

Executive Summary

The Commission's draft finding is that the operation of the National Energy Retail Law:

- ▶ has furthered the interests of South Australian energy consumers
- ▶ has resulted in increased efficiencies, and
- ▶ has not adversely affected consumer protection in pursuit of national consistency.

Purpose

Pursuant to section 30 of the National Energy Retail Law (South Australia) Act 2011, the Commission is conducting a review of the operation of the National Energy Retail Law (**NERL**), which came into effect in South Australia on 1 February 2013 (**NERL review**).

The NERL establishes a regulatory regime governing the sale and supply of energy (electricity and reticulated natural gas) to customers served through the national electricity grid or gas pipelines. It provides a range of customer protections for residential and small business customers in their dealings with energy retailers and distributors. It complements other general consumer protection laws such as the Australian Consumer Law (for example, in the area of energy marketing) and privacy legislation.

The NERL is administered by the Australian Energy Regulator (**AER**) and replaces the previous energy regulatory regime administered by the Commission under the Electricity Act 1996 and the Gas Act 1997 (**pre-NERL regime**).

In accordance with the terms of section 30, the NERL review is to focus on the impact of the NERL on South Australian energy consumers and whether its implementation has:

- ▶ adversely affected consumer protection in pursuit of national consistency, or
- ▶ resulted in increased efficiencies.

That section also provides that the review may address such other matters as the Commission thinks fit.

This Draft Report sets out the Commission's draft review findings, for public consultation. Submissions are welcome and will assist the Commission in finalising the review for submission to the Minister for Mineral Resources and Energy in 2016.

Consumer protection

The Commission's draft finding is that the NERL is operating well in South Australia and that South Australian energy customers, if anything, have benefited from being part of the national customer protection arrangements (noting that the NERL has only been operating in South Australia for a little over two and a half years).

In an overall sense, this is not an unexpected outcome, as the provisions of the NERL generally either reflect, mimic or enhance the protections existing under the Commission's pre-NERL regime. For example, the general requirements as to billing, time to pay bills, dispute resolution and debt recovery processes remain largely unchanged.

In addition, through its public consultation processes during the review, the Commission has been presented with a clear, specific and positive message from stakeholders as to the impacts of the NERL: it has resulted in improved customer access to hardship programs and better data to analyse the experiences of and outcomes for hardship customers. While the pre-NERL regime (which was

established prior to market commencement in 2003) did place hardship obligations on retailers, the NERL adopts an approach of requiring specific and approved hardship policies to be implemented by retailers.

Accompanying that message has been explicit acknowledgment from stakeholders that hardship is driven by economic and other factors external to the NERL – the NERL itself does not drive hardship. In that context, stakeholders see the role of the NERL as being to encourage and permit retailers to identify and engage with those customers who are experiencing hardship with a view to maintaining supply and avoiding further accumulation of debt.

The evidence gathered by the Commission supports that view. While there has been an increase in the number of customers identified as being in hardship programs since the commencement of the NERL, econometric analysis shows a significant statistical relationship between hardship customer numbers and the rate of unemployment. It is external factors which drive the absolute numbers of customers experiencing general financial hardship at a point in time and, with energy being an essential service, that general hardship often translates into energy hardship.

Having regard to that context, while there has been an increase in the number of hardship customers since NERL commencement, this has occurred during a time of increasing economic challenge for South Australia. Despite that increase there has not been an increase in the rate of disconnections for residential electricity customers since the commencement of the NERL and, at the same time, there continues to be a high rate of instalment payment plan participation by customers (allowing them to actively manage energy payment obligations).

This suggests that the NERL hardship policy requirements are permitting or requiring retailers to accommodate and assist customers in financial stress. Against a background of deteriorating economic conditions, the hardship programs are being properly employed through the NERL in an effort to avoid increased levels of disconnection. The econometric analysis also supports a component of the increase in hardship numbers being due to the success of the NERL in giving people greater access to the hardship programs.

Retailers have put the view to the Commission that they are keen to assist customers. However, they have also cautioned that, for the hardship regime to be most effective, customers will need to engage with retailers. The Commission understands that hardship is a complex issue for many customers, with issues such as reluctance or embarrassment on the part of customers to admit to financial distress being very real and understandable reactions. However, research into how companies can best engage with customers, and in turn have customers want to engage, is occurring across a range of industries. In this respect the South Australian Council of Social Service's *Better Practice Guide for Energy Retailers* is a useful contribution. Created in collaboration with retailers and the community sector, the guide highlights the need for retailers to focus on early intervention and assessment of customers' capacity to pay.

In this broad context, through the consultation process the issue of financially vulnerable regional customers was raised with the Commission, both in terms of their ability to contact their retailer and in having access to competitive energy market offers, particularly in the case of gas. The Commission recognises the importance of equal treatment of customers regardless of location, and the particular challenges which regional customers can face (distance, technological differences, economic conditions) but has not found or been provided with evidence that the NERL itself has given rise to a deterioration in the level of customer protection for regional customers.

