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By email: Secretariat.EWP@ret.gov.au

Submission in response to the draft energy white paper

The Consumer Utilities Advocacy Centre Ltd. (CUAC) would like to thank the Department of Resources, Energy and Tourism (DRET) for the opportunity to provide feedback on the Draft Energy White Paper. CUAC is a specialist consumer organisation established in 2002 to represent Victorian energy and water consumers in policy and regulatory processes. As Australia's only consumer organisation focused specifically on the energy and water sectors, CUAC has developed an in-depth knowledge of the interests, experiences and needs of energy and water consumers.

Given our focus is primarily in relation to Victorian consumers of electricity and gas, this brief submission will not focus on all aspects of the White Paper but rather the areas where we have particular knowledge. Given this, the submission will relate primarily to Chapter 6B of the White Paper on electricity and gas markets. In developing our positions in relation to the White Paper we are guided by our strong principles. Energy services are essential for health, wellbeing and social participation. Therefore, we believe that consumer interests – particularly those of low-income, disadvantaged and rural and regional consumers – must be a primary consideration in the development and implementation of energy policy and in service provision. CUAC's advocacy maintains a focus on the principles of affordability, accessibility, fairness and empowerment through information and education.

Additionally, a range of CUAC's recent research activities are of relevance to some of the topics that are the subject of chapter 6B. CUAC has recently produced research on:

- the future of electricity and gas network pricing arrangements; and
- approaches to ensuring that energy retail competition works in the consumer interest.

A note on vulnerable consumers and distributional impacts

At the outset, we would like to stress the importance of ensuring access to, and the affordability of, electricity and gas services to all Australians. We note that Chapter 6B of the white paper includes some reference to the needs of low-income and vulnerable consumers particularly in relation to the prospect of further retail market deregulation. However, it also notes that "it is appropriate for assistance to be provided [to vulnerable consumers and those who may be

disadvantaged through market reform] through social policy settings rather than through energy policy settings, to ensure that energy market signals are preserved.”¹

While this approach may be the most appropriate in theory, the reality is far more complex. It is clear that social policy processes are not generally well aligned with changes to the energy market. Often, energy market reform can be made without the appropriate consultation and inclusion of the requisite social policy decision makers to ensure that social policies can mitigate the impact of the energy policy decisions. Furthermore, in instances where steps are taken to provide social policy support to consumers impacted by changed energy policy, there can be a significant lag before the support becomes available or effective. This problem is further exacerbated by the distribution of responsibility for social policy between a variety of agencies at a Commonwealth and State level.

However, it is also a problem that too often distributional impacts and impacts on the vulnerable can be simply overlooked or discounted in energy reform processes. This is justified on the basis that these concerns should simply be dealt with in “social policy”. However, it is often the case that the agencies charged with administering social policy have a range of pressing issues on their own agendas and can lack the capacity, knowledge, inclination or resources to manage the distributional impacts of energy reform processes.

Simply put, any policy decision should give careful consideration to distributional impacts and the effect it might have on the most disadvantaged in society. If the impacts are significant or socially regressive, careful consideration should be given to ensuring that these impacts are managed appropriately and mitigated where possible. In some cases it may be that some of the distributional impacts may be more quickly and effectively dealt with through creative and well designed *energy* policy. Government should not shy away from adopting such an approach where solutions present themselves.

A note on national consistency

While CUAC can see the benefits of nationally consistent regulation for national industries, this objective in itself is not desirable if the cost of its achievement is too dear. CUAC remains concerned that national regulatory arrangements have not necessarily delivered as well as previous Victorian regulation in all areas. There is the prospect that this may occur again in the transition to the National Energy Customer Framework.

