

Mr Malcolm Gray  
Senior Commissioner  
Independent Competition and Regulatory Commission  
PO Box 161  
Civic Square ACT 2608

Dear Mr Gray

**Issues Paper – Report No 9 of 2013  
Retail Prices for Franchise Electricity Customers from 1 July 2014**

Thank you for your letter dated 4 October 2013 inviting ACAT to comment on the above Issues Paper.

**ACT Civil and Administrative Tribunal**

The ACT Civil and Administrative Tribunal (ACAT) was established by the *ACT Civil and Administrative Tribunal Act 2008* and commenced operation on 2 February 2009. ACAT brought together a large number of ACT tribunals, including the former Energy and Water Consumer Council.

Under Part 12 of the *Utilities Act 2000*, ACAT is responsible for determining hardship applications and complaints made by consumers and customers of ACT energy and water utilities. These may include complaints about:

1. Contraventions of a customer contract by a utility.
2. Failure (or potential failure) of a utility to provide a utility service to a consumer or the withdrawal (or potential withdrawal) of a utility service from a consumer, where such failure or withdrawal causes (or would cause) substantial hardship to the consumer.
3. Contraventions by a utility in relation to the protection of personal information.
4. Contraventions by a utility of an obligation under the Act in relation to network operations.
5. Acts or omissions of an authorised person for a utility in relation to network operations.
6. The amount of a capital contribution charge imposed by a utility.

ACAT also has jurisdiction to consider and resolve customer complaints about the feed-in-tariff. This responsibility is vested in the ACAT by the *Electricity Feed-in Code* determined by the Independent Competition and Regulatory Commission (the Commission).

From 1 July 2012, ACAT has been the jurisdictional energy ombudsman for the ACT for the purposes of the National Energy Customer Framework (NECF).

For more than 20 years, ACAT and its predecessor agencies (the Energy and Water Consumer Council, the Essential Services Consumer Council and the Essential Services Review Committee) have performed statutory functions in the regulation of energy and water utilities in the ACT, including a function of advising the Minister and the ICRC on utility issues in the Territory. As a result of this long association with utilities and their customers, ACAT has built up considerable expertise in dealing with issues relating to the utilities industry in the ACT, including the impact of utility poverty and financial hardship, systemic issues affecting customers and consumers, and the operational performance of utilities.

The comments which follow in this submission are made in the context of the responsibilities and experience of ACAT as described above.

## Chapter 2 Recent Developments in the Electricity Market

### Section 2.1 Market developments

The Commission identifies three main cost categories for electricity in the ACT: wholesale electricity costs; network costs; and retail costs. While the ACT is located within the NSW wholesale electricity market, the ACAT observes that there are geographic and climatic factors that provide some differentiation between the two markets.

#### *Wholesale Electricity Costs*

The ACT climate leads to an electricity demand peak in winter, with a smaller peak from air conditioning in summer. This, together with the significant and increasing level of solar generation in the ACT, reduces our electricity costs at times of peak summer pricing, with a corresponding reduction in our overall wholesale cost relative to NSW.

In addition, the dominant retailer in the ACT, ActewAGL Retail, can forward purchase to advantage and is not greatly exposed to the short-term vagaries of the spot market. That market, as noted by the Commission, has moderated significantly in recent years, largely due to the availability of adequate generating capacity as a result of reduction in demand and increasing renewable energy generation. The ACAT does not believe that any allowance should be made simply for the possibility of an increase in volatility in the future.

#### *Network Costs*

While network costs have been a significant driver of overall costs in recent years, 'gold plating' of networks has been identified as a significant factor and this is now being addressed by the Standing Council on Energy and Resources (SCER). In addition, the network within the ACT is relatively new and geographically contained and is unlikely to require significantly increased expenditure in the period under consideration. The ACAT notes that the Australian Energy Regulator (AER) determines this element of the overall electricity price.

#### *Retail Costs*

Electricity retail costs in the ACT are minimised because of the dominant position of ActewAGL Retail in the ACT energy market. There has been little customer churn and insignificant costs in acquiring and retaining customers in recent years. At present, no other retailer is actively marketing to new domestic customers, however EnergyAustralia has a substantial number of continuing customers, initially acquired by Melbourne-based TRUenergy and former Sydney-based EnergyAustralia. We understand that Origin Energy has approximately 120 small customers in the ACT, which they inherited from CountryEnergy..

### Section 2.2 Jurisdictional regulatory decisions

With regard to other jurisdictions, the ACAT considers that market conditions in Queensland, South Australia and even Victoria (Section 2.4) are different to the market conditions in the ACT and comparisons need to be treated with considerable caution. In particular, the purported benefits of competition in retail electricity markets are not very well supported by actual experience in these jurisdictions.

