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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 South Australia – Second 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 South Australia – Second Draft Report*.

TRUenergy supports the Commission's finding that the retail energy market in South Australia is effectively competitive, and broadly agrees with the proposed implementation approach. Comments on the recommendations are provided below.

1. The regulation of standing contract prices should cease by no later than the expiration of the current price determinations made under section 36AA of the Electricity Act and section 34A of the Gas Act.

TRUenergy supports the recommendation. Given that the market is effectively competitive, it is appropriate that the regulation of standing contract prices ceases at the expiry of the current price determinations.

2. A price monitoring framework to monitor standing contract and default contract prices should be introduced for a period of at least three years following the removal of retail price regulation.

TRUenergy supports the introduction of a price monitoring framework for three years following the removal of price regulation. We also support the recommendation that the report does not extend to wholesale price movements, for reasons explained by the Commission.

However, we are concerned by the Commission's suggestion for the report to review the price impacts of each standing contract and default contract on annual customer bills for defined consumption levels. Such calculations require assumptions with respect to the consumption patterns of consumers (including peak/off-peak and seasonal ratios), which will only correspond to the actual consumption patterns of a small minority of customers at that consumption level. Variations in those consumption patterns, as well as deviations from the benchmark consumption levels, have the potential to significantly impact the

annual cost estimates. The directional impact will be dependant upon the tariff structure of the product, and will vary across retailers.

Overall the results will present both a misleading estimate of annual expenditure for most customers, and a misleading assessment of the relative cost of competing retailers standing offer products. An unintended consequence is the potential for such an approach to distort the competitive market, by encouraging retailers to structure their tariffs to appear attractive under the annual cost estimate assumptions, rather than in a manner which most benefits consumers.

Consistent with the Commission's recommendations from the Victorian review, TRUenergy recommends that ...*"The reporting of the standing offer prices should focus on factual matters."*¹ This would not extend to estimating average customer bills based on assumed consumption patterns.

3. A conditional statutory power that can be exercised by the South Australian Government to re-introduce retail price regulation should be included in each of the Electricity Act and the Gas Act. In accordance with the terms of the AEMA, the exercise of the power would be conditional upon a review of competition by the Australian Energy Market Commission concluding that competition is no longer effective and recommending the re-introduction of retail price regulation as the appropriate policy response.

TRUenergy supports the recommendation. An independent review by the AEMC, identifying the absence of effective competition an explicitly recommending the re-introduction of price regulation, prior to re-regulation, is necessary to ensure that the review process is not politicised, but rather based on robust analysis.

4. The obligation to agree to supply electricity, and the obligation to agree to sell and supply gas, to small customers pursuant to the standing contract price and subject to the standing contract terms and conditions remain in place. In respect of new connections, the obligations should bind the relevant standing contract retailer and, in the case of existing connections, the financially responsible market participant for that connection.

Given the Commission's finding in the first final report of effective competition in the South Australian retail energy market, retention of the standing offer obligation is unnecessary, other than for regional gas customers. Nevertheless, we recognise that this is an issue of concern for some consumer representatives, and is not an unreasonable transitional measure for residential customers.

However, for business customers, unlike residential customers, energy is not a quality of life commodity. It is a business input. As part of their ongoing commercial operations businesses will be required to enter financial, tenancy, wholesale and labor contracts, all of which all likely to have a greater financial impact and risk than an energy contract. There is no adequate rationale to justify imposing an obligation to offer for commercial risk takers.

¹ AEMC 2007, *Review of the Effectiveness of Competition in Electricity and Gas Retail Markets in Victoria*, Second Draft Report, 19 December 2007, Sydney. p 23.

We also note that in the Victorian review the Commission only recommended the retention of the obligation to offer for residential customers. The South Australian first draft report does not identify any basis for which a broader obligation to offer should be imposed beyond the Victorian recommendation. TRUenergy recommends that the obligation to offer is limited to residential customers.

To the extent that some form of obligation to offer is retained, TRUenergy supports the FRMP model as it ensures that the burden of the obligation is shared equitably among retailers. In particular, it is an appropriate balance between the local retailer and the defined area/universal models, with the responsibility applying in direct proportion to the size of the retailer's customer base.

For new connection sites, TRUenergy supports retention of the local retailer model as an interim solution. Whilst the local retailer concept is becoming increasingly meaningless, the tender process would be relatively complex and costly to administer, and would be introduced at a time when resources should be allocated to more important transitional issues. Retention of the local retailer model would have no adverse competition implications, as competitive tensions will continue to be provided through market offers. Indeed of all the segments of the retail energy market, new connections are already one of the most intensely competitive. It would be more appropriate to review the issue following the removal of price regulation, when further consideration could be given to alternative models.

