



**TASMANIAN COUNCIL OF SOCIAL SERVICE
(TasCOSS)**

**SUBMISSION
TO THE
MINISTERIAL COUNCIL ON ENERGY
on**

***A National Framework for Energy Distribution and Retail Regulation
(Consultation paper prepared by NERA Consulting and Gilbert + Tobin)
January 2006***

Introduction

The Tasmanian Council of Social Service (TasCOSS) is the peak body for the community service sector in Tasmania. Its membership comprises individuals and organisations active in the provision of community services to low income, vulnerable and disadvantaged Tasmanians. TasCOSS represents the interests of its members and their clients to government, the public, the private sector and to the media.

We have been involved in electricity issues for several years as advocates for low income and disadvantaged electricity consumers in Tasmania. TasCOSS is represented on the Tasmanian Energy Regulator's Customer Consultative Committee; in 2004, ran an electricity training program for domestic consumers and their advocates with funds from the National Consumers Electricity Advocacy Panel, and is actively involved in a national network of electricity consumer advocates. We are currently funded by the Advocacy Panel for a part-time electricity advocacy position.

We welcome this process of consultation regarding the proposed national framework for energy distribution and retail regulation. Our comments on the paper prepared by NERA Economic Consulting and Gilbert + Tobin do not cover the entire proposed framework, but focus on particular sections that we consider most relevant to Tasmanian energy consumers, and particularly to low income, disadvantaged and vulnerable consumers.

Tasmania is a relatively poor state – the average income is the lowest in Australia and more than 40% of adult Tasmanians have Commonwealth Health Care Cards or Pensioner Concession Cards. In addition, Tasmania's cool climate and the absence of natural gas to most households in the state results in Tasmanians having the highest electricity costs for domestic consumers in the country. Affordability, reliability, safety and consumer protections are therefore very high priorities for Tasmanian consumers. These priorities are reflected in our submission.

We begin our submission with some general comments on the move to national regulation for energy distribution and retail activities. This is followed by the identification and explication of the principles we believe are fundamental to a national regulatory regime for energy distribution and retailing. We then discuss some of the specific proposals for regulation put forward in the NERA/Gilbert + Tobin paper, and offer some recommendations for what we see as a more balanced approach to distribution and retail regulation.

Comments on the move to national regulation

- While we understand the desire of the MCE to rationalise energy regulation we believe that this does not necessarily require the national regulation of distribution and retail functions. The jurisdictions that comprise the national energy market all operate differently with a variety of state and privately owned energy suppliers. Some have relatively well developed full retail competition (FRC) and others, like Tasmania, are still several years off considering retail competition for residential and small business consumers. We believe that a high level of national consistency can be achieved without full national regulation, but with the alignment of jurisdictional regulatory regimes to a degree sufficient to simplify compliance requirements for energy companies operating across state and territory borders.
- An important consideration for Tasmanian consumers is that their particular needs are taken into account in any national regulatory system. Those jurisdictions which have introduced FRC are generally the most populous, and we believe that, if national regulation is developed, it should not be done with only those jurisdictions in mind. It may not be the case that ‘one size fits all’ in relation to distribution and retail regulation and the needs of those jurisdictions with smaller populations must be considered in any move to national regulation. In the case of Tasmania, we are concerned that the particular needs of our small population may be ‘left off the map’ in moves to a national regulatory framework.
- According to the consultation paper, a major rationale for national regulation appears to be a reduction in compliance requirements and costs for energy suppliers. While this is an important factor, especially since compliance costs are eventually passed on to consumers, it should not underpin and shape the proposed framework for regulation. Indeed, a central goal of regulation is, or should be, the protection of consumers. The consultation paper provides little analysis of the benefits of regulatory activities to consumers. We therefore argue that a better balance in developing a new regulatory regime must be struck between the interests of energy supply companies and the interests of consumers, particularly the most vulnerable consumers living on low incomes and otherwise disadvantaged.
- While the consultation paper makes frequent reference to the apparent danger of the costs of regulation outweighing the benefits, it rarely explains this in any detail. In general, we feel the paper relies too heavily on economic criteria for determining an appropriate regulatory framework for energy distribution and retailing. We believe that criteria relating to the public interest and consumer benefit must also be applied in this important task.
- The consultation paper refers from time to time to ‘vulnerable consumers’, and defines such consumers as those with ‘consumption less than 10TJ or 160MWh pa’ (page 46). Levels of energy consumption are clearly not a measure of vulnerability,

and that it is defined in this way raises concerns for us of the consultants' understanding of the nature and consequences of vulnerability in relation to energy supply. It is imperative that vulnerability in its broadest sense is fully understood and recognised in a national framework for energy regulation. See our comments on vulnerability in the 'Principles' section below.

- Although the consultation paper makes no recommendation on retail price regulation, we would like to take this opportunity to put forward an argument for the retention of retail price regulation at a jurisdictional level. As all jurisdictions have different timetables in their moves toward retail competition, as mentioned above, the responsibility for retail price regulation must remain with the jurisdictions in order to manage the transition and to ensure that safety net pricing remains effective for consumers. It is our view that full retail competition will not necessarily benefit all consumers, especially those in financial hardship. It is therefore imperative that state and territory governments have the ability to protect consumers through price regulation and activities related to it.

