

Energy equity and market design. Squaring the circle

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OVERVIEW

This paper was originally prepared for the SACOSS Connecting Fairness and Energy forum to be held in May. The forum was subsequently postponed to later in the year.

Rather than providing an overview or executive summary, some of the paper's key observations are highlighted throughout the document. The highlighted text can be read in place of an overview.

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1. Lara Bingle and the course of energy history

Next month marks ten years since I delivered my most noticed – or perhaps my most notorious – paper on energy markets and consumers. The paper is still available online and came to be known as the “Lara Bingle paper”.² Before recounting the paper, let me paint the scene.

By 2015, most states had deregulated their retail energy markets. For many years, Victoria had been ahead of the pack. We opened the market in 2001 to retail competition. By 2009, we removed the last vestiges of price regulation when the price of standing offers was deregulated. Other states followed on different timelines, but by 2015 most had largely caught up to Victoria.

In those days, the state regulators were among the strongest advocates for retail competition and market deregulation. As chair of Victoria’s Essential Services Commission, I was one of those advocates but the loudest spruiker of all was the Australian Energy Market Commission (AEMC). Each year-or-so, it conducted a review into the retail energy market to examine whether it was competitive. The commission applied a number of so-called “tests” of competition. Each report reached the same conclusion – retail competition was getting stronger and delivering substantial benefits to consumers. Each report would highlight how more could be done to promote retail competition. This typically involved facilitating more retailers entering the market (by lowering barriers to entry), getting more information to consumers; and encouraging and making it easier for consumers to shop around.³

On occasion, the AEMC’s reports would identify some form of market activity that didn’t quite fit the ‘retail-is-wonderful’ narrative – but the commission would invariably wave away these inconvenient findings by simply asserting they were transitional and would be eventually corrected by the competitive retail market.

By 2015, I had been the chair of the Victorian regulator for a few years. Bit by bit, I came to lose faith in the ‘retail-is-wonderful’ narrative. I began questioning the data and the way the AEMC (and my own organisation) was interpreting the data. It dawned on me that the regulatory community had become victim of a confirmation bias of its own making. Because we had positioned ourselves as the leading advocates for retail competition, we fell into the trap of “believing is seeing”. What we chose to *believe* about the market influenced what we saw happening in the market. We believed the retail market must be working for consumers therefore we only saw signs that confirmed our belief. Where our observations didn’t confirm our beliefs, we offered excuses. And the greatest excuse of all was to conclude that customers were not taking advantage of

² Ben-David (2015)

³ Section 8 provides further discussion.

the competitive market we had created for them. We lazily laid the blame on consumers for any observations that failed to fit with our narrative.

By mid-2015, I could no longer see what I had previously wanted to believe. And so, I delivered my paper calling out the logical fallacies in the AEMC's work and the confirmation bias to which it was victim. The event was a major energy conference in Sydney attended by a few hundred people. Now, coincidentally, it was also the school holidays and my family had flown to Bali, so after delivering my paper and having some lunch, I highailed my way to the airport and flew to Bali.

On landing in Denpasar, I turned on my phone to find a long stream of apparently urgent messages. It seems my paper had upset the energy industry and some departmental officials. All hell had broken out. Complaints had been lodged. Indeed, from that day onwards, the industry's peak lobbyist pursued a vendetta against me – seeking to discredit me wherever and however it could.

None of that is particularly important. What is important, however, is that my paper 'broke the spell' that had captivated regulators, departmental officials and ministers for the past decade. The 'retail-is-wonderful' narrative no longer held sway. Questions began to be asked. Doubts began to be expressed. Within months, the Victorian government launched an independent inquiry into the State's retail energy markets and the federal government announced the ACCC would conduct an inquiry into retail electricity pricing.⁴

2. Never far from the madding crowd (of reviews)

Here we are, ten years later, and we're still talking about energy markets and whether-or-not they are working for the benefit of consumers.

Of course, much has changed over the past decade. New technologies, new products, new services, and new business models have entered the consumer energy market at a speed and at a declining cost none of us could have foreseen ten years ago. I'll speak in a moment about these changes and what they mean for consumers. First, however, I need to highlight another major change compared to ten years ago.

