



QUEENSLAND ELECTRICITY USERS NETWORK

"Advocating for affordable and reliable electricity in Queensland"

Submission to The COAG Energy Council on “The Review of the Limited Merits Review”

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DISCLAIMER

“This project was funded by Energy Consumers Australia (www.energyconsumersaustralia.com.au) as part of its grants process for consumer advocacy projects and research projects for the benefit of consumers of electricity and natural gas.

The views expressed in this document do not necessarily reflect the views of the Energy Consumers Australia.”

COAG Energy Council: Review of Limited Merits Review

OVERVIEW

The Limited Merits Review has failed to act in the long term interest of consumers and as a consequence has failed to meet the National Electricity Objective.

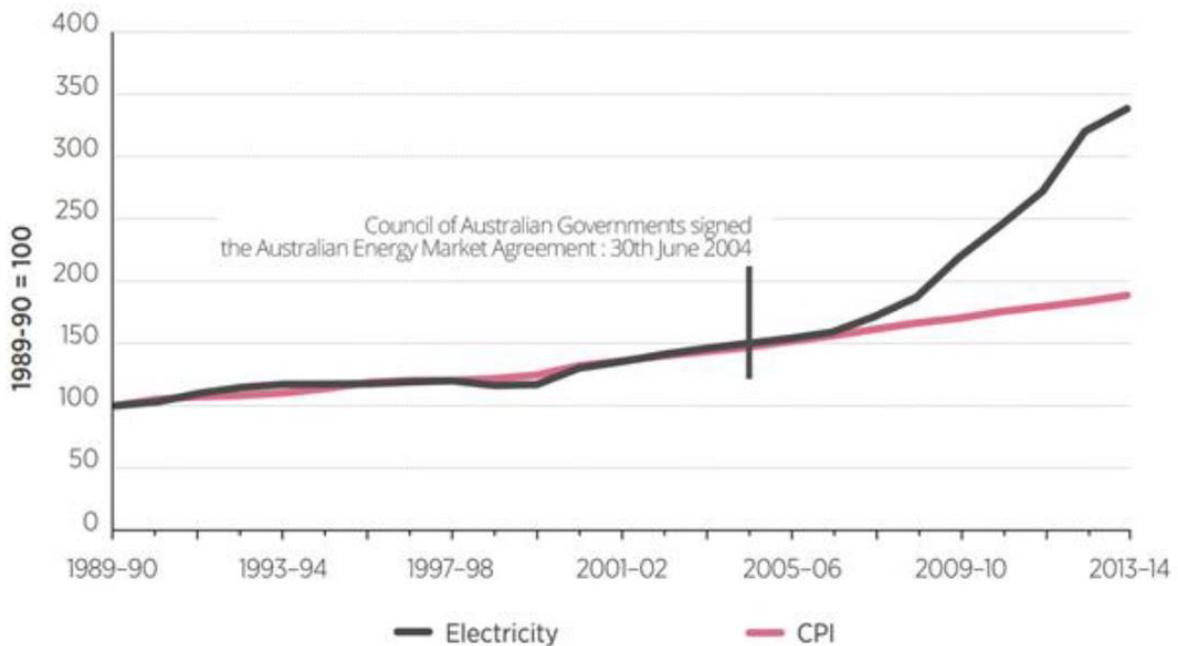
The National Electricity Objective, as stated in the National Electricity Law, is to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to –

- (a) price, quality, safety, reliability, and security of supply of electricity and;*
- (b) the reliability, safety and security of the national electricity system.*

As per Figure 1, it is clear that since the Limited Merits Review (LMR) commenced in 2008 and was reviewed in 2012, the 2013 amendments made to the LMR have failed to assist consumer organisations to arrest the upward trajectory of retail electricity prices and is in stark contrast to the trend of the Consumer Price Index (CPI).

The CPI is regarded as Australia's key measure of inflation, measuring changes over time in the prices of a wide range of consumer goods and services acquired by Australian consumer households. Inflation in Australia has been falling together with interest rates yet one of the key concerns of consumer organisations in network determinations - the Weighted Average Cost of Capital (WACC) – does not adequately reflect this trend. To argue a change to the WACC at a Limited Merits Review is complicated and beyond the internal resources of most, if not all, consumer organisations.

Figure 1: National retail electricity price index, 1989-90 to 2013-14



Source: Australian Government Energy White Paper, April 2015

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New national electricity rules introduced in 2012 to improve consumer participation in the determination process have failed. This is poignantly demonstrated in the 2015-2020 determination of Ergon Energy. The collective efforts of Queensland consumer organisations over an 18 month period saved Queensland household electricity bills the equivalent of 3 slices of bread a week.

Queensland consumer organisations did not agree with the Ergon Energy 2015-2020 decision by the Australian Energy Regulator (AER) but did not challenge the decision at the Australian Competition Tribunal.

The absence of a challenge by Queensland consumer organisations should not be taken as a lack of a desire or need to challenge the AER's decision but rather a lack of resources to challenge using the LMR regime. Consumer organisations do not have access to the millions of dollars expended by network businesses to mount a LMR challenge. Network businesses are in a win-win situation in a Limited Merits Review. If a network business is successful the revenue cap increases allowing a network business more revenue with which to be inefficient. If a network business loses, the tab will be picked up by the consumer as ultimately the consumer pays for the LMR in the retail price.

Amendments to the LMR and the introduction of national electricity rules to strengthen consumer participation have been an abysmal failure. Without the matching financial and human resources of a network business and the Australian Energy Regulator, consumer organisations will find it difficult, if not impossible, to participate either singularly or collectively in a Limited Merits Review at the Australian Competition Tribunal or a Judicial Review at the Federal Court.

