CONSUMER COUNCIL OF FIJI

A Submission to the

Fiji Commerce Commission

Review of the Commerce (Control of Prices for Supply of Electricity and Ancillary Services) Order 2012

February 2015

1.0 Introduction

1.1 Role of Consumer Council of Fiji

The Council has statutory obligations under *the Consumer Council of Fiji Act (Cap 235)* to"*to do all such acts and things which it may consider necessary or expedient to ensure that the interests of consumers of goods and services are promoted and protected*." The Council is also obliged to advise and make recommendations to the Minister responsible for consumer affairs in Fiji or any other Minister on issues affecting the interests of consumers. This work extends to providing advice and making submissions to regulatory agencies, policymaking bodies, private sector or industry groups and international agencies.

The Council welcomes the Fiji Commerce Commission's (FCC) request for our submission in the Review of the *Commerce (Control of Prices for Supply of Electricity and Ancillary Service) Order 2012*. By involving the Council, the FCC is essentially eliciting Fijian consumers' voice in the establishment or review of regulatory measures for such monopoly service providers like the Fiji Electricity Authority (FEA). The Council sincerely hopes that the issues it raise here are given due consideration in the interest of consumer justice and fairness.

1.2 Electricity – Essential Service

Electricity is an essential energy source that plays a critical role in growth and development of Fiji. The Council wish to stress that for consumers in Fiji this essential utility service is virtually provided and regulated by a single commercial entity – the Fiji Electricity Authority (FEA). The provision of electricity in Fiji warrants appropriate policies that protect consumers from monopolistic service providers.

Electricity is vital not only to consumers but to the retail industry, service providers, Government, manufacturing and industrial sector, and the entertainment and hospitality industry. Any changes in tariffs affect end-users the most. An increase in tariffs will mean consumers forking out more of their take-home pay towards their bills; however it does not end there. Consumers' cost of living will increase as traders and service providers pass on the increased cost via increases in retail prices of goods and services. Thus it is important for the FCC to keep in mind the repercussions of any tariff increase on consumers.

1.3 Regulations to be aligned to Government's policy objectives

In making its decisions, the FCC should consider Government's overall policy objectives in the energy sector. Government's vision for the energy sector as set out in the Roadmap for Democracy andSustainable Socio-Economic Development is for a resource efficient, cost effective,and environmentally sustainable energy sector. Objective one of Government's energy policy (*Fiji Energy Policy 2013 – 2020*) states: "To provide all Fijians with access to affordable and reliable modern energy services."The key words here are *access*, *affordable* and *modern* and these should be the guiding principles when setting rules or regulations for FEA.

2.0 Review of the *Commerce (Control of Prices for Supply of Electricity and Ancillary Service) Order 2012*

The Consumer Council recommends the extension of the *Commerce (Control of Prices for Supply of Electricity and Ancillary Service) Order 2012*(hereby referred to as "the Order) preferably for an indefinite period until such time that some serious and meaningful actions are undertaken to review the *Electricity Act (Cap 180)* and bring about reforms to how FEA currently exercises its powers and conducts business. Here the Council wishes to reiterate the arguments and issues that ithas raised in previous submissions to the FCC on the FEA and tariff realignments. It also includes points from our submissions to the Department of Energy on the National Energy Policy review that was deliberated on in 2013. The Council wishes to highlight the following issues to support its argument for an extension of the Order and other regulatory actions that need to be considered by the FCC.

2.1 FEA's Powers and the need for a review of the *Electricity Act*

While a legislative review is beyond the scope of this submission and is not under the ambit of the FFC, the Council believes that it is imperative to highlight this. The FCC's decision must bear in mind FEA's unchecked powers that are well protected in the archaic *Electricity Act (Cap 180).* The FEA as a regulator, generator and distributor of electricity has the unfair advantage of dictating the environment in which it conducts its business. This legislative bias protects FEA's interests and not the consumers of electricity; thus exposing FEA to inefficiencies, unaccountability and irresponsibility.

