

4 October 2016

The COAG Energy Council Secretariat
Department of Industry, Innovation and Science
GPO Box 9839
CANBERRA ACT 2601

Via electronic mail: energycouncil@industry.gov.au

To whom it may concern,

Re: Review of the Limited Merits Review Regime - Submission

The NSW Irrigators' Council (NSWIC) and Cotton Australia welcome the opportunity to make a submission to the COAG Energy Council Secretariat on the review of the Limited Merits Review Regime (LMR). As our organisations have actively participated in the most recent LMR process with the NSW network businesses – both via written submissions and a public hearing presentation to the Tribunal - we would like to share our experiences and concerns regarding the LMR framework and process.

NSWIC and Cotton Australia, as the peak representative organisations for irrigators and cotton growers, have actively participated in the 'electricity debate' for many years due to the high energy costs for our members. Network charges form up to 60% of an irrigators' electricity costs, therefore a network revenue determination which delivers electricity cost effectively, safely and reliably is clearly in the interest of our members. In an effort to achieve this, our organisations have been involved in ongoing discussions around network charges, regulatory decisions and rule changes and have made submissions to the Australian Energy Regulator (AER) on the determination of NetworkNSW's revenue allowance, relevant rule change proposals brought to the Australian Energy Market Commission (AEMC) and the Senate Inquiry into the performance and management of network companies. Through participation in these processes, our respective organisations have acquired significant expertise navigating the regulatory framework governing network charges and we have used this knowledge to liaise with the AER, the AEMC and Essential Energy around future network charges for growers and irrigators. We have also advocated potential mechanisms and areas for change given the dynamic nature of the energy sector and the changes on the horizon.

Given our experience with the LMR process, our respective organisations submit our preference for:

Option 4: The Limited Merits Review should be removed from the National Electricity Law and National Electricity Rules as it is not fulfilling the long term interest of consumers.

In the event that removal of the LMR process is not possible, NSWIC and Cotton Australia submit that Option 2 should be considered. In particular, Cotton Australia and NSWIC believe changes to the National Electricity Law and National Electricity Rules could be made to provide more discretion to the regulator in order prevent further extensive and prolonged appeal processes by the network businesses.

Our submission to the LMR review aims to highlights the challenges our organisations have faced in participating in the process which have led to NSWIC and Cotton Australia arriving at this position. A lack of meaningful engagement through the LMR has undermined the integrity of the process and failed to deliver an outcome that fully considers the needs of consumers.

High cost of LMR intervention remains

Despite our extensive work and level of expertise, NSWIC and Cotton Australia have found the LMR process extremely difficult to engage with. From a stakeholder perspective, the public consultation process for the LMR was extremely formal, onerous and time consuming and overall failed to deliver a materially preferable outcome in the long term interest of consumers. Our organisations wish to highlight that the 2013 review process recommended changes to the LMR regime due to a lack of consumer engagement as a result of ‘the high risks and costs, as well as the overly legalistic environment’. It is our opinion that the changes introduced to the LMR flowing from the 2013 review have not resolved these challenges.

Our respective organisations briefly considered intervening in the NetworksNSW LMR at early stages but were informed about the significant costs to do so, advice that prohibited the extent of our involvement. Under the current regulatory and appeals process, intervention in the Tribunal process is viewed as a key step to delivering change to a network revenue determination. Grassroots consumer based organisations and consumer representative bodies like NSWIC or Cotton Australia do not have the financial capacity to actively intervene in the LMR process. This limitation severely compromises the integrity of the LMR process as engagement under such a regime fails to fully consider the needs of all consumers. While we recognise and indeed commend the initiative taken by the Public Interest Advocacy Centre, intervention in the LMR process is a step which is out of reach for our organisations. Given this we question what ‘definition’ of consumers is currently applied to the LMR as most consumer bodies remain unable to absorb the financial risks imposed by LMR intervention.

