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The release of the First Exposure Draft of the National Energy Customer Framework legislation (Law and Rules) is imminent. Following an extensive process of cross-jurisdictional consultation and negotiation over the past three years the legislation will no longer be introduced into the South Australian (SA) parliament in September 2009, as was the previous forecast, however there is progress and the draft legislation is almost upon us.

The Framework will attempt to harmonise the varying non-price consumer protections and other regulations applying to energy retailers and distributors in the National Energy Market (NEM), with the key protections to be covered including:

- retailers' and distributors' obligations to supply energy;
- the regulation of contractual terms and conditions;
- consumer protections relating to billing, payment and collection;
- obligations of energy retailers to assist consumers experiencing financial difficulties;
- consumer protections relating to marketing; and
- compliance and enforcement of regulatory obligations by the regulator.

Consumer representatives remain very concerned that in the final convergence from state to national legislation many best practice protections have been up for grabs and, in relation to benchmark Victorian protections, may be severely diminished.

Some of our strongest concerns are that the legislation may provide for:

- a diminished role for the AER in relation to retailer hardship policies – that the AER will be able to audit compliance with policies, but will play no role in authorising those policies in the first place, meaning it can only audit against standards set by the retailers themselves instead of independently-set best practice standards;
- the ability for retailers to disconnect a consumer from energy supply while that consumer is participating in a hardship program;
- no requirement on retailers to include the offering of energy audits and retrofitting in their hardship policies despite not only its effectiveness in helping consumers reduce bills but the complementarities of this requirement with other government initiatives around climate change; and
- the seemingly thoughtless homogenisation of the term 'de-energisation' with 'disconnection' even though these two terms have different and well-established meanings, possibly as an attempt to remove the accountability of retailers to report separately on true 'disconnections' (namely, initiated by the retailer).

It is essential that Victorian households retain the benefit of vital and hard fought-for consumer protections – and that these important provisions lead the way for all Australian consumers to receive the same protections. We do not support horse-trading of important protections for vulnerable consumers in the name of national compromise.

With a proposed consultation period of six weeks on the draft legislation, to be followed by a second exposure draft of legislation and further consultation in the lead up to the introduction

of the legislation into SA parliament in the first half of next year, the pressure is on for both consumer advocates and the government to ensure that consumers are afforded the protections that are essential to managing the onslaught of price increases they are facing in the energy market, combined with unprecedented times of the 'global financial crisis'.

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 [Consumers Advocacy Panel](#). To subscribe to *On the Wire*, please email info@consumeration.org.au with "On the Wire" in the subject line. The next edition of *On the Wire* is scheduled for release in June 2009.

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1. Regulatory developments

1.1 Ministerial Council on Energy update

The Ministerial Council on Energy (MCE) convened on Friday, 6 February for its 18th MCE meeting.

Outcomes of the meeting included the MCE's request to the Australian Energy Market Commission (AEMC) to review energy market frameworks in light of the impact on electricity supplies of the heat wave of 29-31 January 2009, including consideration of whether the level of the NEM price cap should be raised to ensure adequate levels of generation to reduce the risk of loss of supply during heat wave events.

The ministers announced the *Ministerial Council on Energy Forward Work Plan* which relates to the Federal Government's Energy Market and Climate Change Policies, including a readiness review of prudential and related financial arrangements in the national energy markets, in light of the challenges facing the energy markets in Australia following the introduction of the Carbon Pollution Reduction Scheme (CPRS) and expanded Renewable Energy Target (RET).

Current work being undertaken on behalf of the MCE includes the AEMC's *Review of Energy Market Frameworks in light of Climate Change Policies* focusing on issues including the convergence of gas and electricity markets, generation capacity investment, system operation

with increased intermittent generation, investment to meet reliability standards, connection of generators to transmission networks, augmenting networks and managing congestion, retail price regulation, and financing new investment. This review coincides and aligns with the AEMC's *Review of Demand Side Participation* in the context of reliability, wholesale markets and financial contracting.

