

REVIEW OF THE OPERATION OF THE NATIONAL ENERGY CUSTOMER FRAMEWORK IN SOUTH AUSTRALIA

Issues Paper

February 2015



REQUEST FOR SUBMISSIONS

The Essential Services Commission of SA (**the Commission**) invites written submissions from all members of the community on this paper. Written comments should be provided by **Friday, 15 May 2015**. It is highly desirable for an electronic copy of the submission to accompany any written submission.

It is Commission's policy to make all submissions publicly available via its website (www.escosa.sa.gov.au), except where a submission either wholly or partly contains confidential or commercially sensitive information provided on a confidential basis and appropriate prior notice has been given.

The Commission may also exercise its discretion not to publish any submission based on length or content (for example containing material that is defamatory, offensive or in breach of any law).

Responses to this paper should be directed to:

Review of the Operation of the National Energy Customer Framework in South Australia - Issues Paper

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The Essential Services Commission of South Australia is an independent statutory authority with functions in a range of essential services including water, sewerage, electricity, gas, rail and maritime services, and also has a general advisory function on economic matters. For more information, please visit www.escosa.sa.gov.au.

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GLOSSARY

AEMC	Australian Energy Market Commission
AEMC REVIEW	AEMC's 2014 Retail Competition Review
AER	Australian Energy Regulator
COMMISSION	Essential Services Commission of South Australia
DRAFT REPORT	Commission's forthcoming NERL Review Draft Report
ENERGY	Electricity and natural gas
EWOSA	Energy & Water Ombudsman SA
NECF	National Energy Customer Framework
NEM	National Electricity Market
NERL	National Energy Retail Law
NERL REVIEW METHODOLOGY	Commission's NERL Review Methodology-Final Decision (March 2014)
NERR	National Energy Retail Rules
PRICING REPORT	Commission's 2014 Ministerial Pricing Report
SMALL CUSTOMERS	Residential and small business customers

1. OVERVIEW

On 1 February 2013, new national regulatory arrangements for the retail energy market commenced in South Australia, referred to as the National Energy Customer Framework (**NECF**).

NECF supports residential and small business electricity and natural gas (**energy**) customers through a range of customer protections.¹ These are described in more detail in Information Box 1.

NECF complements other general consumer protection laws, such as the Australian Consumer Law (for example, in the area of energy marketing) and privacy legislation. Small energy customers continue to have access to a free, independent dispute resolution scheme - in South Australia the Energy & Water Ombudsman SA (**EWOSA**).

NECF was developed from previously operating state-based regulatory frameworks, with the Essential Services Commission of South Australia (**Commission**) having administered the South Australian regulatory framework up until February 2013.

Since that time, the Australian Energy Regulator (**AER**) has been responsible for consumer protection and performance monitoring in the South Australian electricity and gas retail market.

1.1 This Review

The legislation applying the National Energy Retail Law (**NERL**) to South Australia requires the Commission to conduct of a review of the operation of the Law.²

The full terms of reference for the NERL Review are reproduced as Annexure 1. In summary, they require the Commission to:

- ▲ make a finding as to whether the overall operation of NECF has furthered the interests of South Australian energy consumers³
- ▲ focus on the impact of the NERL on energy consumers and assess whether the implementation of NERL in South Australia has
 - resulted in increased efficiencies; or
 - adversely affected customer protection in pursuit of national consistency.

The review necessitates comparison of the operation of NECF with the equivalent state-based scheme that operated in South Australia prior to 2013.

Importantly, it does not include an assessment of the impact of retail energy price deregulation,⁴ which was separate from, but coincided with, the commencement of NECF. Accordingly, while stakeholders may have views on movements in energy prices, this is outside the scope of the review.

The review is therefore seeking views on:

1. customers' experience with the operation of NECF
2. whether recent experience was different to that under the previous state-based scheme.

¹ Specifically covering electricity connections to the national electricity grid and similarly for natural gas.

² The legislative requirements for the NERL Review are set out in section 30 of the National Energy Retail Law (South Australia) Act 2011.

³ More formally the NERL. As the NERL establishes NECF both terms are used interchangeably in this paper. Reference to the NERL should be read as including associated statutory instruments, such as the National Energy Retail Rules.

⁴ Prior to deregulation the Commission set the maximum prices energy retailers could charge for standing contracts.

Information Box 1: National Energy Customer Framework (NECF)⁵

The National Energy Retail Law (NERL) and National Energy Retail Rules (NERR) form the National Energy Customer Framework (NECF).

NECF establishes a national regulatory regime for retailers and distributors selling and supplying energy to customers. NECF applies to the retail sale of electricity and natural gas (**energy**) to residential and small business customers (**small customers**), and to large customers in a limited way. NECF complements other general consumer protection laws such as the Australian Consumer Law (for example, in the area of energy marketing) and privacy legislation.

NECF regulates the relationship between three parties: customers, energy retailers and energy distributors.

Under NECF, small energy customers are supported by a range of customer protections, which include:

- ▲ guaranteed access to an offer of supply for electricity and gas by energy retailers under a direct contractual relationship
- ▲ an obligation on distributors to provide customer services such as new connections, connection alterations and ongoing supply services under a direct contractual relationship
- ▲ requirements relating to information about and marketing of energy contracts, with the Australian Energy Regulator (AER) to operate an independent price comparator service to enable customers to compare market offers across all retailers
- ▲ requirements relating to customer consent, including that customers must give explicit informed consent to enter into a market retail contract (as opposed to a standard contract or deemed contract)
- ▲ requirement on retailers and distributors to have, and inform customers of, complaints procedures
- ▲ information requirements for planned and unplanned interruptions
- ▲ requirements relating to customers with life support equipment
- ▲ a customer hardship regime, requiring retailers to develop customer hardship policies that must be approved by the AER, with certain prescribed elements such as flexible payment options, to assist residential customers experiencing longer-term payment difficulties
- ▲ limitations on disconnection, including the processes that must be followed, restrictions on when disconnections can occur, additional protections for customers experiencing hardship or financial difficulties, and a prohibition on disconnecting premises where life support equipment is required
- ▲ retailer of last resort arrangements, so that a customer can receive an electricity supply from another retailer should the current retailer be unable to continue providing the service (for example if it goes out of business).

NECF is administered by the AER.

A key aim of NECF is to streamline regulatory requirements, increase efficiency through developing a consistent set of rules to apply to a business operation across multiple States as well as maintain best practice consumer protection.

Electricity and gas retailers seek a single national authorisation from the AER, which when granted allows the retailer to operate in any State or Territory in which NECF operates. Distributors continue to be licenced by State and Territory regulators, such as the Commission.

NECF contains no price-setting powers. The South Australian Government deregulated energy retail prices on 1 February 2013, coinciding with the introduction of NECF in South Australia.

The implementation of NECF across States and Territories has been introduced at different times:

- ▲ Tasmania and the ACT commenced 1 July 2012
- ▲ South Australia commenced 1 February 2013
- ▲ New South Wales commenced 1 July 2013
- ▲ Queensland is due to commence NECF on 1 July 2015
- ▲ Victoria aiming to commence NECF by 31 December 2015.

⁵ The information in this section draws in part on Energy Market Reform Working Group, *New Products and Services in the Electricity Market, Consultation on Regulatory Implications*, December 2014, p.7.

Of note, many energy customers may not be aware of the new national arrangements and the introduction of NECF may have been seamless for them. Gaining a sense of the extent to which this is the case would also be useful.

1.2 *NERL Review Methodology*

The Commission consulted on the methodology it would use to conduct this review, releasing its final decision in March 2014: *NERL Review Methodology-Final Decision (NERL Review Methodology)*.⁶ While this review will follow the approach set out, some flexibility may be required if new information becomes available from this review.

1.4 *Time Series Data*

The NERL Review Methodology identified a set of indicators to be used in assessing energy retailer and distributor performance for the purposes of the NERL Review. A key consideration in developing these indicators was the availability of robust data collected on a comparable base, to enable pre-NECF data reported by the Commission to be compared to post-NECF data reported by the AER and other regulatory bodies.

To assist stakeholders respond to questions raised in this Issues Paper and for the NERL Review in general, a set of time series data for the chosen indicators has been released with this Issues Paper (in Excel spreadsheet format).⁷ This provides available data up to and including financial year 2013-14. Some of those data are also presented in graphical form throughout this Issues Paper.

Since NECF started halfway through 2012-13 (1 February 2013) it is recognised that there is limited post-NECF data available at this time, with 2013-14 the first full financial year of NECF operation.

A focus of this Issues Paper is to provide a consistent data set for the use of stakeholders. An analysis of trends in the core indicators will be undertaken for the NERL Review Draft Report (**Draft Report**), due for release in October 2015. The Commission is seeking the input of stakeholder submissions at this time to inform this analysis.

This review will attempt to identify the extent to which other factors have impacted on any movement in hardship indicators. Analysis comparing changes in the level of hardship indicators with changes in various factors external to NECF (for example, unemployment rate, household incomes and average energy retail prices) will be undertaken. If this analysis produces robust results it will be included in the Draft Report.

1.3 *Call for Initial Submissions*

To enable the best outcomes from the NERL Review, it will be important to gain evidence and information from both consumers and the retail energy industry.

Initial submissions are sought on a range of matters relevant to the review (as outlined below) or any other information or evidence which may be relevant to the review's scope.

Stakeholders will have another opportunity to make submissions following the release of the NERL Review Draft Report.

The first-hand experience of energy customers will be particularly valuable for this review. While submissions are welcome on any aspect of this review, energy customers' feedback on their experience since February 2013 is sought through the general customer question on the following page.

⁶ Essential Services Commission, *NERL Review Methodology*, Final Decision, March 2014, available at www.escosa.sa.gov.au.

⁷ The time series data can be located at www.escosa.sa.gov.au.

General Customer Question

Have you had to contact an electricity and/or gas retailer in the past 12 months in relation to any of the following matters?:

- ▲ to seek assistance in understanding your energy bill
- ▲ to seek assistance because you were having trouble paying your energy bill
- ▲ to ask a retailer not to disconnect your premises because you had not been able to pay your bill
- ▲ to seek more information on a market offer you had received for a new energy contract
- ▲ to complain because you were dissatisfied with a service provided by the retailer
- ▲ any other matter identified in Information Box 1.

If so, please state what this matter(s) was concerning:

.....

.....

.....

In relation to these matters:

- ▲ what was the response or action taken by the retailer? Please state:

.....

.....

.....

In relation to these matters:

- ▲ were you satisfied with the assistance you received from your retailer? If not, why not:

.....

.....

.....

Do you recall experiencing a similar matter in the past (preferably the matter occurred prior to February 2013)? If yes, were you (tick as appropriate):

- More satisfied with the outcome of the most recent experience?
- Less satisfied with the outcome of the most recent experience?

Any other comments? Please provide any other comments you may have:

.....

.....

.....

Please include additional sheets if there is not enough space on this page.

The Commission would also welcome receiving responses to one or more of specific questions 1 to 14 in the Issues Paper.

2. CUSTOMER PROTECTION

Customer protection is analysed in two parts:

- ▲ hardship indicators – seek to show the extent to which customers who face difficulty in paying energy bills are properly assisted in maintaining energy supply
- ▲ customer service indicators – seek to show the ability for customers facing difficulty to contact their energy retailer or distributor and the extent to which customers in general are having their needs met.

2.1 Hardship Indicators

The core indicators used to assess customer protection performance in assisting customers who are having difficulty in paying their bills are the number of:

- ▲ hardship program customers
- ▲ disconnection for non-payment
- ▲ reconnection in same name
- ▲ instalment/payment plans
- ▲ security deposits.

Figures 1 to 10 provide graphs for a selection of those indicators, according to three retailer groupings:^{8,9}

- ▲ top three retailers (in terms of customer numbers)
- ▲ remaining retailers
- ▲ all retailers combined.¹⁰

Care needs to be taken in assessing trends in any one of the hardship indicators in isolation. For example, a higher number of instalment plans might be a positive development if it meant that retailers have appropriate systems in place to identify vulnerable customers and that the ‘safety net’ is being applied appropriately.

Question 1: Is there any practical difference in the extent of customer protection (excluding customer service which is dealt with separately in questions 5-7 below) since the commencement of NECF from that which operated in South Australia prior to NECF (that is, prior to February 2013)? If so, what are the key differences in practice?¹¹

Question 2: Is there any evidence that the commencement of NECF (February 2013) has *adversely affected* customer protection for South Australian energy consumers? If so, what is that evidence?

Question 3: Is there any evidence that the commencement of NECF has *positively affected* customer protection for South Australian energy consumers? If so, what is that evidence?

Question 4: To the extent that an impact can be identified from the commencement of NECF (Questions 2&3), is there any evidence of groups or classes of customer being impacted differently? If so, please provide details.

