss of access to current cheap off-peak rates, and an appropriate concessions regime in the new environment, are yet to be resolved by industry and government. Instead, Victorians will be the "guinea pigs" facing escalating costs and uncertainty as smart meters are rolled out in that State ahead of the development of a comprehensive national strategy to introduce smart meters across the country.

Faced with the inevitability of a national smart meter rollout, the drafting of the National Energy Customer Framework (currently underway) must provide adequate consumer protections in light of the unique challenges smart metering will bring. However, finalisation of the NECF is some way off and Victoria is already in the process of transitioning to smart meter technology. It is therefore essential that current jurisdictional tools, such as the Victorian Energy Retail Code, be reviewed and modified to provide the essential ground rules for consumer issues such as notification of changes in prices and tariffs, itemisation of consumption and price information on bills, and protection of the increased data being collected.

Perhaps the only certainty is that consumer protections will be more important than ever. The cost impost, the functionality and services of the meter, and the never ending array of potential market offerings and contracts will add an unwelcome complexity and further undermine consumer confidence in the market.

Happy new year to all of our readers. As always, 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 Consumer 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 March 2010.

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## 1. Regulatory developments

### 1.1 Ministerial Council on Energy update

The Ministerial Council on Energy (**MCE**) met for the 21st time in Hobart on Friday 4 December 2009. The meeting's communique discussed a number of current areas of energy market reform, and the Ministers concluded by noting that they perceive the key challenges facing the MCE are to maintain energy supply reliability, security and affordability, with a particular focus on maintaining security of supply during extreme weather events and as we transition to a low-emissions economy.

Key items discussed included:

- **Australian Energy Market Commission (AEMC) review of energy market frameworks in light of climate change** - Ministers agreed their response to the AEMC's Final Report on its review of energy market frameworks in light of climate change, supporting the AEMC's finding that that current energy market design is 'fundamentally sound' - though with a need to further refine and strengthen existing frameworks, including for the more efficient connection of clusters of generation and to introduce inter-regional transmission charging arrangements.

  While agreeing with the AEMC that energy markets will 'generally be resilient to the challenges associated with the introduction of climate change policies', the MCE did also note the significant task facing energy markets in moving to a low-emissions future. The MCE stated that it believes energy technology will play a key role in facilitating this move. It therefore stated that it was important to transition to a low-emissions future in a manner that encourages significant investment in energy infrastructure and noted the difficulties and uncertainty investors face in the current environment.

- **Pricing -** The Ministers recognised that energy price rises for consumers will occur in the coming years. It noted that ageing infrastructure, growing demand and policies to reduce greenhouse gas emissions will require significant capital and operating investment in electricity generation and networks and this investment is ultimately paid for by consumers.

  The Ministers committed to continuing to work to ensure transparency in prices. However, there was no mention of working to ensure affordability of prices for consumers (even certain classes of consumers such as low-income or disadvantaged consumers). In fact, the Ministers explicitly stated that they see market based price signals as playing an important role in ensuring needed investment occurs. It is unclear to what extent that general statement is qualified by any work being done by the MCE to determine to what extent and in what ways price signals, including price signals to end-users, are effective in energy markets in light of energy's character as an essential service.

COAG has asked the MCE for advice on expected electricity price rises for residential consumers. The Ministers agreed to provide an initial report to COAG by the end of 2009 which will include a breakdown of components making up historical electricity prices. The Ministers agreed to provide a more comprehensive report to COAG in the first quarter of 2010 which will include discussion of likely key trends in electricity prices over coming years.

The MCE also agreed to request the AEMC to commence its review of the effectiveness of retail competition in electricity markets in the Australian Capital Territory. These reviews are seen as an important step in fulfilling the intent of the Australian Energy Market Agreement (AEMA) to remove energy price controls in jurisdictions where competition is found to be effective. It will be interesting to see whether effective retail competition will be found in a jurisdiction that has only two active retailers after seven years of full retail contestability.

- **National Energy Customer Framework (NECF) -**The Ministers noted the release of the Second Exposure Draft of the NECF for consultation on 27 November 2009. They agreed that jurisdictions will introduce the NECF progressively between July 2011 and July 2013 but also anticipated that implementation will be on an incremental basis, with the State and Territories explicitly noting that it may take longer than July 2013 before the entire NECF is implemented in their jurisdictions. The NECF legislative package is still expected to be introduced into the South Australian Parliament in the Spring Session of 2010.

