The Pricing Review: Discussion Paper

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About the Justice and Equity Centre

The Justice and Equity Centre is a leading, independent law and policy centre. Established in 1982 as the Public Interest Advocacy Centre (PIAC), we work with people and communities who are marginalised and facing disadvantage.

The Centre tackles injustice and inequality through:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change to deliver social justice.

Energy and Water Justice

Our Energy and Water Justice work improves regulation and policy so all people can access the sustainable, dependable and affordable energy and water they need. We ensure consumer protections improve equity and limit disadvantage and support communities to play a meaningful role in decision-making. We help to accelerate a transition away from fossil fuels that also improves outcomes for people. We work collaboratively with community and consumer groups across the country, and our work receives input from a community-based reference group whose members include:

- Affiliated Residential Park Residents Association NSW;
- Anglicare;
- Combined Pensioners and Superannuants Association of NSW;
- Energy and Water Ombudsman NSW;
- Ethnic Communities Council NSW;
- Financial Counsellors Association of NSW;
- NSW Council of Social Service;
- Physical Disability Council of NSW;
- St Vincent de Paul Society of NSW;
- Salvation Army;
- Tenants Union NSW; and
- The Sydney Alliance.

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Contents

Recommendations

Recommendation 1

The review should prioritise practical, evidence-based solutions that enhance outcomes for all consumers, rather than adhering to market ideology or a conviction in promoting competition for its own sake.

Recommendation 2

The consumer archetypes should be reviewed and refined to emphasise consumers' willingness to actively manage their energy use and costs.

Recommendation 3

The design of bookend products should prioritise enabling a simple and affordable offering available to all consumers.

Recommendation 4

Simple, affordable universal offerings must exclude products that impose fixed consumption limits or rely on pre-payment platforms.

Recommendation 5

The effectiveness of the retail electricity market should be measured by the market's ability to deliver fair, affordable, and accessible energy services to all energy consumers – not by the number of competitors or the rate of consumer switching.

Recommendation 6

The roles and responsibilities of retailers in network tariff-setting processes should be reassessed and clarified.

Recommendation 7

A simple, affordable universal offer should include a requirement that the retailer manage network price risk on behalf of the customer.

Acronyms list

Acronym	Full name
AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
CER	Consumer Energy Resources
EWCAP	Energy and Water Consumers’ Advocacy Program
NEO	National Energy Objectives
NER	National Electricity Rules
NSP	Network Service Provider

1. Introduction

The Justice and Equity Centre (JEC) welcomes the opportunity to respond to the Australian Energy Market Commission's (AEMC) Pricing Review Discussion Paper (the Paper).

We commend the Commission for undertaking this timely and significant review, which has long-term implications and represents a generational opportunity for reform. To truly mark a departure from previous pricing reform efforts, the review must establish a robust assessment framework – one capable of evaluating what pricing and tariffs should achieve. Our submission and recommendations focus on shaping this framework and offering a structured approach to thinking through the core challenges and objectives of pricing reform.

We are concerned that the Paper does not adequately challenge the assumption that more competition alone will deliver the outcomes consumers need. As we argue throughout this submission, competition is not an end in itself. It must be assessed by its ability to deliver affordable, accessible, and equitable energy services – not by the number of competitors or the rate of consumer switching.

Our submission focuses on reframing the problem: identifying the outcomes we want for consumers and designing pricing structures and regulatory settings that deliver them. We urge the Commission to move beyond the binary framing of competition versus regulation. All markets require rules; the question is what outcomes we want those markets to deliver, and how regulation can ensure they do.

We support the Paper's recognition of the diversity of consumer needs, but caution against assuming that high levels of engagement with the energy market are inherently desirable or achievable. Many consumers simply want to use energy when they need it and pay a fair price for it. The review should prioritise enabling a simple, affordable, and universal energy offer that meets this need, rather than focusing on facilitating a wide array of complex products.

We also call for a reassessment of the role retailers play in managing network price signals. Retailers have shown no willingness to take on even a low level of network price risk despite taking on far higher wholesale price risk. Regulatory frameworks must require retailers to take on this role to ensure consumers are not unfairly burdened.

Finally, we urge the Commission to explore how network tariffs can be made more equitable and efficient, particularly in light of the growing uptake of consumer energy resources (CER). Consumers must have confidence that any remaining costs reflect a fair return on their investments and efforts, and that the benefits of reform will flow to them rather than being absorbed elsewhere in the supply chain.