Today, government departments, regulators and even energy companies are falling over themselves to demonstrate their commitment to better consumer outcomes. This sees a madding crowd of reviews being undertaken into differing aspects of the new energy market and the implications for consumers, market design and regulatory protections. It is head-spinning stuff. Reviews overlap each other in terms of content and in terms of timelines. New reviews are initiated before prior reviews are concluded. One example

⁴ Thwaites et al (2017) and ACCC (2018)

particularly relevant to today's conference is the federal department recently released consultation paper looking at *Better Energy Consumer Experiences*. It released this paper having not yet concluded its own review into a *National Energy Equity Framework* which it commenced last year.^{5,6} Surely, the latter is a necessary input to the former; and even more bewilderingly, the paper on better consumer experiences doesn't even mention the department's work on an energy equity framework. Where does this leave energy equity?

Even the most experienced consumer advocates tell me they cannot make rhyme or reason of everything being asked of them through all these policy and regulatory reviews. What hope is there for members of the public? In my darker moments, I find myself asking: What's really – I mean *really* – the purpose of all these consultations about consumers? Is it all just one big vanity project conducted for the self-satisfaction of those of us in the regulatory community?⁷ And I ask these questions as someone who, as a regulator, did pioneering work on centring regulation on consumer outcomes.

But, I've drifted off topic. So, let's talk about energy equity.

3. Which energy equity?

Equity is a reasonably well-established concept in economics when it comes to questions about the distribution of income, wealth and the building of human capital. Of course, the term equity is also used in many other disciplines, each with its own denotations and connotations. But what does equity mean when used within the context of energy market design and regulation?

The first place I went looking for an answer was in the legal scaffolding establishing the electricity market.⁸ These documents rarely use the word "equity" and when they do, it's only to refer to equity as either a financial or juridical concept.⁹ And of course, the national electricity objective (NEO), with its exclusive focus on efficiency, is also silent on equity.¹⁰ More on this later.¹¹

⁵ DCCEEW (2025)

⁶ DCCEEW (2024)

⁷ The "regulatory community" consists of regulators, policy agencies, professional advocates, researchers, consultants, and so on.

⁸ The National Electricity Law (NEL), the National Electricity Rules (NER), the National Energy Retail Law (NERL), National Energy Retail Rules (NERR) and National Energy Retail Regulations.

⁹ That is, as a balance sheet item or as a body of law administered by the courts.

¹⁰ The broader national energy objectives consist of the National Electricity Objective (NEO), National Gas Objective (NGO) and National Energy Retail Objective (NERO) – see:

<https://www.aemc.gov.au/regulation/neo>

¹¹ See section 9

I next looked at documents produced by various regulators and the (federal) energy department discussing the centrality of consumers. I won't list them all. I'll just make two overarching observations.

First, all the documents cross-reference each other when equity is mentioned. Each document is seeking to borrow authority from another document, but there is no source-document or central definition of equity – let alone any clear explanation of what it means for decision-making, market rule-making or regulatory design.

Second, even though there is no central definition of equity, there appears to be two 'word clouds' used whenever energy equity is discussed. The first word cloud adopts language focussing on consumer's access to **opportunities** and choice, engagement and participation in the energy market. In more recent times, this cloud has increasingly adopted the language of consumer agency. The second word cloud within which energy equity is discussed involves terms referring to the avoidance of undesirable consumer **outcomes** or experiences, such as vulnerability and disadvantage.

A recent statement about energy equity from the Chair of the AEMC is interesting.¹²

“Our equity guidance proposes that energy equity exists where all consumers can fairly access and benefit from the energy system,” Ms Collyer said. “In practice, this means addressing structural barriers that prevent consumers from accessing benefits and ensuring our decisions don't create or exacerbate vulnerability.”

The Chair's statement highlights the disparate interpretations associated with energy equity – on the one hand it appears to mean **providing opportunities for all** consumers (access to benefits) while on the other hand **avoiding particular outcomes for some** consumers (not contributing to vulnerability). The commission does not attempt to reconcile or unify these two very different conceptualisations of equity.

If we are genuinely committed to addressing something called “energy equity”, we first need to be very clear about the problem we are, in fact, looking to remedy.

4. The one constant despite everything

Since presenting my so-called, “Lara Bingle paper” back in 2015, I have written dozens of other papers, articles and submissions. Many of my papers have drawn on first principles when making the case for “rethinking how we think” about the consumer-facing energy market.¹³

As I have already noted, the changes the market has undergone during that time – and continues to undergo – have been extraordinary. Back when I wrote the Lara Bingle

¹² AEMC (27 March 2025)

¹³ See references

paper, many of the developments we've seen over the past decade would have been disregarded as silly daydreams, if not outright science fiction. The scale and scope of change in every part of the energy system has been truly remarkable.

