



Ethnic Communities' Council of NSW Inc.

221 Cope Street Waterloo NSW 2017
Tel: (02)9319 0288 Fax: (02)9319 4229 Email:
iain.maitland@eccnsw.org.au

15/12/2016

Submission on The National Electricity Amendment (Participant derogation - NSW DNSPs Revenue Smoothing) Rule 2016

The Ethnic Communities' Council of NSW (ECCNSW) welcomes the opportunity to provide feedback to the AEMC on the NSW DNSPs Revenue Smoothing Rule Change, in particular to add to our comments made in response to the consultations in various forums initiated by the NSW networks.¹

Since its formation over 40 years ago, ECCNSW has been the peak body for culturally and linguistically diverse (CALD) community members and representative organisations in NSW. ECCNSW 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 National Energy Market (NEM).

ECCNSW is pleased to be able to provide a CALD perspective on this Rule Change.

In general:

The Limited Merits and Judicial Review processes:

It would seem, in hindsight, that the issues presented by a complex Limited Merits Review followed by an equally complex Judicial Review might have been anticipated in the drafting of the National Electricity Law (NEL) and the National Electricity Rules (NER). Unfortunately this was not the case.

The framing of the NSW DNSPs Revenue Smoothing Rule Change indicates that consumers are likely to be presented with one of several scenarios.

In the case where the 2019-2024 regulatory reset is not subject to another Limited Merits Review/Judicial Review process:

- a one or two-year period (2018-2019) of steeply fluctuating prices, (either up or down or both, dependent on the decision[s] of the Judicial Review), followed by relatively stable prices during the ensuing 5-year regulatory period, dependent on the AER revenue decisions for the 2019-2024 reset period
- a smaller, smoothed rise (or fall or both) in the first one or two-year period, followed by relatively stable but higher (or lower) overall prices during the ensuing

¹ Forums initiated by the NSW DNSPs August/September 2016

5-year regulatory period, dependent on the AER revenue decisions for the 2019-2024 reset period

In the case where the 2019-2024 regulatory reset is subject to another LMR/JR process:

- a one or two-year period (2018-2019) of steeply fluctuating prices, (either up or down or both, dependent on the decision[s] of the Judicial Review), followed by relatively stable prices for one to two years subject to the AER revenue determinations for the 2019-2024 reset, followed by a similar period of steeply fluctuating prices for the remainder of the 2019-2024 regulatory period, once again dependent on the determinations of the Limited Merits and Judicial Review processes
- a smaller, smoothed rise (or fall) in the first one or two-year period, followed by relatively stable but higher (or lower) overall prices for one to two years, subject to the AER revenue determinations for the 2019-2024 reset, followed by a similar period of steeply fluctuating prices for the remainder of the 2019-2024 regulatory period, once again dependent on the determinations of the Limited Merits and Judicial Review processes
- a smaller, smoothed rise (or fall) in the first one or two-year period, followed by relatively stable but higher (or lower) overall prices for one to two years, subject to the AER revenue determinations for the 2019-2024 reset, followed by a smoothed rise or fall in prices dependent on the repeated application of this rule change to a subsequent reset period.

In the worse-case scenarios, the price adjustment and fluctuations continue to be a problem for consumers for the remainder of the 2015-2019 regulatory period AND the 2019-2024 period (and possibly beyond).

To add to the issues surrounding this Rule Change, there are indications that the effects of the decommissioning of fossil-fuelled generators (Hazelwood et al) among other factors will see price rises across the NEM in the order of 4%+ in 2017-9.²

In our stakeholder consultations with the NSW DNSPs concerning this Rule Change proposal, we made the point that it was not at all obvious that a 'one-off' steep fluctuation and return in prices was a worse outcome than steady increases over 6-7 years. 'One-off' changes could be mitigated for the most vulnerable consumers by 'one-off' supplementary payments to them. For other consumers, an information process would need to be successfully instigated and undertaken.

While we did not advocate one method (the Rule Change) or the other (BAU), we suggested that some research be undertaken with real consumers to determine what their concerns would be about these options. This research does not appear to have been undertaken.

² AEMC 2016 Residential Electricity Price Trends Report, December 2016,

Note was taken of our comments that it is by no means clear what prices will look like after the 2019-2024 revenue reset process.³ The proponents have indicated they have used similar building block inputs for the 2019-2024 period as the previous revenue period. The graphs indicating rise/fall percentages could look very different than those presented in the Rule Change proposal.