#### *New South Wales*

As noted above, the ACT is significantly different from NSW, and particularly from the large urban centres on the coast. Therefore the IPART decisions should be carefully examined for relevance to the ACT. With regard to the higher retail operating costs allowed by IPART, it is important to re-emphasise that there is little churn of customers in the ACT electricity market, with a consequent reduction in overall customer costs. In addition, ACT green costs have largely been absorbed into the ACT retail price and future increases in green costs will follow a path which can be measured with reasonable accuracy. New green programs could be treated as a pass-through if their funding is not specifically covered by government in the implementation of any such program.

The ACAT strongly rejects the IPART approach of allowing an amount for customer acquisition and retention in retail operating costs. It is poor policy to assert that 'regulated prices must be high enough to create incentives for retailers to enter the market to compete for customers'. Instead the ACAT strongly endorses the ACT Government position (stated in Section 2.3) that 'The implication that customers are required to make a financial contribution to support competition, beyond efficiency costs is contradictory'. The ACAT sees no benefit in setting a regulated TFT in which customers are required to pay more simply for competition's sake.

### **Section 2.3 AEMC advice on best practice retail price regulation**

The ACAT supports retention of the caveat to point two of the AEMC proposed objective 'where competition may be feasible'. The ACAT disagrees with the inclusion of a "competition allowance" in point three of the cost components in the major cost components in a retail electricity price build-up. There should be cogent evidence that competition in the ACT market would lead to a long term reduction in retail prices before such an allowance is accepted. Outcomes in other Australian energy markets do not provide the relevant evidence. .

## **Chapter 3 The Commission's Regulatory Approach and Pricing Model**

In previous submissions concerning the setting of the TFT, the ACAT has generally supported the cost build-up approach adopted by the Commission and proposed for the Price Determination commencing on 1 July 2014. The ACAT confirms this position, with some specific comments offered below.

### **Section 3.1 Regulatory approach**

#### *Weighted average price cap*

The ACAT generally supports this approach to price setting, except that certain fees set by the retailer should be subject to direct consideration and approval by the Commission, in particular to ensure social equity. As an example, ActewAGL currently charges a higher disconnection fee for customers who are disconnected for debt in comparison with the fee for disconnection at customer request. Other examples of discriminatory fee arrangements could be advised to the Commission, if it is minded to regulate in this specific area of retail pricing.

#### *Length of the regulatory period*

The ACAT considers that one year is too short a period and would engage very high one-off costs to the regulator, the utility and other participants in the TFT price setting process. ACAT would prefer a two or three year TFT, with appropriate pass-through arrangements (for both increases and reductions in the cost base). Provided the price-setting methodology is robust, some elements in the price build-up could be subject to annual adjustment during the TFT period.

#### *Cost pass-through arrangements*

The ACAT supports retention of the present materiality threshold. However, the set of allowable pass-through events should be constrained. There are events that are beyond ActewAGL's control but are reasonably foreseeable and these should be the subject of normal commercial risk management. The ultimate objective is not to provide a risk-free environment for the TFT provider, but rather to achieve a fair balance between the community interest and the viability of the regulated utility.

### **Section 3.2 Pricing model**

The ACAT considers that the pricing model should be based on an incumbent business providing the TFT, with no allowance for customer acquisition and retention costs. The rationale for this approach is discussed above.

The ACAT supports the Commission's use of a market-based approach to determining wholesale energy purchase costs rather than adopting a long-run marginal cost approach. The ACT is a buyer in the wholesale electricity market and does not have any role in base load electricity generation (apart from renewable energy generation).

### ***Section 3.3 Cost components of the pricing model***

This section seeks comment on three issues which are largely 'technical' and not within the ACAT's primary areas of knowledge; namely hedging costs, futures prices vs forward contract prices, and long-run marginal costs. Consequently the ACAT cannot comment in detail on these issues other than to say that, in general terms, the ACAT supports the Commission's proposed energy purchase cost model, including a market-based approach to determine efficient LRET and SRES costs.

#### *Carbon price uncertainty and the forward price (Section 3.3.1)*

At present, the impact of carbon pricing on the TFT commencing on 1 July 2014 is uncertain, and may not be known until after the new Senate sits in July 2014. In view of this uncertainty, the ACAT suggests that the Commission determine the size of the price increases associated with the introduction of carbon pricing (including consideration of statements about carbon cost-driven price rises made by ActewAGL at the time) and require an equivalent price reduction to be flowed through quickly if the carbon tax is abolished.

#### *Retail operating costs (Section 3.3.6)*

The ACAT points to the lack of comparability with other jurisdictions, discussed above. The ACAT firmly believes that introduction of any allowance for customer acquisition and retention would be inappropriate for this reason.

The ACAT has no comment on energy efficiency scheme costs (Section 3.3.7) or network costs (3.3.8).

With respect to the retail margin (Section 3.3.9), the ACAT does not consider that the retail margin determined by the IPART should automatically be applied in the ACT. At face value, the ACAT sees no reason for the present retail margin in the ACT to be increased.

Yours sincerely



Linda Crebbin  
General President

15 November 2013