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Industry Panel Secretariat
GPO Box 158
Canberra ACT 2601

Dear Sirs

ACTEW STATEMENT OF FACTS AND CONTENTIONS

I wish to refer the Panel to my previous submissions over many years to both the Independent Competition and Regulatory Commission, the Productivity Commission, the Queensland Competition Authority and other regulatory inquiries. I am happy to provide copies.

The fundamental problem the Panel faces is that the system of regulating monopoly utilities in Australia is fundamentally institutionally corrupt.

It is a corruption of economic thought in that it mistakenly assumes that maximisation of profits in a monopoly situation has some relationship to economic efficiency. That is the reverse of the truth. Economic efficiency requires that society obtain satisfaction of its needs at least cost. In a competitive market, profit maximisation is valuable because it drives the search for least cost solutions: in a monopoly market, profit maximisation really represents the imposition of a toll or tax upon the community.

It is a corruption of legal process in that hardly ever is evidence tested on oath and the victims of monopoly abuses are forced to pay through their tolls and charges for the expensive legal and technical advice used to justify the abuses perpetrated against them. There is no equality of funding in any of these matters and the illusion that independent regulatory commissions are consumer watchdogs is false. They cannot be. They are meant to be independent decision-makers, not advocates for consumers. The result of this one-sided system is that consumers are never properly represented. It was indeed remarkable that ICRC actually tried to do something sensible.

I note for the record that this submission is entirely *pro bono* and therefore hopelessly inadequate, as it has been drafted in a very short time.

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It would take an essay in the literature of economics to demolish every stupidity inherent in the regulatory regime under which this review is being conducted and for which ACTEW is contending.

I could refer the Panel to the work of Harold Hotelling, William Vickrey and many others on the theory of economically efficient pricing of infrastructure.

To summarise the literature going back some 200 years, the optimal efficient pricing structure would be a 2 part tariff when one part is an availability charge set so as to recover the actual cost of the infrastructure and the other part would simply recover short run marginal cost of water supplied over the pipes (usually no more than the cost of chlorinating, opening the taps and fixing any breakages.) The economically efficient availability charge would be a land value rate on the site value of the land serviced. A block of land in a city without access to water would be useless for any building. In effect, a land value rate recoups to the infrastructure provider some of the value added to the land by the existence of the infrastructure (that is, capital sunk in land) which adds to the site value. The economically efficient criterion for whether the reticulation network should be extended is simply to ask whether the value added to the land exceeds the cost of the public works required. Given that these works can be amortised over many years, land rates can pay off principal and interest on loans.

It should be noted that there is no real basis in economic theory for any idea that infrastructure providers should be entitled to perpetually revalue upwards the cost of the infrastructure and charge consumers accordingly.

If one looks at history, the bulk of the ACT water system has long been paid for. The Commonwealth Government developed the city and sold leaseholds as serviced blocks using the money from those sales to recover costs of municipal infrastructure provided, such as reticulation and dams.

There is therefore no basis for either ACTEW or the ACT Government to claim that they are entitled to a rate of return on the replacement cost of assets which they never created or paid for in the first place.

It is as though someone walked into your home, seized possession of your house, had a law passed to declare himself the owner and then graciously told you that you were free to stay in your house provided that you paid him a rate of return on the replacement value of your home as readjusted upwards from year to year. This may be efficiency in extortion or revenue raising but it has nothing to do with economic efficiency, no more than the former practice of capturing Africans and putting them into “productive servitude” in the Americas.

Given the views I have set out above and in previous submissions, it is unnecessary for me to address every issue in the statement of facts and contentions supplied by ACTEW, contending as I do, that the whole approach is utterly misplaced. I so contend that as a Ph.D. in economics from Harvard University who has spent years studying the history of economic thought.

However, I make some observations,

The discussion on page 9 in paragraphs 2 and 3 about economic efficiency and firm specific approaches completely ignores the fact that economic efficiency means the securing of desired supply at least cost. By focusing on firm specific profit maximisation, attention is drawn away from the fundamental issue. In discussing a return of equity, it is absurd to talk about what has been invested in ACTEW's infrastructure while ignoring the ratepayers and users who originally paid for it all and, via various stratagems, are being asked to keep paying over and over again for it. It is instructive to note that in 1990 ACT water was not unprofitable and our domestic water bill for 1297 kL was around \$797. The same amount of water would now cost today in the order of some \$7000. If this is economic efficiency, God help us.

The statement at the top of page 10 that efficient pricing of ACTEW's reticulation network is necessary for efficient investment can be dealt with by observing that serviced land values provide the test of whether investment is sufficient or not. Obviously the sensible thing to do is to invest in the reticulation network where the land values will rise the most, once serviced.

The complaint in the second paragraph of page 10 that the "ICRC treats company tax and net profits as though they are interchangeable" is rather amusing, given that ACTEW and the ACT Government argued before the High Court in the Queanbeyan challenge to the water abstraction charge that ACTEW was merely a Department or emanation of the ACT Government. This complaint by ACTEW against the ICRC should be struck out, as ACTEW and the ACT Government are clearly bound by issue estoppel. Having said one thing when it suited them the purposes of evading section 90 of the Constitution, they can hardly complain now that they are stuck with their own representations by ICRC.

The discussion on page 11 as to the return on equity completely fails to ask who actually contributed the cash to pay for the assets in the first place. Neither ACTEW nor the ACT Government should be entitled to any rate of return on any notional "regulated asset base".

They should only be entitled to a rate of return *on monies actually contributed in cash by the ACT Government* as capital contributions to ACTEW. Rather than putting money into ACTEW, the ACT Government has been assiduously raping it along with the long-suffering consumers of the ACT.

I could say much more but I regret to say that years of experience have taught me that there is more frustration than satisfaction to be found in trying to pick apart things so fundamentally wrong that they seem almost beyond redemption.

Yours sincerely

Terence Dwyer