Principles

- The fundamental principle that must be recognised in regulation is that energy, particularly electricity in the case of Tasmania, is essential. **It is an essential service** for sustaining human health and well-being, and for facilitating participation in modern society. Energy supply must therefore be reliable, safe and affordable.
- As an essential service, **universal access to energy must be facilitated by regulation** – energy must remain accessible and affordable, including to those living on very low incomes and in regional and remote areas.
- In order to ensure continuing access and affordability, energy regulation **must provide robust and enforceable consumer protection**. A national consumer protection regime must be of the highest standard and incorporate carefully selected best practice elements from existing Australian and overseas regimes.
- It is imperative that **all residential energy consumers be protected**, not only those who are most obviously vulnerable due to low income and other acknowledged factors. It is impossible to identify all vulnerable consumers since individual circumstances vary so greatly and are subject to change. For instance, people living on apparently adequate incomes may find themselves vulnerable to financial hardship as a result of accident, illness, debt and over-commitment, loss of employment, relationship breakdown and other events. 'Welfare' responses delivered through community service obligations (CSOs) assist those on identifiably low incomes; however, all residential consumers must be protected from unaffordable pricing, unnecessary disconnection and unfair contracts.
- National regulation **must be informed by significant individual jurisdictional input**. Australia is a large country with considerable variations in climate, demography, population density, settlement patterns, geography, environmental issues, jurisdictional government policy goals, and energy availability. In Tasmania, for instance, natural gas is not yet widely available and Tasmanian households and businesses rely almost exclusively on electricity for their energy needs.

In addition, as mentioned above, energy markets in each jurisdiction are at different stages of development and therefore require different regulatory interventions. We believe that while national consistency in regulation is desirable, this should not come at the expense of the particular needs of individual jurisdictions. See our comments below on Jurisdictional Directions.

Price Regulation of Distribution

- Distribution costs comprise the largest proportion of the final cost of energy supply (approximately 40%) to the consumer. In addition, distribution networks are considered 'natural monopolies'. It is therefore essential that distribution prices are regulated and that the process is transparent and considers the interests of consumers. Price regulation should not be based solely on factors relating to economic efficiency, but should also consider the public interest.
- Consumers need to be protected from price shocks due to decisions made in relation to price regulation of all components of energy supply, including distribution. In recent years, many South Australian residential consumers experienced significant price shocks with increases of 25% and higher. This resulted in serious financial hardship for many and a considerable increase in residential disconnections. Price regulation of all supply components should be balanced and coordinated to avoid high, sudden and unanticipated price increases.
- Price regulation must ensure that small consumers do not pay vastly different network prices based on their geographical location, and that local issues involving cross-subsidisation of consumer classes do not get lost in a national regulatory regime.
- Service performance is a crucial aspect of distribution regulation and should be linked closely with price. Consumers should be able to expect reliable and safe service for the price they pay for distribution. Service performance targets in the form of Guaranteed Service Levels and associated payments work well for consumers in Tasmania and provide not only an incentive to the distributor to improve service, but also some compensation to consumers for poor service. While service targets may vary in jurisdictions according to geography, settlement, land use, vegetation and so on, common principles of service performance can be established and applied, and can be a tool for necessary network augmentation.
- Performance against targets should be reported regularly (perhaps quarterly) to the national regulator and made public.

Consumer protection

- The consultation paper asserts

...that the imposition of energy specific consumer protection regulation should not duplicate other regulations of general application across the economy (Trade Practices Act, Fair Trading and Door-to-Door Sales legislation) unless the generic regulation is demonstrated to be insufficient.
(pages 43-44)

This recommendation is repeated several times in the paper.

We cannot agree with this recommendation due to the facts that energy, as an essential service, is unlike all other consumer products and that competitive retail energy markets in Australian jurisdictions remain immature (and indeed, are not yet established in some jurisdictions, including Tasmania), and therefore need to have specific and rigorous consumer protection measures in place for many years to come.

