AUSTRALIAN ENERGY COUNCIL

Mr Warwick Anderson
General Manager, Network Finance and Reporting
Australian Energy Regulator
GPO Box 520 Melbourne Vic 3001
Lodged online at: AERinquiry@aer.gov.au

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AER Consultation Paper – Pathway to the 2022 rate of return instrument

The Australian Energy Council welcomes the opportunity to make a submission on the AER Consultation Paper – Pathway to the 2022 rate of return instrument.

The Australian Energy Council (AEC) is the industry body representing 23 electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. These businesses collectively generate the overwhelming majority of electricity in Australia and sell gas and electricity to over 10 million homes and businesses.

1. How could the Consumer Reference Group (CRG) be adapted to improve their contribution to the review?

The AER notes the feedback received from stakeholders has highlighted the need to improve the technical expertise on the CRG in order to help them engage on substantive matters.

In best practice, stakeholder engagement increases the information available to governments on which they base policy decisions.[1] The AEC notes that criticisms in the Brattle review as to the quality of information provided by reference groups extends beyond consumers to retailers, investors and even experts.[2]

The AEC found the distinction between the Consumer Challenge Panel (CCP) and the CRG confusing. The CCP assists the AER to make better regulatory determinations by providing input on issues of importance to consumers. Regulatory determinations are technical and complex processes which can make it difficult for ordinary consumers to participate.[3] In our view the review is complex and difficult to participate in without requisite expert knowledge, and therefore ideally suited to the CCP.

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[1] OECD, *OECD best practice principles on stakeholder engagement in regulatory policy*, Draft version, July 2019 http://www.oecd.org/regreform/publicationsdocuments/bestpracticesguidelines/2/
[2] Brattle; *Stakeholder Feedback on the AER's Process for the 2018 Rate of Return Instrument*, Paragraphs 51 (P.15), 52 (P.15) and 59(P.17)
[3] https://www.aer.gov.au/about-us/consumer-challenge-panel

2. Is there anything that needs to change about the CRG nomination process?

We have no view on the nominations process.

3. What characteristics should be sought for CRG members?

The AER notes that: *We agree that a level of knowledge on financial concepts is necessary but we are mindful that selection to the CRG based purely on technical expertise could see the group overlap considerably with, and duplicate, the CCP's role.*[4] As a minimum we believe that the CRG should have (or have access to) that base knowledge of financial concepts, along with bringing other expertise presumably not available or apparent within the CCP.

By having access to knowledge of financial concepts, we recognise that this could take a number of paths, including that experts reconsider the ways in which they explain issues. Stakeholder engagement also means understanding stakeholder issues. It may be prudent therefore to understand how one of the major concerns of CRG members, and one of their core areas of expertise, poverty alleviation, can materially be addressed in this process. The terms of reference of the CRG should make that clear.

4. What should the CRG's main role be when in the 2022 process? Should the CRG's main role be to provide technical submissions or more customer focused submissions to the review process?

It is difficult to imagine that customer focussed submissions won't be required to be technical or at least empirical in nature to address the issues raised in the review process.

5. What scope is there for the CRG and CCP to work collaboratively to jointly contribute to the 2022 process?

As noted earlier, we are unsure as to the exact distinction in customer representation that the requirement for the CRG, and the existence of CCP, is in practice. If the issue here is to ensure that attention is paid to marginalised, disadvantaged or less powerful voices than the CCP may currently represent, then perhaps collaboration can mean the CCP being able to assist the CRG give a voice to those disadvantaged groups of consumers in a form that is suitably relevant to the scope of rate of return and sufficiently technical in nature as to have an impact in such arcane subject matter.

The AER also raises that a *..(pairing) between consumer representatives and retailer representatives might be an area for further constructive collaboration in the 2022 process, given that there is likely to be some alignment of interests between these groups.*[5] Whilst retailers would welcome opportunities for constructive engagement with the CRG, it is important to group stakeholders correctly. The pairing of retailers and consumers may not ultimately reflect where these interests are *not* aligned.

