



Energy Action Group

A0012789L

PO Box 136

North Melbourne 3051

15th September 2000

Attention Mr. Michael Rawstrom
ACCC

Dear Mike

Please find attached Energy Action Groups submission to the NECA proposed changes to Chapter 5 and Chapter 7 of the National Electricity Code to facilitate Full Retail Competition.

Energy Action Group has taken an overview of the changes without looking at the detail. It is clear to us that there need to be a strong sense of vision underpinning the Code changes. This proposal fails from NECA fails to give any sense of vision for the NEM and FRC. If the reform process is to work consumers need to understand the consequences of their behavior. The proposed changes can facilitate almost any outcome.

The Energy Action Group hopes that the Commission has learnt from some lessons from the approval of the Victorian gas access arrangements and the Market System Operating Rules. The approval of the gas market arrangements was based on the market arrangements complying with the Gas Code. Unfortunately the producers, Transco, the disco's and retailco's and significant consumers are less than satisfied with the outcome and are working for a change.

It is Energy Action Groups fear that these Code changes will follow our experience with the Victorian gas access arrangements and the MSOR. We are concerned that these Code change provisions will ensure different outcome for each jurisdiction (different rail gauges) and in the end the process will add to the costs of the reform and detract from any benefits that consumers may receive from the reform process.

We look forward with some hope to participating in the Full Authorisation process rather than the proposed interim process.

Yours faithfully
John Dick
Vice President

Energy Action Group

Comments to ACCC

on the

**NECA Code Change Panel
Full retail competition Report**

Issued August 2000

15th September 2000

Recommendations

The Energy Action Group is strongly opposed to the ACCC granting any Interim Authorisation to the NECA Code Change Panel Full Retail Competition Draft Code changes August 2000. The proposed changes to Chapters 5 and 7 of the National Electricity Code to facilitate full retail competition give no sense of direction to the market, provide no protection for consumers, are un-costed and have the potential to unwind many of the reforms to the electricity market achieved to date. **The Energy Action Group believes that this proposal from NECA (and the jurisdictions) should go through the Full Code Authorisation process not the proposed interim Authorisation process.**

1. There is far too little information or/and critical analysis that has been put forward by the electricity industry and the proponent NECA to support the application. None of the submissions by interested parties to both the NEMMCO and NECA processes show any of the costs and benefits to customers.
2. The proposal to grant an interim authorisation is flawed because:
 - a]. It would be an abrogation of responsibility by ACCC –
The NECA minimalist Code changes fail to provide any direction to NEM and the implementation of FRC. The submission to and the assessment by NECA fail to show that consumers will benefit from the changes to the code. The major thrust of the Code changes is designed to protect the electricity industry at substantial expense would at the same time exposing consumers to market risks without the vast majority of consumers understanding the issues.
 - b]. One of the conditions for the issue under the Trade Practices Act of an Interim Authorisation is that the changes can be wound back with minimum distortion to the market and that it would not adversely affect consumers.

The proposed Code changes do not state any actual tangible outcomes, there is however an implicit assumption that consumers will be better off as a result of the amendments to Chapters 5 and 7 of the NEM Code. Given the information available in the proposed Code change submission from NECA, how is ACCC to measure whether consumers will be better or worse off if the Interim Authorisation is withdrawn at some time after it has been granted?

How can the Commission assess whether market conditions will be altered or not, given the lack of information in all the submissions?

It is the Energy Action Group's contention that the proposal to grant an Interim Authorisation greatly increases the risks for consumers. There is minimal chance for the electricity industry to roll back the investments made under the Interim Authorisation if the ACCC decides to revoke it at some future time before the Full Authorisation is granted.

3. ACCC to date has maintained a degree of distance from the decision making process and is therefore in a better position than the jurisdictions or any other party to assess the merits, cost and benefits. However all parties involved in the FRC process need to see the outcome of the Metrology proposals before making this decision. How can the ACCC determine the public benefits of something that is yet to be disclosed, debated and with no costs on the table?

