ON THE WIRE

March 2012, edition 31.

Probably the biggest consumer news regarding the energy market for residential consumers this month was the announcement by the Australian Competititon and Consumer Commission that it was taking action against three energy retailers and marketing companies about their door-to-door selling practices.

The ACCC alleges that retailers AGL Sales Pty Ltd, AGL South Australia Pty Ltd and Neighbourhood Energy Pty Ltd (part of Alinta Group) each engaged in misleading and deceptive conduct, and that AGL Sales made a range of false representations to consumers in the course of door-to-door selling. The ACCC also alleges that each of the respondents breached the Australian Consumer Law by failing to immediately leave the premises at the request of an occupier.

For us here at Consumer Action, a particularly interesting allegation is that consumers requested the salespeople to leave by placing a 'do not knock' sign on their door. Regular readers would know that Consumer Action has distributed 'do not knock' stickers for some time, and last year established www.donotknock.org.au to allow consumers to order stickers, learn more about their rights and make complaints.

As we noted in our press release on the action, the case demonstrates that the ACCC is listening to consumer frustration and anger about door-to-door sales.

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 the words "Subscribe to On the Wire" in the subject line. The next edition of *On the Wire* is scheduled for release at the end of June 2012.

CONTENTS

1. Regulatory developments

1.1 Energy White Paper

As noted in our last edition, the Draft Energy White Paper was released for comment in December 2011. It was open for comment until 16 April 2012. At the time of writing, some submissions had been placed on the Deparment of Resources Energy and Tourism's website, but far from all had been posted.

Consumer Action provided a substantial submission providing a cnosumer perspective on the Draft White Paper. The submission noted that the Draft White Paper is largely directed to industry development and investment, but is silent on important consumer issues, such as improved regulatory processes, dealing with market failure in the retail market, or recognition and control of market power. Drawing on international experiences, this submission challenges the Government to produce a White Paper that addresses the range of social, economic and environmental issues that affect our country's future energy needs.

The Government will now review all the submissions ahead of finalising its White Paper. More information can be found here.

-back to top-

1.2 National Energy Customer Framework

As reported in our last edition, jurisdictions are working towards a 1 July 2012 date for implementing the National Energy Customer Framework. Each jurisdiciton is implementing enabling legislation as follows:

- Commonwealth, passed September 2011
- South Australia, introduced March 2012
- Victoria, introduced March 2012
- New South Wales, to be introduced April 2012
- Tasmania, to be introduced April 2012
- ACT, to be introduced May 2012

Due to the change of government in Queensland, there may be a delay to implementation legislation which may push back the start date for that state.

Some jurisdictions have indicated that they will maintain jurisdiction-specific retail protections to ensure customer protections are not lost in the transtion to national regulation. The Joint Implementation Group, which was established by the Ministerial Council on Energy Standing Committee of Officials in 2010 to ensure a co-ordinated national approach to the implementation of the NECF, has released a document outlining the jurisdiction specific requirements. For example, the Victorian enabling legislation has maintained a ban on late payment fees and the wrongful disconnection payment regime in that jurisdiction.

Information about the Australian Energy Regulator's role in overseeing complianc and enforcement with the NECF can be found here.

-back to top-

1.3 Competition Tribunal decisions on AER electricity and gas determinations

On 6 January 2012, the Australian Competition Tribunal made a merits review decision of the distribution determination for the Victorian electricity distribution businesses. The Tribunal has allowed the distributors to recover additional revenues above those initially allowed by the AER and will result in some further increases to electricity distribution tariffs in 2013. The Tribunal's decisions will increase allowed revenue across all of the businesses by around $300 million, or over three per cent of total allowed revenue of $8.8 billion over the 2011-15 regulatory period. There may be further increases for each business when the Tribunal makes its final decision, which is due by 5 April 2012.

More information can be found here.

On 12 January 2012, the Tribunal made another decision on the review of the AER's July 2011 gas access arrangement decisions for the South Australian and Queensland gas distribution network operators, Envestra and APT Allgas. The tribunal rejected the AER's approach to calculating the allowance for the cost of debt. Further, it overturned the AER's decision to not allow Envestra to recover the costs of a 'network management fee' margin included in the charges paid to APA, a related party which provides network services to Envestra.

