

8 February 2013

Australian Energy Markets Commission  
PO Box A2449  
Sydney South NSW 1235

Dear Commissioners

### **Review of Competition in the Retail Electricity and Natural Gas Markets in New South Wales**

Simply Energy welcomes the commencement of this review and hopes it can result in the deregulation of retail prices in New South Wales. Retail price regulation distorts important price signals in retail electricity and gas, undermines investor confidence and restricts the entry of new retailers.

Simply Energy is a wholly-owned subsidiary of GDF SUEZ Australia Energy<sup>1</sup> and is one of the largest second tier retailers operating in Victoria and South Australia. In 2012, Simply Energy commenced retailing to small, medium and large business customers in New South Wales. Simply Energy is also a member of the Energy Retailers' Association of Australia (ERAA) and supports the submission the ERAA has provided to this review.

Our comments focus on Chapter 5 of the Issues Paper (Identifying a Path to Removing Retail Price Regulation) and have the following key themes:

- We would prefer to see retail prices fully deregulated in the quickest manner possible.
- New South Wales is more than ready for deregulated retail prices and a decision to gradually remove price regulation will only cause detriment for the customers who remain under regulated prices.
- However, if the Australian Energy Markets Commission (AEMC) finds through this review that a gradual approach is preferred, then we would prefer to see a change of approach to the way that price regulation is applied. Rather than using a consumption threshold, we would prefer that price regulation be limited to customer types as defined in the National Energy Consumer Law.
- There is no need for any specific legislative requirements around how retailers communicate with their customers about deregulation as there are already sufficient protections under the National Energy Consumer Framework (NECF) and the Australian Competition and Consumer Law (ACCL).
- Any further customer protection requirements proposed as part of the AEMC's review must be tested against accepted best practice regulation principles to establish that a real case for action exists and assess whether there is a net benefit from implementing any options developed to address any identified market failures.

In the remainder of this submission, we respond to the questions raised in Chapter 5 of the Issues Paper.

#### **Rolling back retail price regulation**

Simply Energy favours reliance on market mechanisms where the cost to consume electricity reflects the cost to produce and deliver electricity and where pricing is sustainable to attract the ongoing investment that will underpin customer reliability. It is not the job of regulation to deliver regulated price caps that deliver the best that competition can offer. If that were the case competition would not occur. Energy prices should however gravitate to efficient levels with workable competition.

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<sup>1</sup> GDF SUEZ Australian Energy Energy is wholly owned by GDF SUEZ S.A. and a business line of GDF SUEZ Energy International. In Australia, the company owns and operates 3,500MW (gross) of renewable, gas-fired and brown coal-fired plants in Victoria, South Australia and Western Australia in addition to our retail business, Simply Energy.

***Question 23 (a): Are the approaches in past reviews useful as a basis for NSW? Should the path to deregulation be gradual or should price regulation be removed for all customers at the same time?***

Simply Energy would prefer to see retail prices fully deregulated in the quickest manner possible. The sooner NSW deregulates prices, the sooner New South Wales will remove regulatory uncertainty which is one of the greatest disincentives to invest in the New South Wales retail energy market. Even if the regulated retail price is set high enough for new entrant retailers to afford the cost of entry, there is always the risk that a regulator may behave unpredictably and make an unanticipated and opportunistic change to the regulated price path which can damage the original business case for investment. Energy retailers saw this most recently in South Australia where the Essential Services Commission of South Australia caused great uncertainty by suggesting a significant and unanticipated change to the regulatory price path.

The effect of unanticipated changes in a regulated price path is well recognised in infrastructure regulation where networks are given the certainty of a 5 year price path that they can rely on to make informed investment decisions. While the capital invested in retail may be lower than that invested in networks, retailers require the same level of certainty over future changes in the regulated retail price to make their own informed and sound investment decisions.