⁸ More data is available in the time series data, available at www.escosa.sa.gov.au.

⁹ Consistent with the NERL Review Methodology, the objective of the NERL Review is not to assess individual retailer performance, this being the responsibility of the AER post-NECF.

¹⁰ For the period of the data collection, the top three retailers (in terms of customer numbers) have been AGL, Origin Energy and EnergyAustralia.

¹¹ Note that these questions are being directed to stakeholders such as energy retailers and distributors, as well as customers.

Hardship Indicators

Figure 1: South Australian (residential) electricity hardship customers (per 100 customers)

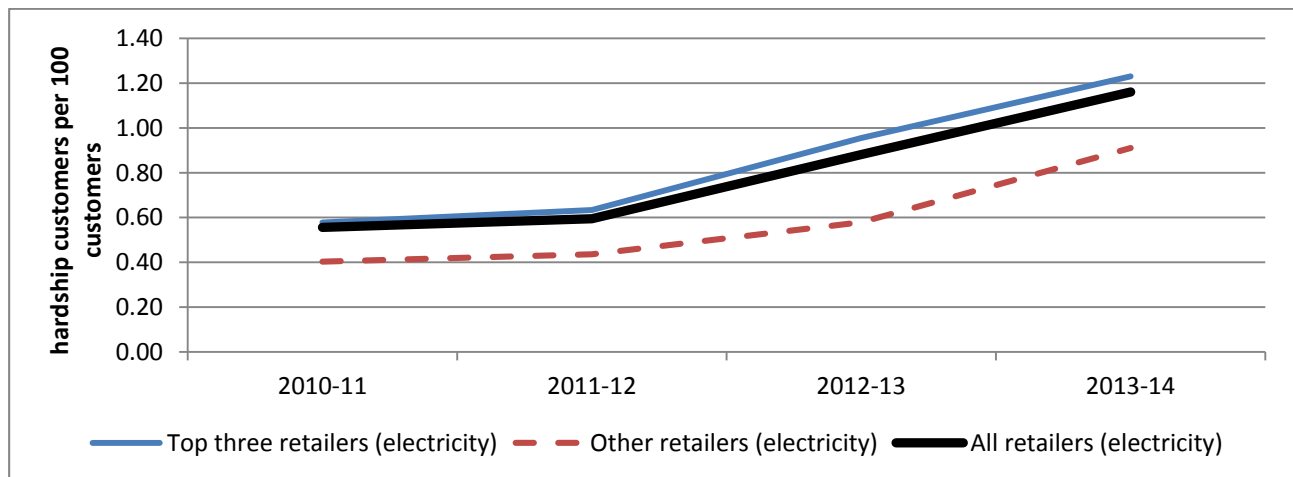


Figure 2: South Australian (residential) gas hardship customers (per 100 customers)

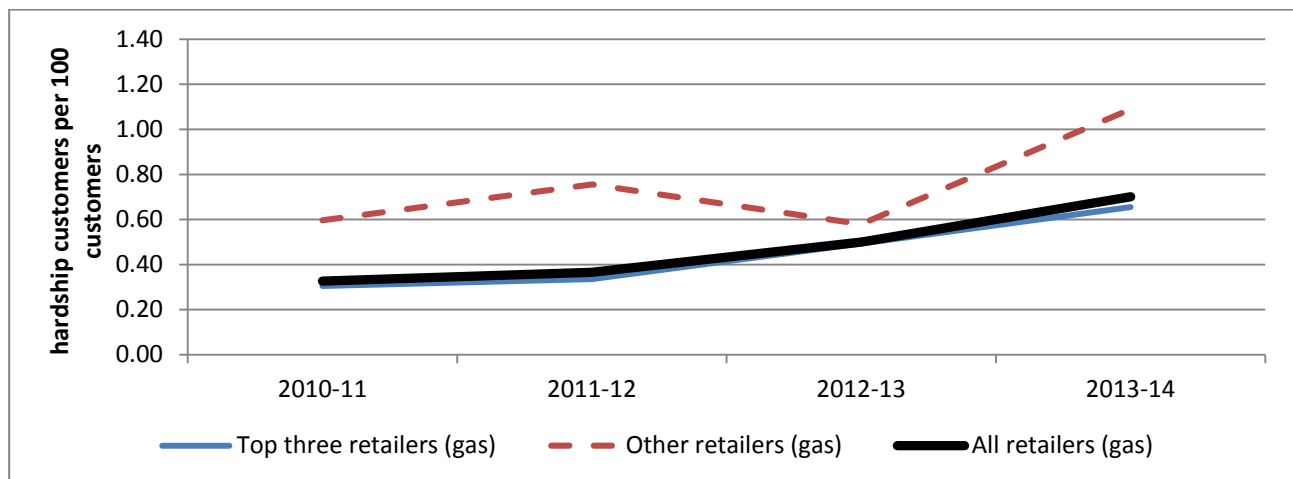


Figure 3: South Australian residential electricity disconnections (per 100 customers)

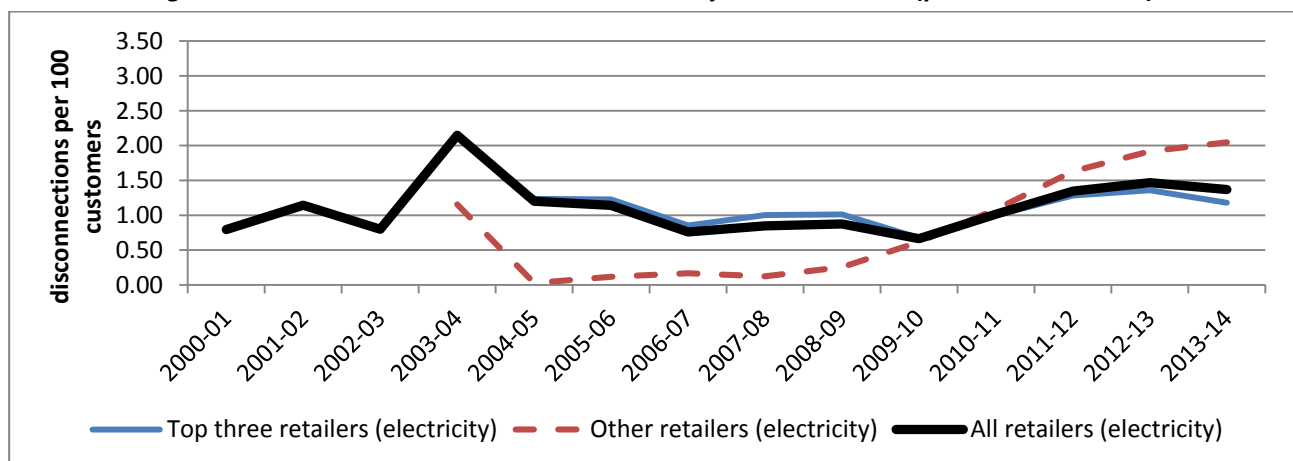


Figure 4: South Australian residential gas disconnections (per 100 customers)

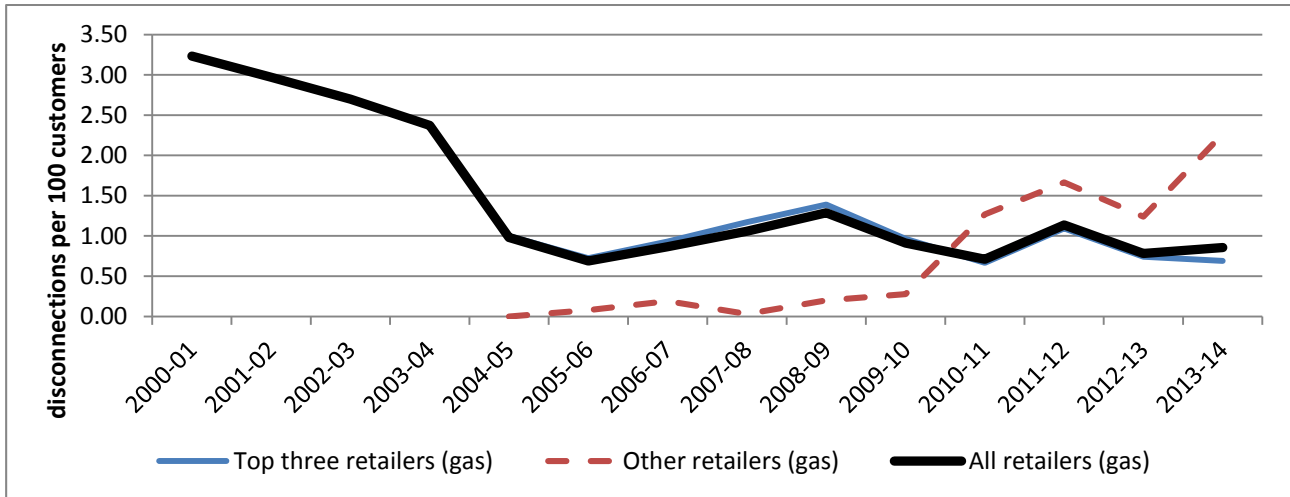


Figure 5: Percentage residential electricity disconnections reconnected within 7 days (South Australia)

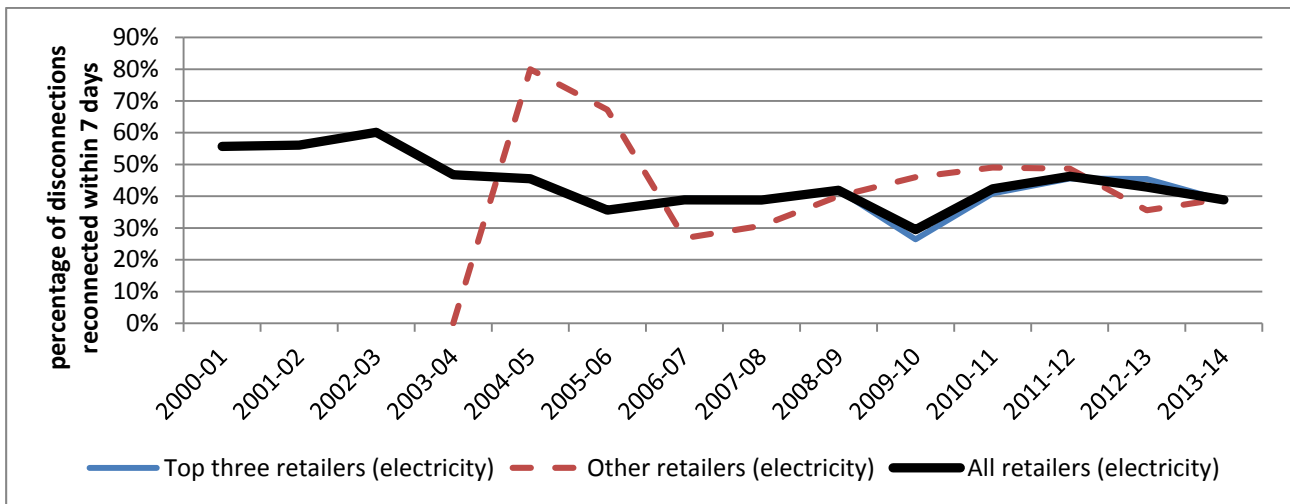


Figure 6: Percentage residential gas disconnections reconnected within 7 days (South Australia)

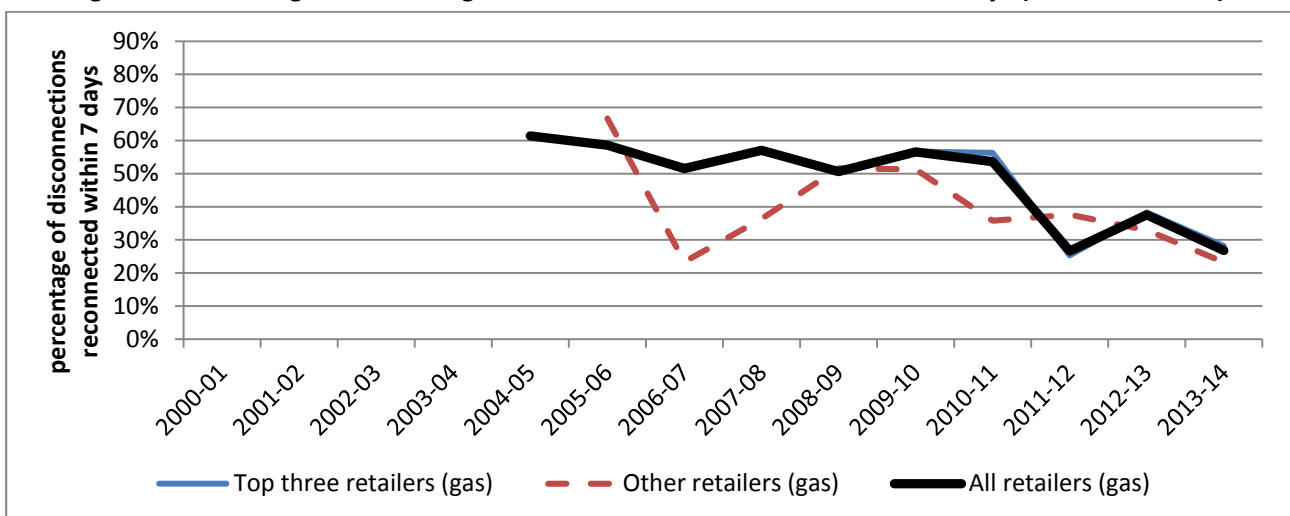


Figure 7: South Australian electricity residential payment plans (per 100 customers)