The tribunal's decision allows APT Allgas to recover an additional $11 million for its Queensland network, and Envestra and extra $10 million for its Queensland network and $71 million for its South Australian network. The AER reports that the increase will have the following impact on typical bills:

- Envestra SA - an increase of $190, compared to the AER's Final Decision of $185
- Envestra Qld - an increase of $125, compared to the AER's Final Decision of $120
- APT Allgas - an increase of $140, compared to the AER's Final Decision of $125.

More information can be found here.

Consumer Action and the Consumer Utilities Advocacy Centre have pointed to the Victorian distribution decision as further evidence that the ability of the distribution companies to appeal the merits of independent regulator's decisions should be abolished. The groups state that distributors can challenge the AER's pricing guidelines with minimal risk that the outcome will see them worse-off, because:

- the system allows distributors to only challenge the parts of an AER decision they think they can win (rather than open up the whole decision to merits review), and
- no-one other than the distributors can effectively challenge aspects of the AER's decision that may be detrimental to consumers.

In a report published in 2011, Consumer Action and Consumer Utilities Advocacy Centre recommended repealing distribution businesses' rights to a merits review in the National Electricity Law, while maintaining their access to judicial review.

See the full media release.

In December 2012, the Standing Committee on Energy and Resources (**SCER**) agreed to bring forward to 2012 the review required under national energy laws on the Limited Merits Review appeal arrangements.

-back to top-

1.4 Australian Energy Regulator (AER)

Electricity Transmission Sector Performance Report
In February, the AER issued the 2009-10 electricity performance report for transmission network service providers (TNSPs). The TNSPs covered in the report are:

- ElectraNet
- Ausgrid
- Powerlink
- SP AusNet

- Transend
- TransGrid
- Directlink, &
- Murraylink.

TNSPs manage the high voltage lines that transmit electricity to cities, towns and across state borders within the five interconnected jurisdictions of the NEM –South Australia, Victoria, Tasmania, NSW and Queensland. Large users of electricity such as aluminum smelters typically connect directly into the transmission network.

Transmission network charges generally make up about 10 per cent of a household customer's bill, but a much bigger proportion of a larger customer's electricity costs.

The report shows that TNSPs service standards, which include the availability of the network to transport electricity and interruptions to supply, continue to improve. It also shows that TNSPs continue to earn commercial returns with the aggregate profits of TNSPs increasing to $460 million in 2009-10. Since 2002-03 TNSPs have continually recorded stable return on assets of between 7.4 and 8.2 per cent.

Further details can be found here.

Approval of minimum disconnection amount
Under the new National Energy Retail Rules which are due to come into effect from 1 July 2012, a retailer cannot disconnect a customer for non payment where the amount owing is less than an amount approved by the AER.

The AER is currently considering what the minimum amount should be. Retailers, ombudsman schemes and consumers have provided submissions to the AER, with some stakeholders endorsing the AER's proposal for the amount to be $300, while others suggesting it should be up to $500.

Consumer groups have also raised concerns about the drafting of the relevant rule, which prohibits a retailer for disconnecting where the amount outstanding is less than the threshold *and* the customer has agreed with the retailer to repay that amount. This is different to the current formulation in the Victorian Energy Retail Code which does not have a reference to a customer agreeing with a retailer to pay the outstanding amount.

The rule's wording suggests that a customer with arrears of less than the minimum disconnection amount will not be disconnected only if that customer has agreed with the retailer to repay that amount. This means that a consumer will have had to have engaged with the retailer and commit to repaying the amount, potentially through a payment plan. This makes the minimum disconnection amount provision superfluous as a protection for consumers who have not done so. It also appears to be a restatement of the related rule which states that disconnection of a customer’s premises should not occur “where the customer is a hardship customer or residential customer and is adhering to a payment plan.”

Consumer groups suggest that an amendment to the rule is required to delete the reference to “and the customer has agreed with the retailer to repay that amount.” so that the rule has the intended purpose of prohibiting disconnection in relation to small debts.

For more information on what the AER is up to, click here.

