



11 December 2013

The Essential Services Commission of South Australia
Level 1, 151 Pirie Street
Adelaide SA 5000

Email: escosa@escosa.sa.gov.au

Attention: Mike Philipson

NERL Review: Issues Paper

Thank you for the opportunity to consult on the method ESCOSA may apply to the future review of the NERL, commencing no sooner than 1 February 2015. AGL agrees with the thrust of ESCOSA's consultation; to seek input on the key factors that will require data collection and monitoring in the period prior to the review so they might be considered by ESCOSA at the time of the review.

The two core elements of the ESCOSA review that data collection and monitoring will need to address are:

1. Is the customer protection framework still as effective as pre NERL?
2. Is competition still as effective as pre NERL?

AGL agrees with the Commission's proposed use of customer protection indicators used in previous reviews of effectiveness of competition. AGL's view is that broadly, these existing indicators collected by Retailers and provided to the AER will suffice as core data; though they may be analysed in different ways.

AGL does not support ESCOSA's proposed approach to data collection for price information in Option 1 as the increment of change is so small, and the impacts of externalities so more apparent, that the use of Option 1 is not justified on the grounds of relative margin of error, or the business cost associated with Option 1 that typically exceeds \$100K.

Should you have any further questions in relation to this matter, please contact David Markham, Senior Regulatory Adviser on (03) 8633 6510 or at david.markham@agl.com.au.

Yours sincerely,

A handwritten signature in blue ink that reads 'N Wallis'.

Nicole Wallis
Manager Retail Markets Regulation

- > Being selected as a member of the Dow Jones Sustainability Index
- > Gaining accreditation under the National GreenPower Accreditation Program for AGL Green Energy®, AGL Green Living® and AGL Green Spirit
- > Being selected as a constituent of the FTSE4Good Index Series

Specific Comment

Question 1:

Are the following proposed metrics supported to form the basis of a quantitative assessment of customer protections under NECF?:

- telephone and written performance;**
- complaints (including complaints to the Energy & Water Ombudsman);**
- hardship program customers;**
- concession recipients;**
- disconnections;**
- reconnections;**
- instalment plans; and**
- security deposits.**

This data is currently required by the AER and can be provided by energy retailers. AGL's preference is for the ESCOSA to obtain this performance data directly from the Australian Energy Regulator (AER). In any case AGL contends that the data form requested should be in accordance with the AER's performance indicator definitions.

Question 2:

Are there any other considerations the Commission should have regard to in making an assessment on whether the implementation of the NERL has adversely affected customer protection?

ESCOSA acknowledges that The NERL, and associated National Energy Retail Rules (NERR), broadly reflect the protections contained in the previously operating customer protection framework established by the Commission (e.g. Energy Retail Code, Energy Marketing Code, Energy Customer Transfer and Consent Code, Energy Price Disclosure Code and the Energy Prepayment Meter System Code)¹.

This being the case, then changes to consumer protection outcomes as a function of the NERR will be examined within a very small delta; and consequentially consumer outcomes such as disconnections are more likely to be influenced by changes to the concessional framework or median incomes in SA, or due to the weather driving consumption changes, than the tiny differences between the old ESCOSA regulations and the NERR. Along with pricing, trend analysis needs to incorporate these three externalities as a minimum.

Question 3:

Should the Commission adopt a broad economic interpretation of the term 'efficiency'?

There are any number of ways of applying the theory of economic efficiency to ESCOSA's considerations that will still get us back to the fundamental question of have we maximised our outputs from our inputs? And if not, can this be bettered by more or less Government

¹ NERL Review, Issues Paper, Methodology for Review, Nov. 2013, p.5



intervention? Therefore adopting the broad economic interpretation of the term 'efficiency' is as good a start point as any.

In the context of the review, any examination of the differences between the NERL and the NERR compared with the pre 2013 ESCOSA regulation identifies that these differences are small. Measuring these small differences in functional requirements is unlikely in of itself to identify any statistically relevant changes in per unit costs; or in customer service outcomes.

Question 4:

Should the Commission consider the extent to which the South Australian energy retail market is effectively competitive as part of the NERL Review?

The Commission intends using the same data set criteria as for their effective competitiveness review. AGL doubts that, in light of derogations to SA, the small functional changes that have arisen as a requirement of the NERR and NERL changes could identify any Pareto Improvement in any examination of their material effect on competition, and linking the two together is therefore a waste of effort. However the data set criteria is not contested.

Question 5:

If so, is the Commission's proposed approach to undertaking an assessment of the level of effective competition in the South Australian energy retail market sufficiently comprehensive?

Given the narrow range of plausible variants created by the adoption of the NERR and NERL the Commissions proposed approach is probably overcooked.

Question 6:

Are there any other considerations the Commission should have regard to in making an assessment on the extent and nature of efficiencies resulting from the implementation of the NERL?

It would be impossible to decouple efficiencies resulting from the implementation of the NERL from other industry events such as network price changes, changes to retail marketing activities (such as doorknocking) and channels, changes in the wholesale market and South Australia's own derogations. In addition, South Australia's decision to retain derogations to the NECF in its retention of the 160MWH threshold has created fewer opportunities for retailer efficiencies.

Question 7:

Are there any other considerations the Commission should regard in relation to incorporating pricing evidence for the review?

In a mature market with deregulated pricing, price is not the only motivating factor in a purchasing choice and that for some customers' convenience, non-price incentives, security and brand attributes are far more important.

Price reporting requirements

Question 9:

The Commission's preferred option is Option 1 on the basis that it will allow for a robust quantification of the pricing information. Views are sought on the costs and benefits of Option 1 compared with Option 2.

AGL does not support ESCOSA's proposed approach to data collection for price information in Option 1; a slightly cut down version of the Relative Price Movement (RPM) approach to price regulation.

Robust quantification of the pricing information has not been shown to be required when determining the impact of the operation of the NERL on small customers. This is because the increment of change between the pre and post 2013 consumer protection regimes is so small, and the impacts of externalities so more apparent, that the use of Option 1 is not justified on the grounds of relative margin of error, let alone cost.

With further regard to cost of Option 1, the assertion that retailers have existing systems to meet data reporting requirements using RPM is incorrect. Historically the RPM has required the significant diversion of effort and resources from other business activity. ESCOSA is aware of this and it is unreasonable to assume this has changed. Significant additional regulatory requirements are likely to increase barriers to entry for retailers seeking to enter the SA market.

Setting a baseline for any review needs to be both reliable and repeatable. More broadly, measuring the outcomes for consumers in a competitive market is a measure of the overall competitive market dynamic putting downwards pressure on prices, and the alternative offers that consumers have easy access to (though they may not necessarily choose them). In this light, and with obvious regard to the costs associated with Option 1 AGL contends that Option 2; Average Price is more than satisfactory in each and all of these regards.

Question 10:

Is there an alternative option that the Commission should consider? If so, on what basis should this option be preferred over the options listed in this Issues Paper?

AGL acknowledges that the ESCOSA has a legislative requirement to monitor prices. With this in mind AGL is of the view that using 'Option 2' based on the previous requirements made of retailers under Energy Industry Guideline No.2 is appropriate. However for the purposes of the NERL review, the variation is likely to be so small, and so subject to other influences, that ESCOSA might just as readily rely upon the AEMC's competition reviews and Retail Price Trend Reports in assessing the NERL impacts on pricing and competition.