



Information Bulletin

8th Council Meeting
14th December 2016

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Sydney NSW 2000

Energy Consumers Australia attends, as an observer, the meetings of the Council of Australian Governments (COAG) Energy Council. The three market institutions, namely the Australian Energy Market Commission (AEMC), the Australian Energy Regulator (AER) and the Australian Energy Market Operator (AEMO) also attend as observers.

This bulletin draws on the Meeting [Communique](#) the Energy Council publishes after each meeting.

Meeting Communique (opening paragraphs)

Ministers acknowledged that they were meeting at a critical time for Australia's energy market as they work to maintain the security, reliability, affordability and sustainability of the national energy system for all Australians.

Ministers agreed to significant reforms to the Limited Merits Review regime, the Regulatory Investment Test for Transmission and the gas market, including continued implementation of the gas supply strategy.

Ministers recognised the need to guide the transition of the National Electricity Market from a system of centralised, synchronous generation designed for a different electricity market to a more distributed, low-emissions, flexible electricity system driven by new technologies and changing consumer preferences.

The lead up to the meeting was dominated by an intense debate about climate policy.

Energy Consumers Australia issued a [statement](#) welcoming the Finkel Review's Preliminary Report on 9 December 2016. Energy Consumers Australia was part of a coalition of organisations that issued a [joint statement](#) about the need for integrated energy and climate policy on 13 December 2016.

The Energy Council meeting was however one of the most consequential in recent times. Substantive decisions were taken on three key matters – gas pipeline regulation, the Limited Merits Review regime for network revenue determinations, and the regulatory investment test for transmission (RIT-T). Dr Finkel was also asked to fast-track consideration of a number of essentially technical measures to strengthen the National Electricity Market (NEM).

Each of these matters is addressed in detail below.

Key outcomes of the Energy Council meeting

The most significant outcomes from the Council meeting were decisions on:

- progressing the Finkel Review;
- advancing gas market reform;
- the review of the Limited Merits Review regime; and
- the review of the Regulatory Investment Test for Transmission (RIT-T).

A Blueprint for the future of the National Electricity Market

Dr Finkel briefed the COAG Energy Council on the Preliminary Report on Wednesday 14 December 2016. The [Energy Council Communiqué](#) stated that:

“The future security of the National Electricity market (NEM) remains the top priority of the Council.”

Given the significant concerns amongst consumers and businesses about energy security it is a positive step that the Energy Council agreed on 14 December 2016 to fast-track additional measures to strengthen the NEM and “accelerate proof-of concept projects in order to respond to security and reliability issues identified in the Preliminary Report”. Ministers will consider these measures in February 2017.

Analysis from the AEMC/AEMO Report, including the impacts of the three options for emissions reductions policies, is being considered by Dr Finkel in the course of his review.

The impact of the transition already underway to more renewable generation on wholesale market prices, and therefore the electricity bills of households and businesses was evident in the AEMC’s latest [Residential Retail Price Trends Report](#). The AEMC expects average bill increases in all jurisdictions except Queensland and Tasmania, to range from 2.4% to 9.3%. Retail electricity prices and the competitiveness of the retail market are also key considerations of Dr Finkel.

An overview of the Preliminary Report and Energy Consumers Australia’s initial reactions are set out in a separate Information Bulletin on the Finkel Review [here](#).

Outcome of the Vertigan Review

The Energy Council appointed Dr Michael Vertigan AC in August 2016 to examine, in consultation with stakeholders, whether a new test for determining if a gas transportation pipeline should be subject to economic regulation is needed. The Energy Council released Dr Vertigan’s report [Examination of the Current Test for the Regulation of Gas Pipelines](#) following the meeting.

In his report Dr Vertigan drew the following conclusion:

It is clear that pipeline owners do have market power and, based on submissions by, and discussions with, pipeline customers on their experiences in negotiations, the examination concludes that the existing regulatory arrangements require modification.

