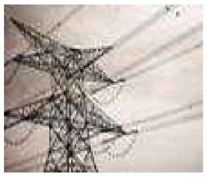
consumer action law centre

ON THE WIRE



June 2010, edition 24.

The proposed National Energy Customer Framework (NECF) will provide new powers to the Australian Energy Regulator (AER) and increased responsibility to the Australian Energy Market Commission (AEMC), both of which previously had largely economic and market management functions. Once jurisdictions sign up to the new laws, these bodies will be directly responsible for the regulation of retail matters, and specifically for protecting the interests of consumers in the provision of an essential service.

This is why consumer groups are advocating for increased direction to be provided to both the AER and the AEMC under the NECF. Consumer groups have consistently raised concerns regarding the lack of consumer focus in the development of the NECF, which is predominantly a consumer law.

The current drafting under the NECF for provisions which instruct these bodies' approach to dealing with consumer considerations is inadequate. They are based on the National Electricity Law and the National Gas Law, which do not contemplate retail functions, and they have not drawn on State models where retail functions have been part of energy regulator duties for many years.

An expanded objective and clearer statutory powers would better inform the regulators' functions, for example, the AER's functions under section 242 in relation to the development of regulatory guidelines. In performing their functions to meet the long-term interests of all consumers, the provisions should expressly enable and encourage the AER and the AEMC to consider customer-related issues such as the impacts of decisions on different classes of consumers.

The regulators themselves, however, also have a responsibility to perform their functions in a manner that focuses on achieving the purposes of those functions as best as possible, rather than in the narrowest manner possible merely to acquit their statutory functions.

We have raised these concerns with the AEMC in the past, for example in relation to its reviews of the effectiveness of competition in various jurisdictions. Now the AER is off to a wobbly start in the first phase of drafting the guidelines for provision of pricing information to consumers, by narrowly interpreting the scope of matters that are relevant to the guidelines and thus detracting from a focus on achieving an overall goal of more informed consumers in the marketplace. This continues a trend first seen in the way in which it narrowly interpreted its role under the Victorian Government's Order-in-Council directing it to consider distributor cost recovery from consumers for the rollout of smart meters in Victoria.

While it remains unclear whether the final form of the NECF will improve on the current guidance given to the regulators, we are hopeful that changes will be made to these aspects of the legislation and, also, that as they undertake more and more of their new retail regulatory functions, the national energy regulators will become more confident in undertaking these roles with the overall consumer welfare aim in mind.

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 mailto: info@consumeraction.org.au with "On the Wire" in the subject line. The next edition of *On the Wire* is scheduled for release at the end June 2010 following the MCE meeting.

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1. Regulatory developments

1.1 Ministerial Council on Energy

The Ministerial Council on Energy (MCE) will meet next Friday, 11 June 2010 in Melbourne.

It is expected that the National Energy Customer Framework (NECF), of key interest to consumers, will be one of the agenda items at the meeting, as Ministers decide upon the next steps in terms of agreeing on policy principles for the NECF legislative package, ahead of an out of session meeting in August that will sign off on the final legislation for introduction to the South Australian parliament in its Spring session.

We note that The Australian recently reported on this matter.

For more on the NECF see section 1.3 below. More information on the MCE can be found here.

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1.2 Smart meters - Victoria

The Victorian Government is under increasing pressure to justify its decision to mandate the roll out of smart meters to every Victorian households and small businesses.

In response to the Auditor General's report released in late 2009 which identified issues with the governance arrangements for the rollout and noted that there had been no adequate assessment of the costs and benefits of the rollout, a new governance structure has commenced with regular meetings between business, government, regulators and consumer groups, and a cost benefit study is underway.

Eight months into the mandated rollout of 2.5 million smart meters in Victoria, the Victorian Government recently confirmed the first cost blowout of the rollout, from $1.1bn to $1.6bn. This cost will be passed through to Victorians on their electricity bills.

Victorian consumers are currently paying, on average, an additional $53 per annum for the cost of the rollout as determined by the Australian Energy Regulator in October 2009. Increased costs will be factored into further price reviews in late 2011 and again in late 2012.

While it remain unclear whether the overall benefits of the smart meter rollout will outweigh its costs, the rollout is now well underway and will continue until complete. Given this, consumer groups are now focusing on what should be done to maximise the benefits for consumers and mitigate against unfair consumer impacts.