But one thing has not changed in all those years. It's the very feature of the market that spurred me to write my paper back in 2015 and many papers since. One thing has remained invariant. Most consumers are still human beings. Human beings who live busy lives with seemingly endless demands on their time. Human beings who are bombarded with information about the countless decisions they must make as they navigate modern life. Human beings whose actions are prone to all sorts of behavioural biases and cognitive vagaries. Human beings who have been favoured by good fortune and human beings who have not been so favoured – whether it be health, education, literacy, numeracy, cognitive skills, psychological stability, or financial security.

The one thing that has not changed in the energy market is that consumers are still human beings. Human beings who are just not interested in energy. For the most part, they just want to use electricity, maybe buy a few solar panels to save a bit of money, pay a fair price, and not get screwed over in the process.

And that's as far as it goes for most people.

So, when we're talking about energy equity, **what** are we talking about? **Who** are we talking about? And most importantly, **why** are we even talking about it?

By remaining silent on these three questions, the references to equity in countless regulatory and policy documents represent strings of words with no real meaning. Aimless words. Words of false hope. Jibber jabber that leads to nothing of substance.

For the past decade, I have spent an enormous amount of time trying to find the right words; words that mean something; words that can lead to genuine action; genuine solutions for all consumers.

5. The mass conversion of consumers

Before I attempt to answer those 'what, who and why' questions about equity, I need to spend a bit of time deconstructing the words that fill countless reports, submissions, regulatory decisions, policy documents and the never-ending schedule of energy conferences and workshops.

There's one word in particular that demands attention. It's a word that I have already used many times today without any hint of discord. It's a word that flows effortlessly through rules, regulations, reports, policies and conferences. It's a word that is regularly

compounded with other nouns to invent new regulatory concepts.¹⁴ But there's a problem. The word no longer reflects the reality of the energy market or how people experience that market. That word is "consumer".

Over the past decade, the markets and its rules and regulations have evolved to enable the entrance of all sorts of new technologies and business models. So-called "consumers" are no longer just buying and using electricity – as was the case when retail competition was introduced from the early 2000s.

These days, the market characteristics implied by the term 'energy consumer' has broadened greatly. Today, so-called "consumers" are increasingly treated by the rules as "market participants". That's the AEMC's term, not mine¹⁵. The regulatory framework has come to rest on the premise that people will buy electricity at one price and sell it another; they will use their appliances at one price and switch them off at another; they will charge their batteries at one price and discharge them at another; they will use their stored electricity at one price and sell it at another. Whether people actually do behave in this way is not the relevant consideration within the market's design. The market is now contemplated and designed around consumers' **potential** behaviours.

Within this conception of the energy market, we are all viewed as having something to trade. Even if we don't own solar panels or batteries, smart devices or an electric vehicle, we are still viewed as having something to trade – namely, when we use electricity. Or to use the jargon, "shaping our load profile in response to price signals".

In other words, a mass conversion has taken place within the regulatory framework governing the electricity market.¹⁶ Those people who were once called and treated as consumers, are now called consumers but they are now treated as **traders**. Within this regulatory mindset, everyone is a market participant – an energy trader – whether or not that's how they view or conduct themselves. Everyone is viewed as having made a market-based decision regardless of whether they invest in consumer energy resources, enters contracts with time of use tariffs or allow others to use their storage devices to arbitrage in the wholesale energy market. Everything consumers do (or don't do) is conceived as the product of an informed, financial decision based on their individual preferences and circumstances.

Let me describe the point I am making in more concrete terms – namely, how so-called "consumers" now experience the energy market.

Back in the early 2000s when the retail energy market was being established, it required consumers to shop around in one dimension: price. Consumers were encouraged to

¹⁴ For example: consumer engagement, consumer empowerment, consumer-centred, consumer engagement, consumer agency, etc

¹⁵ AEMC (2023)

¹⁶ Ben-David (July 2024) and Ben-David (June 2023)

shop around for the best priced energy contract. There was nothing else the competing retailers could offer us. Price was the only decision variable we faced.

