

Retail Prices for Non-Contestable Electricity Customers

Response to ICRC Draft Decision

3 March 2006

Contents

1.	<i>Introduction</i>	3
1.1	Background	3
1.2	Overview of ActewAGL's response to the draft decision	3
2.	<i>Responses to the draft decision</i>	5
2.1	Competition and retail price regulation	5
2.2	Safety net and social policy issues	5
2.3	The Commission's proposed implementation regime	6
2.4	Future price regulation	7

1. Introduction

1.1 Background

The Commission's current review of retail prices for non-contestable electricity customers is the latest step in the move toward opening the retail electricity market to competition. Along with other jurisdictions in the National Electricity Market, the ACT committed in 1995 to the phased introduction of competition to retail electricity markets.

Full retail contestability (FRC) was introduced in the ACT on 1 July 2003. A regulated Transitional Franchise Tariff (TFT) was introduced as part of the transitional arrangements. The TFT was set for 3 years, as a transitional measure 'to assist...newly contestable customers in exercising their right of choice in a less pressured manner.'¹ As part of the transitional arrangements, the Commission is required to review the arrangements before the TFT expires on 30 June 2006.

The Commission released an issues paper, *Retail prices for non-contestable electricity customers*, in November 2005. ActewAGL responded in December 2005. ActewAGL argued strongly that the ACT electricity market is competitive and retail price regulation should be removed. The TFT has effectively aided the transition to a competitive market, and there are appropriate consumer protection and support arrangements in place to help those in need. ActewAGL also argued that, if the government does decide that ongoing price regulation is required, a light-handed approach based on ActewAGL's 'CPI Framework' would be appropriate.

1.2 Overview of ActewAGL's response to the draft decision

ActewAGL supports the Commission's draft conclusions and recommendations that:

- The ACT retail electricity market is competitive (p. 39)²;
- The TFT be discontinued (p. 39);
- The TFT was never intended as a safety net or social policy instrument, and there are other more appropriate and targeted tools that should be used for meeting social policy objectives (p. 39);
- To allow time for amendments to the Utilities Act, a temporary price direction should apply from 1 July 2006 to 30 June 2007, with the CPI-related price adjustment regime to apply (p. 41), and;

¹ ICRC 2003, *Final Determination – Investigation into Retail Prices for Non-contestable Electricity Customers in the ACT*, May.

² Page numbers throughout this submission refer to ICRC 2006, *Draft Decision – Retail Prices for Non-contestable Electricity Customers*, Report 2 of 2006, February.

- If the ACT Government requires future price directions, the CPI-related adjustment regime (p. 42) should be used.

Further comments on these conclusions and recommendations are provided in section 2 of this submission.

ActewAGL does have concerns about some aspects of the draft decision. These are outlined in section 2 of the submission. Our main concerns are that:

- Any further details of possible future price regulation should be provided *before* the final decision (p. 42, section 4.7, first paragraph), to allow consultation prior to the release of a final decision;
- The Commission should clarify the proposed arrangements for any temporary price direction (p. 41 and appendix 3);
- It is not appropriate for the Commission to make a final decision requiring ActewAGL to notify all price adjustments and apply the CPI framework to all adjustments if the TFT is removed, as this could curtail or impede the proper operation of a competitive market (p. 42, final paragraph).

2. Responses to the draft decision

2.1 Competition and retail price regulation

ActewAGL endorses the Commission's draft conclusion that the ACT electricity market is competitive. Consumers in the ACT are continuing to embrace competition and the benefits it can deliver. ActewAGL and the other retailers that are active in the ACT are continually enticing customers to their negotiated contracts, and potential new entrants have indicated intentions to start competing in the ACT³.

Any move to continue regulation in a competitive retail market would be totally out of step with the thrust of national energy market reforms. At the most recent Council of Australian Governments (COAG) meeting, on 10 February 2006, State and Territory Governments re-stated their commitment to removing retail price regulation where there is effective retail competition⁴. The ACT electricity market is competitive, so retail price regulation should be removed.

The costs of maintaining retail price regulation in competitive markets are widely recognised, as illustrated by several quotes in the draft decision – from the Ministerial Council on Energy (MCE), the Productivity Commission and submissions responding to the Commission's issues paper.

ActewAGL firmly believes that ACT electricity customers should not be forced to bear the ongoing costs associated with retail electricity price regulation. The TFT was introduced as a transitional measure when the market was initially opened to competition. The market is now competitive so the TFT should be removed.

2.2 Safety net and social policy issues

ActewAGL endorses the Commission's draft conclusions that the TFT was never intended as a form of safety net or social policy instrument, and other more targeted forms of assistance are to be preferred within the ACT. These specific forms of assistance, together with the provisions of the Consumer Protection Code and ActewAGL's customer hardship programs have provided adequate protection for consumers in the ACT, and will continue to do so in an unregulated market.

Pensioners and health care cardholders receive rebates and eligible customers in financial hardship receive support from the Essential Services Consumer Commission (ESCC). ActewAGL also provides support for those in need through the Staying Connected policy and

³ Aurora Energy has submitted to the Commission a proposed code of practice for the introduction of prepayment meters, as a first step toward entering the retail electricity market.

