

# **ESSENTIAL SERVICES CONSUMER COUNCIL**

(established under Part 11 of the *Utilities Act 2000*)

## **RESPONSE TO ICRC REPORT NO 2 OF 2006**

### **RETAIL PRICES FOR NON-CONTESTABLE ELECTRICITY CUSTOMERS**

#### **1. OVERVIEW**

In its Draft Decision, the Independent Competition and Regulatory Commission (ICRC) concludes that:

1. the electricity market in the ACT is sufficiently competitive to permit the cessation of the transitional franchise tariff (TFT);
2. further public information programs on the availability of competitive tariff offers are required;
3. the current TFT be extended to 30 June 2007 (with a CPI adjustment) because of legislative difficulties in implementing full retail contestability (FRC) by 1 July 2006;
4. after 1 July 2007, there be a statutory "deemed customer contract" which would apply in default to customers who do not enter a contestable contract; and
5. the ACT Government should retain the right to refer to the ICRC terms of reference for an inquiry into retail electricity prices in the ACT in case of misuse of market power or failure of market competition.

The ICRC also drew attention to an offer by ActewAGL whereby that utility, which will have the responsibility as default retailer for deemed contract customers, has suggested a default pricing arrangement which is linked to future CPI and is vetted by the ICRC.

The Essential Services Consumer Council (ESCC) does not agree with the central conclusion of the ICRC (1. above), namely that the electricity market in the ACT is sufficiently competitive to permit the cessation of the transitional franchise tariff. This opinion of the ESCC is discussed in Part 2 of this Response and leads the ESCC to conclude that the TFT arrangements should be continued until 30 June 2009, with a further review of competition in the ACT electricity market to be undertaken late in 2008.

While it disagrees with the ICRC's central conclusion, the ESCC recognises that the ACT Government may be minded to accept the analysis of the ICRC on this matter. In this case, the ESCC is broadly supportive of the other conclusions of the ICRC (2. - 5. above) and recommends that they be accepted by Government as they will provide important safeguards for financially vulnerable electricity consumers in the ACT. These safeguards are discussed in Part 3 of this Response.

The ESCC is particularly concerned to ensure that, from 1 July 2007:

- the ACT Government retains the power to re-regulate retail electricity prices if there is an abuse of market power or failure of market competition;
- there are robust "deemed customer contract" arrangements in place which provide an adequate safety net for customers who do not enter contestable contracts; and
- the commitments regarding default customer pricing and a price vetting role for the ICRC after 1 July 2007, made by ActewAGL in its submissions and accepted by the ICRC in its Draft Report, are publicly confirmed by ActewAGL to the ACT Government before the Government acts upon the ICRC's Final Report.

## **2. COMPETITIVE ENVIRONMENT**

### **2.1 Actual and Potential Competition in the ACT**

The ESCC does not agree that the present market environment for electricity in the ACT is sufficiently competitive to warrant the abolition of the transitional franchise tariff (TFT). The ICRC relies heavily on potential competition indicated by very recent movements in the takeup of contestable contracts. In contrast, the ESCC considers that the best indication of a competitive market is actual competition and the widespread adoption of competing price offers – and this is not yet the actuality of the ACT electricity market.

The ESCC considers that many of the 15 companies who have obtained a retail electricity licence in the ACT have simply taken a defensive position, and have no real intention of entering the ACT market unless something changes radically. This defensive position may arise from the fact that they already have large electricity customers in the ACT or because they wish to ensure that they can enter the ACT market quickly if there is a radical change in the market environment. The licence fee that these licensees continue to pay is insignificant in terms of their overall operations, and therefore does not indicate a specific intention to enter the ACT market. The ESCC suggests that these licensees cannot be considered even as potentially competitive in a practical sense, given the present and forecast nature of the market.

The ESCC notes that two licensees – Country Energy and Energy Australia – have entered the ACT market. In the case of Country Energy, the ESCC notes that their customer base is very small and considers it likely that they are competing largely in response to ActewAGL's encroachment in their own market in Queanbeyan and Southern New South Wales. In the case of EnergyAustralia, it appears that the company has embarked on a sustained attempt to enter the ACT market and has moved its customer numbers from perhaps 500 to somewhere around 5000 customers in the 2005 calendar year. It is interesting to note that the Energy Australia submission to the ICRC indicated that the "margins currently available under the TFT are adequate", but that "a greater margin would likely increase the level of competition", presumably by increasing profit margins. In response to this, it is reasonable to ask whether competition is seen as an end in itself, even at the expense of higher prices for the consumer. It is arguable that the TFT is serving a useful purpose of reining in the inefficiencies of inappropriate competition.

The ESCC generally sees, as its primary concern, the interests and well-being of those in the lower socio-economic groups within the ACT community. However, ESCC members come in contact with sufficient people within the middle income group to be aware of their general approach to provision of essential services. This income group forms the greater part of those who would be affected by any change to the present pricing arrangements. It appears to the ESCC that the majority of this group see little, if anything, to be gained from moving from the TFT to the other offers that are available. They do not see they have any significant "choice" in relation to their electricity supply, and rely to a great extent on the protection provided by the TFT and the overall regulatory and consumer protection frameworks. Since they are the ones most likely to be adversely affected by any change to the TFT their interests and views should be properly taken into account. In short, the degree of competition actually, and potentially, available in the ACT electricity market is not presently sufficient to protect the interests of those most affected by the abolition of the TFT.