6. Does the AER's support of the CRG need to change ahead of the 2022 review? If so, how should that support change?

[4] AER, *Pathway to the 2022 rate of return instrument | Consultation paper*, P.10 https://www.aer.gov.au/system/files/Path%20to%202022%20instrument%20-%20Consultation%20Paper%20-%204%20November%202019%20-%20FINAL%20PUBLIC.pdf

[5] Ibid, P.13

Within the context of the Brattle Report, and our responses to the previous six questions, the AER may need to change some of its approaches to the CRG. We believe that it would be best determined collaboratively by the AER, CCP and CRG together and we have no specific changes to prosecute.

7. Do the IRG and RRG need to be altered to enable them to be able to more effectively contribute to the development of the Instrument? If so, what changes should be made to the groups?

The IRG and the RRG are both concerned with the entire life cycle of the rate of return instrument and its impacts, from sometimes similar and sometimes differing perspectives. As outlined in the Brattle Report, retailers had welcomed the opportunity to participate but had also been criticised in that report for not making direct contributions, for example, as to their cost of capital. Retailers with generation assets are similar to networks in that they are capital-intensive businesses. Retailers do not believe that the long-term interest of customers can be served by setting an inadequate rate of return that does not fund the necessary expenditure to maintain and operate the system safely and securely. Nor is customer interest served by volatile decision-making that reduces investor confidence in the sector.

The RRG in practice sought to monitor the rate of return in this regard and did not see itself as a source of cost or tax treatment information for the AER, who already have considerable powers in that regard. The RRG was keen to see that the overall decision was reasonable in the context of the very low risk profile of regulated networks, and that the reaction of the capital markets did not signal that the decision was or would be materially too low. We hope that the RRG, and its individual members in commercial confidence, provided feedback and advice that the AER found helpful in this regard. We did not see the RRG function as to produce benchmarking data for use by the AER.

8. How could the concurrent evidence sessions be adapted to improve discussion on topics?

A number of stakeholders have observed that these sessions were time constrained. We share the view that the available time could be better spent on the disagreements of substance, and not on agreed or undisputed issues. A method to narrow these down earlier would help. However broadly speaking, we do not agree with the other criticisms made of the concurrent evidence sessions.

9. At what points in the process would the concurrent evidence sessions aid the most?

In the Brattle report, some stakeholders recommended that a joint report should be written prior to the concurrent expert sessions. We agree that this would be a useful time in the process for the joint report to be published.

10. What could be done to better assist the concurrent evidence sessions to fulfil their role? Do the evidence sessions need to be extended to allow more discussion on certain topics or should the number of rounds be increased?

We do not believe that this is required, nor that evidence has been supplied within the Brattle report that the time allowed, or the agenda, was materially deficient. Most concerns of stakeholders, which we do not generally share, relate to the approaches taken by experts and the AER in the presentation and assessment of evidence. Some seem to have carried this forward from the terms of reference themselves.[6] Stakeholders also pointed to situations in which they felt that the AER unreasonably dismissed evidence presented by the networks.[7] Neither of these are directly addressed by extension of time or increased iterations.

11. Do stakeholders consider the Joint Expert Report was useful to the process? How could it be improved?

We consider the Joint Expert Report as critical to the process. Clarity around the purpose of the Report, in particular the extent to which the AER must rely on it, (if at all), may assist some stakeholders in understanding in future reviews.

12. Are there any adjustments that could be made to the Independent Panel that would assist it in undertaking its role?

We have no comment in this regard.

The AEC acknowledges that the AER was developing its process and approach concurrent with the passage of enabling legislation and believes that the review was very well conducted in that context. Whilst there is opportunity for improvement there is no requirement in our view for substantial change.

Any questions about our submission should be addressed to David Markham by email to david.markham@energycouncil.com.au or by telephone on (03) 9205 3107.

Yours sincerely,

David Markham
Corporate Affairs
Australian Energy Council

[6] Brattle Group *Stakeholder Feedback on the AER's Process for the 2018 Rate of Return Instrument*, p.7 para 16.
[7] Ibid, p11 para 34.