By 2025, the energy transition has radically changed the decision ‘space’ in which consumers find themselves. The emergence of new energy technologies, products and services, and business models, means consumers are now having to evaluate market contracts involving multiple decision variables.¹⁷ See Box 1

Box 1. Decision variables when considering energy contracts

Consumer energy contracts may now include terms addressing:

- the price of electricity supplied via the grid as well as the price of electricity exported to the grid
- volumetric limits on how much electricity can be exported to the grid and maybe even limits on how much electricity can be drawn from the grid
- delegated control over onsite electricity production, storage and load
- price, access, ownership and control of electricity stored offsite (say, in community or network batteries), and/or
- payments for the provision of ancillary system services

Energy contracts may be further complicated by:

- dynamic prices or controls which change in real time (reflecting underlying system conditions) rather than having set values specifiable in a contract
- lock-in periods potentially lasting a number of years
- an array of penalties (not necessarily monetary) for breaches or customer initiated over-rides of previously agreed thresholds
- financing arrangements that are indistinguishable from payments for energy services, and
- customers relying on multiple suppliers providing interacting services.

The complexity for consumers when contracting in the energy market has exploded. Each additional decision variable doubles or triples the complexity of contracting. And with that complexity comes the risk that some, many or most people will ‘mis-contract’ their energy. That is, people will enter contracts they do not understand and which do not align with their individual interests or circumstances. Put simply, energy consumers are now at increasing risk of entering contracts where they pay for something they don’t

¹⁷ Ben-David (July 2024)

use, don't get or don't need – thereby delivering undeserved profits to their retailers, energy management providers, virtual power plant operators, appliance installers, and so on.

Don't get me wrong. There is no doubt that all these contract choices can deliver great benefits to some people. Or as we economists like to say, this hugely expanded range of contracting options allows better 'matching' of consumer preferences with supplier offerings. That outcome, however, is predicated on shoppers having the time, resources and computational skills required to navigate the labyrinthine contract market in which they find themselves.

Then finally bear just these three observations in mind. First, report-after-report from the ACCC finds that around 80 per cent of consumers are paying more than if they were on a more suitable contract – and that's before we even start looking at all the complex contracts mentioned in Box 1.¹⁸ Second, the AER reports that 44 per cent of Australians have literacy levels considered to be below what is required to participate fully in society.¹⁹ This is just referring to baseline literacy and numeracy, not the sophisticated computational skill required to navigate all the decision variables I've described. Third, a recent report from ECA found that less than 20 per cent of people confidently understood what the term "retail tariff" even means.²⁰

In other words, even after 20 years of experience with the retail energy market, most consumers just don't behave like the consumers described in microeconomic textbooks. The energy market has not solved complexity for consumers. It has created it. And now, as the energy transition deepens, the market is spawning ever greater complexity.

The regulators, who were established at a very different time to promote the market, are ill-equipped to respond to this rising tide of complexity. They have neither the tools nor the authority, neither the constitution nor the mindset, to respond effectively to the greatly enhanced risks that consumers now face – the risk that they are entering contracts that serve them poorly while undeservedly profiting others.

If it is true that the energy market was created almost 25 years ago to serve the long-term interests of consumers, then experience shows that it is now evolving beyond many-or-most of the people for whom it was supposedly created.

But that evolution is not just expressed in terms of the market's complexity. This evolution is also a reflection of how we have come to view (and accept) consumers relationship to the market.

¹⁸ For example, see: ACCC (2024)

¹⁹ AER (2021)

²⁰ Energy Consumers Australia (2025)

Over the past 25 years, the words used to describe, discuss and regulate the energy market have implicitly and increasingly treated the market as an object in its own right; an object with its own rights; an object with its own purposes and its own needs – rights, purposes and needs that are distinct from the rights, purposes and needs of the consumers for whom it was supposedly created.

If we want to talk about energy equity, then the way we talk about the energy market matters. The way we talk about the energy market frames how we understand the energy market; and consumers' place within it. The words we use matter.

6. Words matter

I am fond of saying: How we speak influences how we think. How we think influences how we act. And, how we act influences the impact we try to have in this life. I am constantly asking myself: how is my thinking being limited by the words I use.

We can ask the same question about the way we talk, and therefore the way we think about, the energy market. Our words matter. They matter a lot. Our words frame the way we see the world; the way we think about it; and the way we interact with it. The words we use to discuss the energy market, and consumers' place within it, are important. Our words frame our relationship to the market and they establish the boundaries of what we believe to be possible.

