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National Framework for Regulating Electricity & Gas Distribution and Retailing Services – Policy Response Paper

Thank you for the opportunity to comment upon the Standing Committee of Officials' Policy Response Paper to the National Framework for Distribution and Retail Regulation.

1.1 Definition of the obligation

If business customers are to be covered by the obligation to offer (see our comments below), TRUenergy supports the recommendation that retailers may meet the obligation for customers consuming 40-100 MWh by the offer of a market contract. We agree with SCO's comments that there is a high degree of diversity in the service needs and costs of supplying customers in this range, whereby mandating standard contracts is not justified.

However, it is unclear why such an approach has not been adopted for gas, and we recommend adopting a 250Gj second-level threshold for gas in the national framework.

1.1 Application procedures/conditions to the obligation

TRUenergy is concerned that the conditions to the obligation to offer to supply significantly weaken current jurisdictional arrangements. It is unclear why this is the case, when no amendments have been made in the many jurisdictional code reviews conducted since contestability, and there is no evidence available as to why these arrangements are not appropriate:

- The requirement to provide a security deposit should be a condition precedent, consistent with current arrangements in all jurisdictions. If a condition subsequent approach is adopted, and a customer is connected but then subsequently fails to provide a security deposit, the resulting disconnection would impose additional costs on the retailer, and additional costs and hardship upon the customer, than would be have incurred had the connection been refused in the first instance. At the very least, any

subsequent connections should be contingent upon the provision of security to prevent a never ending cycle of connection-disconnection-reconnection.

- In an earlier draft, customers in rental properties were required to provide details of owner/agent. The requirement was then removed on the grounds that it "*does not appear to be an essential requirement.*" This statement is untrue - details of owner/agent are necessary to mitigate bad debt and facilitate access, are a feature of the current regulatory framework in Victoria, South Australia and Queensland, and impose no additional costs upon the applicant. Retailers were not consulted on this assessment, and the requirement should be re-inserted.
- The customer should be required to pay to the retailer any outstanding debt owed by the customer to the retailer relating to a previous supply address (unless the amount is in dispute or a payment arrangement is in place) as a condition precedent. This is consistent with arrangements in South Australia and Queensland with no customer protection concerns, and assists in preventing the accumulation of debt. The current recommendation only applies to the new supply address and is a condition subsequent. The ability of the retailer to recover debt declines substantially once the customer is connected, and it is unclear why the old debt is not considered at all in the obligation.

1.1 Retailer information requirements

The SCO recommendation would require retailers to advise customers on the "particulars" of government concessions. This is too onerous at the contract formation stage, given the number and complexity of schemes. Instead the obligation should be to advise on the availability of concession schemes, and to contact the retailer for further information.

1.2 Designating retailers with the obligation

TRUenergy supports the FRR model, consistent with the SCO recommendation. The model equitably imposes the obligation in accordance with the size of each retailer's customer base.

1.4 Definition of small customers

TRUenergy does not support the retention of business customers under the obligation to offer obligation. SCO justify the recommendation on the grounds that some small businesses may lack the necessary skills and resources to negotiate an energy contract, and may be subject to vulnerable marketing. This is a patronising view of business customers which, if true, would question whether such businesses should be operating in a commercial environment.

Businesses, as part of their day-to-day operations, are required to negotiate with many entities, including, for example, suppliers, landlords, financial institutions, government authorities, and employees, often involving complex contractual negotiations. The negotiation of energy contracts should not be regarded as any different to these other commercial negotiations. Indeed the complexity,

financial impact and risk of an energy contract is likely to be substantially less than most other contracts the business will be required to enter. Whilst we continue to advocate the removal of business customers from the obligation, we nevertheless support the SCO recommendation for a reduction in the small customer definition to 100MWh.

The SCO response paper does not resolve the issue of aggregation for business customers. Currently all jurisdictions other than Victoria allow business customers to aggregate their consumption loads in order to opt-out of the small customer definition. Aggregation provides cost savings through the bundling of retail contracts for multi-site business customers. In Victoria, the ESC recommended in their 2004 review of the effectiveness of retail competition that aggregation be permitted.