2. Rethinking assumptions around markets, consumers, and competition

We welcome the Paper's explicit focus on "accounting for the diversity of consumer needs, experiences, and preferences". This marks a significant departure from prevailing assumptions that good consumer outcomes in energy markets only require addressing structural barriers to participation in the market and providing consumers with plentiful choice, clear information, and comprehensive protections.

We note that diverse needs can be accounted for in many ways, without necessarily designing for every individual requirement. The Paper rightly observes that the existing regulatory approach with its focus on solving discrete problems is unlikely to yield such holistic solutions. We wholeheartedly agree. However, the proposal to hew to a "preference for market-based solutions" may undermine this intent.

This preference, reflected in the Commission's decision-making framework, assumes that "market-based solutions that drive competition" are the most effective and efficient way to achieve the goals[1] outlined in the National Energy Objectives (NEO) and deliver the best outcomes for consumers. This seems to suggest a binary choice between 'market-based' and regulated solutions, which is a misunderstanding of the fundamental role of regulation in creating and maintaining effective markets.

Regardless, we commend the Commission for clearly outlining its starting preferences and assumptions. We are however concerned that this stated preference for market-based solutions may unduly limit consideration of alternative approaches that could better serve the long-term interests of all consumers.

The Commission's reliance on market-based solutions is less an evidence-based commitment than an ideological one. Markets, narrowly understood, are not inherently the most efficient or effective way to deliver outcomes – especially when it comes to essential services like energy. The effectiveness or otherwise of markets depends on their design and the circumstances of the consumers interacting with them. There is ample evidence, both within and beyond the energy sector, of markets producing inefficiencies, consumer harm, and inequitable outcomes.

To its credit, the Commission's framework acknowledges that "practical considerations may require a different approach to market-based solutions" during the energy transition. Pricing is one such area where a departure from market orthodoxy is not only justified but necessary. For instance, in recognising that price signals at a retail level may not be an efficient (let alone appropriate) means of influencing consumer behaviour.

If this review is to produce genuinely good (not just less deficient) outcomes for consumers, the Commission must be willing to set aside ideological commitments and adopt a more flexible and nuanced approach by giving precedence to consumer realities over economic theories.

Recommendation 1

The review should prioritise practical, evidence-based solutions that enhance outcomes for all consumers, rather than adhering to market ideology or a conviction in promoting competition for its own sake.

We understand the four consumer archetypes are intended to provide a reasonable starting point from which to consider the diversity of consumer needs, experiences, and preferences. We are

[1] Namely, the efficient investment, operation and use of energy services.

however concerned that the archetypes embody implicit value judgements and inappropriately ascribe intent by suggesting consumers express certain preferences based on their circumstances. All consumers should be regarded as equal in their desire for access to sufficient energy to meet their needs for as little cost as possible.

By starting from this premise, two broad groups of consumers emerge. The first, much larger group, simply wants to use energy when they need it and pay a fair price for it. These people may or may not have CER.

The second, arguably much smaller, group consists of those consumers more willing to take some responsibility for how and when they use energy and how they pay for it because they feel this will either better meet their needs or deliver a lower cost. Neither of these two groups are defined by whether they have access to CER or not. Their differences come from how much responsibility they want to take in managing their energy use and costs.

The Paper does not adopt this framing. Instead, the archetypes are underpinned by an apparent assumption that higher levels of engagement with the energy market are inherently good and necessary to secure decent outcomes. For example, the axis relating to the consumers' "opportunity to act" suggests this opportunity is desirable and should be realised.

This framing is significant because it suggests that consumers who have the opportunity to act but choose not to are justifiably penalised or left worse off. This problematic assumption has long affected the energy retail market, where consumers who do not actively shop around are seen as having invited or chosen the higher prices they pay.

This review must avoid making value judgments or classifying consumers based on the resources at their disposal, as these assumptions are not accurate or durable. A better approach would be to consider how much responsibility each consumer wants to take in managing their energy use and costs. This is more likely to capture the full range of experiences across the consumer spectrum and better reflect consumer preferences.

Recommendation 2

The consumer archetypes should be reviewed and refined to emphasise consumers' willingness to actively manage their energy use and costs.

3. Focus on delivering a simple, affordable, universal offer

We agree that the energy market should offer a range of products that reflect and meet the needs of consumers. However, it may be unrealistic – or at least questionable – to expect that these diverse needs can all be met while simultaneously lowering overall system costs. Energy is first and foremost an essential service, and consumers must be able to use it based on need. Accommodating a wide range of consumer preferences is likely to increase costs, at least to some extent.

