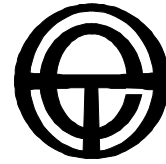


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SUBMISSION

Arrangements for Consumer Advocacy in the Energy Sector

Rule Change Issues

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1. Introduction

1.1 Key themes

Total Environment Centre is pleased to be able to comment on the transitional arrangements for the National Consumers Electricity Advocacy Panel (“the Panel”) as part of the continuing review of a consumer advocacy mechanism. We refer to previous communications jointly with other organisations to the MCE concerning the focus and structure of such a mechanism (“NEM Consumer Advocacy Arrangements – A briefing for government” and the letter of 23 November 2005; see Attachments 1 and 2). We look forward to the opportunity to comment further when options for future, long-term arrangements are being canvassed.

Increasing the capacity of consumer advocacy in the NEM is critical. The policy and regulatory frameworks in energy remain in a relatively early stage of development and the competitive marketplace is at different levels of development across the NEM. Even in those States where full retail competition has been introduced, the market remains immature, characterised by high transaction costs, information asymmetries, the continued disadvantage of certain classes of consumers (rural and low-income consumers and private tenants, to name just three), a complex regulatory framework and uncertainty about how a national energy retail and distribution framework will affect the interests of consumers.

Research on the implications for consumers of energy market reform has been left almost entirely to the non-government sector to initiate and undertake, and where State governments have supported research and advocacy on behalf of consumers, it has proved to be of great value to regulatory decisions.

Total Environment Centre (TEC) endorses the statement from the Ministerial Council on Energy (MCE) that, “An accountable, effective and unbiased advocacy panel which allocates funding on merit is an essential tool for ensuring that the long term interests of consumers are accounted for in the national electricity market.” This principle is the foundation for our comments in this submission. Furthermore, we also agree with the MCE that there should be a “focus on small and medium consumers”, since they have limited resources for representation themselves.

TEC proposes that additional focus should be placed on the environment as a key area for advocacy, as environmental externalities caused by the NEM have direct impacts on small and medium consumers, as well as the wider community and national economy. These issues will be addressed further below.

TEC agrees that a consumer advocacy mechanism is necessary since end users have, “the same rights to be involved in National Electricity Market decision making as participants in the market and require additional resources to do this.”

Our general recommendations are:

- The environment should constitute a particular area of focus within consumer advocacy arrangements and that proper consideration of environmental externalities – acknowledging the role of demand management and climate change in particular as primary issues – should be addressed in funding advocacy, capacity building and research.
- Our preferred structure is for a company limited by guarantee, with a governing board and a consultative committee, rather than a Panel.
- Any consumer advocacy body must be free of ministerial and government direction. Therefore it is not appropriate to insert the MCE in the Rules as arbitrator for Panel decisions (in the proposed versions of clauses 8.10.2[b], 8.10.2 [d1], 8.10.2[e]). The appropriate arbitrator is the Australian Energy Market Commission (AEMC) since the MCE could equally be charged with conflict of interest in directing decisions.
- Constitution of the Panel (if this is unavoidable) – it is essential that the four members be end user representatives, with one representative specialising in environmental issues. The Panel was originally established to assist consumer participation in the National Electricity Market (NEM), not to represent those directly involved in the market.
- Members of the Panel (if this is unavoidable) should be truly independent: nominees should not have been employed at a professional level within the previous three years for any of the major industry or other stakeholders.
- As well as publishing summaries of the applications received and their responses, the Panel should also publish the reasons for rejection or acceptance of applications, to ensure transparency of decision making and to minimise confusion for applicants.
- Funding of the Panel is a shadowy matter; it simply decides what should be funded then asks for an allocation of money. There should at least be upper and lower limits set for an annual budget to allow for forward planning by both the AEMC and NEMMCO.
- The guidelines for allocation of funding on the basis of “diversity” need to be rigorous and publicly available. The concept of diversity is insufficiently defined, which can lead to inconsistency of decision making as well as uncertainty for applicants.
- The Panel currently meets every two months: this should continue, rather than meetings being set at three-monthly intervals (as stated in both the existing and proposed Rules). The Panel guidelines allow for “Stream 3” urgent applications and this should be codified in the Rules; that is, by providing for more frequent meetings as necessary.

1.2 The Environment and the NEM

The impact of the NEM on the environment and, in turn, on consumers, should be highlighted in the Rules as a primary issue to be considered within the “diversity of issues” in allocating funding for consumer advocacy. This is in the long-term interests of all consumers, not just particular interest groups. The more than 100,000 customers in Australia – and the number grows daily – who have voluntarily chosen to pay more for accredited Green Power products attest to the community support for this position.

