

## **Energy and Water Ombudsman (Victoria) Limited**

ABN 57 070 516 175

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16 January 2008

Dr John Tamblyn  
Chairman  
Australian Energy Market Commission  
PO Box A2449  
SYDNEY SOUTH NSW 1235

**By email:** [submissions@aemc.gov.au](mailto:submissions@aemc.gov.au)

Dear Dr Tamblyn

### **Re: The Review of the Effectiveness of Competition in Electricity and Gas Retail Markets in Victoria – Second Draft Report**

Thank you for the opportunity to comment on the Australian Energy Market Commission's (AEMC's) *Second Draft Report of the Review of the Effectiveness of Competition in Electricity and Gas Retail Markets in Victoria* (the Second Draft Report).

Given the AEMC's confirmation of the finding in the First Draft Report that competition is effective in Victorian electricity and gas retail markets, it follows that, under the terms of the Australian Energy Market Agreement, the AEMC is recommending to the Victorian Government that its current system of price regulation should end as from 1 January 2009. That system of price regulation is light-handed. As the AEMC says in its report, the Victorian Government has not exercised its reserve powers in respect of the standing prices established by the host retailers since 2002.

The Energy and Water Ombudsman (Victoria) (EWOV) accepts the logic of this consequence, even though we still believe that the AEMC is being too sanguine about the state of marketing in the state. However, in this submission we wish to confine our comments to the recommendations and reasoning in the Second Draft Report, and not reopen matters about which the AEMC has already reached a conclusion.

Firstly, EWOV is very pleased by the support the AEMC has given to the Victorian consumer protection framework in the Second Draft Report. EWOV has consistently supported this framework in its submissions to the Ministerial Council for Energy consultation processes and is heartened by the endorsement of it coming from the AEMC. The Appendix setting out the elements of the consumer protection framework and where they occur in regulation and law is a valuable adjunct to the report.

## **Standing prices**

EWOV is also pleased that there will be a recommendation to continue a system of standing prices. As we pointed out in our submission on the First Draft Report, standing prices are used as reference points for a couple of purposes, including maximum tariffs for caravan park residents and also for those people using electricity or gas without having set up an account. As long as standing prices do not increase at an excessive rate, the continuation of the system of standing prices will offer some limited protection, particularly to the residents of caravan parks.

The Second Draft Report asks if the standing prices should be published in newspapers rather than in the Government Gazette. EWOV answers that of course they should. The Gazette, as noted in the Second Draft Report, is not a well-known or easily accessible publication, and it was only appropriate to publish those prices in the Gazette while their publication implied Government approval. That will no longer be the case. Standing prices are of considerable public interest, and the media is more likely to notice and report on them if the tariffs are advertised in wide circulation papers. EWOV would go further and suggest that publication in the Public Notices section is inadequate; it is unreasonable to expect people to go looking for the standard prices. They should be in a section of the paper where it is likely that people will see them. EWOV suggests that the final advice to the Victorian Government should include a recommendation that retailers be obliged to publish their standing prices in the first 15 pages of a widely circulated daily paper, both metropolitan and regional. Retailers should also be obliged to make them readily available on their websites.

## **Obligation to supply and sell energy**

EWOV supports the continuation of the obligation to supply and sell energy, making it possible to remain on standing contracts. It would be a most awkward transition, if those people who have not entered market contracts were required to take some action or be disadvantaged. EWOV also supports the concept of the Financially Responsible Market Participant (FRMP) for the premises having the obligation, even though we anticipate that there may be some confusion where customers, newly moved into premises, do not know who the FRMP for the previous occupant was. We agree that the concept of host retailer is becoming less relevant and that it is more equitable if all retailers share in these kinds of obligations. In supporting these recommendations, we are mindful that it is open to customers to contact their retailer of choice and enter into a contract which would override the 'rights' of the former FRMP. We anticipate some confusion on this point and that some cases will come to us because of these new arrangements, but we already see cases where retailers who have contracted with previous residents endeavour to assert a right over the service of the new residents, so we would not anticipate a significant net increase in cases.

EWOV notes that the Second Draft Reports talks of supplying and selling energy even though its references to the FRMP suggest that it is only electricity that is covered. Is it

the AEMC's proposition that the obligation to supply and sell gas should lie with the Financially Responsible Organisation (FRO)?

EWOV believes that the simplest solution to the issue of new connections is to continue with the status quo rather than go to distributors calling for tenders. Given the high degree of contestability in Victoria, it is open to customers to go to whomever they like (although some new retailers prefer to steer clear of new energisations) so there is no great loss of choice for the customers. Distributor tender is, it is arguable, more likely to diminish choice for customers because, given the effort of going through a tender process, only a few retailers may submit tenders.

### **Price monitoring**

We support the concept that the Essential Services Commission monitors standing prices in a similar way to its current monitoring of market contract prices. We see no reason why that should not be an ongoing part of its retail performance monitoring, at least until the stage where the number of customers on standing contracts is less than 10% or 5%. The price monitoring is particularly important in the context of significant forthcoming energy and water price increases.

### **Public information campaign**

We note that the AEMC has not formally asked for comment on its suggestion to the Victorian Government that there be an information campaign concentrating particularly on the customer's right to information. This is always a good message to be delivering and one that needs to be delivered given the continuing complaints that customers were pressured into signing contracts on the spot when they asked for information or conversely complaints that they were transferred when they only agreed to receive information. However, we are not entirely clear on the connection between the suggested campaign and the removal of retail price regulation.

### **Marketing abuses and enforcement**

EWOV entirely agrees that more frequent and more prompt enforcement action would lessen the current levels of abuses in the marketing processes. We take the AEMC's point when it says that marketing abuses exist under the current system of retail price regulation. EWOV has never particularly seen a connection between the levels of price regulation and marketing abuses, and merely responded to the questions about marketing the AEMC itself asked in its earlier call for submissions.

### **Conclusion**

EWOV is largely supportive of the recommendations the AEMC has outlined in the Second Draft Report. The continuation of standing prices and of the obligation to supply and sell energy will significantly mitigate any adverse effects from the abolition of retail price regulation. We note that the AEMC would be prepared to revisit its consideration

of the effectiveness of competition in Victorian energy markets if confronted by evidence of market failure and/or consumer detriment.

Should you wish clarification or further information on this submission please contact Stephen Gatford, Manager Public Affairs and Policy, on (03) 9649 7599 or at [stephen.gatford@ewov.com.au](mailto:stephen.gatford@ewov.com.au).

Yours sincerely

A handwritten signature in cursive script that reads "Fiona McLeod".

**Fiona McLeod**  
**Energy and Water Ombudsman (Victoria)**