1.5 MCE directed review of small customer definition

The recommendation that the small customer thresholds should reduce over-time is supported, and suggests that SCO believes that the appropriate thresholds are driven by the level of competition in the market. This in turn suggests that it may be appropriate for jurisdictions to have different thresholds if competition is at differing stages of development, and that, given the high levels of competitive activity generally in retail energy markets, a five year review period is too long.

TRUenergy recommends that the AEMC be responsible for conducting a review of the thresholds as part of their reviews of the effectiveness of competition. This would allow each jurisdiction to lower their thresholds in response to the level of competition in that market, rather than waiting for competition to develop in less mature markets. In accordance with section 14.11 of the Australian Energy Market Agreement, the AEMC would be required to conduct the review biennially, a more appropriate time frame which recognises the rapid development of retail competition.

1.6 Standing offer tariffs

TRUenergy does not support the proposal for standard retail tariffs to be published 20 business days prior to commencement.

Obligations to publish standing offer tariffs must take into consideration the timing of distribution tariff variations. Once distribution tariffs are published, sufficient time must be provided for the retailer to evaluate the distribution tariffs, establish the appropriate retail tariff, gain regulatory approval (where required), and arrange for publication.

Under the National Electricity Rules (6.19.9(e)), distribution businesses are required to publish their tariffs 20 business days prior to commencement. A 20 business rule for retail tariffs will not allow retail tariffs, reflecting the new distribution tariffs, to commence on the same date as those distribution tariffs.

A reasonable approach, adopted in the South Australian electricity determination and recommended here, is to require the retailer to publish standard tariffs 10 business days prior to commencement.

TRUenergy does not support the limit of varying standing offer tariffs to no more than once every six months. The time period is arbitrary and does not allow retailers to respond as required to unforeseen market events, increasing the potential for retailer failure. Retailers have both a commercial incentive (given the internal costs of repricing) and a competitive incentive (given that price regulation will only be removed in effectively competitive markets) not to impose frequent tariff increases. In the absence of any evidence to the contrary, these pressures should be regarded as sufficient, and the temptation to regulate in the absence of market failure avoided.

1.8 Standing offer terms and conditions

TRUenergy supports the AAR recommendation, contrary to the SCO recommendation, that would allow retailers to adopt terms and conditions not inconsistent with the model terms. These arrangements have worked effectively in Victoria since market start, and despite numerous reviews and legislative changes the Victorian Government has not sought any amendments. No concerns have been raised by the regulator, Ombudsman, or consumer groups in any related consultation groups regarding interpretation of the term "not inconsistent" or the actual terms adopted. Allowing retailers the additional flexibility to draft their own terms and conditions assists in the development of a consistent brand message to customers, and encourages competition.

SCO justifies the recommendation on the search costs imposed on customers if contract terms vary, and the risk that they may not have the information necessary to make an informed decision. There is no evidence from either the ESC or the AEMC reviews to support this assertion.

1.9-1.13 Deemed Supply Arrangements

TRUenergy supports the SCO response on the circumstances under which deemed supply arrangements arise, their terms and conditions, and duration. The proposal builds upon the current inconsistent jurisdictional arrangements, providing a workable and balanced solution.

Deemed customers impose additional costs and risks upon retailers. This includes the out-bound costs of contacting the customer to establish account information, and the additional risk that the customer will vacate the premises or transfer to another retailer prior to making any payments towards their energy usage. It is therefore reasonable that retailers have the ability to charge deemed customers above the standing offer tariff.

1.15 Minimum terms and conditions of market retail contracts

In general, TRUenergy supports the SCO response on minimum requirements for market retail contracts. The proposal, which allows for variation on a number of requirements, will promote innovation and product differentiation, and thereby further competition in the retail energy market. However, there are additional minimum requirements which we believe provide scope for variation.