-back to top-

1.5 Australian Energy Market Commission

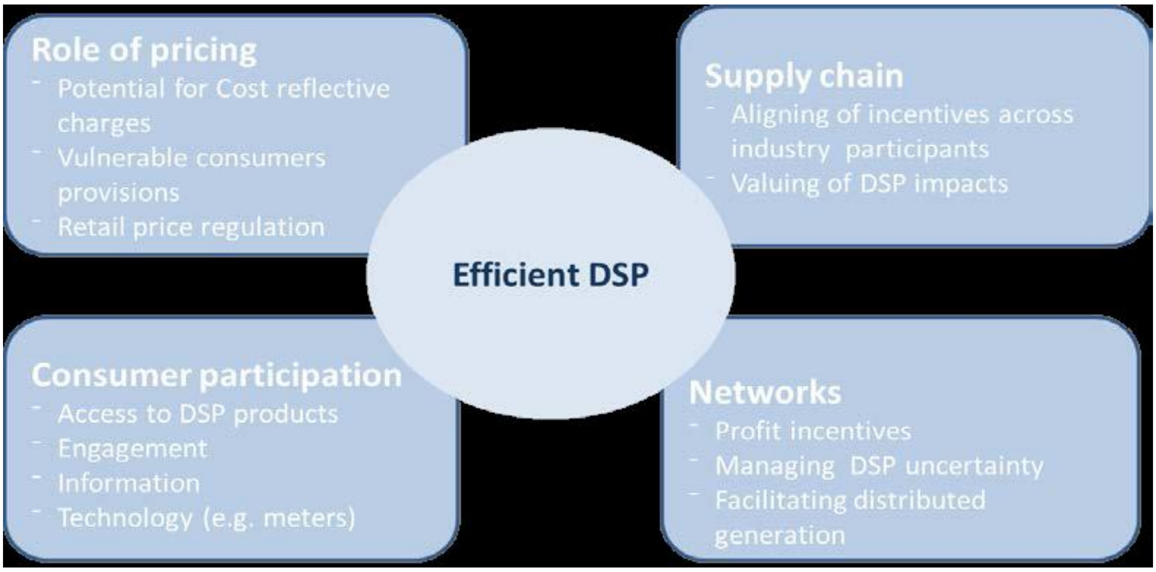
Reviews

Power of choice—stage 3 Demand Side Participation (DSP) review
On 23 March 2012, the AEMC published a Directions Paper as part of its Power of Choice review. This review is exploring how to use the power system more efficiently through capturing the value of demand side participation. Demand side participation includes options which are available to consumers (or to intermediaries acting on their behalf) to reduce or better manage their electricity use. Examples can include (but are not limited to) electricity conservation, fuel switching, energy efficiency and peak load shifting.

The issues and themes considered by the Directions Paper are wide-ranging and cover consumer participation, pricing, the supply chain and the role of networks. The Paper includes the below figure to provide an overview of the relevant issues (Directions Paper Summary, Figure 1.1, page 6).

The AEMC will be holding a public forum for stakeholders to present their views and provide the AEMC with feedback on the key considerations for the next stage of the review. The public forum will be on 19 April 2012 in Sydney.

Submissions to the directions paper close on 4 May 2012. More informatino can be found here.



Rule change proposals

Economic Regulation of Network Service Providers
On 2 March 2012, the AEMC released a directions paper on rule change requests from the Australian Energy Regulator (AER) and a group of large energy users (EURCC). These rule change requests seek to change the way revenues are set for electricity and gas network businesses (NSPs).

Key issues raised by the Directions Paper are:

- **Rate of return (electricity and gas):** The rules provide different approaches to determining the rate of return in electricity distribution, electricity transmission and gas. The AER proposed that the three sectors move to a single approach which most closely aligns to electricity transmission, in which there are periodic reviews of the rate of return parameters, which are then fixed for each NSP or gas service provider.

  The AEMC has agreed that the current rules for electricity transmission are not satisfactory and has indicated its preference is for a single framework to apply across all three sectors. The AEMC will particularly examine the cost of debt component of the rate of return, which was raised by both AER and EURCC. While the AEMC has not supported the EURCC's proposal for different appraoches to the cost of debt for government-owend and privately-owned NSPs, it is considering whether the rules should provide more discretion to the AER.

- **Capital expenditure (capex) and operating expenditure (opex) issues**
  Part of the AER's role is to consider, in advance, forecasts of capex and opex which NSPs propose to undertake. If the AER does not approve such expenditure it may replace the forecast with its own estimate. The AER is concerned that the rules restrict its ability to interrogate and amend NSPs' forecasts, and that this means network costs are being set at higher than efficient levels.

  The AEMC is seeking more evidence to understand the drivers of increases in network costs. It proposes to analyse this evidence to determine the extent to which the AER's powers (or lack of such powers) in respect of capex and opex allowances are contributing to these increases. It will also examine whether the policy settings for capex and opex allowances are consistent with the practices of other regulators in Australia and overseas.