⁴ Council of Australian Governments, Communique, Attachment B, 10 February 2006.

the Customer Council, which comprises representatives from CARE ACT, the Salvation Army, the Smith Family, the Financial Counsellors Association of Australia, the Country Women's Association, the Australian Consumers' Association and the Council on Ageing National Seniors. The other retailers in the ACT market also offer support programs for those in financial hardship.

ActewAGL will continue to offer a standard customer contract, available to all customers, with no fixed term and the ability to opt in or out of the contract at any time. This will provide a safety net for customers who are unable or unwilling to take up negotiated contracts with ActewAGL or competing retailers.

The current arrangements for supporting those in need – through the ESCC, rebates, consumer protection provisions, ActewAGL's hardship program and ActewAGL's provision of a standard contract – have worked effectively in the case of the ACT retail gas market, which has been unregulated since 2004. ActewAGL firmly believes that they will continue to provide the appropriate means to effectively support electricity customers in need.

2.3 The Commission's proposed implementation regime

2.3.1 A temporary price direction

ActewAGL supports the Commission's proposal that, to allow sufficient time for amendment of the Utilities Act, it is appropriate to apply an interim price direction for the period 1 July 2006 to 30 June 2007 (section 4.6, p. 41). ActewAGL fully supports the proposed price adjustment scheme to apply in that year. We suggest, however, that for consistency with other price adjustment mechanisms used by the Commission, it may be appropriate to use the CPI average for the 8 capital cities, for the 12 month period to 31 December each year.

ActewAGL notes that in the more detailed discussion of implementation options in appendix 3 of the draft decision, the Commission describes the temporary price direction as applying not for a fixed 1 year period, but instead until some 'price variation trigger' occurs (p. 60). The trigger could be the date on which the relevant amendments to the Utilities Act commence.

ActewAGL seeks clarification from the Commission on whether the proposed temporary price direction will apply for 12 months from 1 July 2007, or alternatively until some price trigger such as the amendments to the Utilities Act occurs.

While ActewAGL appreciates the Commission's view that the price trigger approach would provide 'sufficient flexibility' for government and the Commission, it must also be recognised that such an open-ended arrangement would involve costs. ActewAGL believes that this flexibility would create unacceptable uncertainty about future regulatory arrangements, and involve ongoing costs of regulation in a market that the Commission has found to be competitive. ActewAGL prefers to have any temporary price direction applying for a fixed determined period, preferably no longer than 1 July 2006 to 30 June 2007, when the Commission has proposed the TFT be removed.

2.3.2 A limited price direction

In appendix 3 of the draft decision the Commission puts forward an alternative to the temporary price direction. ActewAGL does not support the alternative of the Commission issuing a limited price direction (p. 61).

As noted by the Commission, effectively limiting the coverage would require a precise and skilful definition of who is not a non-franchise customer. ActewAGL believes that it is inappropriate to try to re-word the Utilities Act to ‘encourage most customers to agree to negotiated customer contracts while providing a safety net...’ Customers should be free to make their own choices, and safety net issues should be addressed directly and transparently without the need for ongoing price directions.

2.4 Future price regulation

While concluding that price regulation should be removed, the Commission has proposed a future form of regulation ‘should the ACT Government require it to determine a regulated tariff for a period of time beyond 30 June 2007’ (p. 42). ActewAGL supports the scheme recommended by the Commission.

ActewAGL is concerned, however, that the Commission says it will ‘present further details on this approach in its final report’. We are concerned that by providing further details only at the final decision stage, the Commission will not be providing an opportunity to respond. ActewAGL therefore requests that there be an opportunity to provide input and comments on any further details, *before* the final decision is released.

In the discussion of future price regulation (page 42, final paragraph), the Commission also says that it is favourably disposed to ActewAGL’s proposal that, if the TFT is removed, ActewAGL would still advise the Commission in advance of proposed changes and apply similar adjustment rules to those which would apply for the interim arrangements (that is, the CPI framework). The Commission says that it will make a final decision on this proposal as part of its final report.

While ActewAGL would clearly look to meet the needs of customers, it is not appropriate for ActewAGL to be burdened with ongoing regulatory restrictions on how it can adjust prices. If the TFT is removed, ActewAGL will be competing in an open market and will be under ongoing and increasing pressure to keep customers and the community informed about prices and ensure that prices are market-based and competitive. As indicated in our response to the issues paper (p. 27), the unregulated default tariff attached to the standard customer contract would move over time according to changes in cost pressures.

In the unregulated ACT retail gas market, ActewAGL has voluntarily continued to notify the Commission of intended prices and changes so far have been limited to the CPI. ActewAGL would expect to inform the regulator of any proposed change to prices in its electricity standard customer contract, once the TFT is removed.

The threat of re-regulation will also provide a strong incentive for ActewAGL. Under section 15 of the ICRC Act, the Minister can at any time issue an industry reference to the Commission for a review of ActewAGL's prices. While retail regulatory functions are scheduled to be transferred to the national regulator, under the Australian Energy Market Agreement⁵ responsibility for retail pricing will not be transferred. It will remain with jurisdictions.

⁵ Australian Energy Market Agreement, section 8.1.