



11 April 2007

Dr John Tamblyn  
Chairman  
Australian Energy Market Commission  
By email to [submissions@aemc.gov.au](mailto:submissions@aemc.gov.au)

Dear Dr Tamblyn

Thank you for the opportunity to comment on the Australian Energy Market Commission's (AEMC) Draft Statement of Approach in the Review of the effectiveness of competition in the gas and electricity retail markets (Draft Statement).

This submission represents the views of the Consumer Utilities Advocacy Centre Ltd, Victorian Council of Social Service, Alternative Technology Association, and St Vincent de Paul Society Victoria.

As a starting point, it must be remembered that energy is an essential service, underpinning every form of social and economic activity in Australia. Energy generation and consumption have social and environmental outcomes, and the market cannot be viewed without considering those. Our organisations all endorse the National Energy Consumers Roundtable *Charter of Principles for Energy Supply* (attached), which states

Electricity is an essential domestic service. Except in rare and exceptional circumstances, a regular connection to electricity supply is not discretionary or optional. In most instances there is no alternative to electricity. Electricity supports fundamental human needs including safe food (storage, preparation) and safe shelter (hygiene, lighting, temperature control). Electricity supports equipment that is critical to wellbeing and independence (health, communication). Beyond these fundamentals, electricity supports community engagement and family life (social interactions, employment, education). A reliable, safe, affordable supply of electricity is now a matter of right rather than privilege and access must be guaranteed as far as reasonably possible.

We recognise that the Draft Statement defines the Commission's approach to and framework for the Review, but emphasise that that approach must recognise the linkages between

customer protections delivered by both regulatory mechanisms (such as through price regulation, regulation of terms and conditions, etc.), and government interventions (such as community service obligations, direct grants, rebates, etc.). These regulatory and non-regulatory protections are interlinked, and that relationship must be well understood by the Commission in formulating its recommendations for the retention or removal of retail price regulation. To provide just one example of these linkages, significant price increases passed through to low-income consumers who hold health care cards will generate a proportionate increase in the Government's concessions budget.

There are also developments that must be taken into account in the Commission's consideration of the market. The scheduled roll-out of interval meters in Victoria from 2009 will see the emergence of new and complex products relating to time of use pricing. The State Government's commitment to pricing carbon emissions (through a state or federal emissions trading scheme) will raise prices for all consumers. These developments will affect the market, on both the supply and demand sides, and recommendations about the role of retail price regulation must take these factors into account.

The following provides some comments on specific issues raised in the Draft Statement.

### **3.3 Market structure**

We endorse the AEMC's decision to look at different customer segments. The customer classes that we recommend be included in that list are:

- low-income consumers, tenants and rural consumers, all of which were identified in the last FRC review identified as not accessing competition;
- low volume users;
- electricity only areas, where fuel substitution is even more restricted
- consumers on time of use tariffs (to pick up different treatments of peak/off-peak); and
- small business and rural consumers, where consumption may be for business and residential usage (e.g. home businesses, farmers).

We also recommend that the analysis of customer segments include a demographic breakdown to differentiate household type (e.g. sole parents, couples with/without children, singles, shared households), socio-economic status/income, and housing tenure (rental/home-owner) — these all play a role in the types of products consumers are offered, and affect the degree to which customers can participate in the market. The last breakdown of tenure will provide an important analytic tool by which to dig further into the churn rate: the Victorian data on switching does not differentiate between passive and active switching, so customers changing suppliers only because they are moving house are indistinct from those seeking a better deal. (Tenants move much more often than owner-occupiers, usually in a greater hurry and often through no choice of their own.)

We agree that the number of firms supplying gas and electricity and their market share is pertinent to the Review, as it does affect competition outcomes. Within that assessment, we

recommend that market concentration be a particular focus. This is especially relevant in Victoria, where the size of the dominant three firms has increased (through acquisitions), thus giving them the weight of capital to invest in generation and consolidate their positions further. While new entrants have gained some market share in Victoria, the significant imbalance means market concentration should be a distinct criterion in the assessment of the effectiveness of competition.

The participation of households as suppliers (through microgeneration systems such as solar PV) should also be factored into the analysis of the market. The inability of those households to secure fair and reasonable feed-in tariffs, in recognition of the true value of embedded generation to the NEM, can legitimately be described as a barrier to entry.

Finally, we also encourage the AEMC to look closely at the operations of the wholesale market and its impact on competitive outcomes, particularly in relation to the emergence of ‘gentailers’ (retailers that own generation plant). Anecdotal evidence suggests that new entrants are struggling to compete given the current price of wholesale electricity, and there is some concern that this could be presenting a significant barrier to entry.

### **3.4 Market conduct**

There remains a need for more robust demand-side data in the Victorian marketplace. Churning must be acknowledged as (at best) an imprecise measure. To assess the effectiveness of competition, the Commission must understand why and how consumers switched, and whether those choices are generally in their best interests.

We are not confident that consumers are operating effectively in this marketplace – there remain significant information asymmetries, despite the Victorian Government’s decision to regulate product information disclosure.

We are also aware through our networks of continued instances of market misconduct – misrepresentation by retailers’ agents remains a too commonly heard story in community and emergency relief organisations. In that respect, the Commission’s analysis must take into account that rivalrous behaviour among market participants does not *of itself* signify effective competition — it may equally indicate aggressive, predatory marketing that exploits consumers’ lack of knowledge.

We make the following specific comments in relation to the indicators for market conduct (sec. 3.4.2).