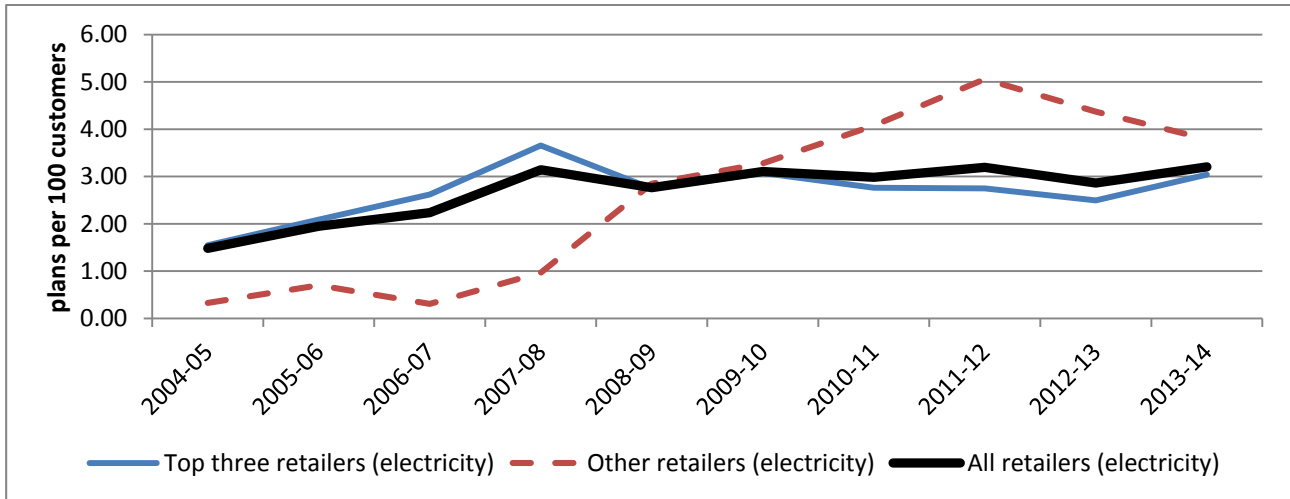


Figure 8: South Australian gas residential payment plans (per 100 customers)

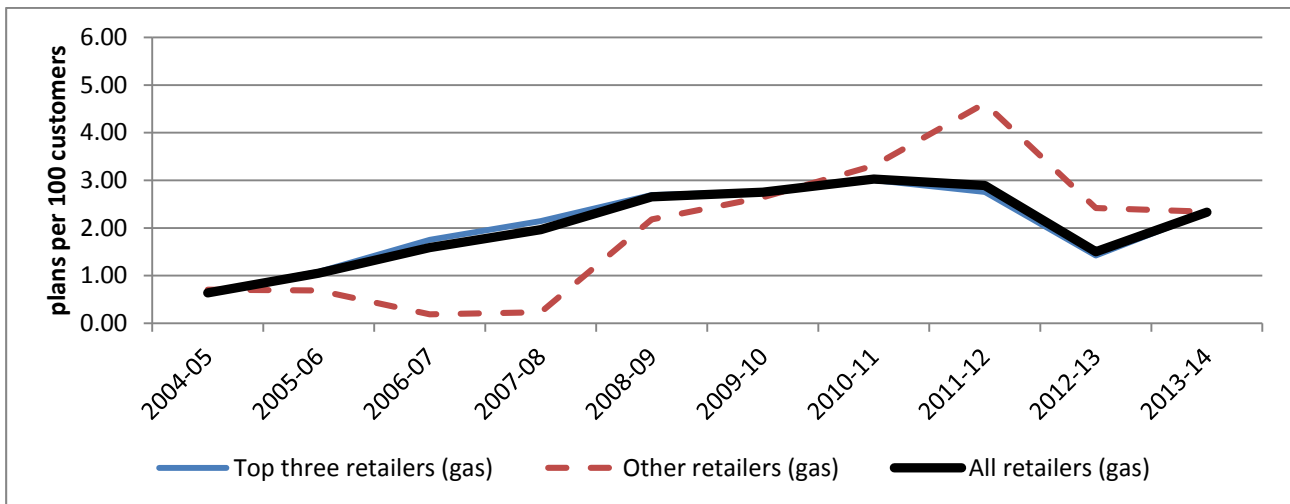


Figure 9: South Australian small business electricity disconnections (per 100 customers)

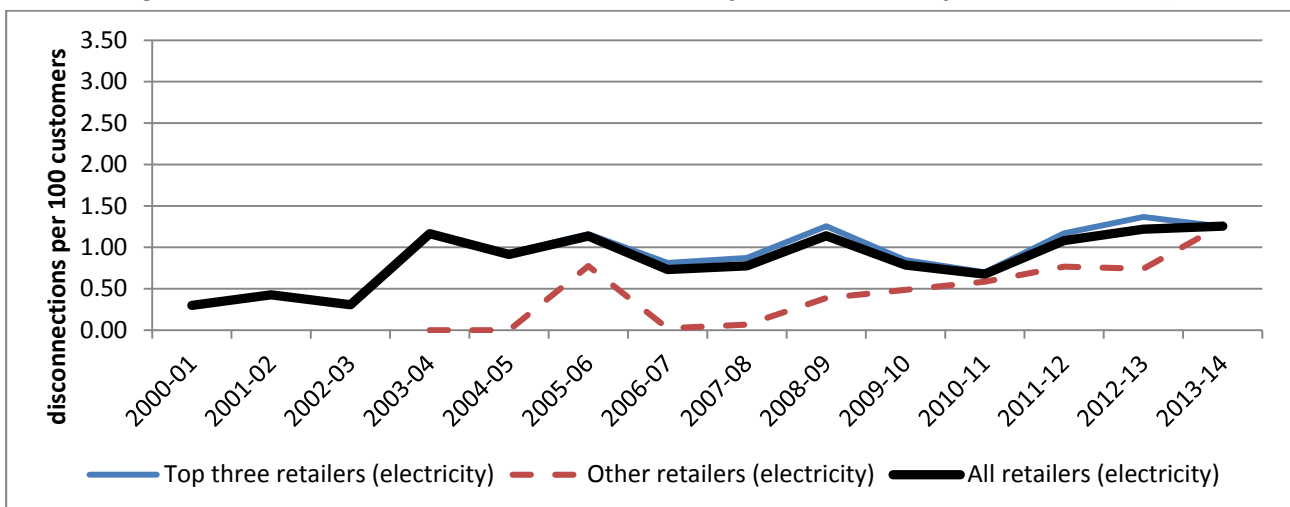
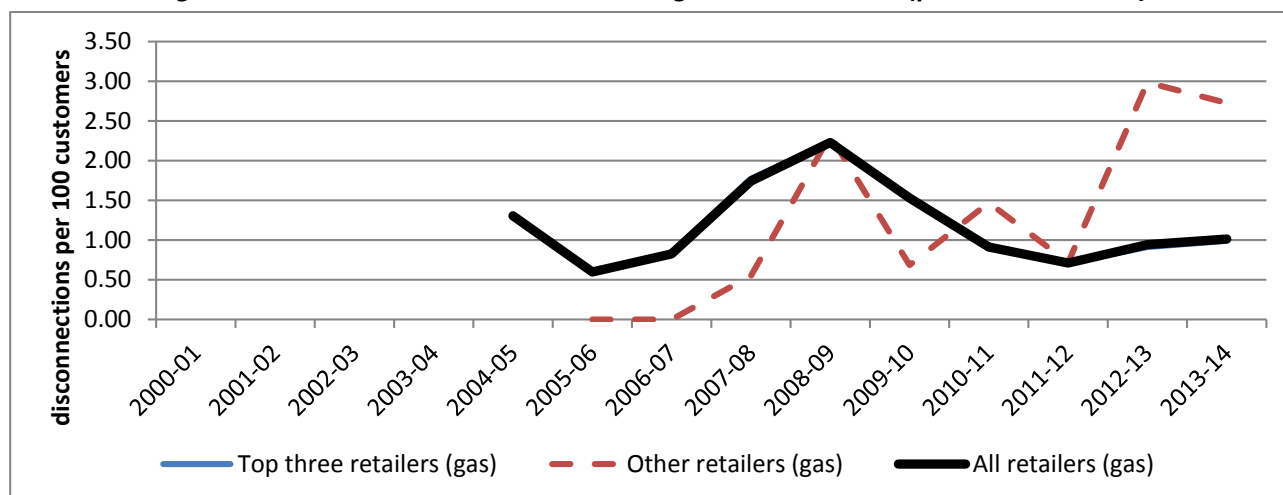


Figure 10: South Australian small business gas disconnections (per 100 customers)



2.2 Customer Service

The core indicators used to assess customer service performance for both energy retailers and distributors are:

- ▲ complaints (the extent to which customers in general are having their needs met)
- ▲ telephone and written responsiveness (ability for customers facing difficulty to gain access to assistance from their energy retailer).

Figures 11 to 16 provide graphs for a selection of complaints data:

- ▲ total complaints (per 100 customers) for energy retailers according to three groupings: top three retailers (in terms of customer numbers); remaining retailers; and all retailers combined
- ▲ total complaints for all retailers combined by category of complaint¹²
- ▲ EWOSA complaints relative to total complaints received by energy retailers, SA Power Networks and Australian Gas Networks
- ▲ EWOSA complaints relative to total complaints received by Ombudsman SA and the Telecommunications Industry Ombudsman.

Further, details of the customer service performance of energy retailers and distributors is provided in the time series data.

Since 2004-05 the percentage of retailers meeting the annual telephone responsiveness standard (85 per cent of calls answered within 30 seconds) has ranged between 30 to 60 per cent, with 60 per cent achieved in 2013-14.

As indicated in the time series data, SA Power Networks (before ETSA Utilities) has consistently met these standards. There is, however, no such data for Australian Gas Networks (before Envestra) as the gas distributor did not have a direct relationship with customers prior to NECF and to date this data has not been collected for Australian Gas Networks post-NECF.

¹² Figure 12 shows a large increase in the category 'other' for 2013-14. The AER advises that 'other complaints' includes complaints about customer service, privacy issues, failure to respond to complaints and health and safety issues (AER, *Annual Report on the Performance of the Retail Energy Market*, 2013-14, p. 14). This 'other' category essentially includes any complaints not directly related to billing, marketing or transfer.

Question 5: Is there any evidence that the commencement of NECF has *adversely affected* the level of customer service received by South Australian energy consumers? If so, what is the evidence?

Question 6: Is there any evidence that the commencement of NECF has *positively affected* the level of customer service received by South Australian energy consumers? If so, what is the evidence?

Question 7: To the extent that impacts can be identified from the commencement of NECF (Questions 5&6), is there any evidence of groups or classes of customer being impacted differently? If so, please provide details.