The Commonwealth, State and Territory Governments have recognised the significance of environmental impacts from the energy sector, the interactive relationship between markets and greenhouse gas impacts, and the importance of the NEM to reduce

greenhouse gas emissions. For example, the 1998 *National Greenhouse Strategy* contained key objectives to: "Expand and invigorate energy market reforms to improve the economic efficiency of energy supply and lower the rate of greenhouse gas emissions," and to, "Reduce greenhouse gas intensity while achieving efficient and competitive electricity and gas markets and lower energy prices."¹

It is critical that a national consumer advocacy body is empowered to explore and fund advocacy on environmental issues, including externalities, that exist in the NEM. In particular, opportunities for demand management are being overlooked. Stationary energy consumption is the largest contributor to greenhouse emissions in Australia, yet there is a dearth of consistent advocacy related to the market framework within which those emissions occur.

Impacts of the NEM on low income consumers and the environment provide many synergies, and those in vulnerable households are likely to be the hardest hit by climate change. Low income consumers:

- are often living in below-standard accommodation with poor insulation, leading to greater reliance on heating and cooling appliances and, as a result, pay higher electricity costs;
- are less likely to be able to afford energy efficient appliances, or to replace inefficient ones;
- may have limited access to fuel switching options (such as solar hot water), particularly if they are living in rented accommodation; and
- are more likely to be severely affected by the rising costs of climate change, for example as reflected in prices for greenhouse pollution.

1.3 Demand management and the NEM

DM² must be promoted to an integral feature of the NEM, which is founded on economic efficiency. To achieve this there must be equal emphasis on demand and supply as the basis of standard economic regulation. DM and energy efficiency must therefore be given high priority and integrated into national regulations. As such, it should be highlighted in the Rules as a primary issue to be considered within the "diversity of issues" in allocating funding for consumer advocacy.

The importance of enhancing DM in the NEM has been repeatedly highlighted by the Council of Australian Governments (COAG) and the MCE over many years. As early as 1992, the National Grid Management Protocol recognised the importance of DM as integral to the creation of an efficient and cost-effective electricity system.³ In 2002, the Parer Report⁴ again emphasised the importance of demand management and recommended several measures to improve demand side participation. Subsequent MCE

¹ Commonwealth of Australia. *National Greenhouse Strategy*, Section 4.1. Online at <http://ngs.greenhouse.gov.au> accessed on 11.11.2005

² DM in this submission can be read to include 'demand response', 'demand side management', 'demand side response', 'energy efficiency' and 'non-network solutions'. In general, DM can include both the management of peak loads and energy efficiency as a way of meeting capacity requirements most cost effectively. It includes a diverse array of activities that meet energy needs, including cogeneration, standby generation, fuel switching, interruptible customer contracts, and other load shifting mechanisms.

³ National Grid Management Council, *National Grid Protocol*, First Issue, December 1992

⁴ Commonwealth of Australia, *Towards a Truly National and Efficient Energy Market*, 2002, p 33

communiqués over 2004 and 2005 have specifically highlighted the need for greater energy efficiency.

2 Rule changes

In this section we address changes to the Rules that we consider necessary to fulfil the social and environmental obligations any consumer advocacy body should meet. These changes are intended to deal with the interim situation, and do not necessarily reflect TEC's recommendations for the future. In particular, it is recognised that a long-term model (including the likely establishment of a body governed by a board) will be developed and that the current proposed Rule changes are designed to deal only with the "function performed by the Panel at present".

We have mainly commented on those clauses of the Rules that require modification.

Clause 8.10.2 (a) 1: a person appointed by the AEMC to act as the chairperson for a period of up to three years.

In the current Rules the person should be appointed after "consultation with representatives of end-users ..." There is no argument presented as to why consultation with end-users is unnecessary, therefore the principle should stand as input from consumer organisations will widen the pool from which to choose.

Clause 8.10.2 (a) 2: four members appointed by the AEMC.

Previously it was required that there be two consumer representatives on the Panel. Since the Panel's function is to represent "medium and small customers", these four members should all be consumer representatives, otherwise the proposed changes are lip service only. One member should be expert in the environmental impacts of the NEM and an advocate for demand management in all its forms, since there is currently limited incentive for implementation of demand management initiatives (including distributed generation). It should be properly recognised that the market has impacts beyond the purely economic. Independence of the members can be dealt with under Clause 8.10.2(c)2.

The Panel should also include one member to represent vulnerable consumers since their interests too are currently excluded from the NEM at the national level, and are restricted to customer service obligations at the jurisdictional level (which vary widely).

Clause 8.10.2 (b) 1: have regard to any nominee recommended by the MCE and any guidelines prepared under clause 8.10.2(e)

The Panel should be independent of ministerial and government direction, therefore the MCE should have no role in appointing members to the Panel. It should be a truly independent body, directed only by the AEMC in order to avoid political interference. The AEMC is itself an independent authority entrusted to make impartial decisions. It is sensible for the AEMC to appoint members, unlike the previous situation where they were appointed by the Chair; this should assist impartiality of decisions by the membership.