The irony is the LMR is supposed to protect the long term interest of consumers through the National Electricity Objective and the national electricity rules yet until 2015 consumer organisations had not participated in a Limited Merits Review.

The reason Queensland consumers did not challenge using the LMR regime

The Queensland Electricity Users Network (formerly the Far North Queensland Electricity Users Network) first met with the Australian Energy Regulator to discuss our concerns regarding Ergon Energy's exorbitant prices in November 2013.

Since 2013 it has been a steep learning curve to understand the complexity and drivers of the continually increasing electricity prices adversely impacting on Queensland businesses and households. QEUN's interaction with other consumer organisations based in Brisbane demonstrated that other consumer organisations were also expressing the same dismay at their inability to influence the Ergon Energy proposal and the Australian Energy Regulator's draft and final decisions.

As a result of funding provided to the Public Interest Advocacy Centre (PIAC) by Energy Consumers Australia we have some knowledge of the LMR regime.

It was PIAC that advised us that a challenge to the AER's final decision must be made within two weeks of the AER's final decision. As far as we are aware consumer organisations in Queensland do not have in-house legal staff experienced in an energy sector LMR. Access to

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outside legal advice and specialist economic advice needed for an energy sector LMR is well beyond the financial resources of Queensland consumer organisations. Consequently consumers did not challenge the AER's final decision on Ergon Energy's 2015-2020 determination.

Interestingly we understand that Ergon Energy lodged a challenge to the Australian Energy Regulator's *draft* decision. This reiterates our earlier point that a network business is in a win-win situation in a Limited Merits Review as ultimately it is the consumer that picks up the tab.

The potential for Queensland consumers to challenge in the future

Consumers are currently weighed down with a plethora of engagement opportunities with a range of entities that include the COAG Energy Council. Most consultations are increasingly seen by consumer organisations as a tick the box exercise required to meet the legislative obligations of regulators and network businesses.

The Review of the Limited Merits Review is very important to consumer organisations as over one million dollars of a lean advocacy budget has been spent to date by Energy Consumers Australia on the LMR regime. We support the current allocation by Energy Consumers Australia as it has clearly demonstrated to consumer organisations the ineffectiveness of the LMR regime in upholding the National Electricity Objective.

Reform options

The reform options being considered by the Review of the LMR are:

- Retain the Tribunal as the review body without legislative amendment (status quo)
- Retain the Tribunal as the review body with legislative amendments
- Replace the role of the Tribunal with a new investigatory body
- Remove access to LMR

Due to the inability of consumer organisations to participate at the professional level demanded by the Australian Competition Tribunal (Tribunal), due to a paucity of human and financial resources, we suggest the COAG Energy Council either make legislative amendments to the Tribunal or the Tribunal is replaced with a new investigatory body that is financially accessible to consumer organisations.

We also request that any changes to the LMR regime take into account that the cost of electricity is often in the top three input costs of a business. As such businesses need to have some certainty regarding the future direction of electricity pricing for their budgets and workforce planning. Thus the length of time needed to bring about a decision is critical to business consumers and ultimately affects the health of the Australian economy. The delayed decision by the Tribunal on the NSW network determination followed by more uncertainty as a result of the Tribunal's decision is unacceptable to business consumers.

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Effective national electricity rules would minimise the need for a LMR

If the national electricity rules did support the National Electricity Objective of protecting the long term interests of consumers the need for the LMR regime would be minimised. It is a case of treat the symptom or treat the cause. The symptom is consumers being forced to allocate scarce financial and human resources to a legalistic and time insensitive Tribunal when the cause is the national electricity rules which are not acting in the long term interest of consumers.

A number of national electricity rules are ineffectual and need to be urgently reviewed. One consumer organisation invested 18 months in an attempt to change one part of one of the 170 rules but to no avail. Again consumers are blocked at every turn by the national electricity rules.

SUMMARY

The QEUN did not challenge Ergon Energy's 2015-2020 determination despite our objection to the Australian Energy Regulator's decision. Like other Queensland consumer organisations QEUN did not have the financial or human resources to seek an opinion on a challenge, let alone challenge the AER's decision using the convoluted LMR regime at the Tribunal.

The million plus dollars allocated by Energy Consumers Australia to the LMR regime is money well spent as it has convinced us that the LMR regime is not a realistic pathway for consumer organisations to reduce exorbitant and unsustainable electricity prices. The LMR only benefits network businesses and the tab is ironically picked up by the consumer.

The key to affordable and reliable electricity lies in the development of national electricity rules that do act in the long term interest of consumers. This requires robust discussions with knowledgeable consumer organisations representing both business and residential consumers.

The number of network businesses using the Limited Merits Review is a canary in the coal mine for energy consumers and should be a warning to the COAG Energy Council that urgent changes need to be made to the national electricity rules and energy policy in general.

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Appendix 1

The following is a list of organisations involved in the Queensland Electricity Users Network:

1. Cairns Regional Council
2. Tablelands Regional Council
3. Cook Shire Council
4. Far North Queensland Regional Organisation of Councils
5. Advance Cairns
6. Tourism Tropical North Queensland
7. Regional Development Australia FNQ & Torres Strait
8. Cairns Chamber of Commerce
9. Mareeba Chamber of Commerce
10. Atherton Tablelands Chamber of Commerce
11. Innisfail District Chamber of Commerce, Industry and Tourism
12. Urban Development Institute of Australia (Cairns branch)
13. Canegrowers - Tablelands
14. North Queensland Miners Association
15. Australians in Retirement (Cairns branch)
16. Queensland Dairyfarmers Organisation (Northern Division)
17. Mareeba District Fruit and Vegetable Growers Association
18. Mareeba Shire Council