Of particular interest is the MCE's focus on retail price regulation. In consideration of the CPRS and the operation of retail markets, the MCE is assessing the broader issue of retail price regulation for "energy consumers". The Communiqué outlines that "the MCE recognises the importance of addressing regulatory impediments to carbon cost pass-through associated with the efficient functioning of the CPRS." As such it has requested the *2006 Australian Energy Market Agreement* is amended to ensure that where retail prices are regulated, energy cost increases associated with the CPRS are passed through to end-use customers.

A copy of the communiqué from the MCE's 18th meeting can be found [here](#).

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1.2 National Energy Customer Framework (NECF)

The MCE Standing Committee of Officials (SCO) has also announced the release of the First Exposure Draft package of Law, Regulations and Rules for the National Energy Customer Framework (NECF) will occur by 30 April 2009. The expected rollout date is 1 January 2011 following consultation of the second draft of legislation.

Consultation on the First Exposure Draft will run for six weeks and include a general information session and targeted stakeholder workshops.

Energy consumer advocates are very concerned at the potential reductions in consumer protections against the benchmark Victorian Energy Retail Code.

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1.3 Retailer of Last Resort (RoLR)

The RoLR framework is due to be released later this year to coincide with the Second Exposure Draft of legislation for the NECF.

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1.4 Energy White Paper

The Australian Government is working to develop an Energy White Paper which will address both Australia's energy security and climate change demands through to 2030. The ultimate aim of the Energy White Paper is to set durable policy directions to ensure Australia's long-term economic prosperity and energy security.

The Department of Resources, Energy and Tourism has released a Strategic Directions Paper to discuss a possible national energy policy framework through to 2030. The Strategic Directions Paper outlines the focus of the Energy White Paper, and has been followed by six discussion papers on six specific topics:

- International energy
- Realising Australia's energy resource potential
- Governance, institutional, legal and regulatory frameworks and community engagement
- Investment, competitive markets, and structural reform: national energy markets and transport

- Maximising the value of technology in the energy sector
- Our people: demographics, workforce, and Indigenous participation.

Consultation workshops are being held in all state and territory capitals from mid-April. For full details about the Energy White Paper including links to the Strategic Directions Paper, and to sign up to attend the consultation workshops, click [here](#). Note that for unknown reasons the six discussion papers are not available on the website and you will need to email the secretariat directly.

Consumers are already concerned with the lack of demand side representation in the steering committee for the Energy White Paper and the initial discussion of the role of the demand side, including the definition of affordability, in the strategy and discussion papers.

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1.5 Australian Energy Market Commission (AEMC) update

Consumer representatives continue to be concerned with the level and type of consultation the AEMC conducts with consumers. The inadequate level of consultation and the limited uptake of consumer concerns are of particular significance with the number of reviews and rule changes the AEMC conducts, and specifically those with implications for consumers.

The AEMC is currently undergoing a range of rule changes and reviews including:

Rule Changes

- [Demand Management](#)
- [Futures Offset Arrangements](#)
- [Transmission Network Prices Publication Date](#)
- [Total Factor Productivity for Distribution Network Regulation](#)
- [Contingency Administered Price Cap Following a Physical Trigger Event](#)
- [Causer Pays for Ancillary Services to Control the Tasmanian Frequency](#)
- [NEM Reliability Settings: VoLL, CPT and Future Reliability Review](#)
- [WACC Reviews - Extension of Time](#)
- [Minor Changes](#)
- [Regulatory Investment Test for Transmission](#)
- [National Transmission Statement](#)
- [Arrangements for Managing Risks associated with Transmission Network Congestion](#)
- [Negative Settlements Residue Recovery, Extension of Sunset](#)
- [AETV Participant Derogation to allow commissioning of a new power station](#)

Reviews

- [Review of Demand Side Participation in the National Electricity Market](#)
- [Review of Energy Market Frameworks in light of Climate Change Policies](#)
- [Review Into the Use of Total Factor Productivity for the Determination of Prices and Revenues](#)
- [Review of National Framework for Electricity Distribution Network Planning and Expansion](#)
- [Review into the Role of Hedging Contracts in the Existing NEM Prudential Framework](#)

More information on the AEMC can be found [here](#).