Profiling Vs Interval Metering

The proposed Chapter 7 Code changes if authorized in their current form will provide a solution that will either move towards load profiling or towards a metered solution. This is not providing any direction to the market.

There are significant consumer and market issues around a metered or profiling solution. The Code change proposal is silent on these issues.

Interval metering is not the complete answer to sorting out the last tranche contestability issues, but it significantly helps to resolve a number of important issues. It greatly assists in sorting out-

- a) issues around Distribution Loss Factors
- b) intra tariff subsidies, particularly between air-conditioning and non air-conditioned consumers on peak price days
- c) market risks across consumers

There is the precedent relating to metering, where ACCC required the 3rd contestable tranche to move to a metering solution. Why would the ACCC effectively withdraw their previous authorisation for interval metering for the <160 MW class? Is the rationality for the < 160 MW so different from the > 160MW? The basis of the settlement arrangements that are outlined in these Code changes will legitimize, either Load or Cost profiling.

The profiling solution significantly masks consumer behavior from the NEM price signals. The last tranche of customers constitute around 42% of the energy sold through the NEM. The use of either energy or cost profiling, particularly a crude regionally based net system, one profile fits all solution, or the new offering from NEMMCO of a cost profile¹, will insulate consumers from their behavior and substantially increase market participant risk. One simple example is the use of a profile arrangement that masks the costs associated with high priced or peak load days. The consumers who are insulated from the high price signals will continue to increase their consumption, whilst their retailer and other customers who are not covered by the profile will wear the costs of the continued consumption of the profiled customer. There is a substantial intra tariff cross subsidy.

The Metrology and profiling processes are still being determined by the jurisdictions. Currently no details of these procedures have been made available to market participants and the public. If the ACCC is to issue an Interim Authorisation, it is Energy Action Group's contention that the process would be carried out without having sufficient information to assess the impact of the minimalist FRC Code changes on the market and consumers. **Therefore the ACCC should move through to the Full Authorisation process.**

These proposed Code changes appear to be a one off package and fail to provide any direction to the NEM. These Code changes expose electricity consumers to higher prices as electricity retailers pass on the risk inherent in the NEM.

Consumer risk is exacerbated by the ACCC draft Authorisation on VoLL, with the proposal to move from the current figure of \$5000/MWh to \$20,000/MWh from the start of the year 2002. This draft decision provides a simple illustration of the significant increase in risk for consumers. If the net system load profile proceeds without metering path, the cost associated with exposure to high VoLL will be allocated on a profile, smearing the price signal.

There is mounting evidence from California that there are significant problems in getting the policy and market outcomes wrong. The Australian electricity supply industry is climatically similar and structured more like California than it is like any other comparable energy market. The NEM participants work with summer peaking, constrained interconnectors and ramp capacity systems in a market where they have to guess the extent of their risk. (NSW is the current exception with a significant mothballed generation capacity and a significant winter peaking energy load and a developing summer peak load problem.) The NEM System Pricing Dispatch (SPD) system dispatches generation on price not the system transmission efficiency. This mix leads to price volatility for energy and Ancillary Service Payments. Ancillary Service Payments are pass through payments to customers. How are these payments going to be allocated to consumers on FRC: will it be on a profile or a meter read arrangement?

The vast majority of current franchised customers have little or no understanding of how they are expected to behave given the proposed arrangements to expose them to the risks and costs involved in FRC and the development of the market.

¹ NEMMCO (2000), **Settlement of Wholesale Energy Market using Cost Profiling**, Version No. V001, August

The British National Electricity Consumers Council issued a press release on their views of profiling and metering provided as Appendix 1. This press release clearly indicates the problems that they perceive that a sophisticated profiling system causes for residential consumers

The Victorian Government currently has a proposal for customers to voluntarily load shed, if there are supply constraints this coming summer 2000/2001. How does this policy response to voluntarily limit the Victorian region pool price before a high priced event occurs encourage the new generation capacity that the market is supposed to deliver, some time in the future? This policy coupled to the move to FRC fails to address the problem of supply deficiencies and ensures the market failure to deliver an adequate electricity supply.

