

1 February 2008

Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235



By email to: submissions@aemc.gov.au

Dear Commissioners,

Review of Effectiveness of Competition in the Electricity and Gas Retail Markets in Victoria – Second Draft Report

The Alternative Technology Association (ATA) welcomes the opportunity to provide comment on the *Review of Effectiveness of Competition in the Electricity and Gas Retail Markets in Victoria* Second Draft Report (the Report), as released by the Australian Energy Market Commission (AEMC) on the 19th December 2007, and the proposal to remove price regulation in the Victorian retail electricity market.

ATA is a not-for-profit organisation established in 1980 to empower our community to develop and share sustainable solutions for the way we live and to promote the uptake of sustainable technologies in order to protect our environment. The organisation provides service to over 4000 members, who are actively promoting sustainability in their own homes by using good building design and implementing water conservation and renewable energy technologies.

ATA advocates in both the government and industry arena for ease of access and continual improvement of these technologies, as well as the production and promotion of information and products needed to change the way we live. As Australia's peak member-based organisation representing early-adopters of renewable energy systems, ATA is in a unique position to highlight the needs and concerns of small-scale renewable energy system owners and their interaction with the retail energy market.

Removal of Price Regulation

Firstly, ATA would like to express disappointment that the views expressed in our response to the first draft report, and the views of other consumer representative organisations such as CALC, CUAC and the St Vincent de Paul Society, seem to have been ignored or at least heavily discounted in reaching the conclusions of the second draft report.

One of the key determinants used by the AEMC in concluding the Victorian electricity market is effectively competitive is the high level of customer switching between retailers, or customer 'churn'¹. The AEMC goes on to admit that "the majority of switching decisions are currently made 'on the doorstep' as a result of direct selling"², conceding that "a number of submissions also indicated that there is evidence of some significant instances of marketing misconduct in Victoria which may not all be captured by reported statistics"³ and acknowledging "the serious nature of the complaints referred to in submissions"⁴.

1 p. 7 of the *Review of Effectiveness of Competition in the Electricity and Gas Retail Markets in Victoria* Second Draft Report
2 p. 46 of the Second Draft Report
3 p. 39 of the Second Draft Report

Whilst the AEMC correctly acknowledged that “this conduct needs to be addressed through appropriately targeted and cost effective regulation of compliance with the relevant codes and laws”⁵, it is of grave concern that, in light of evidence and allegations of marketing misconduct, customer churn resulting predominantly from ‘on the doorstep’ direct selling is still presented as one of the key pieces of evidence for effective competition.

It seems to follow that, if customers are not provided with accurate information, are coerced by misleading marketing practices, have not had the opportunity to compare relative offers and/or end up on deals under which they are worse off, then customer churn cannot be presented as evidence of an effectively competitive market. However there has been no active investigation of these issues by the AEMC.

Standing Offer

ATA has serious concerns with the recommendation that all retailers be obliged to set their own standing offer prices. This, combined with the obligation to only publish standing offer prices, will surely give rise to a situation whereby retailers are able to heavily load their standing offers at the expense of market contracts in order to have the most competitive market contracts to lure customers onto these market contracts, as presently happens in the banking and telecommunications industry.

It is quite possible that a situation will arise whereby low-income, low-consumption, rural and disadvantaged consumers find themselves subsidising wealthy, educated and internet-savvy customers. Consumers who choose not to exercise their right to switch, either due to disinterest or inability to exercise choice (language barrier, age or disability), as well as customers who appear undesirable to service on behalf of the retailer (low-consumption customers, phone-based sign-ups rather than internet, rural consumers not able to be door-knocked) may find themselves on either an undesirable standing offer or an expensive market contract at the expense of desirable customers, who receive the benefits of lower priced offers. It is not difficult to see the types of customers who will be disadvantaged, and those who will benefit, from this arrangement.

Publication of Retail Offers

ATA supports the publication of standing offer prices on retailer websites, and the additional requirement for publication in newspapers circulating in the relevant areas. Whilst Australia boasts some of the highest internet penetration rates in the world (presently estimated at around 74% according to the International Telecommunications Union⁶), over one quarter of the population does not use the internet. Limiting disclosure to the internet potentially limits this significant portion of the population’s access to important information on this essential service. We recommend the inclusion of a requirement for retailers to publish standing offer prices in newspapers.

Effective competition relies on the ability of customers to make informed choices about the options open to them. When it comes to retail electricity offers, the only way a customer can be sure that they are receiving a favourable deal is by undertaking a comparison of how such a deal compares with relative deals from within the given retailer, and also across retailers. As such, ATA has concerns with the Report’s recommendation to limit the requirement for publication to standing offer prices, and not extend the requirement to all retailer electricity offers.

By limiting the publication to standing offers, consumers will need to go to considerable lengths to determine the value of any given retail offer by phoning a considerable number of the 30 licensed retailers in Victoria as a means of comparison. This, by phone, will be remarkably onerous, and it is difficult to see how, particularly when faced with a doorstep salesperson, how a consumer can make an informed choice considering the scarcity of information. Further, limiting publication of offers may result in certain, less-desirable classes of customers (low-consumption, phone-based sign-ups, rural consumers, etc.) may find themselves significantly disadvantaged. These consumers will have little else with which to compare their

4 p. 42 of the Second Draft Report

5 p. 42 of the Second Draft Report

6 <http://www.internetworldstats.com/sp/au.htm>

offers, other than the standing offer, and hence little way of knowing whether their offer is competitive in the market.