For example, a quick scan of the evidence would suggest that the outcomes of distribution price reviews under the Australian Energy Regulator’s (AER) processes have been more favourable to distributors than the price reviews undertaken by the Victorian Essential Services Commission (ESC). This has been highlighted in a number of papers including the recent rule change request from the AER to the Australian energy Markets Commission (AEMC) and in the Energy Users Association of Australia report: *Australia’s Rising Electricity Prices and Declining Productivity: the Contribution of its Electricity Distributors*². This outcome has been attributed to the design of the

¹ Draft Energy White Paper 2011, p. 138

² Mountain, B.R., May 2011. *Australia’s rising electricity prices and declining productivity: the contribution of its electricity distributors*. Energy Users Association of Australia, Melbourne. See also Australian Energy Regulator (September 2011) *Economic regulation of*

regulatory framework that provided the Victorian regulator with far greater discretion than that currently afforded to the AER. CUAC views outcomes such as this as one of the costs of achieving national consistency and is considerable justification for a cautious approach to further national harmonisation.

Similarly, in the move to the National Energy Customer Framework, Victorian consumers have been concerned about the possible loss of well-designed and carefully considered consumer protections that have served the Victorian energy market and its consumers well. CUAC sees no reason why Victorian consumers should accept any loss of protections in the pursuit of national consistency.

In essence, the pursuit of national consistency should not lead policy makers to accept second best outcomes. If second best outcomes are realised, consumer confidence in the effectiveness of their energy markets will be eroded.

Retail market competition and price deregulation

CUAC is not, in principle, opposed to strengthening retail competition and the introduction of price deregulation where competition is found to be effective. As highlighted earlier, CUAC represents the interests of Victorian consumers who have been participants in a market where competition is possible and retail energy prices are deregulated. We welcome the acknowledgement in the Draft White Paper that a robust set of consumer protections are required to ensure consumers can participate in the market with confidence.

However, we also note that despite the presence of strong consumer protections in Victoria, the move to a deregulated retail market model has seen a number of measures of consumer experience and satisfaction with the market decline. For example, according to the latest data from the ESC, the number of complaints to electricity retailers doubled in the last year and rose by 50 per cent for gas retailers over the same period.³ Given that the competitive market should drive improvements in service standards and maintain pressure on prices, outcomes such as this are concerning and do not indicate a healthy market.

Recent CUAC research has also revealed ongoing concerns about the level of understanding and engagement of consumers with the competitive retail energy market in Victoria. CUAC released a research report entitled *Improving energy market competition through consumer participation* that outlines these concerns. This research paper is included as an attachment to this submission. The research examined the experiences of Victorian consumers in the retail market through a survey and also examined why particular consumer behaviours occur in competitive markets for energy. A range of policy, regulatory and information-based approaches are recommended to improve the performance of the Victorian retail market in the interests of consumers through greater competition.

Some of the key findings of that research report are that:

³ *transmission and distribution network service providers: AER's proposed changes to the National Electricity Rules*
Essential Services Commission 2011 Victorian retail energy market overview 2010-11 December 2011, Melbourne, p. 1

- 42 per cent of survey respondents found it difficult to understand energy offers compared to 32 per cent of respondents who find it easy;
- 33 per cent of survey respondents indicated that they thought that the price of energy is set by the government in Victoria;
- 52 per cent of respondents who had changed electricity or gas retailer indicated that they switched provider to seek lower prices;
- 37 per cent of consumers who had not changed energy providers indicated that the reasons were that it was “too hard to choose”, “not worth the effort”, or they “could not be bothered”;
- 75 per cent of respondents to a voluntary, open-ended question about any energy market issue used this opportunity to comment negatively about door-to-door sales;
- 30 per cent of respondents indicated that there was a likelihood they would switch retailer in the coming year, compared with 54 per cent indicating that this was unlikely;
- in contrast to some of the other findings 74 per cent of respondents who had changed providers reported a degree of confidence in their switching decision; and
- 61 per cent of respondents expressed support for a competitive market model.

Furthermore, the report found that the quality of information available to Victorian consumers was not adequate. Switching websites and door-to-door marketing were consistently found to deliver either misleading, incorrect or incomplete information to consumers. This highlights the need to ensure that retail market design reflects the need to provide accurate and useful information to consumers to support informed choice.

The report also found that there are a number of factors that impact on the effectiveness of consumer participation in markets generally and energy markets specifically. Issues such as limited consumer capacity and behavioural biases can impact on the quality and extent of consumer participation.

