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The Australian Energy Market Commission  
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**Review of the Effectiveness of Competition in Gas and Electricity  
Retail Markets in Victoria – First Draft Report**

Thank you for the opportunity to comment upon the Commission's *Review of the Effectiveness of Competition in Gas and Electricity Retail Markets in Victoria – First Draft Report*.

*General comments*

TRUenergy acknowledges the work of the Commission in delivering a detailed and robust report, and supports the conclusion that competition in electricity and gas retailing in Victoria is effective.

In previous submissions, TRUenergy has stressed that effective competition is primarily a factor of low barriers to entry, whereby even the potential threat of new entry imposes competitive pressure on incumbents to price at market-based levels. On this dimension we agree with the Commission's finding that "*current market conditions encourage efficient entry, thereby creating a credible threat of competition from actual or potential new retailers and constraining the pricing and output decisions of existing retailer.*"

Even on those dimensions we regard as less relevant to determining the effectiveness of competition, the report is consistent both with our own understanding of current market conditions, and with the report's overall conclusion of an effectively competitive market.

*Transitional Issues*

With regard to phasing out price controls, the Commission has indicated there may be merit in a transitional process that includes retaining the obligation to offer and a period of price monitoring and reporting. TRUenergy provides the following comments for the Commission's consideration in the development of the Second Draft Report.

TRUenergy does not support the retention of the obligation of offer for business customers. Energy is not an essential service, in the sense of a quality of life requirement, for business customers, but rather should be regarded as one of

many business inputs. Whilst property owners have no obligation to make tenancies available, and financial institutions no obligation to make credit available, neither should such an obligation be imposed upon energy retailers.

If the obligation to offer is to be retained for residential customers, a number of potential models may be used, the most common identified as:

- Franchise model – Currently applies in Victoria, with the obligation assigned in accordance with the retailer's former franchise area.
- FRMP model – Applies in the Queensland electricity, with the obligation assigned to the financially responsible market participant.
- Universal model – Whereby all retailers participating in the market have the obligation imposed on all sites.

TRUenergy does not support the universal model, as it imposes an unreasonable burden on second tier retailers with no commensurate increase in consumer benefit. This view was shared by Allens Arthur Robinson in their advice to the Ministerial Council on Energy on options for the obligation to offer in the national energy market:

*There does not at present appear to be any credible basis for applying the obligation to all retailers ... the creation of an obligation to supply implies a need for the retailer to maintain the financial, business systems and energy trading capacity to satisfy supply request from potentially significant numbers of customers on a more or less immediate basis. This is not a capability which all market entrants will necessarily have, or should be required to have. Such a requirement would impede market entry and the development of the competitive market. Nor is it necessary in order to achieve the policy objective of ensuring an availability of supply to all customers on reasonable terms and conditions, so long as this is available from at least one retailer. In terms of the evaluation objectives and criteria, it does not improve the climate for investment, lower the cost and complexity of regulation facing investors, enhance regulatory certainty and lower barriers to competition. Nor does it minimise the burden and cost of regulation where practical, having regard to the benefits of regulation, in particular the need for appropriate consumer protection.<sup>1</sup>*

If the obligation to offer is to be retained for residential customers, the important feature of the model is that at least one retailer is obliged to make an offer available. In an effectively competitive market, if the retailer with the obligation prices the associated product above market-based levels, other retailers will enter the market and under price the incumbent. As the Commission has argued throughout the report, in an effectively competitive market the mere threat of market entry is sufficient to prevent the use of market power. This would apply were either the franchise or FRMP models adopted, without the additional administrative and compliance costs of the universal model.

The Commission also refers to a transitional period of price monitoring. However it is important to recognise that the Victorian market was initially designed as a price monitoring regime with reserve Ministerial power, unlike other jurisdictions

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<sup>1</sup> Allens Arthur Robinson, *National Framework for Distribution and Retail Regulation – Working Paper 1*, November 2006, p. 18.

that established transparent price review processes conducted by an independent regulator. In practice, the Victorian system has almost developed into one of government price setting, imposing strict controls on price movements and tariff rebalancing under the ongoing threat of the reserve power.

If a transitional price monitoring framework is considered necessary, it must provide restrictions on the use of any reserve powers, whereby they cannot be used as a threat to operate a price setting arrangement. One option would be to require the responsible authority to conduct an independent regulatory review, and to identify use of market power, prior to any exercise of reserve power.

#### *Other Issues*

The Commission has made a number of other comments within the report, upon which we welcome an opportunity to respond;

*Single fuel gas contracts* – The Commission states that "*Market offers for gas are currently only provided in conjunction with the supply of electricity under a single contract type.*" This is incorrect. TRUenergy, as part of the *Go Easy* and *Go for More* product ranges, allows customers to choose a gas only, electricity only, or gas and electricity product.

*Standing offer tariffs* – As suggested by Commission throughout the report, product innovation is constrained by the role of standing offer tariffs. Simplicity is an important product feature for many consumers. However, whilst standing offer tariffs remain, simplicity is expressed in the form of consistency with the standing offer tariff (ie products offered as a discount to that tariff), rather than in the form of a simplified tariff structure.

*The role of non-price inducements* - TRUenergy's product suite is constantly under review to ensure that it meets the demands of consumers within a highly competitive market. The potential reintroduction of non-price inducements is evaluated in this context. The suppression of many standing offer tariffs below market-based levels in the early years of FRC was a significant contributor to the greater presence of non-price products at that time.

*Tariff Rebalancing* – The Commission states that it "*does not have before it any evidence of any obstacles that retailers face in undertaking tariff rebalancing.*" In fact, the State Government has maintained strict rebalancing constraints on retailers, whereby some tariffs remain less profitable. This is an important consideration in the transitioning approach. The framework must ensure that all impediments to efficient pricing are removed in an environment free from the threats of price setting intervention.

*Identification of customers in financial hardship* – The report correctly discusses the shared responsibility of government and retailers in dealing with customers experiencing financial hardship, and the role of government in addressing social policy matters. We also agree with comments regarding the role of retailers in providing temporary assistance

measures, including flexible payment arrangements. However, there is also an important role for consumers in identifying themselves to retailers when assistance is required. Given that a significant proportion of customers consistently pay their bills after the pay by date, there is no magical algorithm that will allow retailers to identify customers in difficulty unless the customer makes contact with the retailer to request assistance. In this context the mutual obligation model should be stated as a three-way arrangement, with responsibility for seeking assistance resting with consumers and consumer representatives.

Please contact me on (03) 8628 1122 if you require additional information.

Yours sincerely,

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