This does not imply that opportunities for flexibility, efficiency, and better integration of CER do not exist. But where there is a tension between meeting consumer needs and reducing system costs, we believe the Commission should prioritise designing a market and regulatory framework that meets the needs of all consumers. It is not reasonable to expect all or even most consumers to modify their behaviour solely to suit market efficiency goals.

We also question whether regulation should focus on actively seeking to enable a wide array of offerings. Instead, it should ensure the market delivers the outcome that most consumers want: a simple, affordable, and fair energy service. This product is unlikely to emerge as a result of competitive forces (as has been demonstrated to date) and should therefore be the primary objective of the review.

Consumers want energy to be available when they need it and affordable at the time they use it. They are not inherently seeking a wide range of options, but rather a product that dependably meets their needs. A single well-designed offering could be sufficient in many cases. That is, variety is not a requirement if the core service is effective. To the extent that variety is desirable, it should be realised as a smaller number of variants where value and difference are easily discernible, rather than a large plethora of offerings that are practically indistinguishable.

In our view, regulation does not need to enable diversity for its own sake but simply provide space for it. A well-designed and genuinely affordable simple offer could organically lead to a range of more sophisticated products – provided retailers and other service providers are required to demonstrate that these offerings deliver genuine extra value relative to the 'baseline' simple offer.

By focusing regulation on delivering 'basic' outcomes, innovation can be directed toward solutions that align market incentives with consumer interests – rather than having blind faith that a largely unfettered retail market will spontaneously deliver innovation and equitable outcomes.

The Commission's emphasis on "bookend" products should be refined to focus on enabling a simple, affordable, universal offering. That is, the primary objective should be to enable a suitable product for most consumers who cannot or choose not to actively engage with the energy market. The secondary consideration can then be how flexibility and the development of more sophisticated products can be developed in a framework designed to optimise this universal offer.

Recommendation 3

The design of bookend products should prioritise enabling a simple and affordable offering available to all consumers.

It is neither necessary nor desirable to design a framework that anticipates every possible flexible offer. It is not an objective of good market design, particularly in a market for an essential service, to accommodate every possible product. As we noted in our previous submission[2], the goal should not be to accommodate all service and pricing possibilities but to identify and meet the common needs and preferences of all consumers. Within that framework, necessary flexibility can then be incorporated to deliver greater efficiency.

This starts with addressing the needs of consumers who do not or cannot engage with the market in ways currently required to secure decent outcomes. Only once these outcomes are guaranteed

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2 See JEC submission to Electricity pricing for a consumer-driven future: Consultation paper.

should attention shift to integrating more dynamic arrangements that contribute to system efficiency.

While optimising the utility and value of CER to the system is critical, we caution against designing a framework that seeks to maximise benefits for consumers with CER on the assumption that the broader benefits – in the form of lower system costs – will flow to those without CER. This approach exacerbates inequality and unfairly places the risk that these assumed benefits do not materialise on consumers experiencing disadvantage or vulnerability.

Consumers without CER should not have to rely on those with CER to behave in a manner that reduces overall system costs, to ensure they are not left worse off. Conversely, assuming that equity is delivered if overall system costs are lowered against a hypothetical counterfactual is inappropriate.

While we disagree with the 'basic' nomenclature, we support the Paper's characterisation of 'basic' offerings as those where "any underlying wholesale or network price risks or opportunities would be completely managed by an intermediary such as the retailer, with the customer experiencing as little cost risk as possible".

Likewise, while we support shifting cost risk away from consumers under such offerings, this must not undermine the essential nature of energy services. We are deeply concerned by proposals to include products that impose limits on consumption as part of the suite of 'basic' offerings. Such products are an inherently retrograde step in the delivery of an essential service, which would exacerbate inequity and condemn a significant cohort of consumers to a second-rate energy service.

Recommendation 4

Simple, affordable universal offerings must exclude products that impose fixed consumption limits or rely on pre-payment platforms.

In our view, the path to improving retail product offerings must start with requiring retailers to bear greater exposure to risk, cost-reflective network price signals, and market volatility, and to actively manage these risks on behalf of consumers.