The research scanned the international evidence to identify effective approaches to overcome these issues. This included examining the significant reforms currently being introduced by Ofgem in the UK to improve the function of the British retail market. The report identified a number of approaches including appropriate regulation of the number and approach to expressing retail offers, campaigns to raise consumer capacity to participate in the market and cooperative approaches to improving the quality of market information. Consideration needs to be given to these elements of market design if further retail market deregulation is to occur outside Victoria.

Therefore, if the White Paper expresses support for a competitive retail model with price deregulation, it is important for it to also note that the design and policy surrounding such a market model will be critical to its success. It cannot just be assumed that simply deregulating and “letting the market rip” will lead to effective competitive outcomes with informed consumer participation. Consequently, the expected pressure on prices and service improvements may not eventuate as anticipated. Rather it is the “choice architecture” of the market that will lead to consumer engagement and its effectiveness. CUAC is concerned that the Draft White Paper gives insufficient attention to the mechanics of competitive market operation. Some clearer policy direction in this regard could provide additional consumer confidence in the policy intent and would support increased consumer benefits from the introduction of competitive market models.

Improving the regulation of our monopoly energy networks

CUAC has ongoing concerns with the economic regulation of Australia's monopoly distribution networks. We have already identified in this submission the fact that the outcomes of the national economic regulatory regime appear to have been more favourable to distribution businesses when compared to the previous Victorian regulatory regime.

To further consumer outcomes in this area, we have actively participated in distribution price reset processes administered by the AER. Additionally we are providing input to the rule change process being administered by the AEMC into the economic regulation of electricity and gas networks. We are supportive of this process and will continue to engage in the hope that it delivers an improved regulatory regime.

Last year, CUAC, along with the Consumer Action Law Centre, also released research into the merits review appeals mechanism for distribution determinations. The research found that there are inherent problems with a system that provides an incentive for distribution businesses to automatically appeal AER determinations. These appeals are often one sided in nature, provide virtually no opportunity for consumer input and have resulted in higher distribution prices for Australian consumers with, in CUAC's view, no discernible improvement in network outcomes. We are pleased, therefore, with the Standing Council on Energy and Resources (SCER) announcement to bring forward the independent review of the limited merits review appeals process. We shall ensure the findings of our research are made available to this review.

We are also supportive of the announcement of the Productivity Commission review into productivity benchmarking of distribution businesses to improve the use of benchmarking in the Australian regulatory context.

However, we remain concerned that these processes will not necessarily deliver the regulatory outcomes that are ultimately required to rein in rapidly growing network costs. For example, one area that is still not being effectively addressed in regulatory reform processes are the approaches to ensuring consumer interests and values are considered by distribution businesses in the development of their regulatory proposals and then through the price reset processes. Furthermore, we would see the need to ensure that the regulatory regime reflects best practice as evidenced by both local and international research. To this end, SCER should remain open to further reform of the regulatory regime in the interests of ensuring Australia has the best possible approach to economic regulation in this area.

Increasing the capacity of the consumer

We note that one of the key actions from Chapter 6B includes a commitment to "improve public communication and engagement in the energy reform process." This is welcome. However, CUAC is of the view that public communication and engagement in energy should go much further than simply providing information on the reform process. CUAC is concerned that many consumers have a limited understanding of energy and how to improve outcomes for themselves through easily achievable consumption decisions and behavioural changes. As the Commonwealth assumes more responsibility for the energy market, it will be necessary for it to also seek to resource consumer information and education activities to support consumer knowledge about some of these issues. This will improve consumers' ability make effective

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market choices and take advantage of energy efficiency opportunities. CUAC would urge further exploration of this and the approach the Commonwealth could take to improving the “energy literacy” of Australian consumers in the White Paper.

Once again, we would like to thank DRET for the opportunity to provide feedback on the Draft Energy White Paper. We would be more than happy to further discuss the issues raised in this submission.

Yours sincerely,

Jo Benvenuti
Executive Officer