

1 February 2008

Australian Energy Market Commission
By email to submissions@aemc.gov.au

AEMC Retail Competition Review – CUAC Response to Draft Report

The Consumer Utilities Advocacy Centre Ltd (CUAC) welcomes the opportunity to respond to the Australian Energy Market Commission's Second Draft Report *Review of the Effectiveness of Competition in Gas and Electricity Retail Markets in Victoria* (the Draft Report).

CUAC is an independent advocacy organisation, established to represent the interests of Victorian consumers, particularly low-income, disadvantaged, rural and regional and Indigenous consumers, in policy and regulatory decisions on electricity, gas and water. This submission has been made with the interests of those consumers in mind.

CUAC remains concerned at the conclusion of the Commission in its Final Report, that competition is sufficiently effective to remove retail price regulation. Our concern is driven largely by the failure of the Commission's analysis to do anything more than provide a snapshot of the level and nature of competition in the Victorian energy market at this point in time, and does not take into account the ways in which this market will become more complex in the short-term. As we noted in our earlier submission:

The Victorian market will change significantly following the advanced metering infrastructure (AMI) roll-out – the push for more complex tariffs is inevitable, requiring consumers to understand in detail the level and type of their consumption. The effect on competition of the AMI roll-out should have been incorporated actively into the Commission's assessment. In addition, the introduction of an emissions trading system will place upward pressure on prices – which are already under pressure from wholesale market constraints.

It is unfortunate that the Final Report does not provide any research into the way in which these trends will alter the level of competition in the Victorian energy market and, more importantly, how they will affect consumers' participation and awareness of the market, in a brave new world of products that are likely to be both more complex and more expensive.

The following provides comments on specific recommendations in the Draft Report.

Obligation to offer to supply (s. 4.2)

CUAC perceives the main risk to consumers with the Commission's proposed approach is that it creates a powerful incentive for retailers to make the standing offer their most expensive product, creating a number of less than desirable consequences.

It enables retailers to load costs into the standing offer to discount other products, as has happened in other sectors such as banking and telecommunications, where low-use subsidise high-volume consumers. It must be remembered that those cheaper products are not necessarily available to all consumers.

As the obligation to offer supply is tied to the standing offer, the most disadvantaged consumers will pay the highest price. Those consumers who by virtue of their income or credit rating depend on the standing offer to ensure access to an essential service are the consumers who will be most disadvantaged by this approach.

The Commission neither acknowledges nor offers a solution to either of these probabilities, which present real risks to low-income and disadvantaged consumers. To truly provide a safety net for consumers unable to access the market, the proposed approach requires significantly more refinement.

Who should have the obligation to offer? (s. 4.2.1.2)

CUAC would welcome an assessment of how the proposed FRMP model has worked in reality. While full retail competition has only been operating for some months in Queensland, it would seem appropriate to include an assessment of the model's success and any emerging problems or issues in the Second Draft Report.

Designated retailer for new connections (s. 4.2.1.3)

CUAC has some concerns about the approaches proposed to deal with new connections, but recognizes that there may be no easy solution to this particular issue.

The distributor tender model would seem to run the risk of potentially significantly delaying new connections – apart from the administrative delays caused by a tender process, distribution businesses have not traditionally had to take this approach and we would be skeptical that their operational systems would be easily able to incorporate this role at the level of service a customer would require. There a number of questions we would like to see answered before we could support such an approach, including

- This model would also only appear viable for larger scale developments – how would a single household be treated under this system?
- What would be the default position should no retailers participate in the tender (say at a time of volatile or rapidly increasing wholesale prices)? How would a consumer be guaranteed connection?

- Distribution businesses would no doubt seek additional revenue to cover the costs of conducting the tender, which would be passed through to consumers, making the process of securing a new connection more expensive for little apparent benefit. Has the Commission undertaken an assessment of how costs would be allocated within this system?

While the idea of designating a host retailer for new connections seems to conflict with the move to the FMRP model to deliver the obligation to supply for other customers, it would appear a more practical approach than the distributor tender.

Publication of prices (s. 3.3.1)

Of major concern to CUAC is the requirement that only standing offers be published, which in effect will serve only to exacerbate the already serious information asymmetries in the market.

The customer survey conducted by the AEMC made very clear that customers rely primarily on the retailer for information – at point of sale, the customer is not going to receive any information except about the product on offer. That situation does not equate to an ‘informed and active consumer’, a criteria crucial for effective competition.

If all product prices were published, consumers would be able to more easily identify and compare offers to find the product that best suits their need, and commercial and/or public comparison services could be developed that would provide independent advice to consumers to facilitate a choice that maximizes their welfare.

