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Dr John Tamblyn
Chairman
Australian Energy Market Commission
PO Box A2449
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Dear Dr Tamblyn

I refer to the Australian Energy Market Commission's (AEMC) Second Draft Report (Draft Report) on its Review of the Effectiveness of Competition in Electricity and Gas Retail Markets in South Australia that was released 14 October 2008.

The Draft Report based on the Stage 1 findings recommends replacing the existing framework for regulating retail energy prices in South Australia with a price monitoring framework and reserve statutory powers to re-introduce retail price regulations should the AEMC determine competition not to be effective at some future time.

I am concerned with the lack of detail in support of a number of the recommendations contained within the report. I would seek a greater description within the Final Report of how the proposed price monitoring regime would operate. In this regard I make the following observations:

Price Monitoring

The Draft Report indicates that the AEMC considers the monitoring of trends in standing contract and default contract prices to be the key competition indicator to be monitored under a price monitoring regime. If this is the case further detail should be provided on how the AEMC would use this information to determine the state of competition including other indicators it would rely upon.

Should the State Government request AEMC to undertake a review of the state of competition in an accelerated timeframe it would seem necessary for the AEMC to have ready access to both current and historical data for all the indicators it considered important in order to meet the timeframe.

The Final Report must detail the indicators the AEMC would require and on what basis it would use them to determine if competition was effective.

Regarding the recommendations of transferring retail price regulation functions to the Australian Energy Regulator (AER) I note that in accordance with the Australian Energy Market Agreement (AEMA) this decision is at the discretion of the State and Territory Governments.

Regional gas

In my submission to the First Draft Report I stated that it was difficult to perceive how the gas market could be deemed to be effectively competitive in its own right, given the structural limitations affecting the level of competitiveness for regional gas customers identified in the report.

I note the AEMC suggests some issues may be resolved in the near term (due to legacy contracts for firm transmission haulage capacity on the MAPS laterals expiring in the short to medium term) and that market offers from Origin available to regional gas customers are currently providing the same level of discounting as market offers available in Adelaide. I maintain my position on the regional gas issue.

I am advised that results from the ESCOSA Estimator suggest that contracts available to regional gas customers are some way off the best market contract available in metropolitan areas. This difference widens when comparing the best dual fuel contracts available to metropolitan and regional customers. Even if Origin is providing the same level of discount to regional and metropolitan customers this might be small consolation.

It appears unlikely the monitoring framework proposed for regional gas that sufficient information would be collected to determine the level of competitiveness in other sub-markets and issues regarding sub-market competitiveness may go unidentified. This indicates the need for a broad competition indicator monitoring framework to be developed.

Retailer of Last Resort (RoLR)

It is not apparent that the AEMC has considered the practical realities with its recommendation that there should be a gas RoLR scheme adopted in South Australia immediately.

South Australia has not pursued establishing a gas RoLR scheme at this time due to the potential cost involved. Any RoLR would seek to recover extra costs given the nature of the current gas market potentially resulting in higher gas prices to consumers. These extra costs will be incurred despite the possibility that a RoLR event may never occur. The Commonwealth *Corporations Act 2001* has established provisions to deal with business failure that in most cases would result in the retailer either trading out of difficulties or the assets, including the customer contract portfolio, being sold in an orderly manner.

South Australia proposes to establish a contingency plan to deal with a gas retailer business failure that minimises any distortion of established Corporations Act insolvency arrangements while directly addressing the Government's policy objectives of customer protection and reliability of supply.

I note that a recently released draft consultants' report on a national RoLR Framework prepared for the Ministerial Council on Energy (MCE) Standing Committee of Officials (SCO) recommends that jurisdictions be allowed to opt out of the proposed gas RoLR scheme.

I would be interested to see the Commission's detailed reasoning in this area.

Community Service Obligations (CSOs)

In relation to CSOs, the AEMC has sought stakeholder comment on the Country Equalisation Scheme (CES). The scheme is designed to ensure that small country customers are not charged more than 1.7% higher than that amount charged to city counterparts. As the establishment of the scheme and its funding source are prescribed in legislation there can be no issue regarding the transparency of the CES. I also concur with the AEMC's preliminary assessment that South Australian CSOs including the CES do not have an anti-competitive effect on energy retailing.

If you or your officers wish to discuss any element of this submission further please contact Mr Sean Kelly Executive Director, Energy Division from the Department for Transport, Energy and Infrastructure on (08) 8204 1715.

Yours sincerely



HON PATRICK CONLON MP
MINISTER FOR ENERGY

24 November 2008