Consumer involvement in the LMR process is too late

Cotton Australia and NSWIC were poorly consulted by NetworksNSW during the NSW network revenue determination process for 2015–2019 despite concerted efforts on our behalf to raise issues with the network businesses faced by our members. Given the challenges NSWIC and Cotton Australia faced engaging directly with the network businesses, we greatly appreciated the opportunity to present to the Tribunal in August 2015. This allowed our organisations to highlight the challenges we faced raising the concerns of our members, and provide feedback on issues such as efficiency benchmarking. We also appreciated the opportunity to provide the Tribunal with additional written submissions. This allowed us to highlight specific issues such as the investments made by our industry to manage rising electricity costs and more complex matters regarding regulatory framework matters such as the regulated asset base. The opportunity for our

organisations to present directly to the Tribunal was only brought about through the 2013 changes to the LMR review process. Although we believe the intent of this previous amendment to the LMR framework was sound, Cotton Australia and NSWIC do not believe the process has delivered a preferable outcome for the LMR process.

We believe that consideration of information at the Tribunal hearing results in consumers voices being heard 'too late' to the LMR process. It would be far more cost effective, and indeed result in better outcomes, for consumer preferences to be incorporated by the network businesses and the AER in the initial determination process. While we recognise that this will be challenging, especially given our historical engagement with the network businesses, we believe that changes in behaviour can be encouraged by the regulator and enforced by legislation. We also recognise the need for our organisations to engage with the network businesses on an ongoing basis. To provide us with a 'continual voice' in network business discussions we are a stakeholder representative on the Essential Energy Consumer Advocacy Group, the major network provider for our NSW members.

Participation in the LMR process is time consuming

Cotton Australia and NSWIC spent significant amounts of time reviewing Essential Energy's appeal to the Australian Competition Tribunal in order to provide members of the panel with a detailed and specific response. In addition, we submitted a further eight documents to the Tribunal as requested during the public consultation.

Not only did our respective organisations find it extremely challenging to review Essential Energy's voluminous appeal to the Tribunal, spanning over 1000 pages, but the content of the network's document was difficult to understand for individuals without a legal background. NSWIC and Cotton Australia believe that the length and content of the documents submitted by the NSW network businesses provided a significant disincentive for consumers and stakeholder representative bodies to participate in the LMR process. In addition, we believe it prevented any meaningful engagement with the community who were directly impacted by the appeal.

The role of consumers remains uncertain in Tribunal decision making

NSWIC and Cotton Australia were disappointed by the lack of response from the Tribunal on our presentation and extensive submissions. Cotton Australia and NSWIC were not informed if and how the Tribunal would attempt to incorporate stakeholder feedback in their final decision making process. This lack of engagement with consumers and stakeholder representative bodies exacerbated the feeling of '*not being heard*' or '*not being listened to*'. NSWIC and Cotton Australia believe that further stakeholder consultation should have occurred subsequent to the submission process, detailing how the Tribunal had assessed information provided by consumers and how it had incorporated it in the decision making process. While we hesitate to highlight additional process, we have brought this to the attention of the review committee as further evidence of current issues with the LMR process. A lack of meaningful engagement has resulted in an outcome which our organisations believe is not in the long term interest of consumers and it remains unclear what evidence was used to arrive at such a decision.

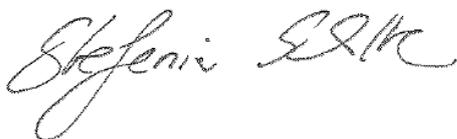
While Cotton Australia and NSWIC understands that the Australian Competition Tribunal had limited resources at their disposal to review the documentation provided by the proponents and the

intervener, it is evident that the previous amendments to the LMR framework enabling stakeholder consultation has failed consumers' long term interests.

In its current form Cotton Australia and NSWIC wish to highlight that the LMR process is not achieving the objectives of consumer engagement or decisions that are materially preferable to consumers. In the example of the NSW determination, ongoing legal appeals have necessitated the lodging of a rule change with the AEMC by the network businesses in the event that the decision made by the Tribunal is upheld by the Full Federal Court. The NSW case highlights the issues with the LMR process – the network revenue determination remains unresolved, legal challenges continue resulting in ongoing costs for the AER and network businesses (and by default consumers), and consumers remain uncertain regarding their exposure to electricity costs. Clearly changes made in 2013 to the LMR process have failed to deliver the intended result and we question whether any further changes will deliver a material benefit for consumers.

We look forward to leadership from the COAG Energy Council on these issues and welcome any opportunity to speak with Council Members should you require clarification or evidence on the information presented in this letter.

Yours Sincerely,



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NSW Irrigators' Council



Felicity Muller
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