The FRC reform process at the jurisdictional or the national level has not been subject to a public benefits test. **The Energy Action Group strongly recommends that the ACCC apply the public benefits test to this application for Authorisation and not grant the Interim Authorisation but proceed through the Full Authorisation process.**

The failure of the jurisdictions to adequately provide consumers with information about the costs and benefits of FRC raises serious questions as to the adequacy of the current iteration of the Chapter 7 Code changes that will facilitate the process of market settlements and customer transfers.

In the medium to long term, time of use, interval metering provides market signals to consumers, minimizes cost smearing and allocates the risks closer to the source of the system constraint. A table illustrating the advantages and disadvantages is included in Appendix 2.

Load profiling masks market signals and smears costs across customer classes and mutes consumer responses. How are price signals going to work as the market based resource allocation mechanism? The most volatile consumers, the (current) franchised customers receive no direct market signals from the NEM. The risks are born and allocated by the customer's retailer. This will occur either as a pass through charge or a risk premium on the energy price offering² or the retailer wearing the costs of their market exposure. **Load profiling is uncompetitive.**

The move to full retail contestability further exposes the last tranche of customers to both the energy and Ancillary Services Payment market. The current jurisdictional proposal is to use either a regional energy or cost based Net System Load Profile solution. However the details are still being settled and are not in the public domain. In the case of Victoria (and possibly NSW) the current proposal is for a regionally based one profile fitting all customers in the <160 MWh class. This approach has no vision and is certainly against the spirit of the National Measurements Act³.

The use of customer load profiles could also be anticompetitive as it will allow the possibility for 2nd tier retailers to cherry pick 1st tier retailers, with the customers of 1st tier retailers subsidizing the losses. This leaves the situation where the 1st tier retailer retains the less profitable customers increasing its risk profile and costs. The question is whether this risk should then be passed on to the remaining consumers who may not have the ability or opportunity to change to a 2nd tier retailer who has offered cheaper energy than the incumbent retailer.

The recent Californian market experience of a month and a half of prices over \$US 200/day and particularly relating to consumer exposure in San Diego should act as a warning to regulators about being too hasty to grant a premature interim authorization⁴. The advent of FRC is going to expose the risks of the NEM to both retailers and to consumers.

² The current proposal by the Victorian government to cap customers energy charge and risks will deter second tier retailers entering the Victorian market to supply the less than 160 MWh customers. This process further increases the risk of retailer failure in the market.

³ This clearly raises consumer protection issues, particularly if the jurisdictions are trying to circumvent this legislation.

⁴ The EOB /CPUC (2000) California's Electricity Options and Challenges, Report to Governor, August 22nd, relating to incidents in June highlights the issue of risk and costs to consumers. It is worth

Implicit in the proposal to proceed with FRC and the Chapter 7 Code changes is the need to profile customers to allocate costs and charges. This approach would appear to contravene the general test where Net system Load Profiling or any of the variants of profiling have the potential to significantly restrict competition between the host retailer and a 2nd tier retailer. This is clearly not in the public benefit.

The smearing of costs and the deeming of consumption based on a 1 or 3 month meter read raises significant consumer protection issues, particularly relating to how cost and charges will be allocated and what will happen if they are allowed to flow through to consumers from one off or high priced events as they do for contestable customers currently.⁵

The Customer Administration Settlements and Transfer (CATS) procedures will take up to 6 months for final NEM settlement to occur. Will the costs associated with price revision be passed through to customers who will probably not have any recollection of their behavior six months later?

- There are significant “rail gauge” issues around the Metrology Procedures that have been overlooked in the NECA Application for Authorisation for the Chapter 7 Code Changes.