Experience and evidence demonstrate that where retailers are not required to manage these risks, they do not. This is not a criticism of retailers but rather an indication of a reasonable and rational response to prevailing incentives. We would not expect any profit-making entity to voluntarily expose themselves to greater risk than necessary. However, where retailers are not fulfilling this function, it shifts the burden onto consumers who are ill-equipped to understand, manage, or appropriately price these risks.

4. More contestability and choice can make markets less effective

The Paper puts forward the view that "an effective retail market is most likely to deliver on the objectives of this review". Implicit in this statement is a recognition that the current retail market is ineffective and continues to produce poor outcomes for many consumers – a view we strongly share.

However, we challenge the framing in the Paper that simply equates an “effective” market with a “competitive” one. Competition can indeed be a feature of effectiveness but it is not synonymous with it. Effective markets can be delivered without competition, and competitive markets can be incredibly ineffective. The Paper outlines several characteristics of a workably competitive retail electricity market, including:

- Prices that trend toward efficient costs over time
- Quality of service that matches consumers' expectations
- Choice of products and services consistent with consumers' preferences
- Many retailers participating in the market, with no sustained market power for any individual firm
- Sufficiently high rates of consumer switching between retailers and offers, ensuring competitive pressure on retailers

We dispute several of these premises.

First, the number of competitors in a market does not correlate with effective competition. The current retail market illustrates this point well. In practice, most retailers offer similar products with limited innovation, while a small subset competes at the margins – creating the illusion of competition without delivering broader benefits to all, or even most consumers.

Second, switching rates are not a proxy for effective competition. Consumers frequently switching providers does not imply their interests are aligned with those of the market, or that this switching is delivering a better outcome for that consumer or any others. What matters are the outcomes they experience: What are consumers paying for their energy service? Are most consumers facing efficient prices? If competition does not lead to better outcomes for all consumers, it is fundamentally not effective.

Third, competitive pressures do not change that retailers, by definition, have competing interests with consumers. The assertion that “enabling the full spectrum of electricity products and services…will help ensure consumer engagement with the retail market is not just superficial” overlooks this fundamental tension.

The assertion suggests that if the right products and services exist alongside appropriate tools to make meaningful comparisons across them, the competitive market will facilitate consumers rationally finding their way to a best-fit offer. This has been an article of faith for several decades, despite consistent evidence that consumers can never be sufficiently informed or empowered to successfully guarantee a fair price offer for their energy needs.

This assumption also overlooks that retailers have little incentive to ensure consumers are on an offer that is appropriate for them. In fact, retailers benefit most when customers remain on poorly matched offers since such offers entail a larger margin between the costs the consumer imposes on the retailer and the price they pay for the service.

Recommendation 5

The effectiveness of the retail electricity market should be measured by the market's ability to deliver fair, affordable, and accessible energy services to all energy consumers – not by the number of competitors or the rate of consumer switching.

While we welcome recent reforms aimed at making it easier for consumers to identify and switch to a better offer these do not address the deeper issue: the expectation that consumers must continually "shop around" to secure fair outcomes. Again, the unstated implication here is that consumers who do not shop around are either choosing to pay a premium or otherwise deserve to. This is not a sustainable or equitable model in the delivery of an essential service.

While we support the intent of the work underway to strengthen consumer protections, we consider it insufficient[3] to address overarching issues in retail electricity markets. We are concerned the Paper suffers from a similar deficiency. That is, the Paper does not meaningfully challenge the assumption that more and better competition on its own, is sufficient to produce the outcomes consumers want. As we argue above, competition is not an end in itself; it can be enhanced without delivering genuinely good outcomes for consumers.

As we note in Section 4, consumers do not necessarily want an endless variety of retail offers. This is because consumers gain no additional utility from switching – electricity itself is a uniform product. Put simply, an electron is an electron is an electron. In the current market, switching is driven entirely by financial considerations and loss aversion rather than by meaningful differences in service.

As such, an effective retail electricity market should be conceptualised as one that delivers the service consumers need at an efficient price. Offer diversity may be a feature of an effective market, but it is not inherently desirable. That is, an effective market could deliver good outcomes for all consumers but include relatively little diversity across offers.