Customer Service Indicators

Figure 11: South Australian total complaints to energy retailers (per 100 customers)

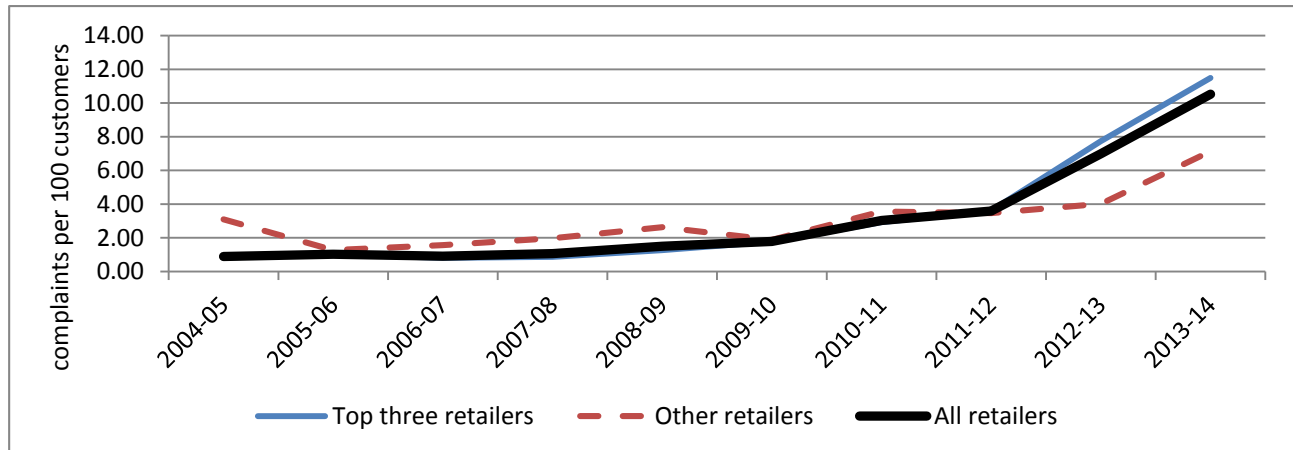


Figure 12: South Australian complaints to energy retailers by category (per 100 customers)

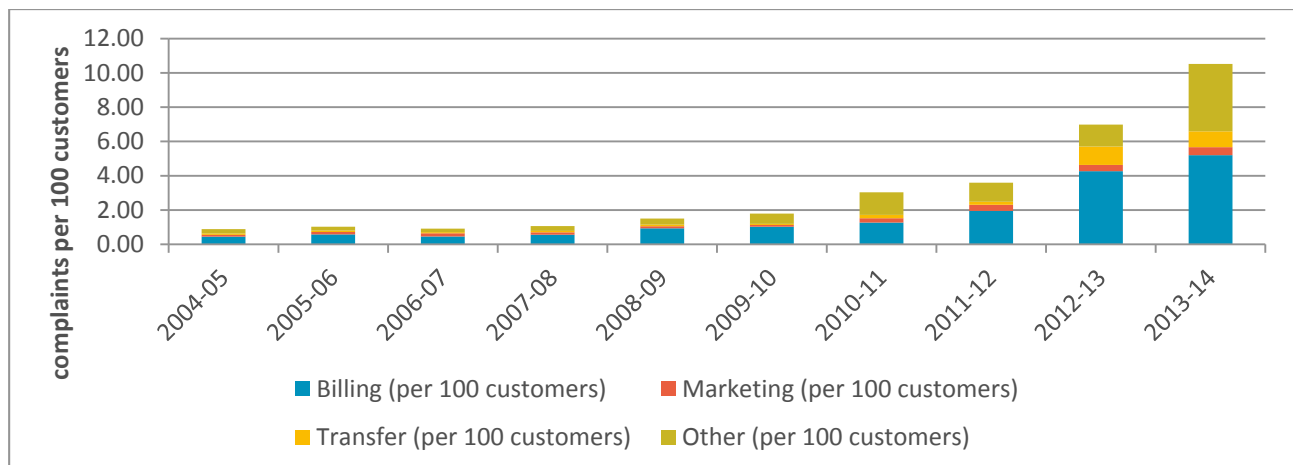


Figure 13: South Australian EWOSA complaints relative to complaints received by energy retailers

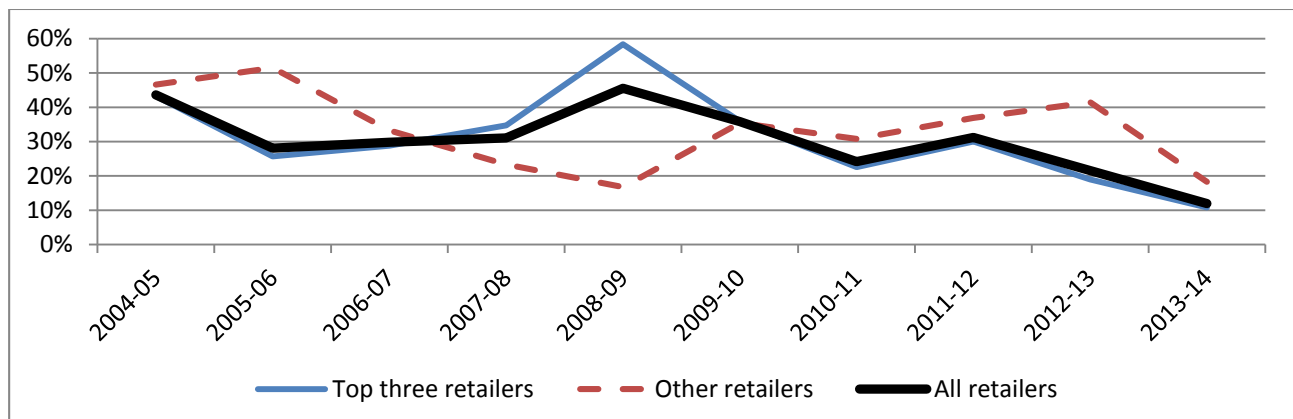


Figure 14: South Australian EWOSA complaints relative to complaints received by SA Power Networks

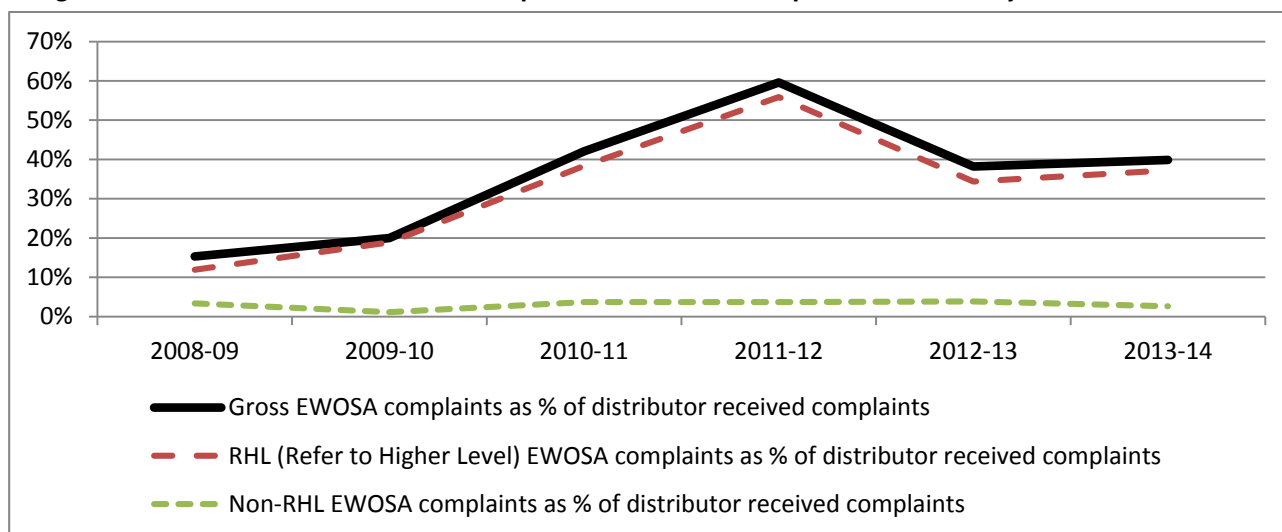


Figure 15: South Australian EWOSA complaints relative to complaints received by Australian Gas Networks

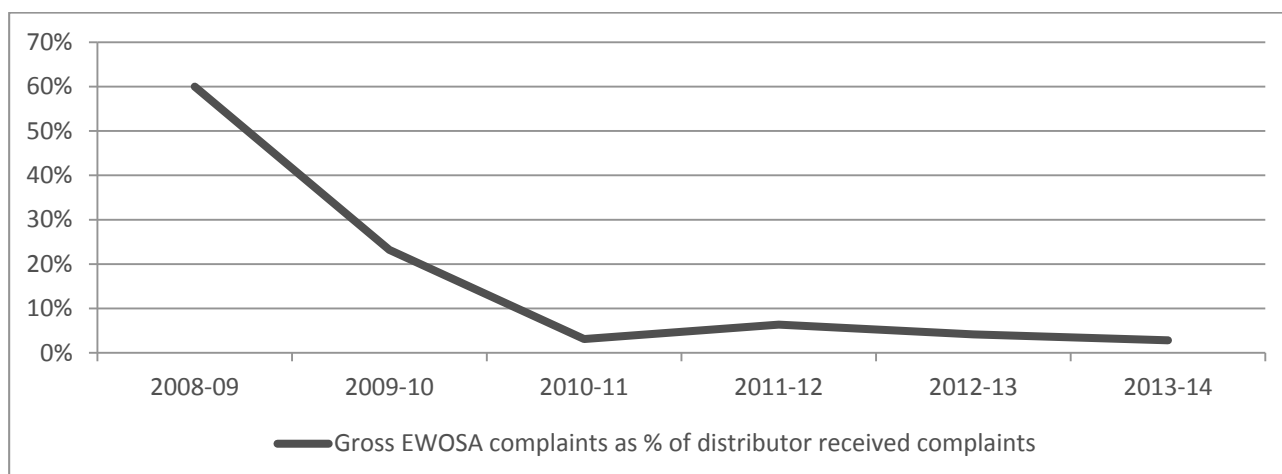
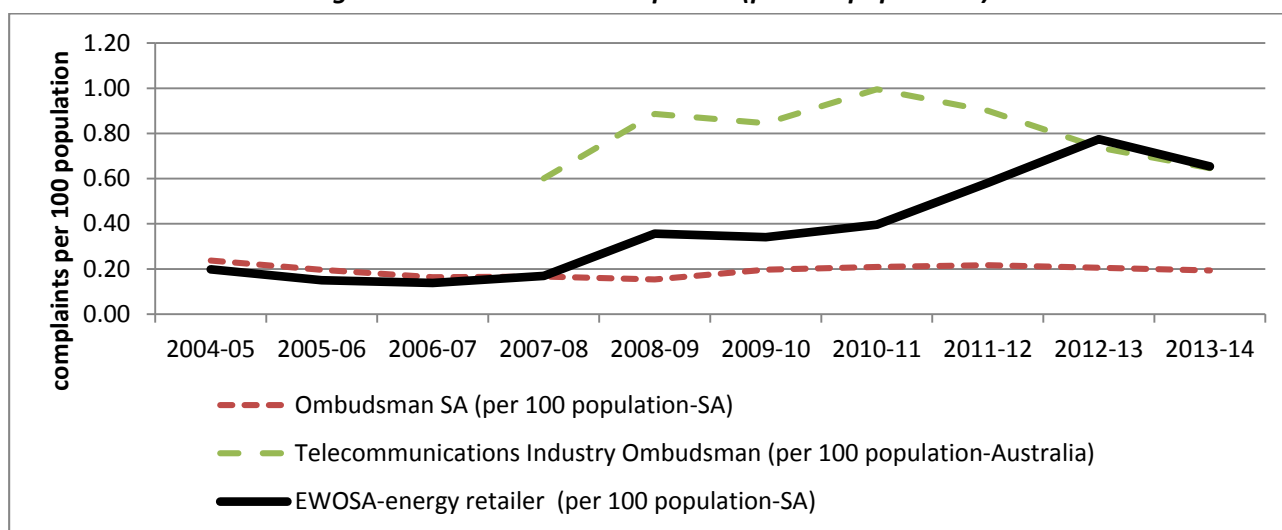


Figure 16: Ombudsman complaints (per 100 population)



3. EFFICIENCY

A key aim of NECF is to streamline regulatory requirements, increase efficiency through regulatory harmonisation as well as maintain best practice consumer protection. The policy outcomes sought include:

- ▲ increased retail competition through:
 - reduced regulatory complexity and lowering barriers to entry by energy retailers
 - single national retailer authorisation eliminating the need to seek separate licences to operate in each participating state and territory
 - encouraging consumer participation by providing a robust consumer protection framework which operates across all participating states and territories
- ▲ increased efficiency through reduced costs to retailers that operate across state borders, targeting the duplication of processes and systems which lead to higher compliance costs.¹³

The Commission is adopting a broad economic definition of the term 'efficiency' for the NERL Review. Consistent with the NERL Review Methodology, efficiency is being interpreted in a broad sense to include:

- ▲ the level of competitiveness in the energy retail market (allocative efficiency)
- ▲ evidence of innovation (dynamic efficiency)
- ▲ movement in retailer and distributor operational costs (technical efficiency).

3.1 Competition

The Commission stated in the NERL Review Methodology that it will rely on the Australian Energy Market Commission's (AEMC) annual competition review findings to the extent they are sufficiently comprehensive for the purposes of the NERL Review.