The Metrology procedures need to be a national process as there is the rather strong possibility that different procedures between each jurisdiction of the NEM will impede retailers from entering a jurisdictional market without incurring substantial costs. **This is anti- competitive.** However it is also important that Victoria and NSW should not dominate the process. Both SA and Qld are following the FRC process and have had to wear the consequences of Victorian actions in the past.

Currently the state based CATS rules for Victoria and NSW promoted in the discussion papers from the two governments could lead to two different outcomes. These two jurisdictions are just working through their decisions around CATS, whilst Qld, SA and the ACT have yet to work through this issue.

The ACCC has specific obligations to maximise consumer benefit. There is absolutely no evidence in the NECA submission that the general test in the Trade Practices Act (ss 90(6), (7)) to show that consumers will receive any benefit from the proposed changes to Chapter 7 of the NEM Code has been met.

- The NEMSAT and the jurisdictions have not sorted out who owns the CATS/NMI data, what data is required or who has access to the data. These processes have the potential to significantly increase costs to both the industry and to consumers.

The move to multi utilities makes the issue of data trawling and mining a critical issue around the issue of customer protection. Each jurisdiction seems to have a slightly different position and no decisions have yet been publicized.

Comments on Chapter 7 Code Changes

The proposed Chapter 7 Code Changes are permissive and will facilitate almost any outcome.

- The decision relating to what sort of IT approach to use is still being determined and ranges from the implementation of a centralized system to a completely decentralised system to ensure market settlements. The costs are still to be determined, but it clearly appears that the decentralized cost structure appears to be cheaper than a centralised option. This has a significant influence on the cost that will be ultimately borne by customers.

noting that the \$200/MWh ceased on around the 30th of August 2000 nearly a month after the publication of this report.

⁵ At one simple level, it is unfortunate that the costs associated with the February Victorian IRFM events were not allocated amongst the various customer classes to understand consumer reaction to high price events and cost pass through. The “White Hole” money associated with this event was in the order of \$20 m for the IRFM period.

The National Retailer Forum (NRF) Submission to ACCC on this issue highlights some of Energy Action Group's concern in regard to the lack of precision of the language in the NECA Draft Code change proposals. The NRF Submission also further reinforces Energy Action Group's concerns that each of the jurisdictions can sign on to the metrology procedures, but the settlements and transfer requirements can still end up with different rail gauges considerably adding to consumer and retailer costs.

Different jurisdictional transfer and settlement procedures will act as a barrier to incoming second tier retailers, particularly those who are coming from out of state and will further add to retailer costs to enter each jurisdiction market, reducing competitive pressures in the market.

These Code changes facilitate FRC. The Energy Action Group is disturbed to see that there is no financial analysis accompanying the NECA submission and the proposed jurisdictions contestability and metrology arrangements. To date there hasn't been any analysis of the costs and benefits of FRC in the large number of discussion papers produced by the Victorian ORG and the NSW Treasury MIG. The jurisdictions and State Owned Enterprises have not commented on FRC. There are some instances where the role of the jurisdiction and their SOE retailers are in conflict and the jurisdiction position has ensured implicit consent by the retailers, minimizing the debates around FRC. **In the end the costs of FRC will, in the end, be another pass through payment to consumers.**

There is strong evidence from Victoria for instance where any changes in customer billing procedures will add to the current retailer billing and transfer costs. The former SECV minimized the costs of billing and transfers for residential customers with 1 and 3 monthly billing, connection and disconnection on a phone call. (There were no security deposits, except in extreme circumstances.) This was a minimum cost system; the implementation of FRC processes will cost retailers and consumers substantially more to meet the new transfer and settlements requirements.