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1.6 Australian Energy Regulator (AER) update

Weighted Average Cost of Capital (WACC) Parameters Review

The AER is currently undergoing a review of the weighted average cost of capital (WACC) parameters. The outcomes of this review are crucial to network price setting and will directly impact upon what consumers pay for the fixed component of their bill. The review was due to be finalised on 31 March 2009, however on 26 March 2009, the AEMC provided an extension of time to the AER to 1 May 2009.

Consumers supported the AER's draft WACC determination and are concerned that this delay will weaken the AER's stance, particularly in light of the desperate but unsubstantiated pleas from industry that the proposed WACC determination would lead to a "substantial reduction in the revenues available to meet returns demanded by the market for providing the necessary capital to regulated infrastructure". We urge the AER to maintain its stance in making this regulatory decision.

For more information, visit the [AER's website](#) and for details of the extension, visit the [AEMC's website](#).

Consumer Consultative Committee

With the recent acquisition of national regulatory responsibilities for distribution businesses and the upcoming transfer of responsibility for non-economic regulation of retail businesses, consumers are seeking commitment from the AER to establish a consumer consultative committee that successfully reflects best practice consumer consultation frameworks and represents cross-jurisdictional engagement. Consumers have written to the AER with a proposed framework for consultation.

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2. Consumer advocacy and other information

2.1 St Vincent de Paul is concerned with increasing electricity prices and highlights an opportunity for an increased role for energy companies – Gavin Dufty, Manager, Policy & Research

At the recent Energy and Water Ombudsman of Victoria (EWOV) hardship forum held in Melbourne, Gavin Dufty presented an overview of changes in energy and other costs for Victorians, including an assessment of these cost impacts and the subsequent challenges for energy companies.

Much public debate has been focused on the escalating cost of housing. Since 1990 Housing cost have risen by 24.9%, however over this time utility costs (gas and electricity) have risen by 85.5% with gas costs increasing by 92.4% and electricity costs increasing by 80.5%.

When a comparison is undertaken regarding these cost trends in relation to the underlying inflation rate since 1990 the findings are even more pronounced with housing costs rising at a rate 59.4% less than the consumer price index (CPI) and utilities costs rising overall 39.3% above the CPI (electricity 31.2% above the CPI, Gas 50.5% above the CPI).

These cost changes in energy disproportionately impact upon particular consumer groups due to household expenditure patterns, for example Aged / Disability pensioners spend 58.7% MORE on utilities than average, the Unemployed spend 32.7% MORE on utilities than average, Single parents spend 26.2% MORE on utilities than average, Couple only households spend about the average and Couples with three kids spend 21.8% LESS than average.

At a time when essential household items such as food, health and utility costs are rising at a rate significantly above the CPI, the current economic situation is also resulting in negative changes in the labour market, placing further disproportional cost and income pressures on those on fixed and low incomes.

The challenge for the energy industry is to learn from their existing hardship programmes, which have been running over the past three years, and to mainstream them by making elements of the hardship programmes available to all households including for example, improved training of call centre staff, and to ameliorate the impacts of price rises and prevent increased cases of hardship.

The energy industry must not rest on its laurels. It must develop and expand current hardship schemes so that they meet the emerging challenges and expectations of customers.

Finally, energy companies must ensure that consumers that are in hardship are offered the best energy rates that that company has. It is a frightening reality that consumers on, or being placed on, hardship programmes are still on energy contracts that have higher rates than the best energy offer available.

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2.2 Initial outcomes of price deregulation in Victoria, Tosh Szatow, Policy Officer, Consumer Utilities Advocacy Centre

Victoria is the first State in the country to experience full electricity retail competition and price deregulation. We are the experimental State.

The Consumer Utilities Advocacy Centre (CUAC) takes a keen interest in price deregulation and has set up systems to monitor offers being made by retailers, and evaluate the impact of those offers across different customer types and locations.

Based on analysis of the initial round of standing and market offers published by the Essential Services Commission (ESC), we have identified emerging issues that will need close scrutiny as the market evolves.