Following the moratorium announced by the Victorian Government earlier this year on the introduction of time of use tariffs, consumer representatives have advocated for a Customer Impact Study that is now being developed to inform the future of the moratorium and any government response to time of use tariffs that may be necessary, for example revised concessions arrangements. Additional work is commencing to assess the way in which time varying tariffs may be rolled out.

The Victorian Essential Services Commission is also currently undergoing a regulatory review in light of Smart Meters, including a full review of consumer protection instruments, after consumer calls for such a review. A range of issues need to be assessed to ensure consumers retain a consistent level of protection in the new smart metering environment, with particular focus upon market contracts and contract variations, the ability for consumers to verify their consumption against the meter, and the ownership by consumers of their consumption information.

Despite the increased public attention on smart meters and new work programs discussed above, there remains an urgent need for clear messages to be communicated to the Victorian public to engage them in the process, particularly as the rollout continues. 5% of consumers have now received their new smart meter and all consumers have been paying for the costs associated with the rollout since the start of the year, yet most Victorians would have little understanding of the program or the potential changes that will occur with the introduction of Time of Use tariffs.

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1.3 National Energy Customer Framework (NECF)

We understand that State and Federal Ministers meet at the Ministerial Council on Energy in Melbourne on the 11 June for the final 'high level' discussion of the contents of the NECF, and a further, final 'detailed' meeting will be held in August before the bill goes to the South Australian parliament in September.

Attention particularly needs to be given to the role of the law in providing a strong base of consumer protection at a time of significantly rising energy prices. This includes ensuring consumers have access to simple and comparable information in relation to their contract terms and conditions, a strong requirement for consumers to provide their 'explicit informed consent' to variations to terms of a contract, the availability of payment plans to all consumers, and the prohibition of late payment fees.

We also believe that the NECF should be assessed against other Australian consumer laws. For example, the enforcement powers that will be given to the AER should meet best practice standards in other laws, and the civil penalties should be high enough to deter businesses from breaching the law. As discussed earlier, the law also needs to make clear to the AER its powers to act in the interests of consumers, ensuring the powers are broad and flexible enough for the AER to exercise its functions effectively.

After the legislation which forms the basis of the national framework is introduced in September, each jurisdiction operating in the National Energy Market will then move to introduce it over the next few years. However, the focus should be on providing the necessary consumer protections in the NECF in the first place.

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1.4 Australian Energy Regulator (AER)

The AER has taken initial steps to commence its role as a retail regulator in the energy sector, with the first informal consultations on guidelines it will be obliged to make under the proposed National Energy Retail Law.

The AER has engaged in a consultative process that involves workshops and submissions, with stakeholders including consumers, retailers, some state regulators and ombudsmen.

The first guidelines it has commenced consultation on includes the Retail Pricing Information Guideline which will be used to guide retail businesses on how to publish any information in relation to the price of their standard and market contracts. This guideline will be critical to ensuring that consumers can access, consider and compare important information about energy retail offers in an informed manner, in what is becoming an increasingly complex marketplace.

A subsequent guideline that has been opened for consultation is the 'Hardship program' performance indicators guideline which will be key to providing a transparent, measurable and comparable performance of each retailer’s approach to their hardship policy and to dealing with consumers experiencing hardship.

More information on the development of the guidelines can be found here.

The AER released its final decisions on the South Australian and Queensland Distribution Price Reviews. For South Australia, the AER's determination for ETSA Utilities enables distribution charges to increase by an average of 9.5 per cent per year over the next five years.

The Queensland decisions for Ergon and Energex resulted in increased price paths of 9 per cent in 2010–11 and 2.3 per cent over each of the remaining four years of the regulatory control period.

On 31 May ETSA advised the AER of its proposed tariff regime for charges to customers within their allowable income (see section 2.2), and Ergon and Energex are due to advise the AER of their proposed tariff regimes.

STOP PRESS: The AER released its Draft Decision on the Victorian Electricity Distribution Price Review on Friday. It proposes that nominal distribution prices from 1 January 2011 would range from a decrease of 17.5% to an increase of 1.1% (depending on the distributor), followed by an average annual increase ranging from 2.6% and 3.0%. Consumer Action's submission on the regulatory proposals to the AER had argued strongly that the AER would be justified in heavily scrutinising the distributors' claims for increased revenue and thus prices. A conference to discuss the Draft Decision will be held on Thursday 17 June in Melbourne and consumer representatives will be attending.

