



26 May 2011

By email: submissions@aemc.gov.au

Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

Dear Commissioners

Submission to AEMC Strategic Priorities for Market Development 2011

The Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on the Australian Energy Market Commission's (the **Commission**) *Strategic Priorities for Market Development* (the **Strategic Priorities**).

We apologise for the delay in forwarding our response, and also for its brevity. Both are due to a limited and finite pool of resources, and a significant level of activity in the national energy market that requires consumer engagement. We have considered the Strategic Priorities the AEMC has identified to address the challenges facing the Australian energy sector, and offer the following comments.

About Consumer Action

Consumer Action is an independent, not-for-profit, campaign-focused casework and policy organisation. Consumer Action provides free legal advice and representation to vulnerable and disadvantaged consumers across Victoria, and is the largest specialist consumer legal practice in Australia.

Consumer Action is also a nationally-recognised and influential policy and research body, pursuing a law reform agenda across a range of important consumer issues at a governmental level, in the media, and in the community directly. Consumer Action has been actively involved in energy advocacy work in Victoria and nationally since the 1990s. Over this time we have provided key consumer input into important energy regulatory processes for consumers, including the current Victorian smart meter rollout and initiatives relating to improved energy price and product information disclosure following the deregulation of Victorian retail energy prices.

Since September 2009 we have also operated a new service, *MoneyHelp*, a not-for-profit financial counselling service funded by the Victorian Government to provide free, confidential

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and independent financial advice to Victorians with changed financial circumstances due to job loss or reduction in working hours, or experiencing mortgage or rental stress as a result of the current economic climate.

General comments

We have an overarching concern that the Strategic Priorities fail to recognise the essential role of consumers within the national energy market, and their role in competition. While the Commission may consider that this is implied, it actually, and effectively, serves to highlight the singular emphasis on the supply side, both within the market and the specific regulatory framework. For example, discussion around the competitive retail markets is largely focused on barriers to market entrants, incentives for producers and generators to invest, liquid spot and contract markets, and policy settings that create uncertainty for generators.

The focus on economically efficient energy markets that does not sufficiently acknowledge the role of consumers, is a significant omission by policy and regulatory decision makers and further highlights the inadequacies of the National Electricity and Gas Objectives when framing the work plan of bodies such as the Commission. We strongly recommend that the Strategic Priorities explicitly recognise the key role of consumers in effectively driving the market.

While we acknowledge the Commission is conducting the DSP3 review, we believe that the strategic priorities can not commence to address consumer issues or needs until the review has been completed, despite the terms of reference of the review being limited. These require the review to focus on "electricity market frameworks for facilitating efficient investment in, and use of DSP, in the NEM," including "all electricity market arrangements and transactions that impact on the electricity supply chain, the Rules, the other national and jurisdictional rules and regulations, and market behaviours."¹ This too lacks an explicit focus on consumers.

We note that the second Strategic Priority "Building the capability and capturing the value of flexible demand" does recognise the need to expand cost-effective consumer choices and improve energy efficiency, however the core discussion in relation to this priority is how to develop the supply side of the market, without any obvious understanding of the demand side.

We recommend, with urgency, that, to enhance the Commission's work program in the upcoming period and to ensure consumer interests are adequately considered, the Commission expand the second Strategic Priority to assess the broader role of consumers within the market, and to determine whether the current market design is truly in the long term interests of consumers.

¹ [Terms of reference for MCE directed Stage 3 DSP review.](#)

Market Structure

We have significant concerns over the increasing complexity of the energy market, and specifically whether competition is working for consumers. Questions such as whether consumers can actually access competitive products and services and participate fully in the pursuit of these present themselves through the issues we encounter with our legal and financial counselling services clients. We also query how effectively the market is helping consumers maximise potential benefits, for example through ensuring they understand the market.

The energy sector is fast undergoing market concentration. The recent privatisation of the NSW retail energy sector has resulted in the national retail market contracting. A number of incumbent market participants, previously NSW government owned, have been acquired by large market participants which brings with it concerns that these businesses, by nature of market composition, will abuse their market power.

Already, the number of market offers available, the complexity of these offers (both gas and electricity) and the way in which these products are marketed to consumers - primarily at the door - impact upon how successfully consumers interact with the market. Further, the introduction of smart meters and smart grids mean that consumer choice is moving from being relatively straight forward to being more complex and confusing. While consumers should of course have the opportunity to choose the products they want and are prepared to pay for, including energy, it is essential that the market does not become so complex that choice undermines its competitiveness, and renders informed participation next to impossible.

We strongly recommend the AEMC take a more sophisticated approach to assessing the market, by seeking to effectively understand what the demand side looks like, and potentially, what we want it to look like, including its behaviours and what would best meets its needs. Further, we need to understand if the market is providing reliable and secure energy to consumers in the most efficient, affordable and equitable manner - or if it is simply rewarding market participants.

Without this revised assessment of the market, the Strategic Priorities presuppose to limit the discussion to the current market design, which we believe is currently flawed for consumers.

Consumer behaviour

The ability of the demand side to interact in the market and for consumers to make decisions is not only impacted by price, but must involve other considerations as well. It is important to note that behavioural economics examines actual consumer behaviour and identifies systematic biases and departures from the perfectly rational consumer that is assumed by our current regulatory framework.

For some householders, decisions to use electricity more efficiently, or make different decisions about their energy consumption and demand, can be limited by a range of structural factors. Barriers to household energy efficiency include the efficiency standards of

buildings and appliances, the split incentive that exists between landlords and tenants, and the inability of low-income households to pay more to be efficient. Perhaps the most significant barrier is the cultural change necessary to convince consumers of the need to consume far less. Complex solutions are required to overcome these problems – and these systematic biases and behavioural departures need to be considered in the ongoing work of the AEMC, including the work in DSP3, and specifically in the strategic priorities.

Consumer Advocacy Panel grant recipient - disclaimer

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The views expressed in this document do not necessarily reflect the views of the Consumer Advocacy Panel or the Australian Energy Market Commission.

Should you have any questions about this submission, please contact me on 03 9670 5088.

Yours sincerely

CONSUMER ACTION LAW CENTRE

A handwritten signature in black ink that reads "Janine Rayner". The signature is written in a cursive, flowing style.

Janine Rayner
Senior Policy Officer