There are many examples, but there is one particularly powerful example of language's influence on how we think about the energy market, especially how we think about notions like energy equity. For me, this is a very troubling example of how we have placidly allowed language to capture our thinking.

Over the past few years, it has become commonplace for regulators, policy makers and consumer advocates – I repeat: and consumer advocates – to talk about consumers who are “unable or unwilling” to engage with the energy market. Indeed, consumers are often just described as being “disengaged”.²¹

What does this type of language infer about the relationship between consumers and the market? Remember, a market only exists by virtue of its consumers. There are no producers without consumers. No supply without demand. Consumers are the market. There is no market without them.

When consumers are described as being “disengaged” from the energy market, we’re talking as though the market has an existence that is separate from, and independent of, those consumers. This terminology imbues the market with a sense of its own self-existence. The market is treated as something that exists in counterpoise to consumers.

²¹ For example, see ECA (April 2025)

In fact, the inferences from such terminology go much further. This type of language infers the primacy of the market over consumers. It infers consumers must learn to fit with the market – to become “engaged with the market” – no matter how “the market” presents itself to those consumers.

Despite all the jibber-jabber about consumer centred market design, in truth, over the past 25 years, regulators have been trying to design market-centred consumers.

When I raise these sorts of concerns, the usual response is that the energy market is no different from other markets and consumers need to operate within that reality. I disagree. Strongly so. There are many reasons why the energy market is not just another consumer market.

The most common reason supporting energy being “different” is its claim to being an essential service. I no longer think this a particularly powerful argument. The boundary between essential and non-essential services is too fuzzy (discussed further in section 7). Moreover, there is no *a priori* reason why something that is essential cannot be delivered via a consumer market.

There are, however, at least three fundamental reasons why the energy market is, in fact, very different from other consumer-facing markets. These three reasons arise from the characteristics of the market itself rather than the underlying service.

First, as just noted, there is no market (no demand side) without consumers. In this case consumers face near-insurmountable barriers to exit from the energy market. For all intents and purposes, they are locked into the market. The same is not true on the supply side of the market. Investors and financiers are not locked-in. Investors and financiers can always exit the energy market.²² Consumers cannot. The playing field is structurally tilted to one side of the market.²³

Second, as already noted in section 5, the consumer-facing energy market and how it is treated by regulators has changed markedly in recent years. So-called ‘consumers’ are now implicitly viewed as traders who are making economically driven decisions about whether to use, buy, produce, sell, store or arbitrage energy. There is no other mass consumer market in which ‘consumers’ transact on both sides of the market (or are conceived in terms which treats them *as though* they transact on both sides of the market, or choose not to do so). The consumer-facing electricity has become unique in this sense.

There is a third, and even more fundamental characteristic that differentiates the consumer-facing energy market from other consumer markets – namely, the energy

²² Albeit an untimely exit may crystallise a loss. See Ben-David (July 2024)

²³ At least for now and for the vastly overwhelming majority of consumers.

market is a “designer market” from top to bottom.²⁴ It’s not an organic market that emerged of its own accord. The retail energy markets is not an economic institution that emerged over time through a process involving producers and consumers negotiating the terms of exchange. Instead, it is an administrative invention entirely created by tomes of rules and regulations. It emerged because a group of politicians, public servants, academics and consultants wrote it into existence in the 1990s and early 2000s.

There is nothing ‘natural’ about the energy market. Nothing happens in the energy market that isn’t enabled, permitted or encouraged by its rules and regulations. Every outcome we observe at every transaction point is a product of the market’s rules and regulations. This means every outcome – including every consumer outcome – is the product of the thinking, beliefs and assumptions of the people who make those rules and regulations. And, the thinking, beliefs and assumptions of those people who make the rules and regulations are dependent on the words they use to describe the energy market. That is why those words matter so much.

When we describe consumers as being unable, unwilling or disengaged, we are subjecting those people to someone else’s ideas, beliefs and assumptions about how they ought to be behaving as consumers. Despite all the talk about consumer choice and agency, there is one choice consumers are denied. They are denied the choice over how they are expected (and required) to behave in the market.