More information on the final decisions for South Australia and Queensland and the draft decision for Victoria can be found here.

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1.5 Australian Energy Market Commission (AEMC)

The AEMC has a new Chairman. The AEMC CEO, Mr Steven Graham, has welcomed the organisation’s new Chairman, Mr John Pierce, who started his term of office on 2 June 2010.

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2. Consumer advocacy

Every issue, *On the Wire* includes articles by other consumer and community organisations. We welcome contributions. If you would like to submit an article for the next edition of *On the Wire*, please contact us at info@consumeraction.org.au with "On the Wire" in the subject line.

The following articles are produced by organisations other than Consumer Action Law Centre and do not necessarily represent the views of Consumer Action.

2.1 Smart Meters and Consumers

Damien Moyse, Alternative Technology Association (ATA)

Despite the tendency of governments and many energy industry businesses to lump them all into one basket, smart meters, and the networks of infrastructure required to support them, can take many forms.

As well as a variety of makes and models, a diverse range of features and functions are available with smart meters. There are various ways in which they can allow a household or business to interact with the electricity network and these are accompanied by various tariff options.

At its most basic, a smart meter is an electronic *interval meter* with *remote communication* capability. These two features alone offer benefits primarily to electricity distributors and retailers. However, smart meters can also incorporate features to benefit consumers.

Such features may include *load control* options; *visual displays* of energy consumption and generation; the ability to interface to a Home Area Network; better metering for household solar PV and other on-site generators; and the ability to monitor and report the quality and safety of the energy supply to a consumer.

What do smart meters mean for consumers?

Smart meters are a mixed blessing for consumers. On one hand, they offer opportunities to improve energy efficiency, better inform consumers about their energy use and reward them for using less power during times of peak demand. On the other, smart meters and associated infrastructure are costly, still technically immature, and offer benefits to energy distribution and retail businesses that consumers may not gain from.

Can smart meters save consumers money?

The cost of implementing smart meters and associated infrastructure will be passed on to consumers, so to save money for consumers the benefits need to outweigh these costs.

In Victoria smart meters are being rolled out state-wide over the next three years at a total cost of over $1.6 billion. This cost is passed on to consumers in the form of an increased service charge which varies from one distributor to the next and from year to year; an average Victorian household will pay $53 more during 2010 and face a further $25 increase in 2011, even if their smart meter is not installed for another three years.

How any new tariff affects your total bill will depend on the daily pattern of your energy use. Choosing the right energy retail product and understanding how you use energy will be key to getting the most out of smart metering.

The Victorian Advanced Metering Infrastructure Program

In recent months there has been a lot of attention paid to the Victorian smart meter (AMI: Advanced Metering Infrastructure) rollout. From January 1 this year, all Victorians have started paying additional metering charges in the range of $67 to $104 per household per year to fund the mandated installation of smart meters in 2.5 million homes; along with their associated communication infrastructure and network management systems.

Late last year the State Auditor General released a damning report into the AMI program, highlighting numerous failures by the State Government in the development and implementation of the program. A direct quote from the Auditor General's Report states:

"There have been significant inadequacies in the advice and recommendations provided to government on the roll-out of the AMI project. The advice and supporting analysis lacked depth and presented an incomplete picture of the AMI project in relation to economic merits, consumer impact and project risks."

Whenever governments undertake major infrastructure or social programs, they tend to do so with fanfare. Billboards spring up attesting to the merits of the fact that they are 'Building Better Schools' or 'Building Better Roads'.

So why didn't we see a 'Building Better Electricity Networks' campaign with the AMI?

Maybe someone realised that a $1.6 billion program, which primarily benefits energy businesses at the expense of consumers, was going to be a pretty hard sell. Recently, various consumer organisations have been protesting about the risks of negative impacts, particularly on low income households, associated with the program. In response to this pressure, Energy Minister Peter Batchelor recently announced a moratorium on Time of Use electricity tariffs for at least until mid 2011.

Time will tell whether further specific measures will be taken to ensure that the consumer and even environmental benefits talked up so much by both government and industry are actually realised.