- We agree that distributors, as monopoly operators in their network areas, should have an obligation to supply domestic consumers on fair contracts with regulated standard terms and conditions. We cannot, however agree with the statement that the scope of regulation in this area 'should not be so wide or prescriptive as to impose regulatory costs that exceed benefits'. This statement does not explain, exemplify or analyse 'benefits' and is therefore problematic.
- In relation to distributor disconnections, there must be strong protections in place through regulation for consumers in financial hardship. These protections obviously need to tie-in with retail regulation which must require retailers to provide a clear outline of disconnection procedures, provide adequate notice of impending disconnection, as well as opportunities for consumers to negotiate payment options, including payment plans. Note that information regarding disconnections should be provided in both written and verbal forms to address literacy and/or language issues. Penalties should be imposed for wrongful disconnection in order to ensure adequate and effective communication between distributors and retailers. Penalties will also encourage compliance with regulated procedures for disconnection.
- In relation to dispute resolution, we support the proposal that energy distribution and retailing companies be required to establish and maintain internal complaint handling mechanisms, and we add that such mechanisms be further required to meet the Australian Standard for Complaints Handling (AS4269-1995). It is also appropriate that external dispute resolution (EDR) mechanisms be maintained in each jurisdiction and be established on a common model that complies with *National benchmarks for industry-based customer dispute resolution schemes* issued by the Department of Industry, Science & Tourism in 1997. Energy supply companies should be required to be members of the external dispute resolution scheme in each jurisdiction in which they operate. Access to EDR schemes by consumers must be simple and free of charge. All jurisdiction-based EDR schemes should be required to provide detailed reports to the Australian Energy Regulator (AER) at regular intervals. Reporting should include the nature of complaints, companies involved in complaints, resolution details and time taken for resolution. EDR schemes should also be required to identify systemic problems to the AER so that these may be addressed through regulation.
- The consultation paper states that 'where full retail competition is effective no energy specific regulation of Market Contracts should be needed' (page 57). This raises the question of who and what determines an effective market. In Victoria where FRC has been in place for a number of years, the Victorian Parliament found it necessary, in late 2004, to extend consumer safety net provisions for an additional three years and to introduce several other energy specific consumer protections. This is evidence that the energy market is special and that consumers require specific protections, including safety net provisions.

We reiterate our opposition to the suggestion that generic consumer protection legislation is appropriate for the energy market. We support the introduction, through the national regulatory process, of a best practice national energy consumer protection code.

Business authorisation

- The consultation paper takes a clear stance on recommending the use of legislative instruments, specifically Rules linked to the *National Electricity Law* and the *National Gas Law*, to impose legal obligations on distributors and retailers. We argue for the retention of licensing regimes administered by regulators and by the AER, in a national regulatory environment. Our arguments are as follows:
 - Licences provide a gate-keeping function, especially in relation to the technical and prudential capacity of companies to participate in energy supply. The consultation paper argues that licences act as a barrier to market entry and frames this as a limitation. We agree that licensing acts as a barrier to entry and believe that it should.
 - Licences can set out specific reporting requirements as licence conditions, including scope, regularity and detail, such as disconnection rates, service target performance and so on.
 - If licences are equipped with a compliance framework that allows for a range of penalties that includes licence revocation at the most extreme, licences can assist in creating a compliance culture among energy suppliers.
 - Licences need not be extensive documents but can include as a condition adherence to the Rules.
 - Limited period licensing (renewable licensing) allows, through the renewal process, for periodic audits of licensee performance and compliance.
 - As the consultation paper argues, legislative instruments tend to be more carefully drafted than licences; however, licences can be more flexible documents and may be amended more easily to meet the needs of changing conditions in a developing energy market.
 - While legislative instruments have the rule of law, they most often apply sanctions such as fines which, we believe, are not as compelling as the sanction of licence revocation which removes permission to trade.

Whatever mechanism is eventually employed, that is, either Rules, licences or a combination of the two, there must be strong and effective enforcement tools to ensure compliance.

Metering

- The consultation paper does not specifically mention pre-payment meters although these may be covered by the recommendation that permits ‘electricity meter standards different from the national minimum standard applied by the Rules on a Jurisdictional basis’ (page 80). If this is the case, responsibility for the regulation of pre-payment meters will remain with the jurisdictions. If, however, regulation of pre-payment meters shifts to the national regulator, we recommend that specific consumer protection measures be incorporated in a national energy consumer protection code.

Jurisdictional Directions

- If the recommendations from the consultation paper are accepted and national distribution and retail regulation is introduced employing the recommended framework, Jurisdictional Directions will become a critical avenue through which jurisdictions attend to local imperatives. However, the paper is unclear regarding the status of Jurisdictional Directions – on one hand it describes them as ‘mandatory’ (page 92) and on the other, in the following paragraph it states that ‘the AER in making regulatory determinations *must either give effect to or have regard to* the Jurisdictional Direction . . .’ (page 92, our emphasis). This lack of clarity undermines our confidence in the role of Jurisdictional Directions and therefore the ability of state and territory governments to have jurisdictional-specific measures implemented under a national regulatory framework.
- Given that the matters assigned to Jurisdictional Directions are critically important to consumers (community service obligations and distribution tariff equalisation in particular), this lack of clarity is a significant failure of the consultation paper.

Conclusion

We believe that the move to national regulation of energy distribution and retail functions, while useful to energy supply companies, will not necessarily benefit consumers in all jurisdictions. We agree there is a strong argument for national *consistency* in many aspects of regulation. However, there are processes other than full national regulation that can achieve this.

We urge the MCE to bear in mind the essential and unique nature of energy supply as a service and to find a better balance than is offered in the consultation paper between the needs of businesses and of consumers.

We hope that these comments are useful in your continuing deliberations. If you require any further information about our submission, please feel free to contact us.

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