Words like unable, unwilling or disengaged embody a view that consumers must fit within the market as it has been designed, rather than the market being designed to fit with the needs and interests of consumers. If after 25 years, 80 per cent of customers are still not using the market effectively,²⁵ then surely the market has been designed for the wrong consumers. If the market’s design were a “product”, such low effectiveness would surely see it sent back to the drawing board.

It’s time we abandoned language bemoaning consumers who are not market-ready. Instead, regulators and policy makers should be focussing their efforts on creating a market that is ‘consumer-ready’.

As a purely designer market, there is nothing preventing the NEM from being designed to reflect the interests and messy realities of consumers’ daily lives. We should expect nothing less.

Consumers should be demanding to know why they continue to be plunged into a market with ever more complex energy contracts. Consumers should be demanding to know why they continue to be exposed to ever greater risks – risks many of them will not be well-placed to understand and will be ill-equipped to manage.

²⁴ Ben-David (July 2024)

²⁵ Section 5

7. Rethinking how we think about energy equity

Before continuing I need to make clear that policy makers and regulators have, since the inception of the retail energy market, grappled with the level and type of protections that should be extended to consumers. I don't have time to describe the evolution of these debates, but I just want to highlight a few key points.

First, recall I described the energy market as a 'designer market' in which nothing happens that isn't enabled, permitted or encouraged by the rules and regulations that define it. That being the case, there is an obvious question that no-one seems to ask – not regulators, not policy makers, not consumer advocates. No-one ever seems to ask the most obvious question of all: Why are we designing a market from which we then need to protect consumers? Surely a more efficient approach would be to design a market from which consumers don't need protecting.

We could devote a whole seminar just to this question. For now, I will just briefly reflect on some of the contemporary discussions around consumer protections.

There is one persistent question in regulatory and policy debates around consumer protections, namely, is it possible to distinguish between essential and non-essential energy (electricity) needs? I have strongly cautioned against following this approach.²⁶

I have already mentioned one reason, namely, the fuzziness of the essentiality of different goods and services. But there is a second reason why trying to distinguish between essential and non-essential can only end in tears, and that's because there are no objective criteria for making this distinction. It is always and everywhere a matter of judgement. What might be classified as essential versus non-essential will depend entirely on the circumstances of each consumer. What might be an 'essential' need for your household may not be an essential need for my household. What may not be essential for your household this week may suddenly become essential next week. And so on.

Parallel to the idea of essential versus non-essential energy is a separate (but related) debate around whether the rules and regulations can distinguish between flexible and non-flexible energy needs. According to this line of thinking, where energy needs are deemed to be flexible, the rules should allow third party control over when a customer can charge their electric vehicle, run their pool pump, charge or discharge their battery. It could also include giving the third party the ability to cycle the customer's air conditioner on and off at certain times of day. While not quite as problematic as deciding when energy is or isn't essential, energy flexibility still presents problems. Even if consumers get to decide what is and isn't flexible, whether they properly understand what they're contracting remains a significant concern (see section 5).

²⁶ Ben-David (May 2022)

A third approach to thinking about how consumer energy ought to be regulated appeared in a paper from the AEMC late last year.²⁷ Instead of trying to distinguish between different types of energy use (essential or discretionary, flexible or necessary), it sought to distinguish between different types of energy consumers. The commission proposed sorting consumers according to two characteristics for the purposes of designing consumer protections (including pricing arrangements). First, whether they had access to resources that allowed them to transact actively in the energy market; and secondly, the extent to which they were interested in transacting actively in the market.

In a submission I made to the AEMC, I argued these criteria were wrong.²⁸ I described the problem that needs to be avoided is customers entering ‘dud’ contracts – that is, contracts that don’t match their individual interests or circumstances. Framing the problem in terms of their resources and interest does not address this problem. While access to greater resources certainly broadens a consumer’s set of choices, access to more choice does not necessarily equate to consumers making *better* choices. Likewise, while consumer interest in the market is a necessary condition for a successful match between the customer and the contract they enter, it is only one of many necessary conditions.

In my response to the AEMC, I argued a more effective and compelling framework for thinking about consumers’ relationship with the energy market involves distinguishing consumers based on two alternative factors, namely:

- **Risk appetite** – This involves recognising that consumers will have differing tolerances for – and willingness and capacity to manage – the financial (and other) risks that comes from being part of an increasingly volatile energy market.
- **Market proficiency** – This consumer characteristic recognises that consumers will have differing levels of skill when it comes to navigating the market in search of a contract that matches their risk appetite.