The Ministers also discussed the importance of a robust Retailer of Last Resort scheme (with a proposed national scheme currently included in the latest draft of the NECF), noted that smart meter provisions in the National Electricity Law supporting rollouts and trials were passed through the South Australian parliament in October 2009, noted the upcoming release of the Final Report of the AEMC's Review of Demand Side Participation and discussed the National Strategy on Energy Efficiency, work on which has now commenced and for approximately half of which the MCE has responsibility for delivery.

The Ministers will meet next around the middle of 2010.

More information on the MCE can be found here.

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## 1.2 National Energy Customer Framework (NECF)

The second exposure draft of the National Energy Customer Framework was released on 27 November 2009. The NECF legislative package has evolved to include additional sections from the first exposure draft on proposed arrangements for network connections, proposed customer registration and transfer arrangements , a consumer small claims process and a Retail of Last Resort regime.

Some changes noted by consumers following submissions to the first exposure draft include a new role for the Australian Energy Regulator of approving retailer hardship policies and the inclusion of marketing conduct rules in the National Energy Retail Rules. While consumer representatives are pleased to see that the jurisdictions have tackled many of our broad concerns, there remain a lot of concerns about important details of the provisions that need to be addressed, and which are essential to ensuring an adequate consumer protection framework in the national energy market. Consumer representatives consider that many of these details reveal an unwillingness to extend various provisions to all small customers in the market. This misunderstands the role of a market customer protection law in providing certain general rights and obligations across the entire market to facilitate the fair and efficient operation of that market (for example appropriate marketing conduct), which can be contrasted with the role of provisions which apply in a more targeted fashion only to certain classes of customers to address problems that only affect these customers (for example appropriate dealings with customers in financial hardship).

In addition to the draft Law, Rules and Regulations of the NECF, the MCE SCO released explanatory material outlining the status of the NECF package, including process to date and next steps, and explanation of the content of the NECF package.

Additional information was provided in the explanatory material to discuss potential enhancements required to accommodate the changed environment that new smart meter functionality will bring. This is of significant concern as it is planned the legislation will be entering South Australian parliament in Spring 2010, thus it seems clear that the smart meter work stream is now significantly behind the general NECF work stream and important customer protection provisions required in relation to smart meters will not be included in the final NECF laws.

This raises issues for Victorian consumers in particular, who are subject to a current government-mandated rollout of smart meters which will be completed over the next four years. This will see all Victorian energy customers moved to billing via smart meters with consequent developments such as higher metering charges and reassignment to tariffs with different tariff shapes such as time of use tariffs. The NECF will already be outdated for the Victorian environment before it is comes into force in that State.

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### 1.3 Retailer of Last Resort (RoLR) scheme

Following the consultation process conducted by the Ministerial Council on Energy regarding the national RoLR scheme in December 2008, RoLR provisions have now resurfaced as a new section in the NECF package.

December 2009 witnessed the Jackgreen RoLR event. It is an important time to analyse the successes and failures of existing jurisdictional programs in dealing with a RoLR event and to test these real examples against the drafting in the NECF. It is essential that we use learnings from actual events to improve customer protections where possible in the NECF draft. This will become even more important if this incidence of a RoLR event is a sign of things to come, which is possible in a market where smaller retailers continue to struggle with difficulties due to issues with financial backing, limited affordable hedging opportunities and issues of general liquidity in the current financial climate.

We continue to consider the imposition of a RoLR fee on customers of the failed or departing retailer as unjust and contrary to other policy goals. It acts as a penalty for consumers who have chosen to actively participate in the market and shop around for a better deal (generally moving away from an incumbent). The recent Jackgreen RoLR event highlighted the varying perspectives on the application of the fee, with the NSW Minister suggesting no fee may be payable as a result of the RoLR event, and the RoLRs in Victoria weighing up the costs of the RoLR event to their business to determine whether they should waive the fee in full, as one retailer is doing, waive the fee when a RoLR customer eventually decides to sign a new contract with them, or apply the fee in full.

If customers of a failed or departing retailer are to be held responsible for paying for the ROLR event, it is implicit that those customers are being expected to assess the overall financial stability of a retailer, as well as the retailer's possible future business plans in terms of longevity in the retail market, before making a decision about which market offer for the supply of energy to choose. In our view this will mean that advice to consumers will need to incorporate warnings about the cost risks associated with switching to smaller or newer retailers, which would potentially have negative effects on overall customer activity in the market, undermining effective competition.

More information on the draft national ROLR scheme provisions in the NECF can be found here.

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### 1.4 Australian Energy Market Commission (AEMC) update

The Australian Energy Market Commission (**AEMC**) has been progressing a number of market reviews and rule change proposals.