  Once a capex allowance is set, NSPs are not prevented from undertaking capex beyond such allowance. After a period of time, any such "overspend" is automatically factored into overall revenues and prices for the NSP. The AER is concerned that this creates incentives for NSPs to incur more than efficient levels of capex. It has proposed a mechanism by which only 60 per cent of such overspend could be included in the asset base.

  The AEMC agrees that there may be incentives on NSPs to defer capex in an inefficient way. It notes that capex above the allowance is not subject to scrutiny, which also creates a risk that it may be inefficient. The AEMC doesn't support the AER's 60 per cent proposal, and explores in the directions paper a range of other options for dealing with the problems it has identified.

- **Regulatory determination processes**
  The AER has raised a number of issues that relate to the ability of stakeholders, including consumer groups, to engage effectively in the regulatory determination process. The AEMC will consider further the process as a whole to ensure stakeholders have sufficient opportunity to provide input and the AER has sufficient time for its decisions.

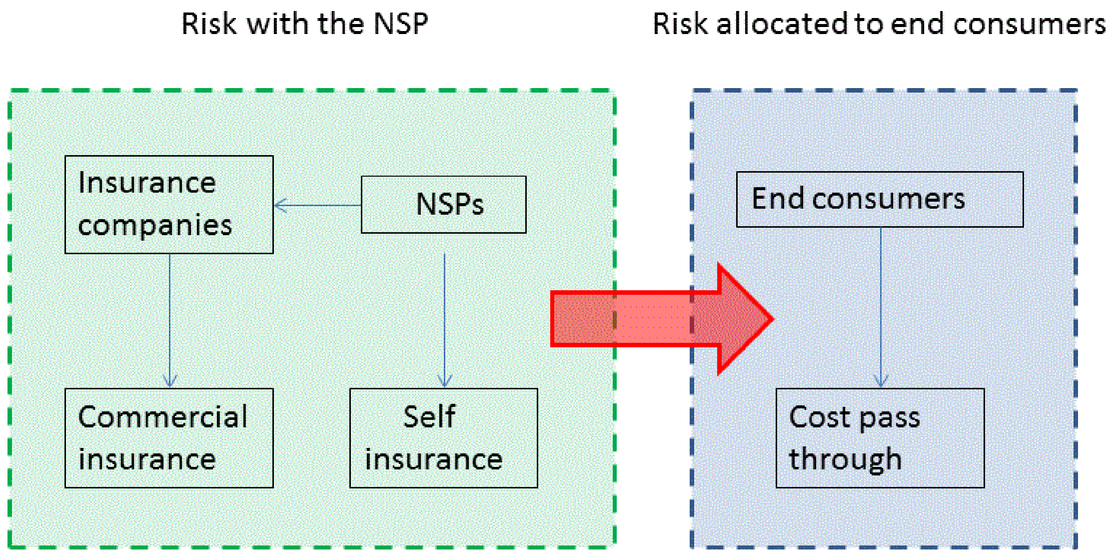
The AEMC is holding a public forum on this rule change on 2 April in Melbourne and submissions to the Directions Paper close on 16 April. A draft determination is due in July. More information can be found here.

Cost pass through arrangements for network service providers
On 2 February 2012, the AEMC published a rule change request from Grid Australia, and an associated consultation paper on proposed amendments to the operation of cost pass throughs for electricity NSPs. A cost pass through is effectively a re-adjustment of a pricing determination to allow a NSP to recover more costs from customers than initially allowed by the regulator due to some unforeseen event.

Grid Australia considers that under the current rules NSPs are exposed to the risk of significant cost impacts arising from natural disasters and potential third party insurance related liability claims that are outside of their reasonable control. To address this perceived problem, Grid Australia has proposed four amendments to the rules:

- include a new 'natural disaster event' within the definition of a 'pass through event' to enable both transmission network service providers (TNSPs) and distribution network service providers (DNSPs) to recover large unexpected costs arising from these events;
- include a new 'insurance cap event' within the definition of a 'pass through event' to enable TNSPs and DNSPs to recover the costs of events that exceed insured limits;
- provide TNSPs with the ability to propose additional pass through events in their revenue proposals, providing consistency with provisions currently available to DNSPs; and
- address the 'dead zone' issue by allowing both TNSPs and DNSPs pass throughs for events that occur in a previous regulatory control period, but where it is too late to include the cost of those events in a total revenue cap for a subsequent regulatory control period.