The trend of an increasing number of customer complaints to retailers has continued following the commencement of the NERL. However, this is in part explained by the general economic conditions described above, as well as a period during which retailers were implementing new customer billing systems, some of which proved problematic. There is no evidence which has been brought to the

attention of or discovered by the Commission which would suggest that the structure of the NERL itself caused the higher level of complaints.

Of note, in more recent times this trend has slowed and, importantly, there has been a reduction in the overall level of complaints to the Energy and Water Ombudsman SA. This is a positive outcome, indicating that retailers are dealing with complaints more effectively in the first instance, with customers not needing to utilise the Ombudsman's services to obtain resolution of their complaint. No issues have been identified with the complaint performance of network entities under the NERL.

Efficiency

The Commission has adopted a broad economic definition of the term 'efficiency' for the NERL review, 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).

In terms of competitiveness, the Commission has relied on the findings of annual retail energy competition reviews performed by the Australian Energy Market Commission (**AEMC**) to assess the level of competitiveness in the South Australian energy retail market and for evidence on the level of innovation.

The AEMC continues to find that the market is effectively competitive, as it has done since 2008, prior to the commencement of the NERL. The evidence presented to the Commission is that the NERL should assist a more competitive market, with new retailers having entered the market as a result of lower barriers to entry.

In terms of innovation, as the market grows following new entry, the range of retail energy products available to customers has increased. No evidence to the review suggested that the NERL has unduly stifled the development of new product or service offerings.

There was only one instance of concern raised with the Commission that the NERL had removed a protection previously available to South Australian energy customers, with associated innovation considerations. The Conservation Council of South Australia submitted that the effective removal, on commencement of the NERL, of the requirement for retailers to include greenhouse gas information on customer bills on a consistent basis has been a detriment. It put the view that the lack of information for customers is a market failure and may affect the competitiveness of a market, as that group of customers that value such information when making decisions about their energy retailer will be adversely affected.

It is not clear that mandating greenhouse gas intensity information on bills remains the best or only source of information for customers seeking to compare the performance of retailers in this area. The NERL contains minimum information requirements for bills and there is nothing preventing a retailer providing customers with information on greenhouse gas emissions in response to demonstrated demand. This change alone is not considered sufficient to show that the NERL has adversely affected customer protection in pursuit of national consistency.

In terms of cost changes, the Commission undertook surveys of energy retailers and energy distributors in 2014 and 2015 seeking to identify actions taken, savings made, and costs incurred through the progressive adoption of the NERL nationally, up until the end of 30 June 2015. This information was sought at the national (all jurisdictions combined) level for retailers, in an effort to ensure consistent reporting and recognising the difficulties that some retailers might have in identifying South Australian specific costs. The distributor information provided was for South Australia only.

Notwithstanding some of the long individual retailer payback periods identified, the overall picture presented by that evidence is that retailers consider the implementation of the NERL to be a positive outcome.

Retailers stressed to the Commission that any difference in regulatory requirements between states leads to increased costs (or loss of efficiency) for retailers. Those costs are passed on to customers. South Australia has a limited set of derogations or modifications from the standard terms of the NERL, with retailer telephone responsiveness and the small business definition threshold of 160 MWh per annum singled out by retailers as being of material concern to them.

Other matters

Representations were received from consumer groups and retailers during the course of the review that the NERL in its current form may not adequately accommodate market or technological developments that have occurred in the energy industry since it was drafted (during the period 2006 to 2011). For example, the lease arrangements for provision of solar photovoltaic roof panels and battery storage, and the competitive provision of meters.

The Commission notes that the need to review the NERL to maintain its relevance is well recognised. The Council of Australian Governments (COAG) Energy Council agreed at its 23 July 2015 meeting to investigate whether the NERL requires enhancement in light of ongoing change taking place in competitive energy markets, particularly in regard to the introduction of new technologies, products and services.

Stakeholders also suggested during consultation that additional requirements should be incorporated into the NERL, such as the elimination of late payment fees. These suggestions have been noted in this Draft Report for the information of policy makers. However, they are considered out of scope for the purposes of making the findings required by the terms of reference, as those focus on identifying any adverse changes in customer protection arising from the NERL as compared to the pre-NERL regime.

Consultation

This Draft Report follows publication of the NERL review methodology (March 2014). A NERL review Issues Paper was published in February 2015, together with customer questionnaire and time series data.

Nine submissions were received to the NERL review Issues Paper, six from retailers or their association and three from consumer based organisations. A public forum was held in the Adelaide Town Hall – Meeting Hall on Friday, 1 May 2015 and a retailer forum held in Melbourne on Friday, 8 May 2015. The Commission has appreciated the extent of engagement of stakeholders during the course of this review and thanks all those that have made a contribution to date.

Next steps

Submissions are sought on this Draft Report on or before the close of business on Friday, **19 February 2016**.

A Final Report is due to be submitted to the Minister for Mineral Resources and Energy in April 2016. Under the terms of the National Energy Retail Law (South Australia) Act 2011, that report is to be tabled in Parliament within six sitting days of receipt by the Minister.