The AEMC's first report under the revised approach, which includes all National Electricity Market (NEM) jurisdictions, was released in August 2014 (AEMC Review).¹⁴

The Commission has reviewed the AEMC Review and, subject to submissions received on this Issues Paper, considers that it can be relied upon for the purposes of this NERL Review. There is no need for the Commission to undertake its own independent competition analysis.

The AEMC's key findings are that:

- ▲ competition is effective in the South Australian electricity and natural gas retail markets, although less so for gas in regional areas
- ▲ competition is less intense in the gas retail market, with the proposition that this may be the result of gas being a secondary consideration for most customers and less attractive proposition for some retailers
- ▲ the AEMC does not expect the competitive position for gas to change much in the short term given tight wholesale conditions and lack of uncontracted capacity on the South East Australian Gas Pipeline.

The recent finding of an effectively competitive South Australian energy retail market is consistent with the positive results of earlier, pre-NECF, AEMC and Commission reviews. The AEMC expects competition to continue to evolve as the energy retail market matures.

The findings of the AEMC Review are discussed in more detail in Annexure 2 to this Issues Paper.

¹³ National Energy Retail Law (South Australia) Bill, Second Reading Speech, House of Assembly, Parliament of South Australia, 27 October 2010.

¹⁴ AEMC, *2014 Retail Competition Review*, Final Report, August 2014, available at www.aemc.gov.au.

Given that the AEMC Review shows the level of competitiveness in the South Australian energy retail market is at least as high as it was pre-NECF, it is reasonable to conclude that there is no evidence of a decrease in competition-based efficiency since NECF commencement. Less clear is any evidence of a greater level of competitiveness being driven by the adoption of NECF.

Determining whether greater competition has occurred as a result of NECF will be difficult, having regard to factors such as:

- ▲ it is difficult to make definitive statements on small movements in the level of competition using the standard competition indicators
- ▲ the commencement of NECF in South Australia coincided with the implementation of price deregulation, which is expected to have a major positive impact on the level of competition
- ▲ while NECF commenced in New South Wales shortly after it commenced in South Australia, the full national benefits are yet to be achieved given NECF is yet to commence in Victoria and Queensland.

The NERL Review Methodology noted an intention to undertake analysis on average price movements, with the aim of determining the extent to which average published offer prices reflect the prices received by all customers on average.

While retailers have provided the data for that purpose (September 2014), analysis of the data indicates that more information would be required from retailers before a robust conclusion could be drawn.

Seeking such additional information is not warranted at this time, given the Commission's intention to rely on the AEMC competition review findings for the purposes of the NERL Review.

In addition, since the time of the release of the NERL Review Methodology, the AEMC has advised that it plans to consider ways to obtain information to assist in identifying the extent to which customers changing plans with their existing retailers are actively choosing from the range of products on offer when existing contracts expire, rather than simply being rolled over to a default or standard contract.¹⁵

Question 8: Is there any need for the Commission to undertake further competition analysis in addition to that already being carried out by the Australian Energy Market Commission (refer Annexure 2 for more detail), for the purposes of assessing any impact from the commencement of NECF. If so, please specify what analysis and to what end?

Question 9: Is there any evidence of a change in the level of competitiveness of energy retailers since the commencement of NECF (February 2013)? If so, what is the direction of change and how material was it? Is it possible to separate out the impact of NECF from that resulting from the coincident removal of energy retail price regulation?

Question 10: Is there any evidence that the commencement of NECF has reduced the ability for vulnerable customers to gain access to competitive energy offers? If yes, please specify?

¹⁵ AEMC, *2015 Retail Competition Review*, Approach Paper, December 2014, p.9, available at www.aemc.gov.au.

3.2 Operational Costs

A cited benefit of NECF is to reduce the duplication of processes and systems that result from separate jurisdictional regulatory systems, to reduce compliance costs for retailers operating across State borders.¹⁶

The implementation of NECF across States and Territories has been introduced at different times. In addition, where NECF has been adopted, it has generally been done with modification.

The AEMC Review concludes that those jurisdictions that have adopted NECF have benefited. The AEMC argues that the approach of jurisdictions adopting NECF with modifications can act to restrict entry where retailers seek to expand across multiple jurisdictions, through increasing compliance and systems costs. The AEMC recommends that jurisdictions continue to harmonise regulatory arrangements across jurisdictions to minimise costs. This latter point was raised by some retailers in the AEMC Review, which suggested that there needs to be a further round of harmonisation once NECF has been adopted by all jurisdictions.

A list of current South Australian modifications to NECF is provided in Table 1, based on an assessment made by the AEMC as at 5 May 2014. The potential for cost impacts becomes greatest the more modifications there are and the more they differ between NECF jurisdictions. The COAG Energy Council is to undertake an assessment of the differences in how jurisdictions have applied NECF.¹⁷

As outlined in the NERL Review Methodology Issues Paper, tracking changes in retail (profit) margins might be a way of determining changes in retailer costs, with the margin representing the difference between retail customer bills and retailer costs. While the AEMC has done some work in this area, it has not estimated retail margins for South Australian retailers in its most recent competition review.¹⁸ The Commission is still not proposing to undertake independent work in this area for the reasons outlined in the NERL Review Methodology – given the difficulty in deriving a robust value for retail margins and that undertaking such analysis is not a core responsibility for the Commission.

In accordance with the NERL Review Methodology, energy retailers and distributors are being requested to provide two annual returns. In addition to requests for statistical information, these energy suppliers are requested to list actions taken and savings achieved with the (progressive) adoption of NECF nationally.¹⁹

Customer experience with NECF, in terms of benefits and costs, will also be an important input into the NERL Review. Questions 1 to 7 above are directed towards gaining this information, but any further detail on the benefits and costs from a customer's perspective would be welcomed.

Question 11: Is there any evidence that the South Australian specific modifications to the national framework (see Table 1) have affected, positively or negatively, the potential efficiency gains sought through NECF? If yes, please specify? Equally, which (if any) of the South Australian specific modifications are considered important to be retained?

Question 12: Has the commencement of NECF in South Australia resulted in any other benefits and costs from the customer perspective.

¹⁶ National Energy Retail Law (South Australia) Bill, Second Reading Explanation, House of Assembly, Wednesday 27 October 2010, pp. 1745-1780.

¹⁷ COAG Energy Council, Meeting Communique, Adelaide, 11 December 2014, p.2, available at <http://www.scer.gov.au/council-meetings/>.

¹⁸ The AEMC has indicated in its 2015 Approach Paper that for the 2015 Review such analysis will focus on an assessment of competitive retail prices (p.12).

¹⁹ See NERL Review Methodology, Schedule 1 for an outline of the annual information sought from retailers and distributors.

Table 1: South Australian NECF modifications²⁰

VARIATION	SHORT EXPLANATION OF SOUTH AUSTRALIAN MODIFICATION
Application of the Law	As applying to electricity, the NERL only applies to customers whose premises are connected to the National Electricity Market (NEM) network. Excludes township of Cockburn.
Consumption thresholds	Small electricity business customer continues to be defined in South Australia as one with annual consumption up to and including 160MWh p.a.
Small market offer customer	The provisions relating to this sub-group of small business customers (40MWh to 100MWh for electricity and 400GJ to 1TJ for gas) do not apply in South Australia (in order that this sub-group has access to full suite of standard retail contract terms and conditions).
Late payment fees	NECF permits retailers to pay a late payment fee where a bill is not paid by the due date. Such fees are permitted in South Australia providing the fee does not exceed the reasonable costs of the retailer in recovering an overdue amount and must not be applied if the customer has lodged a complaint in accordance with Part 4 of the NERL.
Minimum retailer service standards	Minimum standards of service for small customers in relation to retailer responsiveness to written and telephone inquiries.
Liability cap – electricity distributor	Liability limited for electricity distributor in relation to failure to supply.
Limited notice for planned outages	Distributors are not required to give notice to customers where a planned interruption is less than 15 minutes – due to expire 30 June 2020.
Exempt entities	Relates to entities determined exempt by the South Australian Minister. AER must publish the conditions on the AER's website and must consult with the Minister before it varies or revokes a condition determined by the Minister.
Small compensation claims regime	South Australia has opted out of the NERL provisions (as has NSW, Tasmania and the ACT).
Extreme weather events	In accordance with the NERL, South Australia by local instrument has defined an extreme weather event as will apply to South Australia. Customers must not be disconnected for failure to pay during such events.
Re-energisation after de-energisation for non-payment standards	In accordance with the NERL, timeframe standards for a retailer to organise re-energisation of properties in South Australia following rectification by customer, relating to events such as failure to make a payment in accordance with a payment plan.

²⁰ Source: AEMC Guide to Application of the NECF, as of 5 May 2014, available at <http://www.aemc.gov.au/Energy-Rules/Retail-energy-rules/Guide-to-application-of-the-NECF>. This analysis excludes transitional provisions that are designed to achieve a smooth transition to the NECF or no longer have effect. The transition provisions in the National Electricity Rules are also not covered. The analysis also excludes specific South Australian regulations that are in accord with the NECF (e.g., nominating local area retailers and opting into to the use of prepayment meter systems).

4. OVERALL ASSESSMENT

The Act asks that the Commission make a finding as to whether overall the operation of the NERL has furthered the interests of South Australian energy consumers.

Question 13: Do you consider that the overall operation of NECF has furthered the interests of South Australian energy consumers? If so, what is the basis for this view? If not, why not?

Question 14: What additional action(s) could be taken to maximise the benefits from the introduction of NECF?

5. NEXT STEPS

5.1 *Timetable for this Review*

The Commission intends to release its Draft Report on the NERL Review for public consultation in October 2015.

STAGE	TIMING
Draft released	October 2015
Public Consultation	Until mid-December 2015
Final released	February 2016

5.2 *Further Information*

Any queries relating to this consultation should be directed to:

▲ Mike Philipson, Principal Advisor

Telephone: (08) 8463 4444

Freecall: 1800 633 592

(SA and mobiles only)

E-mail: escosa@escosa.sa.gov.au

If you would like to keep up to date with the Commission's energy industry activities and the release of papers for consultation, subscribe at <http://www.escosa.sa.gov.au/subscribe.aspx>.

NERL REVIEW TERMS OF REFERENCE

The legislative requirements for the NERL Review are set out in section 30 of the National Energy Retail Law (South Australia) Act 2011:²¹

30—Review

- (1) The Commission must conduct a review of the operation of the National Energy Retail Law in South Australia after the expiry of 2 years from the date fixed under section 4 [that is, after 1 February 2015].*
- (2) The review must focus on the impact of the National Energy Retail Law on consumers of energy and whether the implementation of the Law has—*
 - (a) resulted in increased efficiencies; or*
 - (b) adversely affected customer protection in pursuit of national consistency,**and may address such other matters as the Commission thinks fit.*
- (3) The Commission must prepare a report on the outcome of the review and provide a copy of the report to the Minister.*
- (4) The Minister must, within 6 sitting days after receiving a report under subsection (3), have copies of the report laid before both Houses of Parliament.*
- (5) The Commission must, between the date fixed under section 4 [1 February 2013] and the completion of the review under this section, publish, on a quarterly basis, statistics about the de-energisation of premises due to inability to pay energy bills during each quarter, unless the Commission is satisfied that the AER publishes comparable statistics on a quarterly basis.*

²¹A copy of the Act is available at

[http://www.legislation.sa.gov.au/LZ/C/A/NATIONAL%20ENERGY%20RETAIL%20LAW%20\(SOUTH%20AUSTRALIA\)%20ACT%202011/CURRENT/2011.6.UN.PDF](http://www.legislation.sa.gov.au/LZ/C/A/NATIONAL%20ENERGY%20RETAIL%20LAW%20(SOUTH%20AUSTRALIA)%20ACT%202011/CURRENT/2011.6.UN.PDF).

COMPETITIVENESS OF THE SOUTH AUSTRALIAN ENERGY RETAIL MARKET

This annexure discusses the results of the recent Australian Energy Market Commission (**AEMC**) review of energy retail competition in the context of earlier (Pre-NECF) reviews of the level of competitiveness of the South Australian retail energy market. The discussion concentrates on aspects of most relevance to the NERL Review.

The AEMC's first report under the revised competition review approach, which now includes all National Electricity Market (**NEM**) jurisdictions, was released in August 2014 (**AEMC Review**).²²

The AEMC finds that competition is effective in the South Australian electricity and natural gas retail markets, although less so for gas in regional areas. Competition is less intense in the gas retail market, with the proposition that this may be the result of gas being a secondary consideration for most customers and less attractive proposition for some retailers. The AEMC does not expect this competitive position for gas to change much in the short term given tight wholesale conditions and lack of uncontracted capacity on the South East Australian Gas Pipeline.

The AEMC Review findings lend support to the view that any potential issues affecting competition in the South Australian energy retail market mainly relate to the electricity and gas wholesale market conditions.