Recent Amendments for Grid-Connected Systems

The process of obtaining a retail contract for the grid-connection of small renewable energy systems to the grid has, for a long time, been difficult and confusing. Information from retailers is hard to obtain, tariffs change across distribution jurisdictions, and metering arrangements are varied. In an attempt to clarify this process and create greater certainty for micro-generation proponents, the Victorian State Government introduced the *Energy Legislation Amendment Bill (2007)* which regulates the offers made by electricity retailers for the buy-back of electricity from small-scale renewable energy generators. The legislation, which came into force on the 1st of January 2008 (although there are yet to be any compliant retailers at time of writing), requires all electricity retailers to offer and publish fair and reasonable price, terms and conditions for the feed-in of electricity, with the fair and reasonable criteria determined by the Essential Services Commission.

The introduction of this legislation is a clear recognition of the failure of deregulation to provide not only an adequate price for renewable energy proponents, but also clarity of information and fair terms and conditions for these already disadvantaged consumers. This is confirmed by research published by the ATA in 2005, which found the lack of clear information for consumers and information asymmetries in favour of electricity retailers to be major barriers to the uptake of renewable energy systems such as small-scale rooftop solar photovoltaic systems⁷. The commencement of regulation enacted by this legislation will provide welcome access to information and greater certainty for proponents, and is clear evidence of the failure of present arrangements to adequately provide for renewable energy proponents, and as such a failure of the competitive market.

The limit to publication to standing offers effectively creates a parallel situation for all retail customers, where lack of access to information will prohibit consumers from making an informed choice of the best retail offer available to them. Further, whilst retailers will be required to publish an offer for grid-connected system owners in Victoria under the *Energy Legislation Amendment Bill (2007)*, these offers will presumably be linked to one of many market offers retailers have available⁸. With little choice, system owners will only be able to choose from between the offers available from different retailers, rather than from amongst the offers available from each retailer. As such, customers have no way of determining how such an offer compares with other retail offers for the purchase of electricity.

Monitoring Role

Whilst ATA welcomes the requirement for the regulator to monitor standing offer prices, we find limiting the monitoring to standing offers problematic, and strongly urge the AEMC to reconsider the minimum 3-year time limit. Firstly, whilst the proposed monitoring is welcome for those customers on standing offers, it will reveal little of what is happening to the majority of customers who have chosen to be on market offers. We urge the AEMC to recommend a role for the regulator in monitoring a range of market contracts for all retailers, in order to establish a clear picture of the impact of price regulation removal on electricity consumers. The absence of such a requirement will result in an unclear picture of the impact of regulatory changes on the majority of customers.

Further, beyond the minimum 3-year limit, there are no plans to further monitor pricing. In such a situation, as long as the retailers 'behave' for the first three or so years of the new regulations, they will be effectively 'off the hook' to do as they please beyond this time. This is a most unsatisfactory situation for what is an essential service.

⁷ ATA 2005 *Impediments to Grid Connection of Solar Photovoltaic: the consumer experience* Alternative Technology Association, Melbourne

⁸ Despite repeated requests both the Department of Primary Industries and the Essential Services Commission have been unable to confirm if buy-back offers will be linked to the standing offer, or some other market-based offer yet to be announced. In the absence of any retailer having yet published such an offer, it is difficult to know what the impact of these legislative changes will be on grid-connected renewable energy system owners.

Further Competition Reviews

The Paper states that "the Victorian Government can request a further competition review by the Commission if the standing offer price monitoring report suggests a deterioration in the effectiveness of competition."⁹ However there is no indication as to the ability of the government to do this beyond the 3 years of the standing offer monitoring. The Paper provides no criteria for competition reviews in the absence of price monitoring data, and given the proposed phasing out of price monitoring after a minimum of 3 years, it can only be assumed that there would be no avenue for competition reviews beyond this point. ATA finds this entirely inadequate and urges the AEMC to recommend the continuation of price monitoring beyond the 3 years proposed, and the extension of price monitoring to all retail offers in order to establish a true picture as to the competitive nature of the market.

Reserve Power

The Report recommends the Victorian Government's reserve power to regulate electricity prices be let lapse when due to expire on 31 December 2008. In justifying this position, the AEMC offers four criteria which it claims "provide adequate incentives for, and disciplines on, retailers to set cost reflective prices."¹⁰ Of these, two criteria – public monitoring and reporting of standing offer prices, and the potential for a competition review by the AEMC based on standard offer monitoring – are set to be removed after three or so years. Beyond that time, with only the treat of competitive responses from rivals and the requirement to publish standing offer prices surely a significant portion of the "incentives for, and disciplines on, retailers to set cost reflective pricing"¹¹ will have been removed.

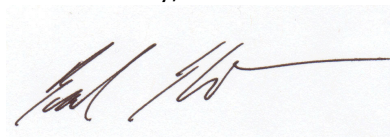
Further, as the Report acknowledges, the reserve powers to determine prices have not been used since 2002. As this is the case, we find it difficult to see the reasons why this power should not be retained. The ability of the Victorian Government to set prices plays an effective deterrent to retailers to abuse their market power, and as result, we strongly believe that these powers should be retained.

Again we urge the AEMC to reconsider limiting price monitoring to 3 years, recommend extending such monitoring to all retail offers to get a true picture of the state of the market and retention of the Victorian Government's reserve power to regulate electricity prices.

Further Contact

ATA again welcomes the opportunity to respond the *Review of Effectiveness of Competition in the Electricity and Gas Retail Markets in Victoria* Second Draft Report. We would welcome the opportunity to discuss any aspect of this submission further. Please direct any questions or further correspondence to Brad Shone, Energy Policy Manager, on 9631 5406 or Brad.Shone@ata.org.au

Yours sincerely,



Brad Shone
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ATA