As noted above, data on customer churn is too imprecise to accurately convey the relationship between switching and competition. We therefore recommend that the Commission include in its research a more thorough analysis of why consumers are changing retailers, giving especial consideration to the following:

- Why are consumers switching? Research should identify how often consumers actively chose to change their energy retailer (as opposed to having to change because they moved house), and analyse the process of decision and change to elicit better data about the degree of information asymmetries. We would recommend as a starting

point the following, which addresses market failures that have become evident in the course of our operations:

- whether a price comparison was made before accepting an offer;
  - whether intermediaries were involved in the process, and how much information they passed on to the consumer;
  - whether consumers received all the relevant information from the retailer before sign-on, or whether it was only at or after sign-on that important information was made known; and
  - the influence of price on their decision.
- Did consumers who actively switched make the right choice? We are concerned that consumers' lack of information and bargaining power means that choices made too often leave the consumer in a worse position, through higher prices or terms and conditions unsuited to their needs (e.g. direct debit or inappropriate length of contract). The notion of explicit informed consent underpins regulatory protections about sign-on, but we continue to see instances of consumers who have made poor choices in relation to their energy contracts and are disadvantaged as a result. The learnings of behavioural economics would provide a useful conceptual framework for this analysis. As such, we strongly recommend that the AEMC dedicate some resources to an ex post assessment of whether competition is effective for individual consumers.
    - The CUAC Domestic Issues Group (DIG) put forward a research proposal along these lines to the Essential Services Commission in Victoria (attached) as members considered it a priority action issue. The DIG includes nearly all of the agencies actively involved in energy issues in the state.

A shadow shopping exercise would also be a valuable window into the process – anecdotal evidence from our networks suggests that retailers often treat tenants differently from homeowners, and that price and other fees and charges are only fully explained at sign-on of the contract.

The Energy and Water Ombudsman Victoria (EWOV)'s data on longer-term trends in relation to complaints on customer transfer should be a useful adjunct to the above.

Any market research on customer awareness needs to look deeper than a general awareness of possible suppliers or whether choice exists. The Commission should aim to collect more detailed information on whether there is an understanding of products and an awareness of the regulator and EWOV to assess how empowered consumers are in this market.

Research on the ease of obtaining, understanding and comparing information should not only identify and assess the efficacy of pertinent mechanisms; it should also consider their relevance to certain customer classes. For example, Vision Australia found that 24% of

Victorians have a print disability<sup>1</sup>, and significant numbers of rural Victorians have poor access to the internet — yet the primary way of obtaining energy market information is online.

The AEMC should also consider approaching those private and public organisations interested in developing price comparison services, to assess what obstacles were placed in their way by retailers unwilling to provide information.

We reiterate the offer made at the National Consumers Roundtable by Victorian consumer and community groups to assist the AEMC as it develops its methodology for the Review. Our groups are very well placed to alert the Commission to systemic problems that should be reflected in information gathering and data collection for this Review.

### **3.5 Market performance**

The AEMC should recognize that as the market has developed, the standing offer has evolved in two ways: firstly, as the ‘price to beat’, where it has driven competition by providing a benchmark around which companies compete; and secondly, as a safety-net tariff for those large numbers of consumers who have chosen not to enter into a market contract. As the Commission develops the criteria by which it will assess whether it recommends the retention or removal or price regulation, this dual role must be taken into account.

The Commission’s research should also reflect that, apart from GreenPower, non-price offerings remain the primary inducement for consumers to switch retailers. Incorporating that fact into the analysis should be undertaken with some care, as we are certainly not confident that consumers are actively incorporating the value of those inducements and doing price comparisons.

In order to assess the overall effectiveness of price competition, we also recommend that the AEMC identify which classes of consumers have benefited from price changes (business vs residential, rural vs. metro, high vs low volume, peak vs peak/off-peak, single fuel vs. dual fuel households, low/medium/high incomes, tenants vs owner-occupiers), as our experience is that price benefits can be limited to certain customer segments. A key part of that research should be the impact on consumers of price changes, to understand the correlation (if any) between price and switching.

In relation to product innovation, the main trends evident in Victoria have been the uptake of GreenPower, and the forthcoming roll-out of interval meters. Both favour incumbents, through the ability of the gentailers to access renewable energy and the capacity to launch TOU pricing to an existing customer base. Renewable energy also provides an interesting example of information asymmetries – anecdotal evidence suggests that the number of people who believe they are on certified GreenPower does not match the number that actually are, reflecting inaccurate and unclear information disclosure by retailers surrounding renewable energy products.

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<sup>1</sup> As defined by the *Round Table on Information Access for people with Print Disabilities*, people with print disabilities include those who cannot independently obtain access to information in a print form because of a lack of literacy or language skills.

### 4.3 Consultation process

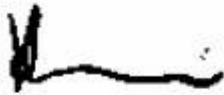
As noted above, we strongly recommend that Commission establish a working group that can advise on developing methodology for demand-side analysis. There are a range of Victorian consumer and community agencies that would be very willing to participate, and whose networks would be of great value to the Commission in eliciting information and comments from consumers in this process.

Such a working group could be used throughout the Review, although we envisage that it would be in addition to the Commission's consultation with consumer stakeholders, either on an individual basis or in public meetings, as that would enable consumers and their representatives to represent their individual constituencies.

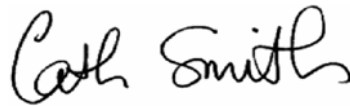
We also strongly recommend that the Commission actively consults with rural and regional consumers, since that class of consumers was deemed to have not benefited from competition in 2004. As such, we would propose that the AEMC hold public meetings in regional Victoria, place advertisements in rural and regional print media (The Australian alone is not sufficient), and leverage from other networks to reach those consumers.

We would be happy to discuss any of the above in more detail with you.

Yours sincerely



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