CUAC believes the Commission is being overly cautious in its approach, and places too much weight on the perceived risk of deterring discounting and facilitating price coordination, rather than looking at the reality of consumers’ experience in the United Kingdom or Norway, where retailers are required to publish all offers. The Norwegian regulator provides an online search engine that tells consumers the range of products available in their neighbourhood, and provides a real world model for consideration.

The Commission points to the criticism of one paper of the UK system to support its decision – we would point to the lack of action by regulators in either the UK or Norway responding to that concern, raising questions about whether they perceive this issue to be causing anti-competitive behaviour.

While publishing all tariffs may run a risk of price coordination, we believe that the trade-off in empowering consumers will create a much stronger market and facilitate and promote competition.

Guideline regarding format for publication (s. 3.3.2)

CUAC agrees that there should be standardization of the format of publication, to facilitate comparison. A key information component of the ESC Guideline has been the inclusion of key terms and conditions that impose a cost on the consumer (early termination fees, for example). That information should also be incorporated into the guideline, to ensure that consumers are provided with adequate information.

Additional publication requirements (s. 3.3.3)

As outlined above, CUAC supports publication of all tariffs.

Given the additional role of standing offer tariffs, as the mechanism to secure access to an essential service and the likely ROLR tariff, we would support publication of those offers in newspapers and the Gazette, with the understanding that that offer would be in place for some announced time.

That approach would not only assist consumers, but also facilitate research and analysis by regulators, policy makers and consumer advocacy groups. The additional costs and administrative burden on a retailer would be negligible, compared to the systemic benefit.

The Commission is right to point out that publication of tariffs in this manner would not reach all consumers. We would agree that it could not be relied upon solely to inform consumers of standing offer prices, and changes to those prices. There is however no one measure that can be used to inform consumers – retailers (and government and regulators) will have to adopt a multi-faceted approach, and publication of standing offer prices in newspapers would be a cost-effective way of ensuring that information was provided.

Price monitoring (s. 3.4)

Should the Victorian Government accept the AEMC recommendation to rely on price monitoring, CUAC would prefer to see a more robust regulatory regime than is suggested in the Draft Report.

Of particular concern is the recommendation that the regulator should refrain from making assessments of the consistency of reported price trends with expected competitive market outcomes. By restricting the regulator from analyzing price trends, this approach poses the risk of weakening and delaying a response to emerging problems that could be causing serious disadvantage to consumers already struggling to retain access.

It is essential that any price monitoring regime must be able to ensure that standing offer prices are reasonable and cost-reflective, especially since the obligation to supply is tied to those products.

While we acknowledge the Commission's desire to delineate responsibility between the ESC/AER, government and itself, the reality is that the regulator remains the agency best placed to identify systemic issues. It holds the most information about the market and, particularly, how standing offer prices compare to market contracts.

Consumer awareness campaign (s. 4.3)

We would emphasise that any change to the regulation of electricity prices requires a comprehensive and well-targeted public education campaign. The Commission mentions the consumer awareness campaign for small business in the Draft Report – CUAC would see that as a completely inappropriate model for households. This is an essential service and any fundamental change to consumers' rights in this market should be carefully outlined to Victorians.

February 1, 2008

As noted earlier, the roll-out of interval meters presages a fundamental shift to the way in which consumers will participate in this market, including requiring them to have a far better understanding of the nature and level of their energy consumption. How to inform consumers of the changes to the market in light of the roll-out is part of the Government's current planning. The Victorian Government is also running a major energy conservation campaign, to encourage reduced use of electricity. Informing consumers of further changes to the market should be closely coordinated with existing or planned public education campaigns.

Compliance issues (s. 4.4)

CUAC strongly supports the Commission's recommendation that there is no need to amend other consumer protection provisions in the regulatory framework. As noted in our earlier submissions in this process, CUAC believes that the robust regulatory regime has been a major factor in building consumers' confidence to participate in the market, thus promoting competition.

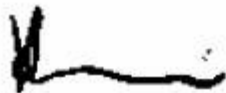
CUAC also welcomes the Commission's emphasis on the need to ensure that there are effective incentives for retailer compliance with regulations, effective monitoring of compliance and targeted enforcement action where serious contraventions occur. The many instances of marketing misconduct highlighted in the course of this review point to some serious market problems on both the supply and demand side, and require further consideration by Government to ensure that existing mechanisms and programs are sufficient.

Yarrow Report

CUAC will provide a separate commentary shortly on Professor Yarrow's report on the impact of maintaining price regulation. In brief, there are aspects of the analysis with which we have concerns, mostly pertaining to the implications of consumer information on tariffs and the broader impact of price volatility. We will also provide some additional information on the specific jurisdictional experiences with deregulated retail energy markets in the UK and Norway.

Please do not hesitate to contact me on 03 9639 7600 should you have any questions about the above.

Yours sincerely



Kerry Connors
Executive Officer