- **Request for Advice on Cost Recovery for Mandated Smart Metering Infrastructure** - The AEMC has recently released its Draft Statement of Approach following a MCE Request for Advice on whether Chapter 6 of the National Electricity Rules, which governs the economic regulation of electricity distribution services, 'efficiently accommodates cost recovery for smart metering infrastructure mandated by Ministerial determination'. This review is of significance to consumers as it will determine how the AER will assess future applications by distribution businesses to pass through to consumers the various costs they allege to be associated with mandated smart metering rollouts, including how the AER can ensure that the benefits of these rollouts can be better shared with consumers. Responses to the AEMC's initial consultation on its Draft Statement of Approach are due on 5 February 2010.

- **Total Factor Productivity** - The AEMC has released its preliminary findings on the use of total factor productivity (**TFP**) for the determination of revenues and prices. The review is considering the application of a TFP methodology to the economic regulation of services provided by electricity and gas distribution and transmission service providers. The AEMC's findings present the merits and disadvantages of TFP and what would be needed to make it work. Responses to the AEMC's preliminary findings are due 26 February 2010, with a public forum to be held on 1 February 2010.

- **Review of Energy Market Frameworks in light of Climate Change Policies** - In its Final Report, released 8 October 2009, the AEMC noted that, generally, the energy market framework was capable of addressing challenges associated with the introduction of climate change policies, subject to implementation of its recommendations. These recommendations included changes to the existing framework around networks, retail pricing arrangements and generation reserves. The MCE has responded to this report – see section 1.1 above.

- **Review of Demand Side Participation in the National Electricity Market** - The Stage 2 Final Report has been released. The report focused on the current scope of Demand Side Participation (**DSP**) in the National Energy Market, finding that there are significant drivers for change to both the practical and economic scope of the market and that DSP is not impeded. For example, it found that the introduction of carbon pricing through the planned Carbon Pollution Reduction Scheme (**CPRS**) will increase the costs of supplying electricity, making DSP more economically attractive. In addition, changes to technology (such as smart meters and smart grids) will provide access to consumption information for a much larger number of customers. The Report does note, however, that there is an ongoing role for reviewing the regulatory framework from the perspective of DSP. The report also flagged that the AEMC will publish a terms of reference to commence Stage 3 of the Review in March 2010, focusing on the regulatory issues likely to arise from new load monitoring and control technology, including smart meters and smart grids, and the services they support.

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### 1.5 National Smart Meter Program and Victorian Advanced Metering Infrastructure program

The National Smart Meter Program is progressing, with pilots and trials set to commence this year and the Australian Energy Market Commission recently requested by the MCE to advise on cost recovery for mandated smart metering infrastructure – see section 1.4 above.

In Victoria, the Victorian Auditor General released his report into the governance of the Victorian Advanced Metering Infrastructure project in November 2009. The report criticised the Victorian Government's governance and implementation of the project, with many of the conclusions useful in considering the governance and procedures of the national process going forward.

More information on the national smart meter program can be found here and on the Victorian program can be found here.

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### 1.6 Australian Energy Regulator (AER) update

The Australian Energy Regulator (**AER**) is responsible for the economic regulation of distribution network service providers (**DNSPs**) throughout the National Energy Market.

The AER has recently made its Draft Determination on distribution pricing for DNSPs in both Queensland (Energex and Ergon Energy) and South Australia (ETSA Utilities), with the determination covering the period 1 July 2010 to 30 June 2015. The draft decisions set the revenue that each of the DNSPs is able to recover for the provision of electricity distribution services. Submissions to the AER's draft determinations and the revised DNSP regulatory proposals for Queensland and South Australia are due by 16 February 2010.

In addition the AER has published the regulatory proposals of the Victorian DNSPs for the period 2011 – 2015. The five Victorian DNSPs (Jemena, SP AusNet, Citipower, Powercor and United Energy) submitted their regulatory proposals on 30 November 2009 and the AER commenced consultation in December with submissions due by 11 February 2010.

The AER is also currently in the midst of an Australian Competition Tribunal review initiated by the Victorian DNSPs United Energy and Jemena in relation to its final determination on the increased metering charges that the Victorian DNSPs are allowed to pass through to retailers to recover the cost of implementing the mandated advanced metering infrastructure rollout in Victoria, made under the Victorian Government's Order in Council for cost recovery of Advanced Metering Infrastructure.

We note that in the past consumer representatives have raised concerns that, unlike initial regulatory determination processes that enable all interested stakeholders, including consumers, to participate, it is much more difficult for consumer interests to be represented in formal judicial appeal processes. This latest instance is no exception and again highlights the problems with allowing well resourced business entities to challenge regulator decisions in fora that give them the benefit of a lack of alternative voices.