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2.2 SA Distribution Pricing 2010-15
Mark Henley, Uniting Care Australia energy project

On 31st May the process was concluded to establish distribution pricing for South Australia for the five years from 2010 to 2015.

The SA distributor, ETSA Utilities had its Tariffs published by the AER.

The process began with a consideration of the distribution review process, then there was a proposal from ETSA Utilities to which stakeholders responded in Spring 2009. The AER then released a draft decision, again with opportunities for stakeholder response, then in May 2010 a final decision from the AER was published giving an aggregated revenue return. The distribution business then had 3 weeks to respond with tariffs for individual customer classes.

Consumer advocates responded to the ETSA Utilities initial proposal by raising a number of issues, including:

- Challenging Capex and Opex bids
- Seeking a greater focus on demand management strategies
- Questioning the equity of upgrades for CBD infrastructure

AER Decision

The AER final decision included the following regarding Demand Management Incentive Scheme (DMIS):

The Part A – Demand Management Innovation Allowance (DMIA) and the Part B – foregone revenue components of the DMIS will apply to ETSA Utilities. The DMIA will be capped at $3 million for the next regulatory control period and allocated to ETSA Utilities in equal annual instalments of $600 000 for each year of the next regulatory control period.

The decision regarding price impacts on residential consumers was given as follows:

Table 16.7: Retail price impacts (%)

	2010–11	2011–12	2012–13	2013–14	2014-15
ETSA Utilities regulatory proposal					
Real impacts	6.3	2.4	4.2	4.2	4.2
Nominal impacts	7.4	3.5	5.3	5.3	5.3
AER decision					
Real impacts	4.9	2.3	2.3	2.3	2.3
Nominal impacts	6.0	3.4	3.4	3.4	3.4

Note: Calculations assume distribution network charges make up 40 per cent of retail electricity prices. Inflation of 2.52 per cent assumed for calculating the nominal impacts.

This equates to a real increase (above CPI) in distribution pricing of 16%, compared to the ETSA bid of 23% over the 5 year period, or about a 6.4% (compared to ETSA's bid of 9%) increase in customer's bills, based on distribution costs being 40% of the whole bill.

This rate of increase is lower than in some other Australian jurisdictions, but it should be noted that SA has had the highest electricity prices for a number of years, with an average "price shock" residential customer increase of 25 - 30% when full retail competition was instituted in 2003.

Tariff Design

ETSA Utilities has worked with consumer groups to consider tariff design and has been open to developing tariffs that are both inclining block in structure and which have lower rates of increase for the first (and second block). The first block cut off is set at the median household usage, and so captures most lower income households exclusively in the first block. In 2009-10 a fourth block was included in the inclining block tariff structure for households.

ETSA lists the following tariff objectives, some of which compete with each other, however the inclusion of customer equity has been strongly supported by consumer groups:

5.2 Network tariff objectives

This section presents the high level framework that ETSA Utilities applies to the development of its network tariff strategy. The major objectives of network pricing are to some extent conflicting and therefore involve making compromises. They are as follows:

- ***Revenue sufficiency*** - prices are formulated to recover permitted weighted average prices under the determination.
- ***Revenue volatility*** - to the extent possible, tariffs will be structured to minimise monthly and annual variations in revenue.
- ***Pricing efficiency*** - through their variable components, prices will signal the economic cost of providing network service. Residual costs will be recovered in a manner which least distorts customers' consumption decisions.
- ***Customer equity*** - customers should pay a reasonable allocated share of costs and moves towards pricing cost reflectivity need to be tempered to limit their impact on some customers.
- ***Pricing stability*** - to the extent possible undue variation in price levels should be avoided.
- ***Pricing simplicity*** - price structures should be understandable, simple and transparent.

The following table from the ETSA report on tariffs, released by AER on 31st May 2010, shows the direction of movements for 2010-11 tariffs, for various customer classes and tariff blocks. The lowering, in real terms, of the first block for residential and small business customers is encouraging.