5. Driving better outcomes for consumers via tariff-setting improvements

Network tariffs are not designed to meet the needs and preferences of retailers – nor should they be. Tariff design should be independent of retailer preferences, focussed instead on sending efficient price signals that reflect efficient costs of usage at the connection point. While retailer

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3 See recent JEC submissions on consumer retail protections: JEC et al, 2024, *Submission to AER Review of Payment Protections in the National Energy Customer Framework*; JEC et al, 2025, *Joint Submission to the AEMC on Changes to Retail Energy Contracts* and JEC et al, 2025, *Joint Submission to the AEMC on Improving consumer confidence in retail energy plans: Draft Determination*; JEC et al, 2025, *Joint Submission to the AEMC on Assisting Energy Hardship Customers Rule Change* and JEC et al, 2025, *Joint Submission to the AEMC on Assisting Energy Hardship Customers: Draft Rule Change*; JEC et al, 2025, *Joint Submission to the AEMC on Improving the ability to switch to a better offer*; JEC et al, 2025, *Joint Submission to the AEMC on Improving the application of concessions to energy bills*; JEC et al, 2025, *Joint Submission to Commonwealth DCCEEW on Better Energy Customer Experiences*

concerns about complexity or packaging may be valid from their perspective, they are secondary to the core objective of cost-reflectivity in the interests of network efficiency.

We acknowledge that achieving this may require rebalancing network tariff components to better signal network constraints and recover fixed costs. We regard this as a parallel but separate concern. In any case, we welcome the Commission's recognition of the challenges posed by the requirement that network service providers (NSP) design tariffs with retail customers in mind.

The 2021 amendments to the NER allow networks to design tariffs that are reasonably capable of either:

1. being understood by retail customers that are or may be assigned to that tariff (including in relation to how decisions about usage of services or controls may affect the amounts paid by those customers); or

2. being directly or indirectly incorporated by retailers or Small Resource Aggregators in contract terms offered to those customers.

In essence, the NER permits networks to design tariffs that are either consumer-comprehensible or retailer-compatible.

Despite this flexibility, network tariff design is currently most often driven by the expectation that consumers will directly engage with and respond to these tariffs. We question whether networks should be engaging with consumers on tariffs at all, given:

- Questions on network tariffs are confused and subject to potentially insurmountable (and unnecessary) complications that undermine clear expression of consumer preference.

- Consumers assume network tariff structures and assignment policies will be passed through by retailers, which is neither required nor necessarily desirable.

- Networks cannot guarantee how retailers will repackage tariffs or what choices consumers will have at the retail level.

We reject the notion that shortcomings in tariff design stem from limited retailer involvement. The requirement for retailer engagement in tariff setting has been deleterious to the process, undermined consumer outcomes, and used by retailers to avoid pressure to innovate.

In our experience, networks actively seek retailer input – often behind closed doors. Given retailers rarely participate in public forums, this leaves networks to relay their views to consumers without scrutiny. This lack of transparency undermines consumer trust and genuinely informed decision-making.

While retailers may have limited formal involvement in network tariff setting processes, they continue to exert significant influence over tariff design. This influence typically manifests in three ways[4]:

- **Threats or assertions of full pass-through**: Retailers may claim they will pass through network tariffs without modification, particularly when tariffs are more cost-reflective and perceived as too complex for consumers to understand or manage.

- **Refusal to pass through certain tariffs**: Retailers may indicate they will not pass through tariffs that are designed to be more consumer-focused, potentially undermining efforts to improve affordability or accessibility.

- **General rejection of proposed tariffs**: Retailers often argue that new tariffs are unworkable due to increased system requirements, operational complexity, or the need for costly upgrades. These objections are common across most proposals unless they closely align with existing practices. Such claims are rarely supported by evidence and are not subject to validation, limiting stakeholders' ability to conduct meaningful cost-benefit assessments.

Retailers have considerable sway in tariff design and have used this influence to delay reform. Again, this is not a criticism of retailers as such. Indeed, these are broadly accepted as rational responses given retailers have little incentive to voluntarily change established business models or invite risks from managing new cost structures. This is precisely why their perspectives on tariff reform should be carefully scrutinised and appropriately contextualised.

Recommendation 6

The roles and responsibilities of retailers in network tariff-setting processes should be reassessed and clarified.

We consider network tariffs a price signal to retailers, who are better equipped than consumers to manage this price risk alongside the others they already face. However, retailers have shown little willingness to manage this risk voluntarily. If we want retailers to manage this risk, regulatory frameworks for both network tariffs and the retail market must be designed to require and support this role.

This is not an unreasonable expectation. Retailers already manage significant wholesale price risk and can arbitrage risk across a portfolio of customers. Requiring retailers to manage network price risk would better align their incentives with those of consumers. In facing these risks, retailers would have an incentive to partner with customers to reduce network costs and promote smarter energy use.

