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[www.aemc.gov.au](http://www.aemc.gov.au)

### **ACAT Submission**

#### **Issues Paper – Review of the effectiveness of competition in the electricity market in the ACT Project Number EPR0017**

The ACT Civil and Administrative Tribunal wishes to make the following comments 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 ACT Energy and Water Consumer Council.

Under Part 12 of the *Utilities Act 2000*, ACAT is responsible for determining hardship applications and non-hardship 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. Contravention 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.

On 1 March 2009, ACAT was given 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 (ICRC).

Under the Utilities Act, the ACAT has power to direct an energy or water utility to pay compensation to a customer or consumer where there is a contravention of the regulatory framework by the utility, to direct a utility to restore or maintain energy or water supply to a residential customer in substantial hardship, and to discharge part or all of a hardship customer's residential energy or water debt. Amounts of debt discharged by the ACAT are reimbursed by the Territory to the utility.

## **ENERGY & WATER**

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For more than 15 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.

## **1. Characteristics of the ACT electricity retail market**

The ACT has some unique characteristics which should be taken into consideration in the Review.

### Energy is an Essential Service in the ACT

As a consequence of the winter climate in the ACT, energy must be viewed as an essential service for ACT consumers. A number of elderly and disabled people in the ACT face death or serious illness if their energy supply is significantly disrupted during the winter months. This may be one reason for the unique statutory role that ACAT performs in relation to energy hardship in the ACT.

### Load Profile

The Territory's residential load profile is markedly different from metropolitan New South Wales, Queensland and South Australia. The main peak load is a winter heating peak rather than a summer air conditioner peak. This may result in a different energy price for the ACT than for those States, and underlines the importance of considering energy (electricity and gas) supply and pricing in the ACT as a whole, rather than focussing only on electricity.

### Bundling Contracts

ActewAGL's ownership interest in, and management of the contract for, the telecommunications utility TransACT is an important driver for retail energy competition in the ACT. The connection between the providers has led to bundle offers where negotiated energy contracts occur. Bundle offers occur because of the cross-selling opportunities between energy and telecommunications rather than competition within the gas or electricity markets.

## **2-5. Market structure and entry into electricity retailing in the ACT**

### Electricity Market Competition in the ACT

When the ACT residential electricity market was opened to competition, two retailers – EnergyAustralia and TRUenergy - entered the market in competition with the incumbent retailer and distributor, ActewAGL. Several other retailers (eg. CountryEnergy) acquired a small number of customers because of circumstances other than marketing activities.

EnergyAustralia was the first new entrant to the ACT market. It offered both electricity and gas contracts, often delivered in a single dual fuel contract. In these contracts pricing was generally offered as a discount from the published TFT price. TRUenergy entered the market a little later. Its marketing strategy relied on door-to-door teams operating on a suburb by suburb basis. TRUenergy offered a discount from the published TFT price and on occasion, a sign-up gift.

ActewAGL Retail responded to the new entrants with a "win back" campaign. It offered discounts from the TFT for existing customers who entered negotiated contracts with the utility. More recently, the focus of ActewAGL's marketing has changed to bundle contracts. These contracts offer an increased level of discount from the customer's electricity or telecommunications bill according to the number of ActewAGL and TransACT services bundled into the one contract. Services offered in a bundle contract can include electricity, GreenChoice electricity, gas, home telephone, broadband, ISP, subscription TV

and mobile phone. We understand the current maximum discount to be 25% off the customer's electricity or TransACT bill (with a cap) for seven bundled services.

TRUenergy ceased marketing activities in the ACT some time ago. Energy Australia have retained existing customers in the ACT (less churn) but are not accepting new customers or, as we understand it, requests for a gas service from an existing electricity customer.

Accordingly, there is no current significant competition in the ACT electricity market and no marketing activities other than promotion of bundling by ActewAGL.

#### Competition and the Regulated Transitional Franchise Tariff (TFT)

There is no competition in the ACT domestic retail gas market. Given the strong links, and possibility of substitution, between gas and electricity in the Canberra winter energy market, the lack of competition in the ACT gas market suggests that the electricity TFT may have little or no relevance to the current absence of competition in the ACT electricity market.

The ACAT sees potential customer disadvantage in setting an artificially high electricity TFT so that "competition" can provide discounts from that price for the small segment of the ACT population who are likely to enter into non-franchise contracts. The ACAT agrees with the ICRC's view that "the regulated price would need to be raised well above the current level to encourage vigorous competition in the ACT and that this would conflict with the requirements of section 20 of the ICRC Act" (p 10, Report 2 of 2010). The TFT currently delivers good value to ACT consumers.

#### **6-15. Market conduct in the ACT**

During the period of active energy marketing in the ACT, a large proportion of ACAT's non-hardship complaints by customers related to marketing activities and the operation of the contestable market. The complaints varied widely but the majority fell into the following categories:

- Marketing conduct: failure to obtain informed consent; failure to observe regulatory requirements both in door-to-door marketing and in telemarketing; misleading information.
- Contracts: problems in the form of contracts and the arrangements for entering contracts; bundling issues.
- Transfer of supply: failure to transfer; delay in transfer; competing transfers (eg after a "win-back" contact), customers lost in cyberspace.
- Poor customer service.

Problems in transfer of supply and poor customer service continue to be the subject of complaints, particularly in relation to gas. Market conduct complaints are rare.

#### **15-17. Market performance in the ACT**

As stated above, ACAT sees no value in creating an unnecessarily high TFT so that energy companies can "compete" by offering a small discount from the TFT.

#### **18-19. Consumer access to a competitive market**

At this stage, the ACAT has observed little action by retailers to assist customers experiencing difficulties in participating in the contestable retail electricity market in the ACT. Because the ACT market is relatively small it may not be cost effective for interstate retailers to adapt existing web-based or print material to the ACT market.

### **Invitation to Consult ACAT**

In the Issues Paper at 3.3.2, the Commission notes that some information about anti-competitive conduct may be recorded by ACAT.

The ACAT, with its heritage bodies, has 9 years experience in investigation and resolution of customer complaints with seven years in a contestable energy market. The Tribunal holds data on complaints which include problems arising from marketing activities, churn between retailers, bundling contracts and customer contracts generally.

The ACAT invites the AEMC to identify what ACAT data may be useful to this Review and to discuss with the ACAT how this information might be provided, for example through data reports and evidence at Public Hearings.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Linda Crebbin', is written over a horizontal line. The signature is fluid and cursive.

Linda Crebbin  
General President

8 April 2010