

Submission to the Australian Competition Tribunal Limited Merits Review

6 August 2015

1. WHO WE ARE/WHO WE REPRESENT/WHY IT IS IMPORTANT

- My name is Iain Maitland and I am the energy advocate for culturally and linguistically diverse (CALD) communities in the National Energy Market (NEM). I act for the Federation of Ethnic Communities' Councils of Australia (FECCA) and the Ethnic Communities' Council of NSW (ECC NSW). FECCA and ECC NSW welcome the opportunity to be involved in the consultation process we are seeing for the first time today.
- ECC NSW represents over 250 member organisations from a wide range of cultural groups. FECCA is the peak body for all Ethnic Communities' Councils across Australia.
- Extrapolations from the 2011 census indicate that approximately 28% of Australian residents were born overseas, an increase of about 24% over the decade 2003 – 2013. Within NSW and Victoria, those states with the majority of the CALD population, 2011 census figures give approximately 29% of the population as born overseas and 25% speaking a LOTE at home. These figures represent increases of approximately 3 – 4% over the 2006 census statistics.
- The figures for LOTE speakers at home can be unreliable, as respondents asked what language is spoken at home often reply English while there remains a strong first language presence within the home, often with the older members of the extended family network.
- Australia wide, within the five year changes in those figures, we find an over 250% increase in residents born in India and Sri Lanka, and a 22% increase in residents born in Asia.
- Approximately 40% of small to medium enterprises within Australia are owned/operated by members of CALD communities – all of these businesses are consumers of electricity and/or gas. (*ref: Hon John Ajaka, Minister for Multiculturalism*)

- This sets the scene for a question I am asked quite often – why are CALD energy consumers different and are their energy concerns/needs different from a ‘typical’ energy consumer.

Firstly

- CALD communities are by no means homogeneous. With the broadest brush, there are at least three distinct groupings based on their arrival in Australia in the post-war period, all with particular energy service needs and issues:
 - the 1940s and 1950s (largely Greek and Italian),
 - the 1970s and 1980s (predominately Vietnamese, Thai, Cantonese speaking Chinese , Phillipina/o and Spanish speakers from Latin America) and
 - newly arrived and refugee communities (Sudanese (Arabic and Dinka speakers), Mandarin speaking Chinese, Tamil and Hazara (Afghan speakers)).
- ECC NSW has conducted a range of research within these communities – with both residential consumers and with SMEs. I offer the Tribunal copies of highlights of some of that research and can provide full copies if required by the Tribunal.
- Newly arrived and refugee communities have specific needs as energy consumers. They often come from areas where energy and water supply is unreliable and they may have not had the open and easy access to power and water that Australian society accepts as normal. Particular problems around bill shock, inability to pay, understanding of contractual arrangements for supply, knowledge about concessions and hardship provisions, language difficulties, lack of familiarity and access to the internet, among others.
- Counter to the assumption that the longer migrants have been in Australia the more familiar they are likely to be with information across the energy sector, longer term residents were less likely to be aware of what was available in the energy market. They also exhibit a marked lack of familiarity with the internet and do not

access information this way, rather by word-of-mouth and local community sources of knowledge. As LOTE speakers age, it is also often the case that their first language replaces English as their usual method of communication.

- Over 1200 ethno-specific SMEs were part of a longitudinal survey of energy use as part of the ECC NSW Business Energy Smart Tips (BEST) project, which provided energy audits and advice to ethno-specific SMEs about reducing their energy bills. While there were indications of behaviour change over the life of the project, initially most businesses did not use the internet for their information, and did not actively engage in the competitive energy market.

2. LTIC/ THE NEO AND A HOLISTIC APPROACH

It is within those areas of difference that the concept of the ‘long term interest of consumers’ plays out for the wide range of CALD communities. We have heard about the LTIC and what the phrase means from a number of groups already– I am aware that Energy Consumers Australia and others will address this in some detail later in the day. **Authentic** consumer engagement and communication is an integral factor in the LTIC, but in the CALD context, it is even more challenging to establish what those long term interests are if the opinions and views of one quarter of the population have not been authentically ascertained.

As I indicated earlier, FECCA and ECCNSW welcome the opportunity to be involved in this consultation process. While we recognise the short time-frame of this process we also look forward to the ‘early and continuous consultation’ mentioned in the statement of intent by the Standing Council on Energy Resources, now the COAG EC.

We echo the point made by Gerard Brody from Consumer Action Law Centre that the Tribunal offers, where possible, an explanation as to how the different views put forward over these two days were taken into account in the Tribunal’s decision.

Our understanding of the process the Tribunal is undertaking currently is that you are tasked with reviewing the decisions as a whole. It will be easy to get

bogged down in the minutiae of the regulatory decisions (economic largely) and I will be addressing some of those in a moment.

From our perspective, arguments about whether or not the safety and reliability of the network, or investment outcomes, or bushfire protection or a myriad of others will be affected by these determinations is not the matter for determination here; rather it is whether the 'bucket of money for an efficient service', as Professor George Yarrow put it in the Limited Merits Review, is sufficient but not excessive.