5. The framework for entering into default contracts should remain in place. Each retailer should determine its own default contract price. The provisions allowing ESCOSA to fix the default contract price and for the price to be fixed by reference to the Electricity Pricing Order or Schedule 2 of the Gas Act should be removed.

TRUenergy supports the recommendation.

6. Each retailer should determine its own standing contract and default contract prices for energy and publish its prices on its website. Notification that the standing contract price or the default contract price is to change should be published in a newspaper with an appropriate circulation in accordance with any requirements specified by ESCOSA.

TRUenergy supports the recommendation, which is consistent with legislative amendments introduced in Victoria in response to the Commission's report on the Victorian market.

However, the Victorian legislation requires retailers to publish their standing offer tariffs one month prior to commencement. In contrast, distribution tariffs are not finalised until 10 business days prior to commencement (a variation to the National Electricity Rules requirement of one month). This prevents retailers from varying retail tariffs on the same date as distribution tariffs are varied with the knowledge of those final distribution tariffs.

The Victorian Government has responded that the one month period is sufficient as draft distribution tariffs are submitted to the Essential Services Commission 40 business days prior to commencement. However, in the past, distributors have

substantially varied their tariffs between the draft and final stages. This has been done either at their own discretion, in response to finalised variable components, or in response to the regulators review.

Consequently retailers must either incur substantial operational costs by delaying the retail price changes until after the commencement of the distribution tariffs, or risk publishing retail tariffs on the basis of draft distribution tariffs.

TRUenergy recommends, consistent with the current South Australian price determinations, that retailers publish their standing offer tariffs 10 business days prior to commencement. This will allow retailers to vary their standing offer tariffs on the same date that distribution tariffs are varied, with the knowledge of the final and approved distribution tariffs (published once month prior to commencement under the National Electricity Rules).

In addition, under the *Electricity (General) Regulations 1997*, section 7F(6), default prices which are the same as the standing contract price must be published 14 days in advance, but default tariffs that do not match the standing contract price must be published 28 days in advance. The purpose of the longer notice period in the latter scenario is to provide ESCOSA with sufficient time to review the default prices if necessary. However, in the price monitoring framework recommended by the Commission default prices are not subject to regulatory review, whereby any additional notification period is unnecessary. TRUenergy recommends that the regulations are amended so that, regardless of their relationship to standing tariffs, default tariffs are only required to be published 10 business days prior to commencement.

7. The application of the Energy Price Disclosure Code be extended to standing contracts and default contracts.

TRUenergy does not support the recommendation.

The price disclosure obligations were imposed to assist customers in determining the cheapest energy deal for specified consumption levels. As argued above, the entire approach of estimating annual expenditure on assumed consumption patterns is flawed. In the case of standing offer contracts, there is even less merit in the price disclosure framework, given that the contract is not actively sought by customers or marketed by retailers.

Furthermore, there are differences in the price disclosure arrangements that apply across the jurisdictions. Imposing additional obligations within the South Australian framework would exacerbate jurisdictional inconsistency at a time at which all regulators should be working towards greater consistency. The Ministerial Council of Energy, through the Retail Policy Working Group, is currently considering matters related to price disclosure as part of the transition to a national regulatory framework. Whilst this work is underway, TRUenergy recommends that no amendments are made to existing price disclosure frameworks, which will merely impose additional short-term costs.

8. ESCOSA should be tasked to monitor and report every six months on observed standing contract and default contract prices for a minimum of three years.

TRUenergy supports the recommendation, subject to our comments in response to recommendation 2. In particular we note that this recommendation refers to "observed" prices, which we would support, whilst sections of the report advocate calculation of estimated annual expenditure based upon assumed consumption patterns, which is not supported as detailed above.

9. ESCOSA should also maintain and update a central data base on its website of the current standing contract and default contract prices of all South Australian retailers.

TRUenergy supports the recommendation.

10. The AEMC should undertake a review of the price monitoring framework within three years of its implementation.

TRUenergy supports the recommendation. We also consider that if an obligation to offer to business customers is to be retained in the short-term, the AEMC is the appropriate regulator to independently review whether the obligation should be reduced (through a lower consumption threshold) or withdrawn as part of the price monitoring framework review.

11. The South Australian Government undertake a consumer awareness and education campaign as part of the transition to phasing out retail price regulation.

TRUenergy supports the recommendation.

Maintaining a register of approaches to Origin for access to the SESA Pipeline.

TRUenergy supports the proposal, and considers there is merit in extending it to include access to the MAPS laterals. Management of the register, and in particular the conditions for any public release of information, would require detailed industry consultation to ensure that it did not create a perverse disincentive to access requests.

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

Yours sincerely,

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Regulatory Manager

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