Another significant outcome from the SECV customer billing and transfer process for Victorian consumers is highlighted by the Trowbridge Report⁶ commissioned by the Victorian Electricity Businesses. Trowbridge noted that Victoria does not have an adequate data-base of load management information for the implementation of a profiling, reconciliation and settlement solution for FRC. **It is clear that FRC will cost the industry more than the current connection and disconnection arrangements. The question is how much and will the benefits outweigh the costs!**

A Simple Cost Benefit from the public record indicates the potential costs of FRC. The Victorian Office of the Regulator General (2000), **2001 Electricity Distribution Price Review**, May, p 102 received requests for \$43.2 m for Capex and an Opex \$111.3 m giving a total expenditure of \$154.5 m for the five-year regulatory period⁷? If this figure were to be extrapolated to the national level, then costs of around \$500m would be anticipated⁸. These figures have been confirmed again using a simple extrapolation of the PB Power (2000), **Final Report**⁹ which when extrapolated indicates that nationally, distributors would spend between \$505 m and \$1,563 m.

One Victorian DB/retailer has privately indicated that they think the figure per distribution/retail business is more likely to be closer to \$100 m all up for both distribution and retail functions to meet the FRC requirements.

⁶ Trowbridge Consulting (2000), **Victorian Electricity Load Profiling Study**, March

⁷ The Office of the Regulator General approved \$ 4.0 m Capex and \$ 31.0 m Opex a total of \$ 34 m. Clearly the outstanding Capex and Opex will come from the host retailer or the host shareholders

⁸ The UK figure has been quoted at \$A 70 / customer, this translate to approximately to \$500m for the Australian market.

⁹ PB Power (2000), **2001 Electricity Distribution Price Review Final Report on Costs Associated with Full Retail Contestability**

Several interstate **retailers** including Ergon Energy¹⁰ have indicated that they think that the costs are likely to be around the same level. If this position is true, the overall costs are clearly **between \$1,000m and 2,000m** to ensure that retailer and distribution companies and complies with all the IT requirements to trade and settle the NEM. This expenditure could be made without one customer moving from their incumbent retailer to a retailer of choice¹¹.

The failure to provide any financial information nor the provision of any public benefit rationale clearly breaches Section 90 (6), (7) and this should constitute the basis for not proceeding with an Interim Authorisation for the NECA proposed changes, but to proceed with the Full Authorisation process.

Conclusion

This application to ACCC comes as a statement of faith from NECA, without sufficient evidence that the Code changes will protect consumers from both price spikes and from data trawling and mining that access to FRC will provide to the market participants, their affiliates and associated parties.

There are a number of well-documented issues around the early settlement and transfer procedures in Britain, these are outlined in several House of Commons Select Committee on Trade and Industry reports during the period 1997 and 1998. The latest response from British the Electricity Consumers Council is included as Attachment 1. They clearly believe that an interval meter provides a better solution for their consumers that the profiling system that they are currently using.

John Dick
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¹⁰ Skilleter Kate (2000), **NECA/NEMMCO. The performance of the national electricity market, An appraisal**, Airport Centra Hotel, Melbourne, September 6th.

¹¹ The state based regulators ORG and IPART are proposing to pass through reasonable costs associated with FRC to consumers. This leaves the retailer with *some* residual expenditure that they either have to adsorb or to pass through to consumers as well.

Attachment 1

UK Experience: National Electricity Consumer Council Views

The press release below has been distributed by Ofgem on behalf of the National Electricity Consumers Council.

NECC/14
1 September 2000

COMPETITION ALONE WILL NOT DELIVER METERING BENEFITS TO CONSUMERS

Consumer Watchdog - The National Electricity Consumers Council (NECC) today called on the industry Regulator to take positive action to promote the development of smart metering.

Rodney Brooke, NECC Chairman said:

" British meters are primitive and lag behind the rest of the world. Competition has prevented progress. We believe that the Regulator should take positive steps to promote the development of modern metering rather than wait to see if market forces will bring change.

To date only one major supplier has announced that it would pilot modern metering technology on a large scale. The Regulator's current policy is not delivering.