In its issues paper, the AEMC states that allowing greater cost pass throughs will increase risks borne end consumer. That is, if the event occurs the cost of the event will be incorporated into network prices and paid by the end consumer. The AEMC explains this through the following graph:



Pass through moves risk from NSPs to end consumers

If enacted, this rule change may significantly increase the risk alloated to consumers, probably the market participants least able to bear further risks. A draft decision is expected on 17 May. More information can be found here.

More rule change proposals can be found here.

-back to top-

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 *Between a Door-Knock and Cyber-Space: The Problems with Electricity Switching Sites, Katrina Lee, Strategic Policy Advisor, CHOICE*

CHOICE has lodged its first super complaint, part of a pilot project with NSW Fair Trading on electricity switching sites.

Purpose of super complaint pilot

CHOICE entered into a Memorandum of Understanding with the NSW Department of Fair Trading in September 2011 that establishes an 18-month super complaint pilot project to help identify ongoing consumer issues that add up to systemic failures.

The super complaints pilot allows CHOICE to present evidence to NSW Fair Trading of market failures that presents significant risks to consumers in areas that NSW Fair Trading portfolio covers. Under the process, NSW Fair Trading is required to publicly respond within 90 days on actions that may be taken to address the issues.

This project is based on a super complaints system operating successfully in the United Kingdom.

Summary of super complaint

The scope of CHOICE's super-complaint to NSW Fair Trading is that:

- NSW consumers that visit only one commercial switching site may not find, contrary to their reasonable expectations, the 'best' electricity deal available.
- Some of the switching sites are arguably making representations (directly or by omission) that lead consumers to incorrectly believe a user would find the 'best' deal on their site.
- In some instances, different switching sites recommend the same electricity plan but with different estimated levels of savings, which raises questions over the accuracy of the calculations used by some of the sites.
- Some of the commercial switching sites do not provide the user with all the relevant terms and conditions associated with electricity plans so that a user can make an informed decision before switching.
- The characteristics of retail plans, including tariffs and relevant fees and charges, make it difficult for a user to compare plans effectively.

Recommendations

CHOICE recommends that:

- A code or accreditation system for commercial switching sites be introduced, similar to that which operates in the UK. This will help consumers quickly identify the switching sites they can trust.
- NSW Fair Trading investigate whether any of the commercial switching sites are engaging in misleading or deceptive conduct with regard to whether a user would find the 'best' plan using its site or other related representations.
- A project similar to the UK Midata project be pursued in Australia. The Midata project is aimed at giving consumers their personal consumption data in a secure, usable and portable format. By giving consumers access to this information, possibly in combination with switching sites or other third-party comparison tools, it could help Australians navigate complex markets and make more efficient purchasing decisions.

Victorian energy switching sites research by CUAC

CHOICE's NSW super-complaint 'Between a door-knock and cyber-space: the problems with electricity switching sites' available at choice.com.au/switchingsites, follows a study of Victorian energy switching sites commissioned by the Consumer Utilities Advocacy Centre in 2011, which also identified issues around transparency and comprehensiveness.

-back to top-

2.2 *Off-grid systems—When is it viable to go stand alone?, Damian Moyse, Energy Projects & Policy Manager, Alternative Technologies Association*

We all know electricity prices are rising. And with almost $50 billion to be spent on distribution networks until 2015, we know that prices will continue to rise. The question is, when will it be cheaper to pay someone to go off-grid with a stand alone power system (a 'SAPS'), as opposed to upgrading or undergrounding the grid to their home?

A recent research project by the Alternative Technology Association (ATA) attempted to answer this and other related questions. The *Alternative Electricity Options at the Fringe of the Grid Study* quantified the long-term, or levellised, energy cost from a SAPS compared with the long-term cost to all electricity consumers of upgrading the electricity grid.

The research was initiated in mid 2010 in response to the 2009 'Black Saturday' bushfires and the need to understand the costs associated with risk mitigation of un-insulated powerlines. ATA commissioned an energy market consultant to undertake the economic modelling for the project.

Model Scenarios

The model contained two primary options—to remain grid-connected ('on-grid'), or to move to a SAPS. Thirteen scenarios were modelled that encapsulated a variety of on-grid and SAPS configurations.