| Requirement | |
|------------------------------------|---|
| Use of Meter Data & Bill Smoothing | TRUenergy supports the recommendations for use of meter data and bill smoothing not to be a minimum requirements in a market contract. This will encourage innovation and product differentiation, whilst allowing customers to capture greater benefits of the competitive market. |
| Content of Bills | All jurisdictions currently permit some variation, with the agreement of the customer, in the content of bills. The bill is the retailer's primary form of customer communication, and a critical marketing tool. As additional regulatory requirements (including CSO agreements) further limit the space on bills available to retailers there should be some scope for retailers and customers to negotiate their bill content. This is particularly the case when the outcome may be a reduction in the number of pages of the bill and a corresponding reduction in costs to the consumer. |
| Shortened collection cycle | <p>TRUenergy supports the recommendation for payment terms not to be a minimum requirement in a market contract. This will encourage innovation and product differentiation, whilst allowing customers to capture greater benefits of the competitive market.</p> <p>However, shortened collection cycles are merely a specific form of payment term, and should be able to be varied on the same grounds as payment terms more generally. For example, the cost savings available to a retailer from a customer agreeing to remove the reminder notice stage of the collection cycle is a potential source of price discounting.</p> |
| Dual fuel contracts | <p>The emergence of dual fuel contracts is a defining feature of the competitive retail market, promoting innovation and product differentiation, and driving a substantial proportion of customer transfer activity. Any regulation in this area should be avoided in the absence of demonstrated market failure.</p> <p>The disconnection provisions for dual fuel contracts were originally introduced in Victoria, prior to a single dual fuel customer being disconnected. The provisions impose a mandatory delay in disconnecting gas following the disconnection of electricity. In practice, the provision merely extends the gas collection cycle, whereby the customer builds additional debt over the period. It also ignores the reality that customers with separate energy contracts (whether or not with a single retailer) may be disconnected for both fuels within a short period. In doing so it imposes different obligations on the retailer, and rights on the customer, purely on the basis of the contract type.</p> |

1.20 Obligations in relation to hardship customers

TRUenergy generally supports the recommendations in relation to hardship customers. However, the second dot point in 1.20B, referring to the early response of retailers to customers experiencing energy bill payment difficulties, misrepresents the role of energy retailers.

In particular, retailers cannot be expected to know that a customer is experiencing payment difficulty in the absence of advice from that customer, or a third-party on the customer's behalf, that such difficulty is being experienced. Instead the relevant obligation must be upon the customer to advise the retailer that they are experiencing payment difficulty, and then for the retailer to take the appropriate response.

We are also concerned with recommendation 1.20E that the AER should have regard to hardship indicators established in jurisdictional frameworks when developing national hardship indicators. Firstly, existing arrangements should always be a consideration in the development of the national framework, whereby it is unclear why SCO should seek to single out this recommendation. Secondly, TRUenergy considers that the Victorian measures are excessive and developed without considering how those measures would assist in evaluating those programs. Instead the AER should be required to consult with stakeholders in the development of the guidelines, so that these and other concerns with existing measures can be appropriately considered.

1.21/1.22 Distributor-customer arrangements

TRUenergy supports the recommended contractual interface for the distributor-customer relationship for both electricity and gas. This will further national consistency and the efficiency benefits that it will deliver, whilst facilitating a framework in which risk is allocated between distributor, retailer and customer in accordance with the party most capable of managing that risk.

1.35 Model terms and conditions of the default (distributor-retailer) contract

TRUenergy supports the recommendation for the development of model terms and conditions in the Rules for the default distributor-retailer contract. Industry experience is that it is unrealistic to expect retailers to be able to negotiate commercially with distributors as monopoly service providers.

However, we remain concerned at the potential for distributors to vary the model terms. A national dual-fuel retailer must deal with over 20 distribution businesses, whereby variations in contractual arrangements impose significant costs to the industry. Whilst acknowledging the recommended criteria to be used by the AER to assess a proposed variation, these criteria should be specified in the Law, and strengthened to ensure that any variations only occur in exceptional circumstances and they provide a net benefit across the national market. This would require the AER to consider in their evaluation the costs to retailers of any variations to the model.

1.44 Exemption from retailer authorisation requirements

Exemption regimes create a two-tier regulatory framework; licensed retailers operating under the full cost of the regulatory framework competing against exempt retailers operating under a lower-cost framework which generally imposes no auditing requirements, no enforcement regime to deal with compliance breaches, no requirement for membership to an approved Ombudsman scheme, and no obligation to provide government concessions. This is inequitable for customers supplied by the exempt entity, and for licensed retailers competing with them.

