



Ethnic Communities' Council of NSW Inc.

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6/5/2015

Submission in response to the *Review of Governance Arrangements for Australian Energy Markets: Issues Paper.*

The Ethnic Communities Council of NSW (ECC NSW) welcomes the opportunity to provide comment on the Issues Paper presented by the Review Panel for the Energy Market Governance Review published in April 2015.¹

Since its formation 40 years ago the ECC NSW has been the peak body for culturally and linguistically diverse (CALD) community members and representative organisations in NSW. The Ethnic Communities' Council of NSW main activities are advocacy, education and community development. It is a member of the Federation of Ethnic Communities Councils of Australia (FECCA) and the Energy Advocacy role represents FECCA in the NEM.

The ECC NSW welcomes the opportunity to contribute to the discussion on the Issues paper, and our response draws heavily on the submission presented by the Public Interest Advocacy Centre (PIAC) to the review, as well as the additional reports commissioned by PIAC in supporting its submission.²

The issues paper was presented on 20 April 2015, with responses to 46 questions requested by 30 April 2015. For a most important review of the governance arrangements of the energy market the timeframe for a considered and comprehensive response remains particularly tight, and could easily preclude responses from a number of important stakeholders, even with the possible extension of the deadline to 7 May 2015 for some respondents.

The ECC NSW would like to support the recommendations presented by PIAC in its submission, namely:³

Recommendation 1

The Governance Review Panel recommend that the National Electricity Objective (NEO) and associated objectives (the National Electricity Retail Objective (NERO) and National Gas Objective (NGO)) be reviewed and updated to meet the needs of consumers in a transforming electricity market.

That this review focus on a broader interpretation of the 'long term consumer benefit', including appropriate weighting to emissions reduction and social objectives.

¹ Dr M Vertigan, Prof G Yarrow, E Morton, *Review of Governance Arrangements for Australian Energy Markets: Issues Paper*, Energy Market Governance Review, April 2015

² Dr G Kuiper, *From fragments to coherent national consumer-focused markets*, PIAC May 2015

³ *ibid* pages 13 - 19

Recommendation 2

That the Governance Review consider options for reforming the governance of the NEM, including which processes are most effectively the responsibility of State governments and which are most appropriately National responsibilities. This examination should be in the context of the transforming energy market – especially the importance of energy efficiency and demand management, distributed generation and storage to improve outcomes for consumers. One option is for the COAG Energy Council reclaim its role in setting the future direction of national energy policy.

One means by which the Energy Council could do this would be to issue Statement of Policy Principles on key issues to direct the work of the energy market institutions.

Recommendation 3

That, recognising the declining costs that can be captured through economies of scale, institutional streamlining and on-going innovation, the objectives of regulation (including those set out in Statement of Policy Principles) should be to maximise demand management, energy efficiency, distributed generation and storage to reduce costs and emissions and to transition networks to energy service platform providers.

Recommendation 4

That consumers need to have a role in decision-making processes in the NEM and that therefore a consumer advisory committee to the COAG Energy Council be established.

In accordance with the National Electricity Objective, this committee should be comprised of a majority of consumer representatives, selected in consultation with the Energy Consumers Australia (ECA). Such a body should contain representatives from across the spectrum of consumers, including from large, medium and smaller consumers cohorts, from across different regions and from groups with different consumer focuses..

The Council could be required to consult with the consumer advisory committee in the course of:

- *any review of the Council's Terms of Reference*
- *the drafting of its annual work plan*
- *the development of statements of policy principle that bind the energy market institutions work*
- *developing scopes for significant policy reviews*
- *finalising recommendations on appointments to the AEMC and AER*
- *proposed legislative changes to the NEL*

The ECC NSW would add to this recommendation the requirement that there be CALD consumer representation to ensure their voice is included in decision-making processes.

Recommendation 5

Given the importance of the role played by the COAG Energy Council in setting the future direction of national energy policy, that in future changes to its scope and annual work plan should be subject to consultation with consumers and industry.

That the COAG Energy Council finalise its terms of reference as a matter of priority. This would provide greater transparency in respect of its role and would enable it to be held accountable for their actions.