Using a gradual approach to price deregulation merely delays the removal of regulatory uncertainty in New South Wales and thus lengthens the time that retailers cannot invest with confidence in the New South Wales market. Moving to deregulation would bring New South Wales into alignment with Victoria and now South Australia. Such a move was also a key recommendation of the Federal Government's Energy White Paper released in late 2012.

The gradual elimination of price regulation is sometimes premised on the notion that it gives customers time to adjust to price deregulation. Simply Energy does not believe that this notion captures the realities of the market. Customers do not monitor the prices that are charged to other customer types. For example, residential customers will learn nothing from deregulation of small business prices because residential customers do not follow developments in the small business market. In reality, an individual customer will not differentiate between deregulation that has occurred gradually and one that has occurred at the same time.

We believe that New South Wales is a competitive market as evidenced by the rapid increase in customer switching rates and that a decision to gradually remove price regulation will only cause detriment for the customers who remain under regulated prices. It has the potential to shift retailers' focus away from the regulated market and encourage them to invest proportionally more resources into the deregulated market. This is not fair for the customers who remain under regulated prices.

**Question 23 (b): What are the benefits of a gradual approach? If a gradual approach is preferred, what increments, ie how many stages should there be and what should be the applicable level of eligible consumption? Over what time frame? Should businesses be deregulated first?**

Simply Energy cannot see any benefit from using a gradual approach to deregulation. As just discussed, individual customers do not experience or observe the outcomes or effect of deregulation in other market segments. It will also prolong the presence of regulatory uncertainty in the market segment that remains regulated potentially causing retailers to shift their focus and resources toward the deregulated market segment which would be detrimental for competition in the regulated market segment.

However, if the AEMC finds through this review that a gradual approach is preferred, then we would prefer to see a change of approach to the way that price regulation is applied. Rather than using a consumption threshold, we would prefer that price regulation be limited to customer types as defined in the National Energy Consumer Law. For example, price regulation could apply to 'residential customers' or to 'small market

offer customers' as defined in the Law. Consumption thresholds are arbitrary in the way that they are applied and result in the same customer types being treated differently around the threshold.

It is difficult to respond to the AEMC's question on which market segment should be deregulated first because Simply Energy cannot pinpoint any reasons for why either market segment should remain regulated. We suggest that the answer to this question may come from the AEMC's own analysis of the level of competition in each of the market segments.

**Question 23 (d) What information should be provided to customers to establish awareness of price deregulation? What customer protections are required?**

Customers on market offers will be unaffected by the removal of retail price regulation. Including them in any communications about deregulation will only cause confusion about how deregulating prices affects the offer they are on. This will absorb resources amongst retailers in having to explain that deregulation does not affect their tariff and will thus unnecessarily increase costs. We would suggest that no communications beyond a general government media release is directed to these types of customers.

There may be a case for some form of direct communications between retailers and customers who remain on the regulated standing offer. The form and content of this communication should be left to retailers' discretion as they are better placed to know what information customers need and the type of information that will help them understand the impact of deregulation on their own circumstances. Leaving it to retailers' discretion also assists retailers to coordinate written communications with call centre training so that customers receive consistent information and can have their questions answered satisfactorily.

There is no need for any specific legislative requirements around this communication. New South Wales has indicated its intention to adopt the National Consumer Energy Framework (NECF) from 1 July 2013 — well before any decision might be taken on price deregulation. The NECF already sets out quite onerous requirements on retailers to communicate with their customers on price changes.

Energy retailing is already a heavily regulated sector with retailers required to meet a vast array of regulatory requirements under the NECF (or other state-based schemes) and the ACCL. The cost of meeting these obligations is cumulative and, in sum, adds significantly to the cost of undertaking energy retailing activities. These costs trickle down to customers who pay higher prices as a consequence.

Any further customer protection requirements proposed as part of the AEMC's review must be tested against accepted best practice regulation principles to establish a genuine case for action and assess whether there is a net benefit from implementing any options developed to address any identified market failures.

Please don't hesitate to call me on (03) 8807 1132 if you wish to discuss this submission further.

Yours sincerely

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