Existing jurisdictional regimes were established prior to contestability, do not reflect existing market arrangements, and do not represent a transparent and equitable regime. TRUenergy recommends that all existing jurisdictional exemptions sunset as part of the transitional process, and that the AER conduct a review prior to the development of a new national exemption framework.

1.78 Compliance reporting systems

The first dot point in the recommendation is the obligation for entities to establish systems and procedures to monitor regulatory compliance in accordance with reporting requirements developed by the AER. In developing those requirements the AER should explicitly be required to consider the costs to retailers, and robustly validate consumer benefits, when evaluating what represents appropriate systems and procedures.

Similarly with respect to the third dot point requiring entities to conduct compliance audits in accordance with guidelines issued by the AER. In developing those guidelines, and the need for an entity to conduct an audit, the AER should explicitly be required to consider the costs to the retailer and the benefits to the consumer of conducting the audit, the compliance record of the retailer, and the level of competition in the relevant jurisdiction.

1.79 Court based enforcement mechanisms

TRUenergy does not support the SCO recommendation for civil penalties to be assigned to specific Rule obligations. Current civil penalty provisions are broad in nature. They were designed as a last resort, to be applied only in cases of material and systemic compliance breaches, on which the retailer had failed to take remedial action.

With the addition of enforceable undertakings to the enforcement framework, the AER already has a greater suite of enforcement mechanisms than currently available to any jurisdictional regulators. This is despite current arrangements working satisfactorily in all jurisdictions, and no proposals for reform.

1.84 Use of lower courts

TRUenergy does not support the recommendation to allow enforcement in the lower courts for court based remedies.

The recommendation is justified by SCO on the grounds that *"it will assist efficiency if minor matters are heard in the lower courts."* However, such an approach is contrary to SCO's reassurance in section 8.2.4 (in response to retailer concerns) that *"only those provisions the breach of which will have significant effects will attract civil penalties."*

It is appropriate, given the range of enforcement options available to the AER, and the expansion of those options to include enforceable undertakings, that only systemic material breaches, on which reasonable remedial action has not been taken, should be considered in the context of court based action. Such an approach is validated by the evidence that no jurisdictional regulator has to date needed to take such action. Allowing proceedings to be heard in lower courts potentially both lowers the threshold for which breaches will result in court action, and increases the likelihood that court action will be taken.

The suite of enforcement action to be available to the AER, already in excess of what is currently available to jurisdictional regulators, is sufficient to deal with lower level issues, without the need for lower court action.

1.85 Statutory Objective of the NEL and NGL

Amending the NEL objective was initially considered in the May 2005 NERA and Gilbert+Tobin Consultation Paper. The consultants believed there was merit in tightening the economic regulation of the AEMC, and recommended that they be required to have regard to the following principles in the consideration of a proposed rule change:

- Ensuring the benefits to consumers from regulation outweigh the costs of regulation
- Clear and simple regulation and sector specific regulation should not duplicate consumer protection regulation of general application

TRUenergy remains of the view that the AEMC's decisions are more likely to be consistent with the market objective if the AEMC are provided with additional guidance, consistent with the above recommendation. This view is based on our experience in dealing with jurisdictional regulators.

If the MCE are concerned with including such a requirement in the Law, TRUenergy recommends that the AEMC be required to adopt the Principles of Good Regulatory Process identified by the Taskforce on Reducing Regulatory Burdens on Business (Regulation Taskforce 2006) and endorsed by the Commonwealth Government. In particular;

- *Governments should not act to address 'problems' until a case for action has been clearly established.*
 - *This should include establishing the nature of the problem and why actions additional to existing measures are needed, recognising that not all 'problems' will justify (additional) Government action.*
- *A range of feasible policy options - including self-regulatory and co-regulatory approaches - need to be identified and their benefits and costs, including compliance costs, assessed within an appropriate framework.*

- *Only the option that generates the greatest net benefit for the community, taking into account all the impacts, should be adopted.*

At the very least there should be no weakening of the economic regulation role of the Commission by introducing non-economic objectives. We agree with the SCO that “environmental and social objectives are best dealt with in other legislative instruments and policies.”