In framing the solution to this problem of market power Dr Vertigan stated that:

There is not widespread support for increasing the extent of regulation of the pipeline industry and, in fact, significant doubt exists whether such a resolution would address the real concerns of pipeline customers.

Two principal issues have been identified: the information asymmetry between the parties in negotiations, and the superior negotiating position of the pipeline operators. While any solution to address the power imbalance should be backed by a credible threat of regulation, the coverage test is not the focus of the resolution.

Dr Vertigan recommended that:

...the disclosure and transparency of pipeline service costs, pricing and contract terms and conditions be greatly enhanced and a framework for binding arbitration be introduced to the National Gas Law. This approach has the potential to facilitate efficient commercial solutions while avoiding unnecessary regulatory burden.

The Energy Council has tasked Dr Vertigan to work towards commencement of the new arrangements from 1 May 2017, subject to the passage of relevant legislation, and the Energy Council will review the arrangements two years after implementation.

Further details on the Energy Council's work on gas prices and supply can be found [here](#). Information on the work of the Gas Market Reform Group being led by Dr Vertigan can be found [here](#).

Outcome of the Review of the Limited Merits Review regime

Ministers considered the report of the Review of the Limited Merits Review (LMR) regime undertaken by the Department of Environment and Energy for the COAG Energy Council.

Energy Consumers Australia participated in the appeals processes and has consistently made the case for reform to the LMR regime to deliver a framework that works in the long term interests of consumers. Our contribution to this review, which is set out in our 7 October 2016 [submission](#), drew on our experience funding the interventions in the LMR process and extensive analysis of the recent round of decisions.

The Energy Council considered two broad options: the first being to retain LMR, but make improvements to the current the LMR regime; while the second was to abolish LMR. Two other options that were consulted on earlier in the process – maintaining the status quo, or creating a new body to conduct the limited merits review process – were not considered.

As the excerpt from the Communique in the box below details, the Energy Council agreed to retain and reform the current set of arrangements. These changes represent a significant and welcome intervention by the Energy Council to address concerns that the LMR regime was not working as policy makers intended.

The Energy Council's decision is a clear and unequivocal message that the limited merits review process is not about finding and correcting discrete 'errors' in network revenue determinations, but is about ensuring that decisions, on the whole, are consistent with the long-term interests of energy consumers.

The decision to deal with the financial parameters of the revenue determinations through a binding guideline – which will be applied more 'mechanistically' to each network – is particularly welcome and should allow consumer advocates and other stakeholders to engage in these processes in a more strategic and efficient way.

Ministers welcomed the Review of the Limited Merits Review (LMR) regime. The LMR regime is failing to meet its policy intent and is leading to higher prices for consumers. Ministers reaffirmed their strong support and confidence in the Australian Energy Regulator's (AER) performance and ability to make regulatory decisions in the long-term interests of consumers. There was no consensus around the need for the LMR regime to be abolished. However, there was in-principle agreement among Ministers to significant and immediate reform of LMR arrangements, including but not limited to the following areas:

- Tighten and clarify the grounds for review
- Higher financial thresholds for leave which apply to individual grounds for review
- Reviews to be conducted on the papers, rather than through expensive and adversarial oral hearings
- Reviews to be conducted within a strict timeframe
- A strengthened requirement for review appellants to demonstrate that overturning the regulator's decision would not be to the serious detriment of the long-term interests of consumers
- More flexible arrangements for consumer participation in reviews
- Introduction of a binding rate-of-return guideline, with relevant elements of the regulator's decision not subject to merits review
- Remove opportunities for gaming by limiting the timeframes in which material can be submitted to the regulator
- Costs of reviews, including those of the AER, to be borne by network businesses

Ministers have asked for a working group of officials to quickly develop detailed amendments for Ministers' consideration and approval in the first quarter of 2017. Ministers agreed that a further review of the regime be undertaken by officials two years following implementation of these amendments.