That in the interim period prior to the finalisation of the Terms of Reference, that the Energy Council's draft Terms of Reference be made publicly available to enable consumers to assess how their role has changed since the shift from SCER.

Recommendation 6

That Australian Energy Markets Agreement be amended to allow for majority voting on all matters consistent with other COAG Ministerial Councils.

Recommendation 7

That the Energy Council consider how to create appropriate sanctions for non-compliance of the Energy Market Institutions against the accountability frameworks agreed at the December 2012 meeting.

Recommendation 8

That greater transparency be achieved within the COAG Energy Council by:

- *requiring it to publicly release meeting agendas in addition to Communiqués*
- *reinstating the requirement for the Energy Council to provide an annual status report to COAG and make these publicly available on its website*
- *reinstating the requirement for the Energy Council to provide an annual work plan to COAG, and make these publicly available on its website*
- *making the identity of the Senior Council of Officials (SCO), any delegations made to them, and their ultimate supervisor public so that these delegations are transparent and appropriate accountability mechanisms can be put in place*
updating the COAG Energy Council website to provide up-to-date and meaningful information to the public, especially on the legislation that the Council is currently responsible for and its governance

Recommendation 9

Having examined all available options and consistent with international practice and in order to create substantial efficiencies and ensure more streamlined, effective and accountable regulation, rule-making in the NEM be brought in under Commonwealth legislation and combined with rule administration.

In practice, this would mean transferring AEMC's rule-making functions to a Commonwealth Energy Regulator (currently the AER).

AEMC's review and energy market reform roles would be transferred to the COAG Energy Council, consistent with its role as the lead policy maker in the NEM.

In order to facilitate more effective regulation in a transforming energy market, two Commissioners of the Commonwealth Energy Regulator should be required to have knowledge of, or experience in, consumer protection and demand side participation.

Recommendation 10

That, consistent with other energy market institutions AEMO and ECA, the new Commonwealth-based Energy Regulator should be funded by market participants.

Recommendation 11

That a range of minor amendments to accountability, transparency and participation measures of the Commonwealth-based Energy Regulator be considered, including:

- *Reform of the appointments process to provide a consumer voice in the selection of AER members. This could be achieved by requiring consumer consultation by the COAG Energy Council prior to appointment (see discussion above in relation to the Energy Council).*
- *Easily accessible information about the different ways that consumers may challenge the decisions of the AER must be provided.*
- *Consideration could be given to changing the standing rules in judicial review proceedings to make certain the standing of consumer groups standing to challenge or intervene in judicial review proceedings.*

Recommendation 12

Further minor changes to the Limited Merits Review Regime could be considered:

- *Consideration should be given to amending the capacity to have costs awarded against consumers under the Limited Merits Review Regime.*
- *Reform should be considered to remove the availability of merits review if an application is sought for judicial review.*

Recommendation 13

In order to further deregulation in transforming Australian energy markets, in the review of the NECF, consideration be given to creating a mandatory energy-related code (including dispute resolution provisions) to complement the Australian Consumer Law, rather than further amending the NECF.

Recommendation 14

That the AEMO Board include at least two consumer representatives (one representing residential consumers and one representing small business) and that the government and industry representation decrease proportionally.

That these AEMO Board members be selected in consultation with ECA.

Recommendation 15

That knowledge of, or experience in, consumer protection and demand side participation be necessary skills for AEMO Board Directors.

Recommendation 16

That the constitution of AEMO's Information Exchange Committee (IEC) and related working groups be changed to provide for direct representation by consumer advocates and providers of non-supply side products and services.

And that further measures are investigated to address the matters of representation, accountability and transparency with respect to AEMO and the IEC.

Recommendation 17

That consideration be given to introducing a negotiated settlements process for network revenue determinations as one means of providing more meaningful consumer participation in the NEM.

Recommendation 18

That ECA consider an annual Consumer Forum (including more regular working groups) modelled on the EU's Consumer Forum.

If you require additional information please contact Iain Maitland, Energy Advocate on 02 9319 0288 or email energy2@eccnsw.org.au .

Sincerely yours,

Mary Karras

A handwritten signature in black ink, appearing to read 'M. Karras', with a horizontal line underneath.

Executive Officer
Ethnic Communities' Council of NSW Inc.