Part 2 - Regulation of standard retail and market retail contract terms

| 2.1 | Tariffs & charges | Any variation to standing offer tariffs and charges must be published 20 business days in advance of the variation taking effect | As discussed in response to section 3.1.4.2, the requirement should be reduced 10 business days, consistent with the current SA electricity obligation, to allow the alignment of new retail and distribution tariffs. |
|-----|-------------------|--|--|
| 2.1 | Tariffs & charges | A retailer is limited to varying a standing offer tariff to 6 monthly | Limiting the variation time period is arbitrary and does not allow retailers to respond as required to unforeseen market events. The potential for retailer failure is increased. |
| 2.2 | Use of meter data | May be varied in a market contract | TRUenergy supports the recommendation that use of meter data may be varied in a market contract. This will encourage innovation and product differentiation, whilst allowing customers to capture greater benefits of the competitive market. |
| 2.4 | Estimations | ... estimations may be based on ... | In cases other than the customer’s own reading of the meter, the rules regarding estimation are set in the relevant metrology procedures or retail rules. To ensure consistency across regulatory instruments, the obligation should refer directly to the relevant rules. |

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|------|--------------------|--|--|
| 2.11 | Amount of security | | The Queensland and Victorian approach is supported which allows the retailer to use the billing history of the customer, whereby the security provided by the customer reflects the risk of supplying that customer. Otherwise low consumption customers are required to subsidise the security deposit provided by high consumption customers. This is particularly inappropriate for business customers, given that the consumption threshold extends to 100MWh. |
| 2.26 | Disconnection | .. has denied access to a meter for three consecutive scheduled readings without reasonable excuse ... | The words " <i>without reasonable excuse</i> " should be deleted. The current obligation is absolute in all jurisdictions, and there has been no consideration by regulators in amending this obligation. Providing customers with three requests for access, across consecutive billing periods (ie 9 months for a domestic customer), is sufficient to protect consumers. |
| 2.28 | Notice | Where the reason is non-payment of a bill, the retailer must make a reasonable attempt to contact the customer by telephone or other specified means | The current drafting in all jurisdictions provides retailers with options on the method for contacting the customer, determined at the retailer's discretion. This should be the approach adopted in the national framework. |
| 2.29 | Reconnection | Any payment arrangements must allow for fair and reasonable payments at fair and reasonable intervals. | This line does not current apply in any jurisdiction, will directly impact the level of bad debt carried by retailers, has the potential to create a never-ending disconnection-reconnection cycle, and should be deleted. It is likely that it was failure on at least two previous instalment plans which led to the disconnection. |

3.2 Pre-contractual disclosures – required disclosures

TRUenergy does not support recommendation 3.2 (e) "*the availability of standard retail contracts, and the AER's contact details*" should be disclosed prior to contract formation. This information is not relevant to the contractual decision, and currently only applies in New South Wales. No issues of concern

have been raised in other jurisdictions with their arrangements, and no such change has been sought in any of the relevant regulatory reviews. In the absence of any demonstrated need for the obligation it should not be adopted in the national framework.

To the extent that there is an energy-specific issue which is relevant, it is in the case when a retailer without the obligation to offer chooses not to make a market offer to a move-in customer. In those circumstances, it is reasonable to require the retailer to advise the customer regarding the availability of a standing offer with the FRR, as per the current Queensland obligation.

3.7 Training

Consistent with regulatory best-practice, the rules should regulate outputs rather than inputs. In this context, the requirement to comply with general conduct standards renders redundant the proposed obligation for training to ensure that those standards are met.

3.8 Record keeping

Consistent with current arrangements in all jurisdictions, the record-keeping obligation should be restricted to 12 months from the date of contact.

5.10 Liability between parties

TRUenergy supports the use of Queensland regulatory instruments, including the electricity use of system agreement, as the starting point for drafting relevant documents in the national framework. Developed by independent consultants the instruments were the outcome of extensive consultation with stakeholders, including retailers, distributors, consumer groups, dispute resolution scheme representatives, and the Queensland Government officials. Drawing upon the experience of the Victorian, South Australia and New South Wales contestable markets, it represents regulatory best-practice among Australian retail energy markets.

Whilst TRUenergy does have some concerns with the allocation of liability between parties in the Queensland framework, in particular with regard to cases of illegal use, it does represent the most appropriate starting point for drafting the national framework.

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

Yours Sincerely,

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