The National Energy Customer Framework (**NECF**) is not identified as an issue for South Australian competitiveness, but this might be expected because of South Australia benefitting from early adoption of NECF. Although the AEMC notes that jurisdictions adopting the National Energy Retail Law (**NERL**) have done so retaining some non-uniform, state-based measures (**modifications** or sometimes referred to as derogations).

There are other state-based schemes that are not within the ambit of the NERL but are suggested in the AEMC Review to risk having an adverse impact on the level of entry into the energy retail market, such as solar feed-in tariffs and energy efficiency schemes. This adds to the difficulty of isolating any competitive impacts solely because of NECF.

As noted in the NERL Review Methodology²³ key competition monitoring indicators earlier used by the Commission include: number of retailers & market share; small customer switching; barriers to entry; information asymmetries; energy price movements (price/service mix); impacts on low-income groups; and innovation. The AEMC employs different terminology but undertakes similar analysis to that earlier employed by the Commission, with AEMC competition indicators grouped under: degree of independent rivalry; level of customer activity in the market; barriers to retailers entering, expanding or exiting the market; customer outcomes; and retailer outcome. Some differences include the AEMC examining potential barriers to retailer expansion and exit, with the Commission earlier placing an emphasis on the impacts on low-income groups.

²² AEMC, *2014 Retail Competition Review*, Final Report, August 2014, available at www.aemc.gov.au.

²³ Essential Services Commission, *NERL Review Methodology*, Final Decision, March 2014, available at www.escosa.sa.gov.au.

The following summarises the AEMC Review findings according to Commission competition indicators to enable better identification of any gaps in analysis from the Commission perspective, rather than to suggest that one set of competition indicators is better than the other. In practice, any assessment must be made by examining the indicators as a group, rather than require each of the indicators individually to provide a clear result supportive of competition being present.

Number of retailers and market share

The AEMC Review shows 13²⁴ retailers active in serving small customers²⁵ in the South Australian electricity retail market and five in gas. This compares with an equivalent of 11 electricity and five gas retailers as at end of December 2012 (pre-NECF), as earlier reported by the Commission in its last retailer Annual Performance Report.

The percentage of electricity small customers on market contracts rather than standing (pre-NECF) or standard (post-NECF) has continued to increase, from 79 per cent in December 2012 (pre-NECF) to 83 per cent as at end of June 2014 (post-NECF) – the equivalent numbers for gas are 80 per cent and 83 per cent respectively.²⁶

Despite a high level of market concentration (as shown in Figures A.2 and A.3), the AEMC considers that there is strong rivalry in the South Australian electricity and gas retail markets.²⁷

Small customer switching

Switching numbers (the number of customers taking out a new energy contract with a different retailer) are often used as an indicator of customer engagement, with high switching rates notionally indicating active retailer rivalry.

Small customer switching numbers tend to vary up and down over time, responding to factors such as the level of market campaigning. Recent switching rates are higher than experienced in some periods in the past, but post-NECF lower than more recent highs experienced during pre-NECF mid-2012 (see Figure A.1).

The AEMC Review advises caution in interpreting trends in customer switching numbers. Factors which may be pertinent to the recent level of switching include:

- ▲ the top three South Australian retailers have ceased door-knocking (AGL, EnergyAustralia and Origin Energy ceased door knocking in October 2012, March 2013 and September 2013, respectively), removing a key direct engagement mechanism as a source of gaining new customers
- ▲ retention strategies have become increasingly important, particularly for the top three retailers.

Accordingly, lower numbers of new customers with a reduced loss of existing customers will result in a lower switching rate, but not necessarily mean less rivalry among retailers.

²⁴ As of September 2014 there were 14 electricity retailers actively operating in South Australia, with AGL and Powerdirect treated as a single retailer given common ownership.

²⁵ Small customers are defined in South Australia as having annual consumption of up to and including 160 MWh for electricity and one TJ for gas.

²⁶ Market contracts are those that involve active customer participation to enter into an energy contract with a retailer.

²⁷ Market concentration refers to the extent to which the market is dominated by a small number of operators, each having a large individual share of the customer base.

Competition Indicators

Figure A.1: South Australian small customer switching rates (annualised from quarterly data)

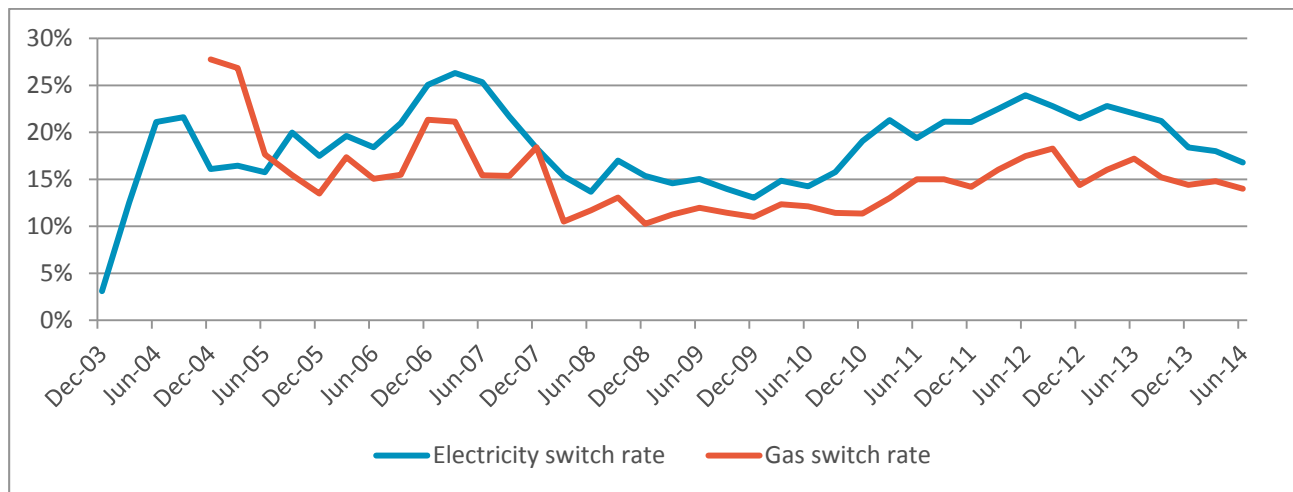


Figure A.2: South Australian small customer top three electricity retailer market share

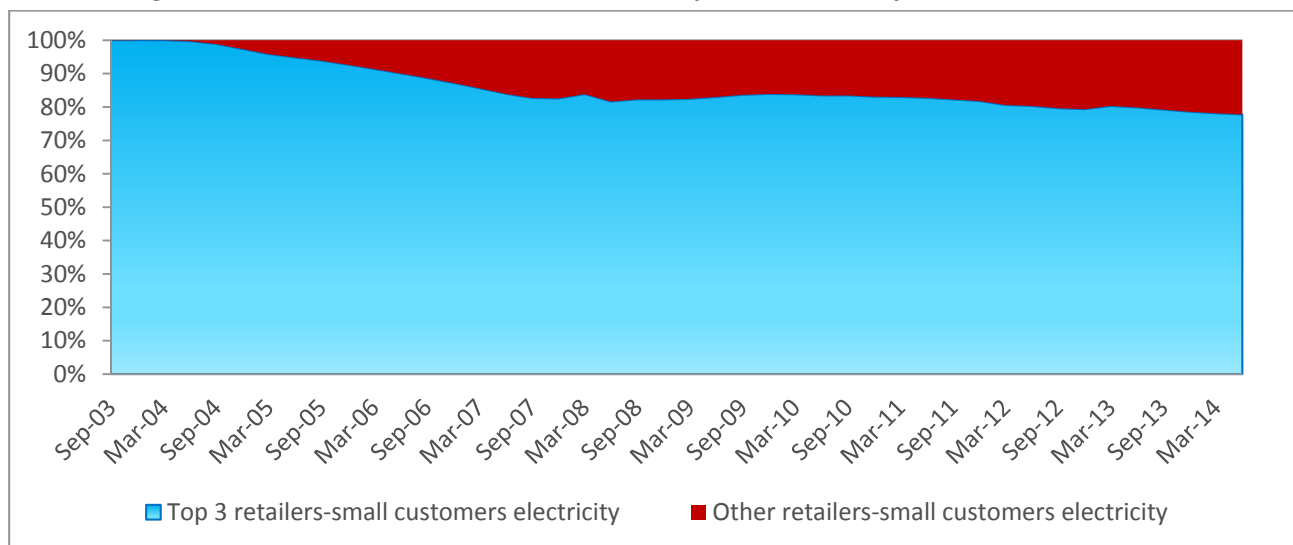
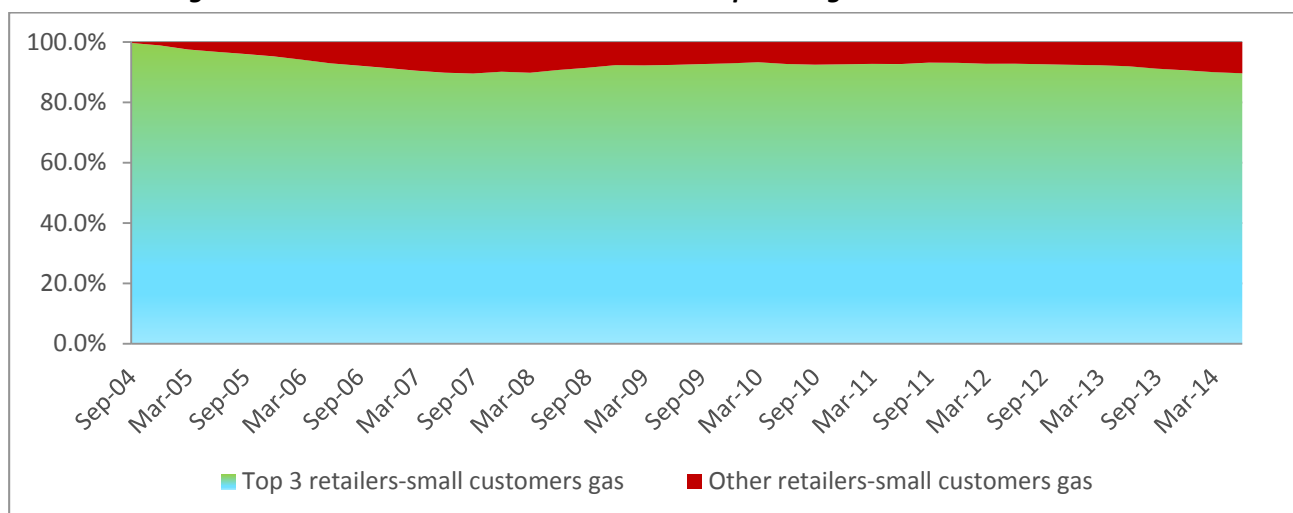


Figure A.3: South Australian small customer top three gas retailer market share



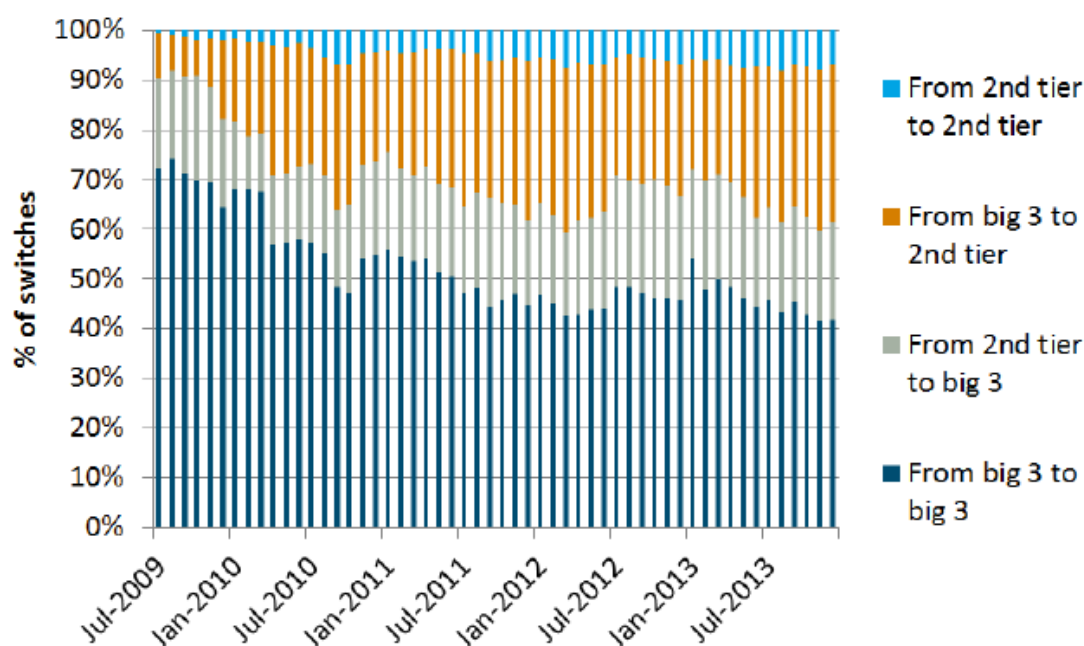
Retailer data received by the AEMC for the review (with some retailers cautioning the estimates were indicative only) indicates that, varying by retailer, up to 28 per cent of electricity customers and 17 per cent of gas customers changed plan with their existing retailer. No information is provided on the extent to which the new plan was the retailer's best offer or equivalent. It is also not known the extent to which customers were *actively* choosing new contracts, as opposed to being shifted to new contracts with the retailer on contract terms expiring. Unless customers are actively choosing new contracts there is a risk they are being placed on less favourable contracts, such as the retailer's default or standard contract.