Firstly, we are concerned that early termination fees (ETFs) may be used to undermine market competition and exclude certain customers from the best offers. We do not have evidence that ETFs are being used pervasively with best offers, but some retailers are clearly coupling their most attractive products with ETFs. ETFs undermine competition by making it difficult for customers to switch to better offers, and typically exclude renters who often can't guarantee they will remain at an address for the contract period.

We have also found that discounts offered to people who pay on time (POT) are unlikely to benefit a customer should they miss one or more payments a year. So while direct debit arrangements and POT discounts can be attractive, customers must be wary that should they miss a payment, any benefit will be evaporated.

We have also discovered interesting trends regarding the distribution of standing and market offers, and how they compare to each other. It is too early to make definitive judgements, but our research shows reasons for concern about how competition may evolve, and how this will

impact on different classes of customer. For instance, it appears that only high volume users benefit from switching from the best standing offer to the best market offer. This may imply retailers do not have an appetite to compete for low volume, and typically low income, households.

CUAC is interested in developing strong messages to both consumers directly, and the Government that highlight issues to be aware of and the need for effective market oversight to ensure competition benefits all consumers. We are currently scoping an original research project, and seek collaborators from the consumer sector. The project will aim to investigate market trends in more detail, and establish key messages for consumers, and clear policy advice to Government.

To discuss in more detail, contact CUAC on 03 9670 5088.

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2.3 Customer Protections and Smart Meters Project – May Johnston, Project Manager, Customer Protections and Smart Meter Project, St Vincent de Paul

The St Vincent de Paul National Council has received funding from the National Advocacy Panel to undertake a project assessing the National Energy Customer Framework (NECF), Community Service Obligations (CSOs) and jurisdictional consumer protections in light of a smart meter rollout.

Electricity is an essential service and smart metering technology has the ability to drastically change how industry allocates the cost to various households. Smart meters enable the 'user pays' principle as well as time varying prices for electricity. Subsequently, the cross subsidies inherent in today's market will be reduced, price volatility will increase and new groups of winners and losers will emerge.

Increases in electricity costs and bill volatility are not 'just' issues facing low income and disadvantaged households or households in long term financial hardship. We know that households move in and out of hardship and price volatility can exacerbate the risk of temporary hardship.

This project assesses the impact a smart meter rollout will have on consumers and therefore improve the understanding of the opportunities and risks associated with the application of smart meters in a domestic energy setting. Furthermore, we will make recommendations for changes to the customer protection framework as necessary in an energy market associated with dynamic pricing and other functionality associated with smart meter technology.

Key issues to be investigated by this project include:

- Implications of dynamic tariffs for the consumer protection framework currently applicable in each jurisdiction, including the National Energy Customer Framework (NECF) and state based codes and guidelines dealing with marketing, product disclosure and consumer information practices.
- Implications for CSOs such as energy concessions (both federal and state government concessions)
- Identification of additional consumer protections, including a framework for the application of Time of Use Pricing, Critical Peak Pricing and Direct Load Control
- The relationship between network and retail tariffs, including the issue of tariff re-assignment, and implications for consumers and the energy market more broadly
- The ability to remotely disconnect / reconnect and implications for the consumer protection framework

- Identification of issues (where applicable) for the broader dispute resolution process (i.e. whether price can be disputed)
- Impacts of and recommendations for the regulatory arrangements, including the approach to allocating costs to households and the pass-through of benefits to consumers

The analysis will result in 5 discrete reports, 4 state specific reports aimed at informing and supporting consumer advocacy and a 5th report for the AMEC/ AER focusing on recommendations and identification of issues pertinent to the rules and regulatory framework of the NEM. The five reports will be produced in the following order: 1) Victoria, 2) NSW, 3) Queensland, 4) South Australia and 5) NEM recommendations.

Seminars will be conducted within each state upon completion of the various state specific reports. Jurisdictional consumer advocates, regulators and policy makers will be invited to participate in these seminars. Consultations on the first report (Victoria) will commence in mid-June and the whole project is to be completed by the end of November 2009.

For more information about the project, please contact:
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