Consumers could get numerous benefits from smart meters including lower electricity prices under the new electricity trading arrangements. Without them, domestic consumers will not have the savings they should. Research shows that advanced meters lead to energy savings of 10% for all electric houses and 5% for gas heated homes."

Smart metering benefits include:

- * An end to estimated bills since readings can be taken remotely
- * A reduction in the number of power cuts and faster reconnection when they do occur
- * Lower prices for prepayment meter customers, many of whom are on low incomes
- * A real choice in tariffs
- * Better energy management which will reduce customers' bills
- * Immediate action when vulnerable consumers have a power failure.

NOTES TO EDITORS

Media Enquiries: Please contact Rodney Brooke on 020 7828 7790 or mobile 07956 887 849.

The National Electricity Consumers Council: the Chairmen of the 14 regional ECCs meet regularly in the forum of NECC. NECC enables Chairmen to provide an independent collective consumer view on key issues and to take joint action on issues of national interest to electricity customers.

Mr Rodney Brooke CBE is the Chairman of NECC. Mrs Elizabeth Derrington is the Deputy Chairman.

The Electricity Consumers' Committees (ECCs): ECCs were established in 1990, under the Electricity Act 1989, to represent the interests of all electricity consumers. There are 14 ECCs, one for each of the public electricity supply companies. ECCs are independent bodies. The Chairmen of the ECCs are appointed by the Director General of Electricity Supply after consultation with the Secretary of State.

Attachment 2

Some of the Advantages and disadvantages of Metering V's Profiling

Interval Metering

Advantages

- Reduces meter reading costs
- Consumer only pays for what they use
- Reduces transfer time
- Increases competition
- Increased innovation by retailers/increased tariff offerings
- Reduces smearing of distribution losses/reduces distribution losses
- Reduces inappropriate cross-subsidies between customers
- Allows demand management
- Provides for price signals
- Appropriate assignment of energy costs (& Ancillary Service Payments)/assists in reducing such costs and allows customer to avoid such costs
- Reduces volatility in the wholesale market (demand response effect on system capacity) = reduces risk = reduces price
- Capacity to use for multi-utility/and other telecommunications usages (synergies)
- Provide kick start for smart meter industry with potential to create an export market
- Facilitates more cost reflective "time of use" transmission and distribution NUoS charges

Disadvantages

- New metering cost (not necessarily an up front cost), potential stranded asset costs

Profiling

Advantages

- Utilises existing meter
- Net System Load Profiling can be implemented using current market arrangements
- Net System Load Profiling involves minimal upfront costs to consumer or retailer (although cost recovery is intended)

Disadvantages

- By definition customer charged on the basis of statistical averaging
 - embeds cross-subsidies between customers
 - allows some customers to game, esp. those with high use/demand like Air-conditioning
 - removes price signal = no demand management signal = volatility (increased risks lead to costs as risk premium must be sought by retailers)
 - the more statistical accurate the profile the more expensive it is
 - there has been a lack of research conducted to form the basis of any reasonable profile in Victoria
 - contravenes the National Measurements Act unless a cost profile is used.
 - Peel-off increase the cost to the remaining consumers covered by the profile
- there may be inappropriate assign of profile resulting in significant inequity
- a complex system
- retrospective pricing occurs, allows no ability to alter behaviour
- makes transfers very slow
- competing retailer or LNSP will know retailers customers data
- puts host retailer into overly strong market position vis a vis new entrants
- no price signal/ no demand management
- energy prices/ASP higher

- The implementation of more complex profiling solutions are very expensive and lock the jurisdiction into profiling as the ultimate outcome

that are supposed to exist with the permissive minimalist Code changes that this NECA proposal has forwarded to ACCC

In essence both NECA and the jurisdictions are saying "Trust Us". –The Energy Action Group doesn't particularly given the lack evidence of consumer involvement in the FRC processes to-date