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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 – 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 Victoria – Second Draft Report*.

TRUenergy supports the Commission's finding that the retail energy market in Victoria is effectively competitive, and broadly agrees with the overall direction of the implementation approach proposed in the second draft report. Detailed comments on each of the recommendations are provided below.

1. The Commission recommends that the regulation of standing offer retail prices should cease from 1 January 2009 and that there be no extension of the existing reserve price powers under the Electricity Industry Act 2000 (Vic) and the Gas Industry Act 2001 (Vic) beyond their current expiry date of 31 December 2008.

TRUenergy supports the recommendation. The Victorian framework is currently legislated as a pricing oversight regime, whereby the Minister has absolute discretion to intervene and set prices. In practice, the threat of intervention is used as a mechanism to negotiate pricing outcomes directly with retailers.

Given that the market is effectively competitive, it is appropriate that the Minister's absolute discretion is removed. Consistent with the views of the Commission, TRUenergy considers that the legislative power to regulate prices should only be reintroduced if there is an adverse finding from the AEMC regarding the effectiveness of competition, and that the reintroduction of price regulation is recommended by the AEMC as the appropriate response.

2. The Commission recommends that the obligation to offer to supply and sell energy to residential customers and existing deemed supply arrangements for residential customers remain in place.

Given the Commission's finding in the first final report that no customers are being excluded from the competitive market, retention of the standing offer obligation is unnecessary.¹ Nevertheless, we recognise that this is an issue of concern for some consumer representatives, and is not an unreasonable transitional measure.

3. The Commission recommends that the obligation to offer to supply and sell energy to a residential customer at a premises where there is an existing connection should rest with the FRMP for the relevant premises.

TRUenergy supports the recommendation, as the FRMP model 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.

On the question of 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.

4. The Commission recommends that all retailers (new as well as host retailers) determine and publish standing offer prices and other terms and conditions to cover the retailers' obligations to offer to supply and sell energy and deemed supply arrangements.

TRUenergy supports the recommendation. However, given that the FRMP will be responsible for providing the standing offer, it is unclear what purpose is served through the publication of standing offer tariffs beyond the web-site (for ongoing transparency) and upon request. Retailers have an obligation to directly inform their customers of the tariff they will be charged, whereby there is no need for any broader communication. Newspaper publication also has the potential to confuse market contract customers who may believe that the prices referred to are their own.

If there is to be an obligation to publish standing offer tariffs in a newspaper, it should only require retailers to publish a summary notice, advising customers of new prices on the web-site or available on request, rather than publishing the full list of prices. This is current practice in both Victoria and South Australia. Such

¹ AEMC, *Review of the Effectiveness of Competition in Gas and Electricity Retail Markets in Victoria: First Final Report*, December 2007, Sydney, p. 97.

an approach would also recognise that under the FRMP model, retailers will be publishing tariffs for all pricing zones, not just their local retailer area. For TRUenergy this would create an electricity pricing list five times longer than currently published in the government gazette, with a corresponding increase in typesetting and publishing costs.

TRUenergy does not support the comments by the Commission that the standing offer tariffs would be appropriate ROLR prices. It is critical that if a ROLR event occurs, the costs of the event are not borne by the shareholders and pre-existing customers of the ROLR. That cannot be guaranteed, and indeed is unlikely, if the only method of cost recovery available to the ROLR is the levying of standing offer tariffs on the ROLR customers. Existing Victorian legislation establishes no link between ROLR and standing offer prices, and the case for such a link has not been made. We note that ROLR arrangements are currently under review through the RPWG process, and recommend that further consideration be deferred to that process.

5. The Commission recommends that the Essential Services Commission, Victoria (ESC) develop a guideline setting out the requirements regarding the format of the publication of retailers' own standing offer prices.

TRUenergy does not support the recommendation. Under current arrangements, imposed by legislation, retailers are required to publish standing offer tariffs in the government gazette. Whilst the method of publication may be varied in future arrangements, the Commission has not demonstrated why a similar high-level obligation would not continue to be sufficient. Development of a guideline also raises the potential for regulatory creep – i.e. a regulatory burden to be imposed in excess of what was originally envisaged by policy makers.

With regard to the recommendation for the guideline to require estimates of annual expenditure based on predetermined consumption levels, we note that the ESC rejected such an approach when it considered its preferred model for price disclosure arrangements during 2005. Estimates of annual expenditure require assumptions to be made regarding energy consumption, in particular the spread of consumption across tariff blocks and peak/off-peak periods. Consequently, the estimate will be misleading for all customers whose consumption patterns differ from the underlying assumptions (i.e. the overwhelming majority).

If a guideline is to be developed, responsibility from the outset should be given to the AER. Legislation for the transfer of retail responsibility is scheduled for introduction in September 2009, only nine months following the proposed removal of price regulation. If the AER were to draft the guideline this would also avoid the additional administrative costs of transitioning a Victorian price disclosure guideline (and potentially a South Australian guideline as well) into the national framework, and allow a national approach to guide the initial drafting.

6. The Commission recommends the introduction of a price monitoring regime for standing offer prices for at least 3 years following the removal of retail price regulation.

TRUenergy supports transparency in the reporting of standing offer prices. We also support the comments of the Commission that ...*"The reporting of the standing offer prices should focus on factual matters and refrain from making assessments of the consistency of reported price trends with expected competitive market outcomes."*² The assessment role is one that should appropriately be performed by the AEMC, in response to a Ministerial referral.

However, we are concerned that the use of the term "monitoring," and the proposal for reporting to extend beyond listing standing offer prices, will potentially, and perhaps inevitably, establish an oversight framework, similar to current arrangements, based on the threat of regulatory intervention.

To ensure that the reporting of standing offer prices is not used as a regulatory threat, we recommend that the term "monitoring" is replaced by the term "reporting," and that the report is restricted to a listing of the standing offer prices published in the corresponding period. The recommendation should also explicitly refer to the above quote, and in particular the need for factual reporting and the avoidance of competitive market assessments.

Once again, we are concerned with the recommendation for the ESC to perform this role prior to the transfer of retail regulatory functions to the AER. For the reasons identified above, we believe that responsibility for price reporting should be given to the AER from the outset.

7. The Commission recommends that, as part of the transition to the phase out of retail price regulation, a consumer awareness and education campaign be implemented.

TRUenergy supports the recommendation.

Report on the impact of maintaining price regulation, Professor George Yarrow, January 2008.

TRUenergy supports the findings of the Yarrow Report on the impact of maintaining price regulation. We have consistently argued to both governments and regulators that the greatest threat to effective competition, and long-term security of energy supply, is the maintenance of price regulation, through the setting of standing offer tariffs below market-based levels. More recently this threat has been exacerbated by increased volatility in the wholesale markets, whereby the ability of consultants to accurately predict forward price movements has become even more problematic.

In addition, we endorse Professor Yarrow's comments regarding the potential for regulated pricing regimes to stifle innovation and product diversity. However, the Commission should equally be wary of the potential for a similar effect on market offer products of various price disclosure proposals. As an example, the

² 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.

development of a price comparator service necessarily promotes price discounting above non-price benefits in the evaluation of competing offers. Reporting of market-based offers, particularly when focused upon price impacts for different customer classes, has the potential for a similar effect. Whilst such developments may be a response of third parties reflecting consumer demand, such as in the United Kingdom, it is entirely inappropriate for regulators to perform such a role, in which case the regulatory intervention merely distorts the competitive market.

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

Yours sincerely,

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