The AER has also released its Comparative performance report of the Victorian electricity distribution businesses for 2008, which continues the series of reports into the financial and service quality performance of Victoria's DNSPs that were previously undertaken by the State regulator.

More information on the AER can be found here.

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## 2. Consumer advocacy and other information

### 2.1 Victorian Auditor-General criticises the Victorian Government smart meter project - Gavin Dufty, Manager Policy and Research, St Vincent de Paul Society Victoria and Nicole Rich, Director - Policy & Campaigns, Consumer Action Law Centre

Restoring the independence of the Auditor-General was a celebrated plank of the policy platform that swept Victorian Labor to victory in 1999.

A decade later, the robust independence of the Auditor-General's office is proving a thorn in that same Government's side. In a scathing report, the Auditor-General has criticised the Victorian Government's execution of its decision to mandate the installation of electricity smart meters in every Victorian home and small business between 2009 and 2013.

At present, our standard accumulation meters have only one function, measuring the total amount of energy used over time, and they must be read manually. Smart meters open up a vast new range of potential services and functions, from better management of network outages to remote connection and disconnection to electricity pricing structures that charge a different amount depending on the time of day a home or business is consuming its electricity. The report is one of the most damning assessments of a Victorian Government project made by the independent Auditor-General in the last ten years, yet what should be a major public outrage in this State over a $2.25 billion project received scant attention, allowing the Government to avoid proper scrutiny.

Instead, the Government dismissed the Auditor-General's criticisms as 'out of touch' because the Government is combating climate change using smart meters and talked up uncontroversial facts such as the progress of the physical rollout of the meters, without actually responding to the substance of the Auditor-General's concerns.

The Auditor-General's report pointed out a number of serious failings with the Victorian Government's project, including whether the stated benefits will be realised in practice, whether these benefits outweigh the large costs of the mandated smart meter rollout, whether businesses (who collect the benefits) will pass these on to consumers (who are bearing the costs), whether the risks were properly considered or managed and whether the equity implications for consumers who can't respond to time of use pricing have been addressed.

The Government had been on notice about these problems. Victorian consumer and welfare organisations have consistently raised concerns about the project and its impacts on Victorian electricity consumers.

It is widely acknowledged that electricity prices will rise significantly due to the carbon pollution reduction scheme, however, it is not well known that Victorian households faced an immediate increase on the first of January this year of an average $68 per annum, as a result of the Government mandated smart meter rollout.

This cost will increase further in the next three years and is merely the cost for the meter rollout. In addition to this cost increase, we are very concerned about the distributional cost impacts when energy companies migrate households from flat electricity pricing to pricing based on the time of use. This will make electricity used in the afternoon more expensive than electricity used in the late evening and on weekends.

Clearly such tariff structures will disadvantage many Victorians who can't shift their usage, in particular those at home during the day such as the elderly, unemployed, those with disabilities and illness, and families caring for young children.

The Auditor-General noted this and other substantial holes in the assumption that consumers will simply change their behaviour once smart meters are installed. However, the Government continues to justify the rollout (and deflect the Auditor-General's criticisms) by simply repeating the claim under challenge – that smart meters will help us tackle greenhouse gas emissions because consumers will change their electricity use. Worse, State and Federal Government-commissioned research indicates that the smart meter rollout could actually increase greenhouse gas emissions if it does shift electricity use from expensive times of the day, when renewable electricity generation is used to meet peak demand, to cheaper off-peak times when the demand can be meet by coal-burning generation.

The Government also seemed to deny that moving to time of use pricing will have a regressive impact on stay-at-home households, stating in its formal response to the report that it had assessed the distributional impacts of the project 'on several occasions' and in each case this showed the impact on Victorian consumers is 'substantially progressive'. The Government should publicly release these assessments if they indicate such positive news for consumers.

We believe that many Victorian households are becoming increasingly concerned about the rising costs of essential services. The Government must start communicating to the Victorian community transparently and accurately about the smart meter rollout. It should tell Victorians about the potential benefits smart meters can bring for managing the electricity network and reading meters, but it also has an obligation to ensure that electricity companies pass these benefits on to consumers. When making claims about the benefits of smart meters for households and in addressing climate change, it should base these on rigorous, current and independent analysis.

The Government, should also be upfront and open about the costs Victorians will have to pay, and what it is doing to develop assistance and other measures to complement the project and address equity issues.

Most importantly, instead of shouting down the Auditor-General the Government should engage with his advice in good faith. That's why it restored the independent office in the first place.

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