



Level 2, 172 Flinders St
Melbourne VIC 3000
Phone: 03 9639 7600
Fax: 03 9639 8966
ACN 100 188 752

11 May 2009
Australian Energy Market Commission
Level 5, 201 Elizabeth St
Sydney NSW, 2000

Via email to
submissions@aemc.gov.au

Australian Energy Market Commission – review of energy market design in light of CPRS and MRET: 1st Interim report

This submission has been prepared by the Consumer Utilities Advocacy Centre Ltd (CUAC), an independent consumer advocacy organisation, established to ensure the interests of Victorian consumers, especially low-income, disadvantaged, rural, regional and indigenous consumers are effectively represented in the policy and regulatory debate on electricity, gas and water.

This submission follows the AEMC Public Forum held on 1 May 2009 in Melbourne. It has been formally endorsed by the following organisations¹:

- Australian Council of Social Service
- Consumer Action Law Centre
- Victorian Council of Social Service
- Alternative Technology Association

CUAC would like to confirm in writing the comments we expressed at the Forum that we were extremely disappointed that the AEMC failed to include small end consumer representation under Session 2 on the agenda, entitled Stakeholder Presentations. Consumer organisations are concerned that this reflects an AEMC view that small end consumer input is not of significant importance in this review. We note the apology made from the chair, by Commissioner John Tamblyn, in this regard.

CUAC would also like to confirm that the National Consumer Roundtable on Energy is a coalition of consumer bodies, social welfare organisations and environmental agencies who work on energy market reform. While the participants that form the Roundtable

¹ Due to time constraints, not all members of the Consumer Roundtable have had the opportunity to review and support this submission.

often support similar positions, they have a diversity of views. CUAC is a Roundtable participant and a nominee from the Roundtable to the *AEMC Review of Energy Market Frameworks in the light of Climate Change Policies Stakeholder Advisory Committee*. However, the Roundtable is not a formally constituted organisation, and therefore, while CUAC staff were listed on the agenda as representing the Roundtable, they are not able to do so. We suggest that this matter may be resolved by listing representatives by their own organisation's title and then adding that the organisation is a participant on the Roundtable.

CUAC has actively worked to incorporate the insights and views of consumer advocates on the Roundtable into submissions to this Review, to better facilitate community consultation with the Australian Energy Market Commission (AEMC). The following organisations on the National Consumer Roundtable on Energy endorsed the CUAC submission made to the first interim report:

- Victorian Council of Social Service
- Australian Council of Social Service
- Consumer Action Law Centre
- Alternative Technology Association
- St Vincent de Paul Society
- Public Interest Advocacy Centre

CUAC believes that a balance and diversity of stakeholder views is important to inform regulatory reviews such as this. Where consumers are characterised as having one voice or single stakeholder view, it can appear that in a technical review invariably dominated by industry participation, this does not facilitate balanced consideration of issues.

Without balanced consideration of issues, rule making and policy development is at risk of prioritising those who speak loudest and most often, particularly where there is a greater number of stakeholders (whose interests may still largely coalesce). Indicative of this, we see increasing pressure being levered by commercial entities to socialise risks and costs, such as carbon costs and network connection costs, that ultimately can only be managed, and therefore should be borne by, those commercial entities. Without balanced consideration of these issues, the appropriate and efficient allocation of risk may be compromised.

The AEMC is in danger of losing consumer interest and involvement in this, and potentially other reviews, if it fails to articulate the rationale behind its decisions to exclude consumer input while appearing to prioritise issues tabled by industry stakeholders as important.

By way of example, CUAC has expressed concern regarding the relative attention given to the ability of retailers to pass through costs attributable to CPRS, while the adequacy of the consumer protection framework and risks to competition from vertical integration remain unconsidered.

CPRS cost pass through cannot be trivialised, however, no credible evidence has been brought to suggest CPRS costs are either significantly uncertain, unable to be hedged, or unable to be handled by the process of price regulation. Furthermore, these arguments were brought at a time when CPRS design remained uncertain. We now find CPRS design being amended, with a delayed start date and fixed carbon price for the first year, making a significant portion of this review redundant.

On the other hand, consumer protections contain rules that regulate the behaviour of market participants in a fundamental way, and are therefore critical to the proper functioning of markets in the long term interests of consumers. At a time when significant cost increases are expected to result from Government climate policy, processes being developed under the national customer protection framework, to ensure consumers retain access to electricity, as an essential service, have gone untested in this review.

These concerns have been heightened with the release of the first exposure draft of the National Energy Customer Framework on 30 April 2009. The draft weakens the protections advocated by consumers in previous NECF consultations, including:

- explicit informed consent provisions for market contracts
- obligations to provide assistance to customers in hardship and
- prevention of disconnection for customers in hardship programs

CUAC believes that adequate customer protections are central to the consideration of the issues in this review.

Consumers have also drawn attention to risks to effective competition posed by increasing pressure for vertical integration. This position was underscored in our submission to the 1st interim report, with a quote from analysis undertaken by MMA (pg 7) for the AEMC:

“There may be potential for participants that control gas supply, transportation, storage, and generation assets to directly influence market outcomes. The ability of smaller producers to access “common infrastructure” such as treatment plants, storage, compression and LNG plants may become increasingly important in order to maintain competition in the gas sector, and to ensure that efficient gas market outcomes are transferred to the electricity and energy retail markets”

Integrated gas and electricity system planning processes may need to be made more robust, particularly to accommodate a departure from traditional incremental growth assumptions towards new processes that can accommodate the large and coordinated infrastructure investments that could be needed to support shifts in generation centres to new regions having renewable generation resources and significant gas infrastructure.

System security requirements may be such as to require additional or new storage to be built, possibly with regulated pricing.”

Significantly, we note MMA analysis (pg 8) which highlights increasing pressure on energy market consolidation and so implicitly threats to effective competition:

- *“Greater integration into generation could occur under some circumstances, in part to overcome disturbances affecting the contracts market, and to benefit from, or to hedge, wholesale market price volatility that could otherwise squeeze the retail function.*
- *Large national, dual fuel and vertically integrated utilities could increase market share if financial market instruments do not evolve to handle the uncertainties.*
- *Some segments of the retail market may face limited competition, requiring more robust market monitoring and market power mitigation arrangements”*

Lastly, we draw attention to pertinent MMA analysis on one potential opportunity for market power issues to manifest specifically at the wholesale level in electricity markets (pg 67) due to CPRS which states:

“Whilst this (uneconomic supply bidding to squeeze out marginal generation) is covered under the Trade Practices Act, in practice it is difficult to prove in electricity markets operating under self-commitment and with multiple risks and constraints to manage.”

None of the issues highlighted by CUAC’s previous submission to the review have been acknowledged or addressed by the AEMC. This omission is all the more pertinent when it fails to address issues raised by the AEMC’s own consultant reports that have been referred to in CUAC’s submission.

CUAC believes that this is a serious omission given the AEMC’s responsibility to consider the presence of competition as a cornerstone of an effective market. In this time of significant market restructuring, the AEMC cannot afford to take the presence of effective competition for granted. It must work diligently to ensure risks best managed by business, are faced by business and not passed on to consumers unnecessarily.

If you have any further queries please contact Tosh Szatow, Policy Officer on (03) 9639 7600.

Yours sincerely

Jo Benvenuti
Executive Officer
CUAC