Australian Competition Tribunal

ACT 3-8 of 2016 – Applications by the Victorian Power Networks

Consumer Utilities Advocacy Centre (CUAC) – Submissions to Public Consultation – 6 October 2016

Introduction

1. These submissions supplement CUAC's oral submissions to the Tribunal at the Public Consultation on 6 October 2016. CUAC asks the Tribunal to consider its submissions in accordance with the Tribunal's consultation obligations under s 71R(1)(b) of the National Electricity Law (**NEL**).

2. These submissions address CitiPower and Powercor's application for review of the AER's determination of the labour price growth rate for the 2016 regulatory year.[i] The AER determined the labour price growth rate based on the average of the Deloitte Access Economics forecasts of the rate of change in the wage price index (**WPI**) for the Victorian electricity, gas, water and waste services (utilities) industry (**EGWW WPI**).[ii] CitiPower and Powercor contend that the AER should instead have applied the growth rates for 2016 provided for in their existing enterprise agreements (**EAs**).[iii]

3. CUAC specifically responds to paragraph 134.8 of both Networks' applications, which alleges that the labour price growth rates provided for in their existing EAs were efficient at the time they were struck.

Relevant NER Provisions

4. CUAC does not address the question of whether an Enterprise Agreement struck under the *Fair Work Act 2009* (Cth) is an "applicable regulatory obligation or requirement" within the meaning of rules 6.5.6(a)(2) and 6.5.7(a)(2) of the National Electricity Rules (**NER**) and section 2D(1)(b)(v) of the National Electricity Law (**NEL**). This will be a matter in contention between the parties in the proceeding.

5. These submissions are instead directed at whether CitiPower and Powercor's proposed growth rates for 2016 represent *efficient* costs of achieving the opex and capex objectives for the purpose of rules 6.5.6(c) and 6.5.7(c) of the NER. CUAC contends that the AER was correct to reject CitiPower and Powercor's proposed growth rates for 2016 as set out in the EAs, as they were inefficient at the time they were struck.

The Enterprise Agreements

6. There are three relevant CitiPower and Powercor EAs: a combined Powercor/CitiPower agreement with CEPU (**the CEPU EA**), a Powercor agreement with the ASU, APESMA and NUW and a CitiPower agreement with the same unions (**the ASU EAs**).[iv]

7. Importantly, CitiPower and Powercor's applications for review are limited to the labour cost growth rate for the 2016 regulatory year, the final year of the CEPU and ASU EAs. CitiPower and Powercor do not challenge the AER's rejection of their revised proposal for labour price growth rates after the expiry of the EAs (from 2017-2020). CitiPower and Powercor's proposal for these years relied upon five-year historical average EA wage growth to forecast labour price growth, which the AER found did not take into account broader labour market conditions in the forecast period.

8. The CitiPower and Powercor agreement with the CEPU was lodged with the Fair Work Commission on 26 September 2014.[v] The previous 2011-2013 EAs expired on 31 August 2013. Negotiations are likely to have commenced some time before 31 August 2013, perhaps around April 2013. Clearly, negotiations failed to conclude by the end of 2013 and presumably were still ongoing shortly before the EA was lodged with the Commission. Based on this, negotiations for the CEPU EA are likely to have taken place between April 2013 and September 2014.

9. The Fair Work Commission approved both of the ASU EAs on 11 March 2014.[vi] The date of the applications is not recorded. The previous ASU EAs expired on 31 October 2013. Based on these dates, the negotiation period for these EAs is therefore likely to have taken place between approximately May 2013 and March 2014.

Inefficiency of the EAs

10. The inefficiency of the 2016 wage growth rates provided for in the CitiPower and Powercor EAs is demonstrated by a comparison with the WPI for all industries, as well as the EGWWI WPI, which both Networks have accepted as an appropriate basis for the forecast for the 2017-20 regulatory years.

11. Specifically, the CitiPower and Powercor EAs demonstrate stable annual wage growth rates of 4.5%-4.55% from 2011 to and including 2016, while wage price indices across all industries, including the utilities industry, were declining.

12. **Figure 1** in the Appendix to this submission is a chart taken from the AER's Final Determinations for CitiPower and Powercor, which compares the average annual wage increases in newly negotiated EAs since 1998. It illustrates the trends in EAs over time for different sectors and for the overall WPI, as measured by the ABS. It demonstrates that the WPI has declined dramatically since 2011 and that specific industries, including the utilities industry, have also tracked downwards, albeit with a slight delay.

13. **Figure 2** in the Appendix shows quarterly changes in the ABS data for WPI and EGWWI since 2008. The blue line representing ABS "Trend" for All Industries shows a declining WPI since 2008. The simple red regression line for ABS EGWWI data illustrates a similar trend.

14. However, an examination of CitiPower's historical EAs from 2011 shows no such decline. **Table 1** in the Appendix summarises the publically available information set out in Clause 16 of each of CitiPower's EAs. These figures are similar for Powercor.

15. The disjuncture between WPI rates and the wage growth rates provided for in CitiPower and Powercor's CEPU EAs is illustrated in **Figure 3** of the bundle. Figure 3 compares the quarterly changes in ABS data for WPI and EGWWI with the quarterly change in the wage increases in the CEPU EA, represented by the purple line.

16. While it may have been reasonable to forecast higher than average wage growth in the utilities sector during the period when the 2011-2013 EAs were being negotiated, the same cannot be said of the period when the 2013-2016 EAs were negotiated.