Or to put it simply, if the real problem is all about the risk of consumers mis-contracting their energy arrangements rather than simply providing them with choice, then the only viable and acceptable way forward to start “rethinking how we think” about energy consumers, energy markets and the entire energy transition.²⁹ The regulatory problem must be framed in the same terms as the problems consumers now face. Complexity. Risk. The risks caused by complexity. If we fail to “rethink how we think” about energy consumers, then we will make no progress on addressing the real challenges they face; or the equity or fairness of the outcomes they experience.

²⁷ AEMC (2024)

²⁸ Ben-David (December 2024)

²⁹ Ben-David (January 2024)

8. Addressing the root cause of energy equity: Risk

As outlined in section 4, if we want to talk about energy equity, we need to be very clear about **what** we're talking about; **who** we're talking about, and most importantly, we need to be clear about **why** we are even talking about it.

This paper has already sought to answer these questions, but let me recap before bringing it home with a clear and focussed approach to rethinking how we think about energy equity.

The paper began with a brief history of the energy market and how it was once dominated by a narrative about the wonderful benefits the retail market was delivering consumers. By the mid-2010s, this narrative began looking tenuous. In response, regulators, policy makers, industry and consumer advocates increasingly started talking about consumers – consumer engagement, consumer participation, empowering consumers, consumer-centred market design, consumer-driven markets, and now, consumer agency.

Lurking in the background of all this jibber-jabber about consumers was the poorly defined notion of “energy equity”. Instead of a clear definition, two word clouds formed around the notion of equity (see section 3). The first word cloud centred on market-oriented objectives like access to opportunities and choice. The second word-cloud sought to convey the avoidance of, or contributing to, particular outcomes like vulnerability and disadvantage. The two word clouds have been allowed to co-exist in the comfort of their own obscurity and their mutual ambiguity. No attempt has been made to unify these word clouds by identifying the root cause of what needs to be solved when it comes to energy equity.

Section 4 highlights the one feature that has remained constant despite all the new technologies, new services, new products, and new business offerings now entering the consumer facing energy market. The one thing that has remained constant over the past 25 years has been the presence of consumers; consumers who must enter contracts for their energy arrangements; consumers who are people; people who are prone to all the fallibilities and limitations that come with the human condition.

Section 5 describes how, over the past decade, people-as-consumers have been thrust into a market that increasingly treats them as economically-minded energy “traders” rather than people who just want to use electricity, maybe instal some appliances, pay a reasonable price, and not feel like they are being fleeced along the way.

Sections 6 and 7 identify the underlying causes of the disconnect between how the consumer-facing energy market is designed and allowed to operate, and how consumers experience that market.

The extraordinary complexity of the emergent consumer-facing energy market has greatly increased the risk consumers will enter the wrong contracts – that is, they'll sign up to

deals that don't align with their interests or their circumstances. Energy consumers are at increasing risk of entering contracts where they pay for something they don't use, don't get or don't need – thereby delivering undeserved profits to their retailers, energy management providers, virtual power plant operators, appliance installers, and so on.

Of course, the retail energy market has always been a risky, but inescapable, proposition for consumers. But that risk is now increasing by the day as consumers find themselves having to negotiate a contract market that just keeps getting more complex.

The four core risks consumers face when contracting involve:³⁰

- First, identifying among the hundreds of available options, the contract (or contracts) appropriately structured for their circumstances.
- Second, having entered a contract, consumers need to act in a manner that is rewarded (and not penalised) under the contract's terms. Depending on the contract, this could involve how they use electricity, when they purchase it, and how and when they produce, store and sell electricity.
- The third risk comes during, or at the end of, the contract period. What new form will the “loyalty penalty” take in the world of multivariate contracts?³¹ What new form of rent will energy service providers extract from customer inertia³² – be they retailers, aggregators, management services operators, or any other counterparty to an energy-related consumer contract?

Over the longer-term there is an additional risk to consumers and their confidence in the energy market and broader energy transition.