Since the time of the release of the NERL Review Methodology, the AEMC has advised that it plans to consider ways to obtain information to assist in identifying the extent to which customers changing plans with their existing retailers are actively choosing from the range of products on offer when existing contracts expire, rather than simply being rolled over to a default or standard contract.²⁸

Other factors cited by the AEMC that might explain lower switching rates include moderation in energy price increases (price rises have been a key driver to encourage customers to shop around) and maturing markets (the AEMC shows energy switching rates to be high relative to other, more established service industries).

The AEMC has produced customer switching numbers according to various groupings of retailer, covering the level of switching between the large incumbent first tier retailers and the new entrant smaller second tier retailers and within each of these groupings (see Figure A.4).

Figure A.4: South Australian electricity switching rates by retailer tier²⁹



The AEMC singles out switching rates between second tier retailers as a particularly useful metric, suggested to indicate that customers are not necessarily biased towards larger incumbent retailers and that these retailers are competing between themselves as well as with incumbents. Visually comparing the reproduced AEMC graph for South Australia (Figure A.4) with similar graphs produced by the AEMC for

²⁸ AEMC, 2015 Retail Competition Review, Approach Paper, December 2014, p.9, available at www.aemc.gov.au.

²⁹ AEMC, 2014 Retail Competition Review, Final Report, Figure 9.7, p.202.

New South Wales and Victoria for this indicator (that is, second tier to second tier switching) shows in recent times South Australia averaging around 8 per cent, compared with New South Wales averaging around 2 per cent and Victoria 20 per cent.

Barriers to entry

The AEMC Review reports that retailers consider entry, exit and expansion relatively easy in the South Australian energy retail market.

A lack of NECF, or NECF with modifications, would be expected to impact on entry to a market, rather than expansion within a market or exit. It would be expected that to the extent NECF was acting as a constraint to competition (either by not operating in a jurisdiction, or operating with material modifications) it would be in relation only to entry. However, once retailer systems (such as billing systems and hardship programs) were adopted and knowledge gained of any state specific issues, then it is not clear why expansion (increasing customers numbers) would be an issue.

Based on the AEMC Review, NECF is not high on the list of issues impacting on competition, even for those jurisdictions yet to adopt.

The factors that retailers cited in the AEMC Review as potential impediments to entry and/or expansion in the South Australian retail electricity market include:

- ▲ wholesale market conditions and the ability of retailers that don't have generation interests in the state to access competitively priced hedging instruments
- ▲ the dominance of the host retailer, AGL, which some retailers claimed is reinforced by AGL's generation interests in South Australia and its 'aggressive' retention strategies
- ▲ the Residential Energy Efficiency Scheme (REES), which some retailers claimed is imposing higher costs on smaller retailers because the scheme is not tradable and the 5,000 customer threshold is too low to enable smaller retailers to achieve any economies of scale in the delivery of the required services
- ▲ prudential and credit support requirements.

Of the factors listed above, the ability to access competitively priced hedging instruments in South Australia was considered to be the most significant impediment by retailers. Of note, NECF, or more specifically the South Australian modifications, did not rate on this key list of issues.

As noted by the AEMC, many of the issues raised during the 2014 AEMC Review about wholesale market conditions and constraints on the availability of competitively priced hedging instruments were also raised when the AEMC undertook the 2007-08 South Australian review, reinforcing the point that the key issues above are not NECF-related.

While retailers suggest Victoria should not be complacent with the impact its additional customer protection measures have on retailer operations and costs, on all the AEMC competition criteria Victoria continues to rank highly.

Queensland, more particularly South East Queensland, is the only other non-NECF jurisdiction and while lack of NECF might impact, with 11 retailers South East Queensland is only marginally behind South Australia in terms of the number of retailers that have entered and are operating. Victoria only lacks two retailers operating elsewhere, which have very small market share in those other jurisdictions. While there are four retailers operating in Victoria that are not operating in South Australia, the combined market share of those retailers is less than 1.5 per cent of the Victorian market.

Information asymmetries

The AEMC Review found that the majority of South Australian energy customers are aware that they can choose their energy retailer and plan, with many actively investigating better offers. Yet the AEMC Review

found that across jurisdictions there was very low awareness of the availability of price comparator websites, particularly independent ones maintained by governments or regulators, able to simplify the search process and identify potential savings.

Just 1 per cent of businesses and none of the residential respondents mentioned the Australian Energy Regulator's (AER) Energy Made Easy website without prompting. When prompted, 14 per cent of South Australian residential customers (11 per cent of small business customers) said they had heard of the site.

This result is consistent with the last survey work undertaken by the Commission.³⁰ When in the Commission survey residential customer respondents were asked the question *(a)re you aware of the ESCOSA Energy Price Comparison Service* (that is, effectively prompted), 13 per cent of metropolitan respondents and 9 per cent of regional respondents reported being aware, 12 per cent across the full group. In terms of sources of information used by survey respondents considering switching retailers, 3 per cent metropolitan and 1 per cent regional used the ESCOSA Estimator, with 30 per cent of those aware of the Commission's website reporting using it (35 per cent metropolitan and 12 per cent regional). On this basis, lack of awareness is not an issue isolated to NECF.

The lack of awareness of independent internet comparison services could be considered a surprising outcome since most customers have access to the internet.³¹ Type the words "electricity price comparison South Australia" into a popular search engine and Energy Made Easy is the fourth web link identified, the first after three advertisements.

Energy price movements (price/service mix)

The level of energy prices is an important competition indicator. As the AEMC Review shows, most customers change retailer primarily to obtain a better price. This is consistent with the Commission's pre-NECF research findings.

Figures A.5 to A.8 show movements in annual average price for all contracts combined (market and standing/standard) for residential and small business for electricity and gas, according to retailer categories of top three retailers, remaining retailers (other retailers) and all retailers combined. Where a line for the 'top three retailers' cannot be observed it is hidden by the 'all retailers' line.

Average price, in nominal dollars (\$nominal) is determined by dividing revenue billed by sales billed, from data supplied to the Commission by retailers.³² While this calculates average revenue, it is considered a reasonable proxy to use for average price.

Of particular interest for the NERL Review is the movement in average prices around the start of NECF, which was effectively in the middle of financial year 2012-13. For electricity customers there was an across the board significant decline in the rate of price increases in 2013-14. That is, prices still increased but at a

³⁰ Colmar Brunton, *Monitoring the Development of Energy Retail Competition in South Australia and Consumer Preference for Market Contract Information*, Report for the Essential Services Commission of South Australia, August 2010, p. 101, available at <http://www.escosa.sa.gov.au/library/100806-ConsumerPreferenceColmarBruntonReportFinal.pdf>.

³¹ The SACOSS submission to the AEMC Review notes that according to the ABS, only 17 per cent of households do not have internet access.

³² Up and until 2011-12 this information was collected by the Commission under Retailer Guideline No.2 (Essential Services Commission, *Energy Retailer Operational Performance Information, Energy Industry Guideline No.2, EG2/03*, [as last varied on 1 July 2010], available at http://www.escosa.sa.gov.au/library/100618-EnergyIndustryGuidelineNo2-V2_03.pdf). For 2012-13 to 2014-15 the information will be collected through annual returns sought from retailers for the NERL Review (see NERL Review Methodology).

much lower rate. While the rate of gas price increases showed a decline across the board in 2013-14, in some cases the extent of the decline was small.

These trends are broadly consistent with those reported in the Commission's 2014 Ministerial Pricing Report (**Pricing Report**), noting that the Report used a different data source in comparing electricity and gas prices that were generally available to small customers on 30 June 2013 with those available on 30 June 2014.³³ The Pricing Report compares movements in average price for contracts offered by retailers on the AER's Energy Made Easy website. Given the close-off date of 30 June 2014, the Pricing Report does not incorporate the impact of the effective repeal of the carbon tax from 1 July 2014.

The 2013-14 average price movements based on market offers shown in the Pricing Report are as follows (with the corresponding results for retailer return data provided to Commission (Figures A.5 to A.8), discussed above, provided in brackets):

- ▲ residential electricity customers 1.7 per cent increase (1.6 per cent increase³⁴)
- ▲ small business electricity customers 0.3 per cent decrease (0.5 per cent increase)
- ▲ residential gas customers 14 per cent increase (16.4 per cent increase)
- ▲ small business gas customers 12 per cent increase (12.2 per cent increase).

These increases can be compared to a rate of inflation, as measured by the Consumer Price Index, in South Australia for the 2013-14 financial year of 2.5 per cent, showing average electricity prices declined in real terms.

As the Pricing Report notes there were two drivers of the increase in average retail gas prices, with an increase in gas distribution prices on 1 July 2013 adding around 8 per cent to residential gas bills, as well as increases in the wholesale cost of gas.

The result for South Australian residential electricity customers is also broadly consistent with that predicted by the AEMC in its 2013 Residential Electricity Price Trends report, where it expected market offer prices to decrease, on average, by 0.9 per cent per year for the three years from 2012-13 to 2015-16.³⁵ Standing contract offer prices were expected to increase, on average, by 0.3 per cent over the same period.

Further, the AEMC's 2014 Residential Electricity Price Trends report found that on average South Australian market offer prices decreased by 3.9 per cent in 2014-15 for the representative customer, with the AEMC expecting them to decrease by 3.5 per cent in 2015-16 followed by an increase of 0.2 per cent in 2016-17. Customers may have saved 10 per cent (around \$189) by switching from the standing offer to the representative market offer in 2013-14, with potentially higher savings from choosing the best market offer.³⁶

³³ Essential Services Commission, *Energy Retail Prices in South Australia: Ministerial Pricing Report 2014 – August 2014*, Fact Sheet, available at www.escosa.sa.gov.au.

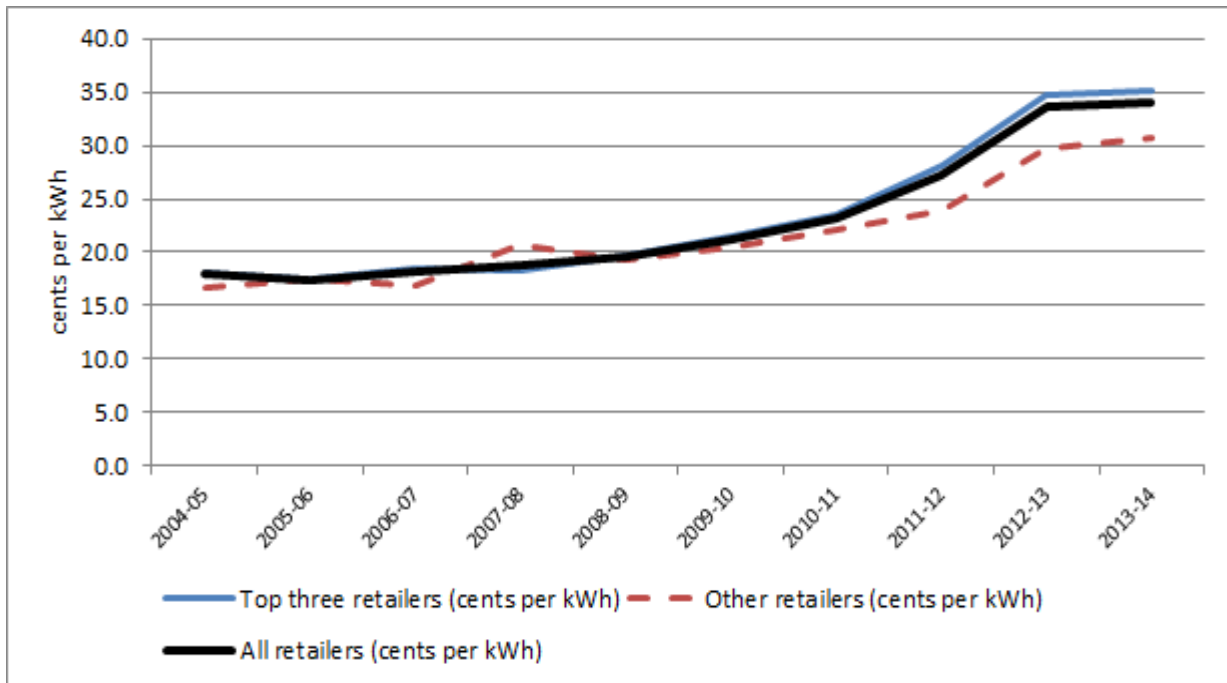
³⁴ Note that these increases relate to combined standing/standard contracts and market contracts. As at 30 June 2014, 83 per cent of small customers were on market contracts.