3. SUBMISSIONS and COMMENTS

We propose to address firstly the NSW Networks determinations, although some of our comments, particularly in relation to consumer engagement, will apply also to our comments about the Jemena Gas determination.

NSW Networks determination:

Our submission to the determinations for the NSW networks reset had three main thrusts:

- the regulated rate of return,
- consumer engagement and consultation and
- demand management initiatives and innovation.

I offer copies of our submissions on the NSW determinations and the Jemena Gas determinations to the Tribunal for your information.

The Regulated Rate of Return:

The last regulatory period (2009-2014) saw a massive increase in the networks capital program, and hence a concomitant increase in the Regulated Asset Base (RAB) brought forward to the new regulatory period. A high ROR, coupled with a high RAB, indexed annually for CPI increases, serves to put considerable upwards pressure on distribution prices, and consequentially the retail prices paid by consumers. Given the flat predictions of peak and average demand, there are convincing arguments that large asset write-downs in transmission and distribution businesses would be to the financial advantage of both energy businesses and consumers.

In the case of energy businesses, to provide realistic market evaluation to potential purchasers of any partial network sales/leases.

For consumers, a large reduction in the return on capital costs of networks has the potential to lower the retail cost of electricity markedly.

While we supported AER's proposal to set a (considerably) lower ROR than the previous regulatory period, we consider the AER's suggested ROR to still be too high, given current financial conditions and the relatively risk free nature of the investment process involving Government-owned distribution businesses such as Ausgrid, Endeavour and Essential.

Discussion and agreement about the risk parameters of distribution and network businesses seems to hinge on definitions of how 'risky' such investment remains. Quite large gaps appear between rates when businesses are evaluated on an AAA-, BBB+ or BBB basis. AER guidelines suggest that the ROR should be established on the basis of a BBB+ risk profile. It does not appear from the networks' initial or revised proposals that this has been the process used. We proposed that a AAA- profile be used.

Consumer engagement and consultation:

Ausgrid, Endeavour and Essential have undertaken engagement with stakeholders, to varying degrees, as part of their consumer engagement strategy during 2014/2015.

We were active in supporting the requirement by the AER that the energy networks engage with their consumers when preparing their proposals. We participated in the development of the set of consumer engagement guidelines that were prepared to assist the networks in this activity.

A major criticism of the process of consumer consultation and engagement by network businesses to date is that it has been, and continues to be, largely a process of one-way information transfer. There is little indication or transparency of how, if at all, such consultation and communication has been used to shape the networks' initial proposals and their subsequent revised proposals.

We place great value on any **authentic** opportunity to provide feedback on consumers' views and CALD communities' needs and views in particular. The present processes present CALD communities with the double impediment of both a lack of culturally appropriate consultation as well as a flawed overall execution of the consultative process.

We are not aware of any significant consultation with consumers or consumer advocates, for example, by networks about varying the process used in calculating their ROR from the AER's ROR guidelines. We would ask where and when has it been explained or communicated why is it in the LTIC to be paying a much higher ROR (and hence electricity price) when consumers bear most of the risk in a regulated monopoly market.

Jemena Gas determination:

Our submission to the determinations for the Jemena Gas network again had three main thrusts:

- the wholesale price of gas,
- consumer engagement and
- the differences in application of the calculation of the weighted average cost of capital.

In our submission we commended Jemena for its commitment to provide gas customers with a 'smooth' price path over the next regulatory period in relation to evening out the expected effects of large increases in the wholesale cost of gas.

We have had a member on the Jemena Customer Council since October 2013 and have noted Jemena's serious and successful attempts to engage consumers and gain real feedback about its activities and regulatory proposals. Jemena has established the initial stages of an excellent process of consumer engagement which could provide a model on which other networks could base their future engagement strategies. It provided considerable resources to its Customer Council in the lead-up to its pricing proposal as well as responding to the concerns of its members.

Jemena has also been particularly supportive of ECC NSW's efforts in publishing a set of general guidelines for engagement with CALD communities, to be used in the context of energy issues and consumer consultation.

As part of the Better Regulation Program, the AER developed its Rate of Return Guideline. The Guideline was established after wide consultation and input from network businesses, consumer groups, investor groups, banks and others. We were part of those deliberations, and accept that the process was rigorous

and that while the Guideline was not universally accepted by all parties, it was established with a general consensus across the industry.

It was disappointing, therefore, to note that Jemena chose not to adhere to the Guideline in its calculation of a Weighted Average Cost of Capital (WACC) for the new regulatory period. Jemena suggested a WACC of 7.06% (amended downwards from its initial submission of 8.67% due to changes in market conditions and considerably lower than the 2010 - 2015 WACC of 10.43%). The calculation of its WACC does not fully comply with the Guideline, which Jemena notes in its submissions. The AER, in its final determination, proposes a WACC of 5.41%, using the Guideline.

As the WACC is a major driver of network prices, with small changes in WACC providing wide differences in revenue returned to a network, we believe that the AER calculation should stand for the next regulatory period.

Thank you again for the opportunity to address the Tribunal today.