Clause 8.10.2 (b) 2: ensure that the person so appointed is independent of the AEMC etc.

The Commonwealth Consumer Affairs Advisory Council has developed a model for appointment of consumer representatives⁵ which is pertinent here. They propose that appointments should be made on merit, and that, "An appointee is independent if the person:

- has not within the last three years been employed in an executive capacity by an organisation or as a director of an organisation about which the appointee will be expected to give advice or make decisions in their role as a consumer representative;
- has not within the last three years been a principal or a professional advisor to an organisation about which the appointee will be expected to give advice or make decisions in their role as a consumer representative;"⁶

These principles and similar ones regarding business interests should be inserted in the Rules to ensure that Panel members are truly impartial.

Clause 8.10.2 (d) 1: The AEMC may not exercise its powers under 8.10.2(d)(4) or (5), without prior consultation with the MCE.

See comments above re Clause 8.10.2(b)1. The AEMC has been established as an independent policy-making body and does not normally have recourse to consultation with the MCE. Supervision of Panel members should be no different, therefore this clause should not be inserted.

Clause 8.10.2 (e): The AEMC must develop and publish guidelines and terms and conditions for the appointment of members of the Advocacy Panel in consultation with the MCE ...

Again, the MCE should not be inserted in this clause. The current Clause in the Rules goes on, "The guidelines must be developed having regard to the need to ensure that representatives selected are capable of reflecting the viewpoints and concerns of the constituencies they represent and to the need for the chairperson to consult with relevant consumer organisations ..." This seems perfectly reasonable and it is unclear why it is proposed to remove it.

Clause 8.10.3 (b) 2: summarises the submissions received ... and the Advocacy Panel's response ...

In the interests of transparency, the Advocacy Panel should also give reasons for their response to the submissions, that is, they should justify their decision.

Clause 8.10.3 (b1), (c), (c1), (d): dealing with financial reporting.

The changes here elevate the degree of accountability of the Panel for its spending. The issue of funding is still shadowy, however. There is no real budget allocated to the Panel nor upper and lower limits placed on spending. The Rules as they stand and these proposed changes will not deal with this problem (in

⁵ Commonwealth Consumer Affairs Advisory Council, *Principles for Appointment of Consumer Representatives: A process for governments and industry*, Commonwealth of Australia, June 2005

⁶ *Ibid.*, p 9

these or other clauses). The Panel simply assesses applications then notifies the AEMC of the amount required from NEMMCO. This is not an efficient system, and is not so critical in this transition stage, but provisions need to be developed in the long-term model to deal with this. At least in the interim the AEMC will be acting as arbitrator to some extent.

Clause 8.10.3 (d) 1: there should be diversity in the allocation of funding with respect to the number of end-users represented, the nature of the interests represented and the issues which are the subject of the application for funding;

Once again there are no clear principles to follow here, and the current guidelines developed by the Panel do not really clarify the situation. It is clear from the reports and advocacy that the Panel has funded to date that they are attempting to fund "a diversity of issues" (although not necessarily sufficient) and a diversity of forms of advocacy, but it is less obvious to what degree the number of end-users, or the interests represented, is diverse. The AEMC should ensure the guidelines developed by the Panel (under Clause 8.10.3[e]) give some clarity to the nature of the "diversity" required of the Panel. This is important not only to ensure that the spirit of this clause is honoured, but also to give some certainty to potential applicants as to their likelihood of success. They may dutifully conform with Clause 8.10.3(d)2 but still not meet the Panel's criteria in terms of what is already being funded, which leads to wasted effort on the applicant's part. "Funding criteria" as referred to in the introduction to this clause does not quite meet this problem.

Clause 8.10.3 (f): The Advocacy Panel must determine applications for funding on a quarterly basis ...

This represents no change from the Rules but is nevertheless inadequate. In practice the Panel is meeting every two months and there is no reason this could not be inserted into the Rules. In the Panel's guidelines⁷ there is provision for assessing "Stream 3" applications, where the applicant is requesting funds on an urgent basis, particularly in response to procedures within the energy market reform program. It is therefore reasonable to insert a statement that the Panel can meet more often to deal with urgent cases. For instance, issues papers released by the MCE and the AEMC as part of this program frequently require response in less than three months (sometimes less than one month). Since the Advocacy Panel recognises the need for funding by some organisations in order to be able to develop submissions or convene meetings (capacity building) to discuss these issues – and has funded such applications – this should be recognised within the Rules. Although the need for urgent response may diminish over time as the NEM develops, nonetheless the facility for more frequent determinations should be made available.

⁷ National Consumers Electricity Advocacy Panel, *Funding Criteria and Guidelines*, online at <http://www.advocacypanel.com.au> accessed on 8.2.2006