Adaptions to the NEL and NER:

The Rule Change process legitimately focuses on the specific details of the changes envisaged by the proponents of this rule change. What it does not provide, however, is the opportunity to explore more widely any different regulatory mechanisms which might alter the regulatory landscape to the long term interest of consumers.

ECCNSW recognises that explorations such as these may well fall outside of the terms of a specific rule change and would undoubtedly require extensive amendments to the NEL and NER, however we would suggest that some thought be given by the AEMC to the following:

If, following a future revenue determination by the AER, the DNSPs decide that it is necessary to instigate a Limited Merits Review of the determination then the following would happen:

- The annualised revenue provided by the *new* AER decision would form the basis of the ongoing revenue for the DNSP instigating the LMR up until the decision of the LMR is finalised, with adjustments for CPI
- Following that decision (and subject to any subsequent Judicial Review), a new revenue decision would be made for the *remainder* of that regulatory period only. That is, no retrospective under or over payments would be made for the period while the decision in the LMR is being made.

In simplest analogy, the decision of the AER (the umpire) would be upheld until the decision had been tested, but no benefit would accrue to the proponents of the LMR until such a decision had been finalised. It would focus crucial attention on the value of questioning revenue determinations, the considerable costs of which are borne by consumers in the form of increased prices, along with price instability.

In this instance, there would be no need for price smoothing to extend beyond a revenue reset period and the final years of a reset would then form the basis for the building blocks of the next, as per the status quo. Consumers would not be exposed to significant price instability beyond those fluctuations expected from the reviewed and implemented AER determination and any other factors external to the revenue determination.

Specific questions posed in the consultation paper:

Question 1. Long term interests of consumers

³ NSW DNSP submission, 2016, footnote, page 6

(a) To what extent would significant pricing volatility lead to inefficient usage and uneconomic investment decisions by consumers?

(b) Would recovering any potential adjustments in revenue over two regulatory periods lead to more efficient usage and investment decisions by consumers?

It is not at all clear what the result of significant price volatility would be on consumer behaviour. It does not seem that any significant research has been undertaken to establish what consumer attitudes and behaviour might be around rapid and significant price variations. Indeed, the scale of any volatility itself is a vexing question. Consumer behaviour and decision-making are generally not *rational* in the economic sense that it is used. It would be challenging to predict what consumers might do in the face of rapid and significant price variations, and whether or not their actions would be in their own long term interest. We do know that consumer trust in the networks and regulatory mechanisms declined significantly when electricity prices rose steeply in a short period of time for few obvious reasons (to consumers), and anecdotal evidence indicates that bill stress has lessened as price increases have levelled.

In either option (adoption of the Rule Change proposal or BAU) it will be imperative that the complex reasoning around any decision is explained in such a way that consumers have an *opportunity* to make an informed decision (if they chose to make one at all) about usage and investment. This is particularly relevant for those consumers who do not have English as their first language, that being roughly one third of the NSW population. ECCNSW research has shown that CALD communities do not access information in the same ways as non-CALD communities.⁴ Specific, targeted and detailed Guidelines have been developed⁵ by ECCNSW to assist in consultations with CALD communities about energy.

ECCNSW would like to thank the AEMC for the opportunity to present our views on this Rule Change. If you require additional information please contact Iain Maitland, Energy Advocate on (02) 9319 0288 or email iain.maitland@eccnsw.org.au.

Sincerely yours,
Mary Karras



Chief Executive Officer
Ethnic Communities' Council of NSW Inc.

⁴ ECCNSW research, see [http://www.eccnsw.org.au/What-we-do/Advocacy/Consumer-Energy-Research-\(1\).aspx](http://www.eccnsw.org.au/What-we-do/Advocacy/Consumer-Energy-Research-(1).aspx), <http://www.eccnsw.org.au/What-we-do/Advocacy/Consumer-Energy-Research.aspx>, <http://eccnsw.org.au/best.aspx>

⁵ ECCNSW, *Cultural Connections: Engaging CALD energy consumers*, 2015, see <http://www.eccnsw.org.au/What-we-do/Advocacy/Guidelines.aspx>