

ATA Governance Review Presentation Script

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Over the past six years, as an advocate for Australia's residential energy users ATA has had strong, continuous and, for the most part, productive engagement with AEMO across a number of different processes and working groups.

More often than not, ATA is the sole consumer advocate, and only non-industry representative, in AEMO market development processes.

As such, ATA are uniquely placed to provide informed insights into the nature and impact of governance issues at AEMO. (We aren't singling out AEMO, we are using our limited resources to add the most value without duplicating the excellent work of PIAC who are covering the rest of the NEM).

Accordingly our submission makes a number of specific recommendations intended to address matters of representation, accountability, transparency and process with respect to AEMO and the IEC, and the panel will be pleased to observe that we've thrown some evidence in there for good measure.

Some people say AEMO is captured by industry. As a criticism I think that's harsh, but fair. I'll give you 3 reasons it's harsh, and three reasons it's fair.

The first reason it's harsh: Let's be realistic - we're all overwhelmed by industry's lobbying power, not just AEMO.

While industry stakeholders don't always agree on everything, each of Australia's 20ish network businesses, dozens of retailers and hundreds of generators shares a common goal: to maximise their revenue and profitability.

That's hardly surprising and shouldn't be controversial to say. Be they regulated or competitive, be they government owned or privately owned, that's what they are accountable to their shareholders to do.

The revenue they can achieve is inextricably linked to whatever the rules allow and how effectively the regulator can do their job.

Industry has everything to gain, and little to lose, by collectively investing hundreds of millions of dollars each year lobbying energy market institutions and governments

Hence in regulating network businesses for example, the AER grapples with ream on ream on ream of pages of proposals and consultant reports from each network business.

(Let's face it - most of the expenditure beyond that first ream steps well over the boundary of necessity into the territory of lobbying)

The journey from proposal to the inevitable appeal and tribunal decision looks less like balanced regulatory process and more like death by ten thousand papercuts, with the AER on the receiving end.

I wish I could say the energy market is captured by the regulator, but that's not going to happen under the current arrangements.

Given consumer advocates would be lucky to collectively have one dollar for advocacy for every hundred dollars that industry does, we're even further from the point where the energy market is captured by consumers.

Which brings me to the second reason it's harsh to point the finger at AEMO about industry capture:

That is the people at AEMO have genuinely improved and broadened their stakeholder engagement in recent times, including with consumers.

When I started dealing with AEMO in my role as a residential consumer advocate late last decade, I felt I was walking in on a closed shop.

Today however AEMO allows consumers and other interested stakeholders into their industry forums, actively engages consumers in relation to some change processes, and has even established a dedicated consumer forum which has been valuable in helping consumer advocates to better understand many aspects of AEMO's role

The third reason that it's harsh to say AEMO are captured by industry is that status quo is just that the way AEMO (and its predecessor NEMMCO) has always done things and it didn't matter a decade ago.

Back then the energy market enjoyed a predictably growing demand which drove confident investment in all parts of the supply chain, competition was on a level playing field where energy flowed one way through the system to passive consumers, money flowed the other way and all AEMO (or NEMMCO) had to do was make sure the sausage machine kept working efficiently and everyone was happy.

But now demand has dropped, and with it confidence and profitability of investments.

The playing field has become lumpy as supply and demand side solutions compete as energy and money flow every which way in the decentralised energy system that now looks less like a sausage machine and more like an episode of My Kitchen Rules.

The same arrangements that worked a decade ago are simply not fit for purpose now,

Which leads me to the first reason it is fair to say AEMO is captured by industry - The arrangement for the Information Exchange Committee, or IEC

The IEC is the statutory body responsible for processes and procedures that, in some respects, have a similar standing to Rules.

The IEC representation comprises only retail and distribution businesses and 'independent' members who are appointed by industry members.

The IEC is not directly bound by the NEO (it has an efficiency objective, but this is not the same as the long term interests of consumers).

It has been put to me that the IEC is not directly accountable to any external institution and that the IEC effectively has powers over AEMO's board.

The IEC's chosen approach of allowing 'observers' to meetings and discussions is commendable for the purposes of transparency.

However in and of itself this does not allow for adequate representation or accountability. The problem of the IEC lacking independence will become worse with time as the energy market evolves to adopt new products, services and participants

If an 'industry' body is tasked with governance that impacts access to innovative services and/or services – as the IEC would be if current arrangements persist – then all parties need to be fully represented in a decision-making capacity.

ATA recommends that the constitution and/or rules relating to the IEC and related working groups are changed to make clear that the IEC must adhere to the NEO, and direct representation by consumer advocates and potentially providers of new products and services.

We note that AEMC are investigating this issue as part of their metering reforms.

The second reason that the criticism seems fair is because AEMO are clearly siding with industry on some energy market development matters.

In fact, some actions by AEMO in recent years indicate an entrenched reluctance to promote reforms that are intended to benefit consumers by improving system efficiency and opening the market to new products and services that compete with existing energy businesses (those businesses are for the most part AEMO's members).

One example of this occurred in 2013. AEMO were tasked by the SCER to submit the Demand Response Mechanism (DRM) Rule Change proposal to the AEMC. To cut a long story short (you can read the full saga in our submission) in response to pressure from incumbent generation and retail businesses AEMO opted instead to hand this task back to SCER.

This is in spite of the facts that:

1. this reform is part of COAG Energy Council's reform agenda;
2. this reform is widely understood to lead to better outcomes for consumers; and
3. AEMO are bound by the National Electricity Objective (NEO) to act in the long term interest of consumers, not the short term interests of incumbent businesses.

And that ties in with a third reason that AEMO might be captured by industry - AEMO's interpretation of the long term interests of consumers.

Rosemary from ECA posed the question - is there a shared view of what is the long term interest of consumers?

It seems that AEMO's 5 step approach to cost benefit analysis goes thus:

- Step 1: Ask incumbent businesses how much it is going to cost to introduce a reform that they don't like
- Step 2: Businesses respond with a lot of large and highly questionable numbers
- Step 3: AEMO copies and pastes these numbers into the 'Cost' column of a CBA without further scrutiny
- Step 4: AEMO hastily gathers scant and conservatively low figures for the 'Benefit' side of the equation
- Step 5: Viola - this very negative number is the net benefit of the pro-competitive reform in question.

AEMO don't always use this approach though - sometimes they just ask incumbents whether a change to their systems might inconvenience them or not and leave it at that.

It is difficult to identify the extent to which poor outcomes arise from AEMO's ownership and membership, which are cultural and which simply the result of incumbent energy businesses are being overwhelming better resourced than AEMO and then consumer advocates.

In any case, all of these issues point to the need for governance improvements, and none justify the poor outcomes. Accordingly, ATA recommends that the panel considers whether AEMO require changes to strengthen AEMO's independence and restrict industry's ability to obstruct reforms that are in keeping with the NEM.