Table 15 - Indicative relative charging parameter movement in the 2010-15 regulatory control period

Distribution tariff class and tariff	Fixed charge	First block rate	Upper block rates	Peak energy rate	Off peak energy rate	Peak demand rate	Off peak demand rate
Residential							
Residential flat rate	↑	↓	↑				
Controlled load		↓	↑				
Low voltage business							
LV business flat rate	↑	↓	↑				
LV business 2-rate	↑			↑	↓		
LV business kVA demand	↑			↑	↓	↑	↓
High Voltage business							
HV business kVA demand	↑			↑	↓	↑	↓
Major business							
ST business kVA demand				↑	↓	↑	↓

↑ increase relative to the average distribution price movement permitted in the AER's 2010 Decision

↓ decrease relative to the average distribution price movement permitted in the AER's 2010 Decision

A blank cell indicates that the corresponding charging parameter is not applicable for a particular tariff.

The actual price impacts are copied below from the ETSA tariffs submission to the AER:

7.4.1 Low voltage residential tariff

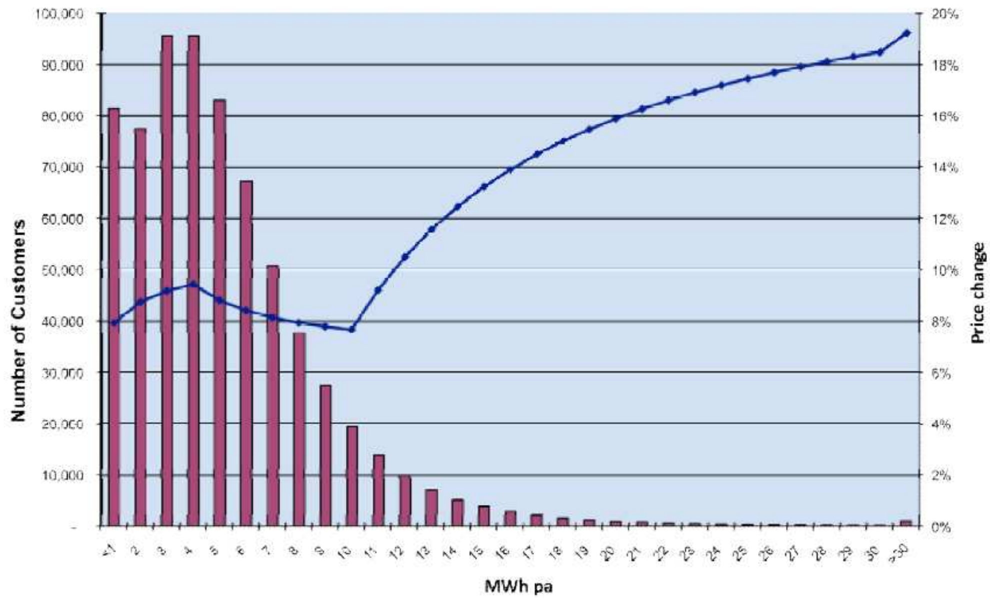
The low voltage residential tariff has a single-rate with an inclining block structure and four consumption steps. The 2010/11 annual bill and price change for this tariff is shown in Table 28, for a range of different customer consumption levels.

Table 28 - Low voltage residential price change in 2010/11

Annual usage	Annual NUoS bill $ p.a.		Change in NUoS bill	Annual DUoS bill $ p.a.		Change in DUoS bill
MWh	2009/10	2010/11	%	2009/10	2010/11	%
2	211	229	8.2%	181	189	4.5%
4	346	376	8.8%	286	298	4.1%
5	444	480	8.2%	359	374	4.2%
8	740	794	7.2%	577	603	4.4%
16	1,549	1,752	13.1%	1,161	1,299	11.9%

The following graph from the 31st May report shows the relatively progressive nature of the new tariffs for 2010-11. The increasing supply charge is the main reason for the increasing price for low use customers. The usage data shows that a vast majority of SA residential customers use less than 5 mega watts per year.

Figure 4 - Low voltage residential NUoS price change in 2010/11



My observations about the process include:

- Most of the regulatory process focuses on the aggregate (total) regulated return to a distribution business, whereas much of the consumer interest is in how the revenue will be collected, which is about the tariff structures. More time needs to be put into this part of the process, and perhaps a rule change is needed here.
- From a consumer process, the distribution review is almost impossible to fully engage with, due to the huge volume of supporting data and consultant reports that are now part of the process, however, engagement on the major issues is quite achievable.

The lack of focus on demand management at distribution business level continues to be of concern.

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