The FEA has always conveniently referred to its powers under the Act whenever the Council raises issues affecting consumers or when there is an attempt to seek redress on behalf of complainants. An example is the doubling of the security deposit in 2011 by the FEA following the upward tariff realignment by the FCC. While FCC had established new tariffs, there was no way of stopping the FEA from going ahead to adjust the consumer deposit as its legislation required it to do so. There is a glaring unfairness in this clause. It gives the FEA both the power to impose the deposit and to estimate such a deposit. This clause allows FEA to impose a deposit "*…of sum estimated by the Authority to be equal to the total amount of all charges likely to be incurred by the consumer for the supply of energy and hire of apparatus for 2 months but not being less than $10*."FEA also dictates its own billing system, such that it is allowed to practice *estimated reading* which is arbitrary, inaccurate and unfair. While price regulation comes under the jurisdiction of the FCC, the FEA still reserves these and other powers under the outdated legislation.FEA's monopolistic and legislation-sanctioned power in the supply of electricity needs to be reviewed and removed to prevent continuing abuse of consumers' rights. A review of the *Electricity Act (Cap 180)* should consider putting in consumer protection clauses rather than having the current legislation which is producer-driven and only protects the interest of FEA.

2.2 Consumer Complaints and FEA's Trade Practices

2.2.1 Complaints

Consumer complaints against the FEA consistently remains in the top ten recurring complaints lodged at the Consumer Council since 2008. The largest number of complaints were recorded in 2010 and 2011 largely due to the fallout from the tariff realignment in particular FEA's consumer security deposit which was unfairly imposed on consumers. These figures exclude the number of consumers who may have lodged complaints with other authorities like the FCC or have simply aired their frustration via public forums like the newspapers' letter-to-editor columns. We have also noted some consumers who have taken their complaints cases directly to the Small Claims Tribunal and some who have instituted legal action in the higher courts.

FEA Complaints 2008 – 2004 (formally lodged at the Consumer Council of Fiji)	
Year	**Number**
2008	59
2009	55
2010	182
2011	147
2012	95
2013	70
2014	46

Some of the most recurring complaints are:

- *unusually high increase in estimated bills against normal readings;*
- *meter readers not making honest attempt to do normal reading, claiming inaccessibility to meters;*
- *billing errors – e.g. wrong tariff line used;*
- *non issuance of bills and bulk billing;*
- *upward revision of security deposit without proper notice;*
- *disconnections without proper notice;*
- *power surges, blackouts resulting in damage to household appliances with no avenue for compensation.*

2.2.2 FEA Trade Practices

Some trade practices undertaken by FEA (based on complaints) are quite baffling and inexplicable. While the FCC regulates prices and fair trading issues under the *Commerce Commission Decree 2010*, there is no independent regulatory body specializing in overseeing the electricity sector. Thus FEA is left to dictate and establish its own systems and standards of practice without regulatory oversight.

Security deposit – This was a major issue that surfaced in 2011 when FEA started rolling out its revised customer security deposit.This placed unnecessary pressure on poor consumers who were struggling even to pay their normal bill. It was through pressure from the Council that FEA decided to stagger the additional deposit amount over a six month period. In other countries, a security deposit may be required by regulation but does not make it compulsory or specify the amount. This allows some level of flexibility for consumers. Electricity providers in countries like Canada and Australia require a customer deposit that is based more a customers' payment history, credit rating, ability to pay, etc other than arbitrary and subjective estimates of usage. Furthermore, the collection and management of the customer security deposit is one area that needs thorough investigation. FEA says the money is in a "rolling operating bank account" and that "this is done in the view that we are refunding security deposits to customers on a daily basis."[1] There are currently no rules or regulations on how the deposit is managed by FEA and other utility providers.

Application of the Government consumer subsidy - In 2010, the Governmentprovided 17.64cents/unit subsidyfor consumption equal to or lessthan 75kwh per month. This was meant to assist low income earners. Unfortunately, FEA's calculation of the subsidy uses a daily average calculation based on a 30.4 days billing cycling. Many consumers thought that they would get the subsidy if they consumed 75kwh or less within a month. However, FEA never explained in clear terms that it uses the customer's *billing cycle*(i.e. number of days billed) where a month is defined as 30.4 days. In order to qualify a consumer's usage should *be 75kwh within 30.4 days, or a daily average of 2.47kwh*. Many consumers complained to the Council that their bills showed 75kwh or less, however on checking the billing days we found that it was less than 30.4 days which increased their daily average above the 2.47kwh cap. The subsidy is not working due to FEA's long-winded methodology and the fact that billing cycles are inconsistent. Consumers will never have a consistent or same billing cycle as FEA's reading system is inconsistent and the estimated reading system may mean some consumers losing out on the subsidy.

Since the latest increase of the subsidy to 85kwh, the Council has already begun receiving complaints from consumers in early 2015. The subsidy does not necessarily benefit the poor, as most often live in larger households with higher power consumption even for basic lighting and other essentials. This subsidy mainly targets 'low consumption rather than actually benefitting poor consumers.A review of the subsidy is warranted to ensurethat it captures thoseconsumers who are in real need.