Within the on-grid option, households continued to use their existing appliances in a business as usual scenario (BAU). The electricity could be delivered via existing conductors, or by upgrades to the network, such as new insulated unscreened conductors (IUC) or underground conductors. Capital cost of network upgrades were valued at $50,000 and $100,000.

Within the SAPS option, households could continue as business as usual (BAU) with respect to load requirement, or the household could be 'optimised' by replacing some appliances and fuel switching (e.g. wood for heating), thereby reducing daily load requirements.

There were three primary designs within the SAPS option. The electricity could be generated by:

- a diesel generator (genset) alone;
- a solar photovoltaic (PV) system with genset backup; or
- a small wind turbine with genset backup.

All SAPS options included batteries. With the solar and wind based systems, there were two levels of renewable contribution—either 70% or 90% of overall energy use.

Study Conclusions

The key finding of the research was that it does not take significant amounts of network investment to make a SAPS a more attractive economic proposition. Table 1 and Figure 1 below outline the levellised energy cost comparisons for each of the scenarios.

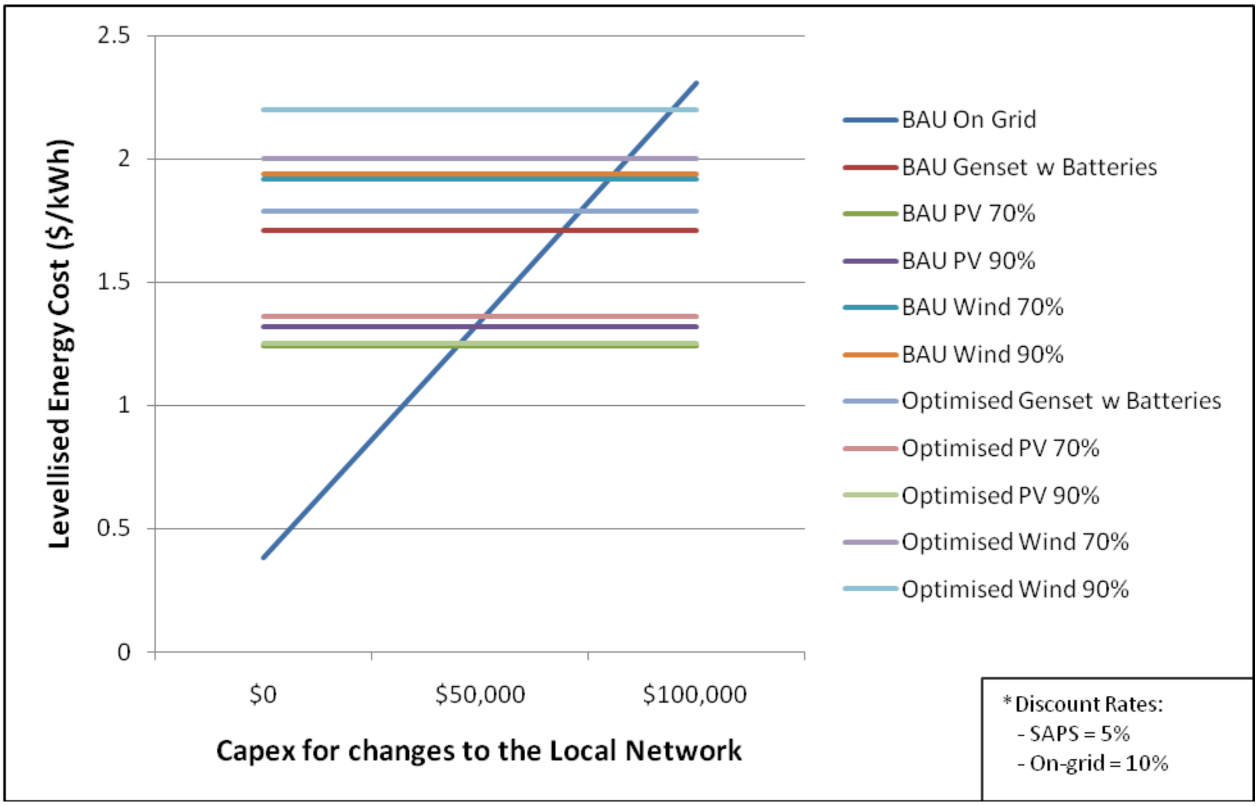
Whilst ATA was not surprised to see that even the most costly off-grid option was cheaper in the long term than a $100,000 network upgrade, the report shows that it is considerably cheaper in the long run to spend about $80,000 up front on a high quality, automated SAPS than upgrade the grid at a cost of $50,000. To put that in perspective, $50,000 is about the cost of undergrounding 100 metres of existing powerline to a single home.