- Fourth, as noted in section 5, consumers are being converted into ‘market participants’ (or traders) even though they may not fully appreciate how this exposes them to market forces that will invariably erode their individual opportunities to earn [excess] returns on their investments. That is, as more consumers and large-scale investors respond to the current opportunity to earn profits, the returns that can be earned on those investments will decline. Experience demonstrates most consumers are not sophisticated investors despite being invited to invest in one of the most sophisticated markets in the economy.³³

³⁰ Ben-David (2025)

³¹ Section 5 describes the multidimensional contracts consumers must now navigate.

³² “Customer inertia” refers to the observed and well-documented behaviour whereby consumers are not ever-vigilant and responsive to changing market conditions – including market-determined prices as well as the terms of their contract(s) with energy providers.

³³ For example, many (or most) household investors in solar panels have felt forsaken by the decline in the feed-in-tariffs they can earn on their exports.

The proliferating risks consumers face when contracting their energy leads to my central contention about how we should be thinking about energy equity, namely: Contracting risks in the consumer-facing energy market is the root cause of energy inequity, at least as far as economic regulation of the energy market is concerned. Addressing energy inequity, therefore, requires a regulatory objective responding to the source of inequity.

The objective of the regulatory framework should be to avoid exposing consumers to risks (and associated costs) they are ill-equipped to understand, manage or price.

This objective would focus the energy market’s regulators on those elements over which they have control— namely, the allocation of risk to consumers through the regulators’ control and administration of the market’s institutional arrangements. This includes the market’s rules and regulation, including contract design. The regulators’ inattention to contract design is one of the unexplained (and inexplicable) oversights in the energy market’s regulatory arrangements.³⁴

The proposed objective does not contradict either of the word clouds described in section 3, but it imposes a far more focussed and disciplined approach to market and regulatory design than we’ve seen to date. It would prevent regulators from simply reverting to the same tired remedies to which they have defaulted for the past 25 years. I have previously referred to these lazy remedies as the “four mores”.³⁵ They include:

- pursuing market rules enabling **more** choice for consumers
- providing consumers with **more** (useful) information
- urging and supporting **more** shopping around by consumers, and
- exposing consumers to **more** efficient price signals.

As the ACCC and others have demonstrated repeatedly, these “four mores” haven’t worked for the past 25 years to ameliorate the risks faced by consumers. There is just no reason to believe these remedies will suddenly start working now.

For the avoidance of doubt, the proposed regulatory objective does not suggest consumers should be given fewer opportunities and less choice over how they transact in the energy market. Nor does it pretend rules and regulations can address the consequences of society’s uneven distribution of income and wealth. The proposed regulatory objective recognises the market’s rules and regulation create the incentives for how service providers intermediate risk in an increasingly volatile energy market. Unless regulators are explicitly required to recognise and address those risks, their rules and

³⁴ Ben-David (July 2024)

³⁵ Ben-David (August 2024)

regulations will continue to create incentives for market conduct that is contrary to the interests of some, many or most consumers.

While the proposed objective applies to all consumers, it goes without saying that risks are magnified for consumers whose life circumstances deny them the same opportunities that might be available to other people. In other words, the proposed objective comfortably bridges the two ‘word clouds’ that currently frame discussions about energy equity.

Finally, it is important to recognise the proposed objective applies to the design and regulation of the energy market. Beyond the market’s economic regulation lies the broader domain of government policy and fiscal measures that may be implemented to address the uneven distribution of income and wealth.

9. Conclusion

Whether the regulatory objective proposed in section 8 should become part of the national energy laws, or whether it is imported into the subordinate energy rules³⁶, is a debate for another day. But it is worth concluding by highlighting why this ought to be a moot question.

It is often said that market and regulatory design should focus on efficiently allocating risks to the parties best placed to manage those risks. If that be true, then it suggests the national energy objectives’ exclusive focus on efficiency is entirely consistent with the proposed objective of not exposing consumers to risks they are ill-equipped to understand, manage or price.

It is a mystery why this self-evident truth continues to be denied. Despite all the evidence to the contrary over the past 25 years, market and regulatory design continues to be predicated on consumers’ seemingly unlimited capacity for understanding, managing and pricing the risks they face when transacting in the energy market. It’s time to move on from such misplaced thinking, beliefs and assumptions.

If we are genuinely committed to addressing energy equity, then regulators and policy makers must genuinely start thinking in terms of the risks the modern energy market is creating for consumers. Unless they do so, any further discussion about energy equity is just more jibber jabber.

— END —

³⁶ National Electricity Rules, National Gas Rules, and the National Energy Retail Rules

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