Outcome of the Review of the Regulatory Investment Test for Transmission

The review of the Regulatory Investment Test for Transmission (RIT-T) has occurred against the backdrop of the security events in South Australia in September 2016 and Tasmania from December 2015-June 2016 that saw outages that involved loss of supply through the interconnectors to Victoria and Basslink respectively.

- In June 2016 the South Australian (SA) Government announced that it had funded a feasibility study into a second interconnector. South Australia's transmission network Electranet is undertaking the feasibility study and information on the consultation process is available [here](#).
- The joint Tasmanian and Commonwealth Governments' process for investigating a second interconnector is being led by Dr John Tamblyn, and information on the process is available [here](#).

The Energy Council considered the recommendations of the Review of the RIT-T which is yet to be made public. The submissions to the Review can be found [here](#).

The Energy Council reaffirmed the market benefits test which is applied to all new transmission network investments that have an estimated cost of more than \$6 million. The market benefit test identifies the cost and benefits associated with each project along with any alternatives.

The Energy Council also agreed to a number of improvements that align with the objectives of the Finkel Review.

These included:

- ensuring that system security and emission reduction goals are adequately considered;
- low probability but high impact events like the South Australian system black event in September are appropriately taken into account;
- information about transmission networks is more accessible to support more effective engagement by non-network providers; and
- the AEMC will further explore the merits of increasing AER oversight of the RIT T.

Further actions leading up to the July 2017 meeting

While the Energy Council may meet again in February 2017, to consider the early measures that could be recommended by the Finkel Review, other areas of work are expected to be progressed in the period leading up to a meeting in July 2017. These include:

- the Energy Project Team work stream including Retailer of Last Resort arrangements and consideration of the issues around embedded networks; and
- the Energy Market Transformation Project Team work stream including responses to the consultations on battery storage, stand-alone systems and consumer protection.

Contact details

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Background: about the Council of Australian Governments Energy Council

The Energy Council is one of eight standing councils established by the Council of Australian Governments (COAG) in December 2013 to address priorities of national significance, through intergovernmental collaboration and decision-making.

The Council consists of ministers from the Commonwealth, each state and territory, and New Zealand, with portfolio responsibility for energy and resources. The Energy Council meets twice a year, with further work out of session undertaken as needed.

The work of the Energy Council is guided by its terms of reference, which cover the following broad themes:

1. Overarching responsibility and policy leadership for Australian gas and electricity markets, including the development of energy and climate change mitigation policies to enhance the security and efficiency of the National Electricity Market.
2. Promotion of energy efficiency and energy productivity in Australia.
3. Australian electricity, gas and petroleum product energy security.
4. Cooperation between Commonwealth, state and territory governments.
5. Facilitating the economic and competitive development of Australia's mineral and energy resources.

The details of the Energy Council's term of references can be found at

<http://www.scer.gov.au/document-categories/terms-reference>

Energy Council priorities

The Energy Council currently has the following priorities, each of which has an ongoing associated work program.

1. Australian Gas Markets (<http://www.scer.gov.au/council-priorities/australian-gas-markets>)
2. Empowering Consumers (<http://www.scer.gov.au/council-priorities/empowering-consumers>)
3. Energy and Carbon Policy (<http://www.scer.gov.au/council-priorities/energy-carbon-policy>)
4. Energy Market Transformation (<http://www.scer.gov.au/council-priorities/energy-market-transformation>)
5. Improving Institutional Performance (<http://www.scer.gov.au/council-priorities/improving-market-performance>)

The agenda for each Energy Council meeting consists of items of strategic significance and those items requiring action.

The Energy Council has also followed a practice of holding a Stakeholder Roundtable on the same day it meets, usually just before it moves into the formal meeting. The format is based around a series of short presentations from stakeholders, where they speak to research or a policy issue relevant to the work of the Energy Council. The Stakeholder Roundtable is supported by the COAG Energy Council Secretariat.