Two meters one account, consolidated usage–The Council has come across cases where complainants have more than one meter registered under one FEA account or name and usage is consolidated. In one case the complainant had two residential meters under his name and FEA billed him on the total added usage of both meters. This inflated his usage and required his tariff line to move to the higher commercial line. This is one tactic that FEA may be unfair using to generate revenue. A fairer system would be to charge each meter separately as usage will be different. This would also equate with the user-pay system as the meters are often used by separate household or users and the bills would match consumption.

Estimated reading – The use of estimated reading continues to be a problem for consumers. Apart from this arbitrary and subject method, the Council has also received complaints where consumers experienced bill shock due to the inconsistent use of the two methods – estimated

[1]Consumer Council of Fiji Research on Security Deposit Management 2012

and normal (actual) reading. The Council has received complaints where consumers received estimated bills for six months and were later charged a very exorbitant bill based on actual readings for those months. There have also been complaints where it has been proven that meter readers were dishonest after not doing normal reading on the excuse that the meters were not accessible.

Compensation– There are no laws requiring FEA to compensate consumers who suffer damage to their home electrical appliances as a result of power outages or surges. FEA bears no responsibility and liability if its grid power system causes damage or losses to consumers' electrical appliances. This is a very unjust situation where FEA's legislation gives it the leeway to estimate and charge a security deposit, but where it is not bound to provide compensation to consumers.

2.3 FEA's Profitability

In the six-year period from 2008 to 2014 FEA's profitability has improved vastly. Between 2008 and 2012 the company's profit after tax had increased by a 1200%. FEA's good performances from 2010 to 2013 led to bonus payments to its employees. In 2011 a total of $1.6million was allocated for bonus payments, $880,000 in 2013 and the latest was in 2014 totalling $1.3million. The low $2.4m profit in 2009 was largely due to foreign exchange losses after the April 2009 devaluation of the Fiji Dollar. In 2010, FEA generated less profit from its core business, however a $7.5 foreign exchange gain from offshore loans led to a higher profit posting. FEA is enjoying Government tax benefits and overall pro-business policies. The $51.9m profit reported in 2011 included a large gain from Government's reduction of the corporate tax rate from 28% in 2011 to 20% in 2012. In 2012 FEA's positive bottom line was assisted by an income tax benefit of $13.5m due to its investment in the Nadarivatu Hydro Project.

Year	$ million
2008	$2.5m
2009	$2.4m
2010	$8.4m
2011	$51.9m
2012	$75.3m
2013	$32.5m

2.4 Current tariffs and scope for reduction

The FCC's last determination on electricity tariff rates in December 2012 reduced the consumer/domestic tariff by approximately 5% from 34.84kwh to 33.10kwh. A major rationale for that determination was the increase in FEA's renewable energy mix to 75.9% due largely to the commissioning of the 40MW Nadarivatu Hydro scheme. The Council notes that FEA continues to undertake expansion and improvement of its hydro power generating scheme. We note that FCC has made tariff comparisons with comparable economies and Pacific Island countries. However, most of these countries have a much higher dependence on non-renewable fossil fuels compared to Fiji which is well ahead in terms of expansion ofrenewable energy sources. The Council believes that the FCC should consider further reduction in tariffs. This request is based on the following:

2.4.1 Profitability

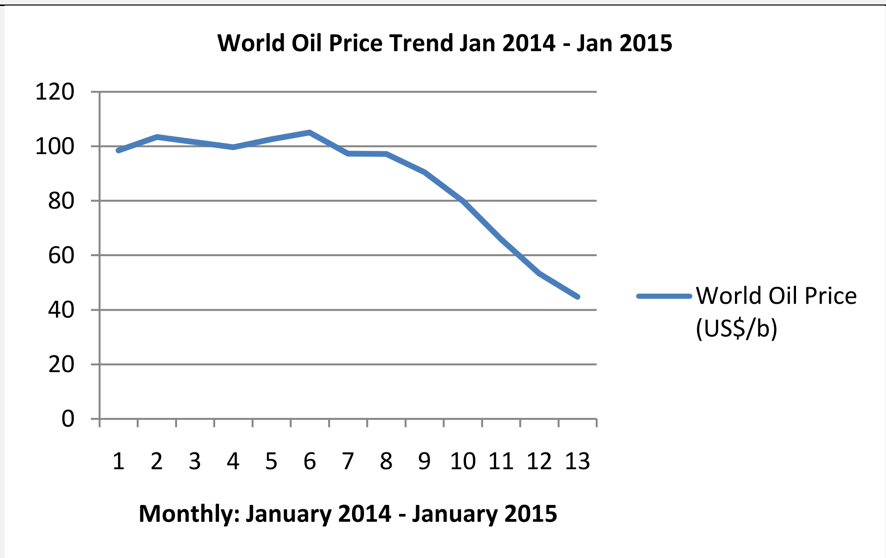
FEA's profitability has improved greatly after the fuel hikes that led to fuel surcharging and upward tariff realignment. FEA has been able to make so much profit that it was able to pay out bonuses to its employees. (See 2.3 above). *The FEA is also enjoying the reduction in the corporate tax rate from 28% to 20% in 2012*. The windfall if invested in renewable energy projects will again benefit the FEA through Government's tax concessions. FEA is operating in a business environment where it enjoys considerable Government support.