17. As set out in Table 1, the EAs for the period 2011-2013 included annual wage growth of some 4.5-5% over three years. This higher rate of wage grown was not unexpected given that in 2010-2011 mining and related resource construction activity was still strong. In its February 2011 Statement of Monetary Policy, the Reserve Bank of Australia stated:[vii]

    > Labour cost growth picked up during 2010 broadly in line with the Bank's expectation following low outcomes in the private sector over 2009. This pick-up is consistent with the strengthening in labour market conditions, and as further gradual increase in wage growth is expected as the labour market continues to tighten.

18. In contrast to the relatively stable outlook that preceded the 2011-2013 EAs, the 2013-2016 EAs were negotiated in a markedly different economic and wage expectation environment. In its February 2013 Statement of Monetary Policy, the RBA reported that by the December quarter 2012, the consumer price inflation index was down to 2.2% over the year. Median inflation expectations for market economists and union officials (excluding the carbon price) were in the order of 2.5% to 2.7%. Consumer inflation expectations had averaged 2% in the three months to January 2013, the lowest level since 1997.[viii] By early 2013, the WPI was closer to 3%. **Figure 4** in the Appendix illustrates the extent to which the WPI declined over the period post 2011.

19. The change in market conditions is also supported by **Figure 5** in the Appendix, which shows a sharp decline in the rate of job growth for electrical distribution trades workers in the five-year period to 2016 in both absolute and relative terms. This decline should have been evident to CitiPower and Powercor negotiators in 2013. The fact that there is some 'recovery' in the 2-year figures highlights the dramatic decline in job growth for electrical tradesmen and women in the relevant 2012-2013 period.

20. The decline of -26.4% in job growth over the last five years also contrasts markedly with the 10 year employment growth in the same sector of +29.5%.[ix] Rapid declines in job growth in the electrical distribution workers industry to a negative rate by 2013, combined with falling inflation should have provided ample scope for CitiPower and Powercor to negotiate a lower rate of changes in nominal wages for the 2013-16 EA period**.** The fact that they did not do so provides evidence that the 2013-16 EAs were not prudent or efficient at the time they were entered into.

Materially preferable NEO decision

21. Based on this analysis, adopting the inefficient growth rates provided for in the EAs for the 2016 year would not result in a materially preferable NEO decision as claimed by CitiPower and Powercor. On the contrary, it would undermine the long term interests of consumers in several ways.

22. First, and in response to paragraphs 154 and 156 of CitiPower and Powercor's applications, CitiPower and Powercor's forecast for 2016 would not be in accordance with the law because it compensates the Networks for more than the *efficient* costs of achieving the capex and opex objectives contrary to rr 6.5.6(a)(2) and 6.5.7(a)(2) of the NER.

23. Second, and in response to paragraph 161 of their applications, that a decision in favour of CitiPower and Powercor's contentions will allow both Networks to recover significantly more than is necessary over the regulatory period, contrary to the revenue and pricing principle in s7A(2) of the NEL. **Figure 6** in the Appendix demonstrates the cumulative impact on consumers if the CitiPower and Powercor contentions were accepted. In summary, such a decision would result in a cumulative increase of 9% in real dollar labour costs over CPI as opposed to the significantly lower 4% cumulative impact of the AER's forecast.[x] This increase would result in higher prices borne by consumers with no trade off to improvements in the quality, safety, reliability and security of supply of electricity, contrary to the NEO.

24. Finally, and in response to paragraph 163 of CitiPower and Powercor's applications, acceptance of inefficient costs under the EAs would depart from the Tribunal's previous emphasis on the need to examine the efficiency of the EAs when they were entered into.[xi] Given the choices made to enter the EAs were economically inefficient, a decision by the Tribunal to allow those inefficiencies would not promote the long term interests of consumers as required by the NEO.

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[i] This expands on submissions made by CUAC to the AER during the Victorian Price Reset as part of the peak consumer body VECUA, dated 13 July 2015 and 6 January 2016.
[ii] AER, *CitiPower Final Decision*, Attachment 7, page 7-50; AER, *Powercor Final Decision*, Attachment 7, page 7-49.
[iii] CitiPower and Powercor Applications for Leave and Review, paragraph 134.2.
[iv] CitiPower and Powercor Applications for Leave and Review, paragraph 103.
[v] Powercor Australia Ltd/CitiPower Pty and CEPU Enterprise Agreement 2013-2016: https://www.fwc.gov.au/documents/documents/agreements/fwa/ae410508.pdf.
[vi] Powercor Australia Ltd (ASU; APESMA; NUW) Enterprise Agreement 2013, https://www.fwc.gov.au/documents/documents/agreements/fwa/ae407221.pdf; CitiPower (ASU; APESMA; NUW) Enterprise Agreement 2013 https://www.fwc.gov.au/documents/documents/agreements/fwa/ae407220.pdf.

[vii] RBA, *Statement of Monetary Policy, Price and Wage Developments*, February 2011: http://www.rba.gov.au/publications/smp/2011/feb/price-wage-dev.html.
[viii] RBA, *Statement of Monetary Policy, Price and Wage Developments*, February 2011: http://www.rba.gov.au/publications/smp/2013/feb/price-wage-dev.html.
[ix] Australian Government, Department of Employment, Job Outlook: Electrical Distribution Trades Workers, http://joboutlook.gov.au/occupation.aspx?code=3422&search=industry&Tab=prospects.
[x] This figure was explained in more detail in CUAC's oral submissions.
[xi] *Ergon Energy Corporation Ltd (Labour Cost Escalators) (No 3)* [2010] ACompT 11 at [57].