### **2.2 National Issues**

The ESCC recognises that there are external influences which also bear on the position of retail electricity customers in the ACT. In particular, the ESCC has in mind the changes occurring in the National Electricity Market (NEM), whereby the ICRC will lose its role as industry regulator to a national electricity regulatory authority. With the arrival of the Australian Energy Regulator, the role of ICRC is changing and its capacity to manage energy pricing in the ACT (eg. through regulation of distribution costs) will diminish. Also, as noted by the ICRC in its discussion of "Consumer impact" (p 3, Draft Decision), the new national arrangements also will affect the industry-funded basis of the ESCC operations, an issue which needs to be addressed by the ACT Government in its discussions at the Ministerial Council on Energy.

A further, important external influence is variations and instability in the prices paid by retailers to electricity generators. While improvement in State interconnects will help the electricity market to operate on a nationally competitive basis, the price of electricity is greatly at risk through factors such as increasing summer demand, inadequate investment in base load generation, privatisation of the Snowy Mountains generation capacity, utility mergers and acquisitions, etc. The ESCC recognises that this variability in electricity pricing poses challenges for retailers and introduces risk to the process of retail price setting by Government regulation.

### **3. SAFEGUARDS**

While it disagrees with the ICRC's recommendation to discontinue the TFT, the ESCC recognises that the ACT Government may be minded to accept the analysis of the ICRC on the issue of market competition and cease the TFT. In this case, the ESCC is broadly supportive of the other recommendations of the ICRC in its Draft Decision (see 2. - 5. in Part 1) and recommends that they be accepted by Government as they will provide important safeguards for financially vulnerable electricity consumers in the ACT. The important safeguards are discussed below.

#### **3.1 The ACT Government must retain the power to regulate retail electricity prices in the ACT**

The ESCC considers that national regulation (and self-regulation) is not sufficient to protect the particular needs of ACT consumers. The needs of ACT consumers are sufficiently different to those of the major energy markets to warrant separate consideration. Experience so far suggests that the ACT will be ignored in the overall considerations of the NEM and its constituent bodies. It is critical that the power to regulate retail electricity prices is retained by the ACT Government.

As suggested by the ICRC, the most likely triggers for the exercise of retail price regulation in the ACT after the cessation of the TFT are misuse of market power or failure of competition in the market.

#### **3.2 Robust "deemed customer contract" arrangements should be in place to provide an adequate safety net for default customers**

It seems to the ESCC that the most satisfactory way forward for the majority of people on the present standard customer contract would be for that contract to automatically convert to a "deemed customer contract". Many customers effectively are not in a position to enter into, or benefit significantly from, negotiated contracts and simply want to continue with their present arrangement with as little disturbance as possible. Other customers may enter contestable contracts and find that they are not to their benefit. It is important to ensure that there are coherent arrangements in place which provide for a "deemed customer contract" for default customers, a fair price for deemed customers, and retailer of last resort arrangement to provide a guarantee of supply of the essential service of electricity.

The ESCC supports the ICRC intention to proceed along this line if the TFT is discontinued.

#### **3.3 Commitments by ActewAGL in relation to default tariff price setting**

The ESCC considers that, failing a continuation of the TFT, the proposal by ActewAGL offers a reasonable basis for setting the price paid by default customers with a "deemed customer contract". The ESCC is most concerned, however, that the commitments described in the Draft Decision are not enforceable. The ESCC understands that the ICRC Act does not make provision for enforceable undertakings by companies and therefore looks for some other mechanism to ensure that the commitments made by ActewAGL survive in effect for a number of years after the cessation of the TFT.

The ESCC considers that the fact that ACT Government is a 50% shareholder of ActewAGL will not be sufficient as the other commercial shareholder is obliged to follow shareholder interests not those of the ACT community.

The ESCC recommends that the ACT Government should ask ActewAGL to publicly commit to their proposals, after the utility has had the opportunity to review the Final Decision of the ICRC. If ActewAGL is unable to give such public assurances, the ESCC strongly suggests that any pending decision to end the TFT should be reversed.

## **RECOMMENDATIONS**

The ESCC makes the following Recommendations to the ICRC and to the ACT Government in relation to retail prices for non-contestable electricity customers in the ACT.

- 1. *TFT arrangements should be continued until 30 June 2009, with a further review of competition in the ACT electricity market to be undertaken late in 2008.***
- 2. *The ICRC should set prices for the TFT in 2006-09 on the basis set out in sections 4.6 and 4.7 of its Draft Decision.***

If the ACT Government accepts the ICRC's Recommendation to cease the TFT on 30 June 2007, the ESCC makes the following Recommendations.

- 3. *The ACT Government must retain the power to re-regulate retail electricity prices in the ACT if there is an abuse of market power or failure of market competition.***
- 4. *From 1 July 2007, there should be robust "deemed customer contract" arrangements in place which provide an adequate safety net for customers who do not enter contestable contracts.***
- 5. *Prices for the deemed customer contracts should be set in accordance with the process outlined in sections 4.6 and 4.7 of the ICRC's Draft Decision.***
- 6. *The commitments regarding default customer pricing and a price vetting role for the ICRC after 1 July 2007, made by ActewAGL in its submissions and accepted by the ICRC in its Draft Report, should be publicly confirmed by ActewAGL to the ACT Government before the Government acts upon the ICRC's Final Report.***

In addition, the ESCC makes a further recommendation which aligns with comments made by the ICRC in its Draft Decision.

- 7. *The ACT Government should give attention to how the ESCC is to be funded by industry when the new national regulatory arrangements take effect.***

Peter Sutherland  
Chairperson  
2 March 2006