2.4.2 World Oil Price Drop and Domestic fuel price reductions

The FEA continues to depend on non-renewal thermal energy for electricity production. The increasing demand has compelled the company to purchase a new set of four diesel generators, which were being delivered to its Kinoya power station in late February 2015. FEA CEO Hasmukh Patel has been reported in the media saying that the new "diesel generators run on heavy fuel oil (HFO) which are cheaper, FEA will be able to save on costs" and he is confident that this will help service their loans.[2]The past year has seen a drop in the world oil price and the most recent FCC quarterly fuel price review has seem some decreases in the retailer price of fuel. The average world oil price has dropped by more than 50% in the past year (See table below). The two world oil price benchmarks – WTI and Brent Crude have both dropped to below US$50 per barrel in January 2015.[3]

World Oil Price Trend Jan 2014 – Jan 2015

Month	Oil (US$)
Jan	98.48
Feb	103.48
Mar	101.51
Apr	99.68
May	102.64
Jun	105.09
Jul	97.36
Aug	97.16
Sep	90.45
Oct	79.89
Nov	65.94
Dec	53.27
Jan	44.74



** WTI Crude (Real) Source: http://www.macrotrends.net/1369/crude-oil-price-history-chart

[2] 'New Kinoya power station to boost capacity" http://fijilive.com/news/2015/02/new-kinoya-power-station-to-boost-capacity/60735.Fijilive 25/02/15
[3] 'Why oil prices keep falling — and throwing the world into turmoil'http://www.vox.com/2014/12/16/7401705/oil-prices-falling Accessed 25/01/15

2.4.3 Cost reduction in FEA's customer payments system

There is anecdotal evidence that FEA's streamlining and outsourcing of its bill payment system is resulting in more efficient and cost savings for the power produce. There has been a rapid development and deployment of electronic payment systems in the last five years. Online banking e-billing or e-pay and mobile payments via M-Paisa and DigiMoney is having a positive effect on FEA. This is apart from the use of outlets like MH and Post Fiji for FEA bill payments. These should reduce FEA's costs such a reduction in paid labour force and a drop in costs for paperwork etc. The low and disappearing queues at FEA offices are good indications that consumers are utilising more of these alternative payment systems and outlets. FEA needs to provide a better assessment and disclosure of the cost savings from these initiatives.

3.0 Recommendations

3.1 The Consumer Council recommendsthat the *Commerce (Control of Prices for Supply of Electricity and Ancillary Services) Order 2012* be extended based on:

- FEA's continued existence as a monopoly; and as both provider and regulator of electricity generation, distribution and sale in Fiji;
- the fact that the *Electricity Act Cap 180* continues to give FEA unprecedented and unchecked powers to the detriment of consumer justice and fairness;
- the fact that FEA's trade practices such its billing systemetc are not fair to consumers, subjective and not bound to any prescribed standards or rules (apart from fair trading laws in the *Commerce Commission Decree 2010*);
- the fact FEA is operating in an environment where there is no independent regulator to oversee the billing system and standards peculiar to the business of electricity generation, distribution and sale and;
- the fact that FEA's profitability has been very positive from 2011 onwards and that is indicative of the fact that price regulation is not detrimental to its business;

3.2 The Council further submits that the FCC considers reducing the current tariffs based on:

- FEA's profitability that has been supported by the reduction in the corporate tax to 20% from 2012, and Government tax benefits arising from the company's investment in renewable energy projects;
- the reduction in the world oil and domestic fuel prices that is easing the burden on FEA's fuel bill.

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