³⁵ AEMC, *2013 Residential Electricity Price Trends*, Final Report, p. xiii, available at www.aemc.gov.au.

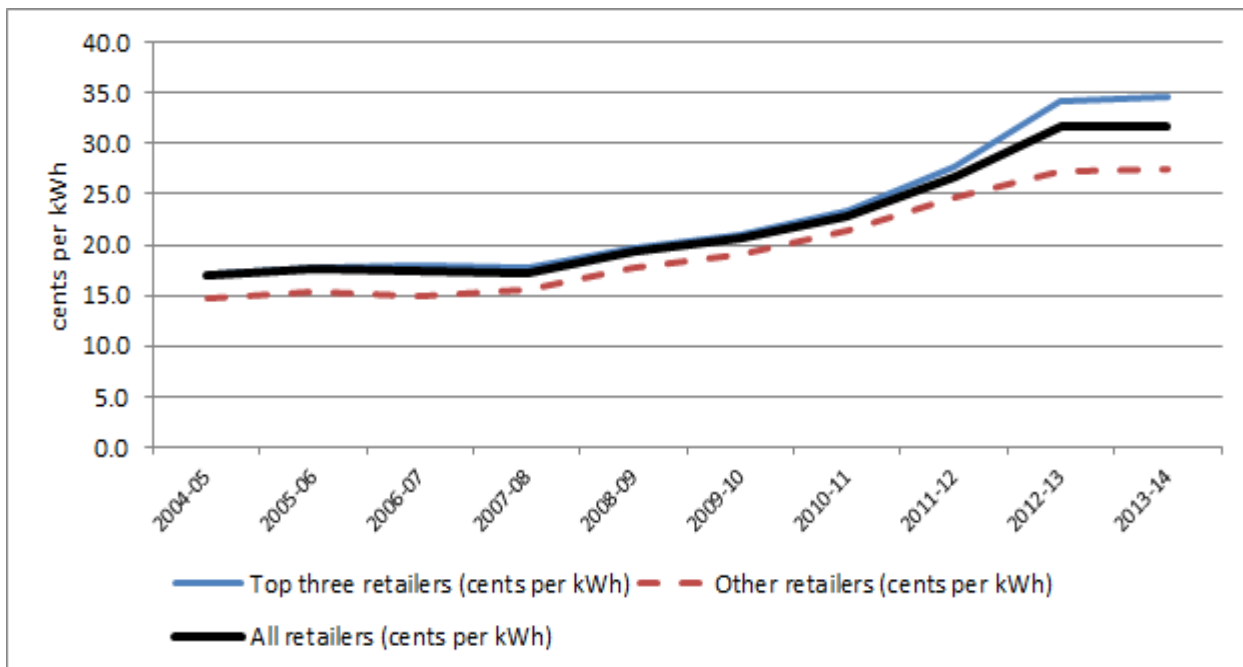
³⁶ AEMC, *2014 Residential Electricity Price Trends*, Final Report, South Australia fact pack and media release, p. 5, available at www.aemc.gov.au.

While this evidence is not conclusive in itself, given the changes in network and wholesale energy costs and noting that NECF coincided with retail price deregulation in South Australia, there would appear to be no apparent negative implications following the start of NECF from the observed movements in average energy prices.

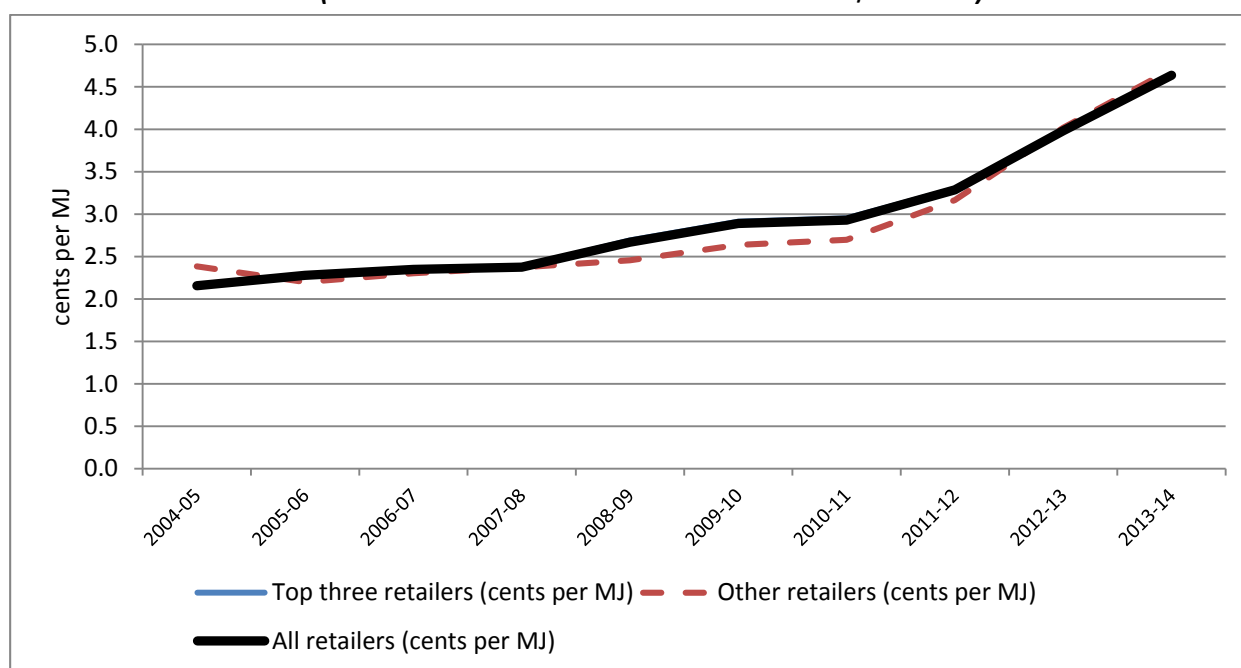
**Figure A.5: South Australian average residential electricity prices
(standard and market contracts combined - \$ nominal)**



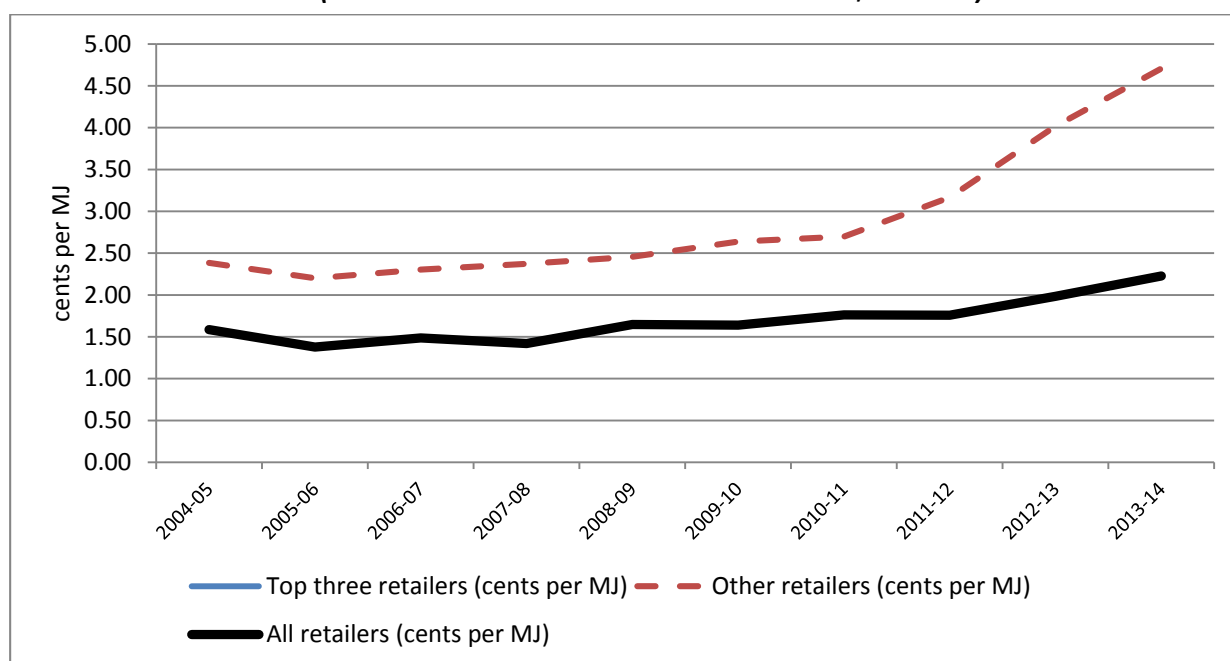
**Figure A.6: South Australian average small business electricity prices
(standard and market contracts combined - \$ nominal)**



**Figure A.7: South Australian average residential gas prices
(standard and market contracts combined - \$ nominal)**



**Figure A.8: South Australian average small business gas prices
(standard and market contracts combined - \$ nominal)**



Impacts on low-income groups

To date, the AEMC Review has reported limited specific data for low-income groups. The AEMC reports that most retailers believe that all customers have the same level of access to competitive offers.

Retailers acknowledged, however, that it can be harder for some groups to take advantage of competitive offers, such as special needs, non-English speaking and elderly customers. This outcome is consistent with the last survey work undertaken by the Commission, pre-NECF, which identified the risk that vulnerable

customers may have less ability to take advantage of retailer energy contract offers. For example, those customers surveyed with low income were less likely to be aware of web-based price comparison services such as the Commission's Estimator which was in operation at the time of the survey.³⁷ Such customers were more likely to indicate they sourced information from door-knockers or telephone sales.³⁸

Retailers also argue that it is not cost effective for them to attempt to isolate customers with poor credit history when making offers.

While it is important to continue to take steps to improve the ability of vulnerable customers to take advantage of energy contract offers, it would not appear to be a NECF-issue per se. That is, on the evidence currently available, access to market offers would not appear to be an issue where it is possible to demonstrate that customers have been adversely affected or the level of efficiency has changed as a result of the adoption of NECF.

In recognition that not all customers have the same level of access to web-based tools, the AEMC prepared a consumer engagement blueprint in 2013 which is designed to make it easier for consumers to compare offers. This blueprint comprises three elements: informing consumers; making it easier for consumers to choose; and using a variety of ways to reach consumers.³⁹ Under the second element, the AEMC has recommended refining Energy Made Easy and the AER's 1800 helpline service, together with refinements to price fact sheets that retailers are required to provide under NECF.

Since the time of the release of the NERL Review Methodology, the AEMC has advised that for the 2015 customer survey, it will seek to segment data to identify any differences in trends for low income and high income customers.⁴⁰

Innovation

The AEMC Review finds that product differentiation has been limited to date in most jurisdictions. Most of the retailers surveyed did not expect innovation to occur in retail gas products.

There appears to be a level of debate among retailers as to the benefits consumers might gain from a retailer providing multiple offers for consideration. The AEMC Review found that larger retailers each offer several different plans (varying contract lengths, fixed benefit periods, graduations of price and non-price inducements), with the retailers stating they did so to meet diverse customer needs. However, smaller retailers tend to offer only a single 'best offer' product, with some of these retailers suggesting that the proliferation of offers from large retailers only serves to confuse customers.

Conclusion

To the extent that the South Australian energy retail market continues to be shown to be effectively competitive then NECF could be seen to be at least maintaining this aspect of efficiency. What is more difficult to demonstrate conclusively is that the adoption of NECF has resulted in increased efficiencies, at this time. The AEMC findings to date would appear to support relying on the AEMC analysis and placing the Commission's focus on that aspect of the NERL Review terms of reference that require the Commission to assess whether the NERL has adversely affected customer protection in pursuit of national consistency.

³⁷ Colmar Brunton, October 2010, p. 101.

³⁸ Colmar Brunton, October 2010, p. 99.

³⁹ AEMC Review, 2014, pp. 29-30.

⁴⁰ AEMC, *2015 Retail Competition Review*, Approach Paper, December 2014, p.8, available at www.aemc.gov.au.



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