



National Irrigators' Council

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The COAG Energy Council Secretariat
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To Whom it May Concern

Re: Review of the Limited Merits Review Regime

National Irrigators' Council (NIC) appreciates the opportunity to provide input into the COAG Energy Council's review of the Limited Merits Review Regime (LMR).

NIC proposes a preference for Option 4 described in the consultation paper, that is to remove access to the LMR. Our view is based on our direct experience with the AER regulatory determination process and underpinned by the following observations:

1. It is apparent the LMR arrangements are not working in a way that was intended which is to serve the long term interests of consumers.
2. Amendments to the LMR regime in 2013, designed to ensure that regulatory decisions promote efficient investment operation and use of energy infrastructure in ways that best serve the long-term interest of consumers, are not delivering.
3. NIC seeks a mechanism and/or framework where the input of consumers is taken into account at the 'front end' of the process rather than the 'tail end'. Such a vehicle could be in the form of an advisory panel involvement at the beginning of the regulatory process.
4. Removing the LMR would represent a first step towards removing a pillar of a cumbersome decision making process that does not give equal balance the needs of consumers with the objectives of the networks.
5. The low level of trust by irrigated agriculture consumers in the current system cannot be overstated, where consumer interests are largely absent.
6. The appeals process does not enable irrigated agriculture consumers to sufficiently impact the process due to our inability to participate on an equal capacity with the appropriate level of technical knowledge and financial resources; it is not a level playing field.
7. Consumers are powerless to participate effectively in the regulation of the industry and to be placed on an equal footing with electricity networks and the oversighting bodies in the national electricity market (NEM). Currently the NEM system and governance arrangements significantly favour electricity networks when they and Government appointed bodies are backed by significant resources to participate in a myriad of processes.
8. Service providers have the capacity to seek to persuade the AER through a legalistic and adversarial process; irrigated agriculture consumers are at a disadvantage to participate on the same level.
9. There is little evidence that representations made by NIC during the Australian Competition Tribunal (Tribunal) community consultations have been incorporated. The hearings largely reflected a narrow focus and did not pursue the AER decision in a broad context.

10. NIC supports an appropriate level of accountability in the framework but does not view the LMR process as the appropriate mechanism to provide the scrutiny and accountability.

Background and key messages

In collaboration with a number of other agriculture peak bodies, NIC has been engaged for some years in advocating for critical industry and market reform necessary to fix the broken regional electricity pricing system in Australia and to ensure that network supplied electricity is a cost-effective energy source for food and fibre producers. We have advocated for a fairer system in the way Australia's electricity network companies calculate their network costs in submissions to the Australian Energy Regulator (AER) during the pricing determinations process. NIC has provided a raft of submissions to Government related inquiries and the AER pricing determinations.

Our members are frustrated by the byzantine complexity and bureaucracy of the electricity industry and by the governance arrangements underpinning the system in Australia.

NIC's involvement in the electricity debate is borne out of the unsustainable cost of electricity network charges on the irrigated agriculture sector. This is having the effect of undermining the viability of rural businesses which produce food and fibre for Australia and significant export income; these industries are the local economic drivers of many communities.

Sustained annual electricity price rises have more than doubled over a seven-year period. Typically network charges represent around 50% of farmers' electricity bills with electricity charges making up less than 26%. Network charges continue to have a highly distorting effect on the electricity market. We have witnessed an entrenched culture of institutional and government blame shifting. Governance and regulation of the industry is split between many bodies, with prescriptive rules and processes impeding any positive change. From our perspective, network companies' shareholders are benefiting at the considerable expense of electricity consumers.

Key messages

NIC calls on the Australian Government to work with the states and territories through the COAG process, to provide a **clear transition plan from coal to renewables**. NIC also seeks:

- A 30% reduction in electricity prices paid during the 2014-15 financial year - to be achieved by:
 - A rule change via the Australian Energy Market Commission (AEMC) to change the way the regulated asset base (RAB) of electricity networks is calculated.
 - A national food and fibre tariff.
- A water energy productivity program designed to fund and accelerate the adoption of energy solutions.

In relation to RAB revaluation, the regulatory framework for gas pipelines requires the assets to be optimised and the value of unused and redundant assets to be written down. This asset revaluation requirement was removed from the electricity pricing rules, not surprisingly just prior to the electricity RAB valuations took off. The regulatory pricing framework that applies to the gas and electricity networks should be consistent; this would mean that networks are only entitled to a return on their useful and used assets, a small step towards real cost reflective pricing.

The current compromised regulatory process must be resolved. We have long advocated for an examination of the way network companies present information to the Australian Energy Regulator (AER) during the pricing determinations process and the volume of material involved. The arrangement adopted in the NEM known as the 'propose-respond' model reflects the imbalance currently in the system, where network businesses propose their business case and the regulator is required to respond. We know that this model was advocated by the network businesses and was adopted by the AEMC and formalised in the National Electricity Rules.

Prior to these rules, in the economic regulation performed by the ACCC (for transmission networks) and state regulators (for distribution networks), the regulators determined the information requirements and businesses responded to the regulator's requests. While the networks also submitted their intentions and proposals, there was no obligation on the regulators to respond to these proposals. This arrangement mirrored those in Britain where there is not, and never has been, a formal obligation on the regulator to respond to network businesses' proposals.

The propose-respond arrangement creates a significant advantage for network businesses relative to the regulator, and effectively places the onus of proof on the regulator to demonstrate that the businesses' proposals are wrong. While the AER is free to ask questions during reviews and to seek information, it is not free to set the agenda – this has been established through the businesses' proposals and the regulator is therefore constrained to respond to those proposals and conduct its reviews accordingly. The propose-respond model also enables network businesses to effectively inundate the regulator through the weight of material it provides.

The current distortions in the market enabling prices to be pushed up must be addressed. This includes the need for a rule change in relation to the five-minute settlement rule. Pricing is currently set at every five minutes, yet financial settlement is made every thirty minutes. It would also be beneficial to allow network credits for local generation which is where the future lies. The network must be opened up to competitors, as with the telecommunications sector. This could allow our sector to access co-gen at a reasonable price or perhaps a group of growers to invest in solar at a district level.

It is clear that the governance arrangements around the NEM are not in the best interests of consumers where regulation is complex, bureaucratic and drawn-out. Consumers must be empowered to participate effectively in the regulation of the industry. Organisational and technical knowledge and depth of consumer advocacy must be strengthened to do this.

We commend these issues to you.

Yours sincerely



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