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4 See PIAC submission to AER Draft decision 2024-29 Revenue Determinations: Ausgrid, Endeavour, and Essential Energy, pp. 4-5.

Recommendation 7

A simple, affordable universal offer should include a requirement that the retailer manage network price risk on behalf of the customer.

We support exploring ways to improve consistency and standardisation in network tariff design to ensure these signals are more predictable and manageable. We also welcome constructive collaboration between networks and retailers to develop tariffs that facilitate the provision of a simple, affordable, and fair energy service offer.

However, these efforts must not compromise the broader shift towards more cost-reflective and efficient network tariffs. We recognise the inherent tension in designing retail prices that signal both network constraints and resource scarcity in the wholesale market. However, arguably this tension is more manageable for the retailer than it is for individual consumers. We urge the Commission to explore this tension further as part of the next stage of this review.

6. Towards fairer network price signals

The Paper sets out that under current arrangements:

- Network tariffs do not share the costs of paying for distribution infrastructure fairly among electricity consumers and may not be suitable for future consumers; and
- Network tariffs sometimes send price signals to consumers that unnecessarily work against wholesale market signals.

We support the first premise and note this issue is particularly pronounced for consumers without CER. This is because consumers with CER often “pay less for network services without necessarily contributing to reducing future network costs”. As CER uptake grows, this risk transfer stands to shift further costs onto consumers who do not benefit from them, did not cause them and are least equipped to manage them.

Our understanding of the intent behind more cost-reflective network tariffs is to address this imbalance at the distribution level and ensure a fairer distribution of network costs.

The second issue relates to the potential misalignment between network and wholesale market signals. The Paper notes that such misalignment is not inherently problematic if both signals accurately reflect underlying cost drivers, however it becomes problematic when:

- Network signals conflict with wholesale signals, and
- Network tariffs fail to reflect the true drivers of network costs.

We question the practical implications of the first point. That is, network signals should reflect constraints and the long-run cost of incremental demand at the connection point. We are concerned that attempting to align network and wholesale price signals may create more problems than it solves. Aligning these signals may limit risks for retailers but can result in poor outcomes for consumers – for example, through the inadvertent creation of new network peaks, and associated escalating network investment needs, due to non-dynamic 'solar soak' tariffs.

The more salient issue with network tariffs is the assumption that consumers can or will respond to price signals they never directly see, as these signals are bundled with other costs in their retail electricity price. The issue is compounded by the growing number of consumers with CER, who can largely avoid network tariffs by reducing their exposure to wholesale costs.

Retailers should face network prices that reflect the long-run cost of incremental demand at a connection point. More cost-reflective network tariffs would help ensure that consumers with CER contribute their fair share of network costs. We acknowledge that such a transition is not without its challenges given many CER investments are predicated on the belief, however misguided, that they will lead to energy cost independence.

This issue could be addressed in part by providing consumers with greater confidence that the efficiencies gained through more cost-reflective pricing will accrue to them – as opposed to being absorbed by other parties in the supply chain. Cost reflective network tariffs should be designed such that they promote a fairer distribution of network costs and provide consumers with a fair return on their investments and efforts.

The South Australian experience with mandated cost-reflective retail pricing illustrates the need for stronger regulations to ensure these benefits flow to consumers. Retailer practices such as not passing on off-peak network savings, while still charging full peak rates or aligning pricing with the shape of network tariffs but applying such high premiums during peak periods that many consumers find it impossible to manage their costs, erode trust.

A recent IPART review[5] further clarifies this point. IPART found that although network tariffs with demand charges were designed to offset other charges – resulting in either a neutral impact or potential 'savings' – retailers were simply adding the demand charges on top of existing costs. This practice not only undermines the intended consumer benefits but discourages consumers that are willing and able to respond flexibly from doing so.

Such approaches are increasingly leading consumers to question whether the retail price they face is reasonable. As such, we urge the Commission to examine what efficient network price signals should look like alongside questions of how consumer benefit and trust can be safeguarded in the delivery of retail energy services.

7. Continued engagement

We welcome the opportunity to meet with the AEMC project team and other stakeholders to discuss these issues in more depth. Please contact Jan Kucic-Riker at jkucicriker@jec.org.au regarding any further inquiries

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5 IPART Annual report: monitoring the NSW retail electricity market 2023-24.