Network expenditure is a cost that all electricity consumers pay through network charges (the 'fixed' or 'supply' charge on your electricity bill). Governments and energy regulators across Australia should pay close attention to these findings when developing policy regarding network management for bushfire start risk mitigation, replacing of existing aged network assets or replacement of constrained (overloaded) powerlines.

Table 1: Levellised Energy Cost Comparison ($/kWh) – SAPS versus Grid Augmentation

Cost of Network Connection beyond Householder's Boundary	**$0**	**$50,000**	**$100,000**	**Daily Electricity Load (kWh)**
BAU On-grid[1]	0.38	1.34	2.31	13.7
SAPS BAU Genset with Batteries[2]	1.71	1.71	1.71	13.7
SAPS BAU PV 70%[2]	1.24	1.24	1.24	13.7
SAPS BAU PV 90%[2]	1.32	1.32	1.32	13.7
SAPS BAU Wind 70%[2]	1.92	1.92	1.92	13.7
SAPS BAU Wind 90%[2]	1.94	1.94	1.94	13.7
SAPS Optimised Genset with Batteries[2]	1.79	1.79	1.79	12.1
SAPS Optimised PV 70%[2]	1.36	1.36	1.36	12.1
SAPS Optimised PV 90%[2]	1.25	1.25	1.25	12.1
SAPS Optimised Wind 70%[2]	2.00	2.00	2.00	12.1
SAPS Optimised Wind 90%[2]	2.20	2.20	2.20	12.1

Figure 1: Levellised Energy Cost Comparison – SAPS versus Grid Augmentation



-back to top-

2.3 Keeping the Lights On: A resource for frontline workers helping people with energy bills, Dean Lombard, Policy Analyst—Energy and Water, Victorian Council of Social Service

The Victorian Council of Social Service has developed a practical resource to help emergency relief workers, financial counsellors, and others working with people struggling to pay energy bills get better outcomes for their clients.

One of my favourite parts of my job is getting away from writing submissions, telephoning bureaucrats, and sitting in meetings to go and talk with the frontline workers who are dealing with real people with real problems—the kind of problems that all the other stuff is supposed to address. The people who can't pay their energy bills, or have just been disconnected; the workers who spend hours on the phone getting energy retailers to do what they are supposed to do anyway. These workers are incredibly skilled and have an astounding practical knowledge of what to demand and who to talk firmly and patiently with to make sure that the great Victorian customer protection framework actually works for vulnerable households.

But even for experienced workers, it's challenging to always remember all the details of the customer protection framework; and for new workers, it can take quite some time to get up to speed with it. This is why VCOSS developed the Keeping the lights on resource: because, in their de facto role as enforcers of the customer framework, frontline workers need the right information at their fingertips. We consulted with policy experts and direct service workers to make sure it has the most relevant information in the most useful format.

Keeping the lights on is designed to be kept where it's most needed, in an interview room or by a telephone. On one side is some information about energy retailers' obligation to offer flexible payment arrangements and (if required) specialist hardship assistance to customers who need it, an overview of the protections against disconnection that Victorian households are entitled to, and a list of energy retailers with their call centre and (where available) hardship teams' phone numbers. On the other are three flowcharts that guide the worker through an optimal process for dealing with unaffordable bills, threatened or actual disconnection, and disputes with retailers. Phone numbers for the Energy and Water Ombudsman and the Concessions Unit are also included. And it's all on a piece of laminated A4 card that's tear-resistant and (in my testing at least) coffee- and sandwich-proof.

VCOSS will be sending out five copies of Keeping the lights on to around five hundred emergency relief and financial counselling organisations (via Emergency Relief Victoria). If you are not affiliated with ER Vic but could use one or more in your agency, contact Dean Lombard at dean.lombard@vcoss.org.au. We have also developed a variant designed to be handed out to service users to assist them in their own negotiations with energy retailers. This can be downloaded from bit.ly/keepingthelightson. Like the laminated cards, it's full colour but designed to reproduce clearly in black and white.

-back to top-

If you would like to subscribe/unsubscribe, email info@consumeraction.org.au with the words Subscribe or Unsubscribe to On the Wire in the subject line.