



13 December 2013

Mr Mike Phillipson
Principal Advisor
Essential Services Commission of South Australia
GPO Box 2605
Adelaide SA 5001

By e-mail: escosa@escosa.sa.gov.au

Dear Mr Phillipson

National Energy Retail Law - Issues Paper - Methodology for Review

Origin Energy welcomes this opportunity to respond to the Essential Services Commission (the Commission's) issues paper on the review methodology of the National Energy Retail Law (NERL). As a significant retailer in the South Australian energy market, Origin has a strong interest in the approach the Commission will adopt to undertake the review required of it under the NERL.

Origin is concerned that the proposed methodology and approach may result in a process that is more intrusive than necessary for the Commission to effectively undertake its review. We note the Commission acknowledges that there are limitations on what the review process can achieve and that there are difficulties in assessing the extent to which the NERL and its associated framework have been effective. Given the limitations faced by the review timeline (2015), Origin believes that the review methodology should place weight on the fact that benefits will accrue over a much longer period, particularly given Queensland and Victoria (as jurisdictions with substantial small customer populations) are yet to implement the National Energy Consumer Framework (NECF).

There is also concern that a focus on retail operating costs as a proxy for estimating changes in technical efficiency will result in costly and time consuming analysis, with limited confidence in the outcomes that it may produce over the course of the Review. Origin does support the Commission seeking data from retailers that is consistent with other reporting already undertaken (e.g. for the Australian Energy Regulator) and the monitoring of prices of offers available in the retail market during the review period.

We discuss these and other specific matters in relation to the consultation paper below and would welcome further discussion with the Commission on the development of its Final Methodology for the Review. Please contact David Calder on (03) 8665 7712 in the first instance should you have any questions in relation to this response.

Yours sincerely

A handwritten signature in blue ink, appearing to read "K. Robertson".

Keith Robertson
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Chapter 2- Coverage

Section 2.1- Customer protection

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

Origin supports the alignment of the metrics the Commission sets out on page 8 of the issues paper, to the extent they match data already collected by the Australian Energy Regulator (AER). We would not support the creation of new metrics to support the review as this will result in additional reporting costs. This data is provided to the AER on a timeframe similar to that proposed by Commission. Origin would recommend to the extent possible that Commission gather these metrics from the AER directly or allow retailers to copy the Commission when such data is submitted to the AER.

The Commission states on page 7 of the issues paper that one potentially negative outcome of a nationally consistent consumer protection framework “...could be a loss of innovation to deal with specific South Australian issues”.¹ Origin believes that the efficiencies achieved through a harmonised national regulatory framework would far outweigh any minor tailoring that national consistency may prevent. Origin does not believe the Commission intends to suggest this, but we consider the purpose of the Review is not to revisit the policy decision to implement a harmonised national regulatory framework for energy retailing.

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?

Origin notes the Commission acknowledges that not all jurisdictions have implemented NECF and may yet to have done so, even some way into the contemplated Review for South Australia. As such, we encourage the Commission to recognise incomplete nature of reform to the extent that NECF is not full implemented over the course of the review.

¹ ESCOSA (2013), *NERL Review - Methodology for Review - Issues Paper*, page 7.

Section 2.2- Increased efficiencies

The economic underpinnings of the Commission's approach to defining efficiency are sound in Origin's view; however we would caution the Commission to avoid the risk of abstracting actual market outcomes through the rigid application of a theoretical framework.

2.2.1 Technical efficiencies

Given that NECF has not been implemented in two relatively large jurisdictions (Queensland and Victoria), evidence supporting technical efficiency associated with nationally consistent regulation will be incomplete in the near term. Two of the jurisdictions that have implemented NECF feature restricted retail market competition (Tasmania), or are relatively small in size (the Australian Capital Territory). As such, in our view data available in the near term may not provide an accurate assessment of the effectiveness of NECF to date.

Furthermore, New South Wales has only recently implemented the NECF, and retailers have had to invest in systems to prepare for NECF introduction under the expectation that most jurisdictions would implement, with few changes, the package in quick succession. This has not happened and as a result, retailers have made investments in systems to be NECF-ready, but are required to maintain processes and procedures that support both variations to NECF and the consumer protection framework that remains in force in Queensland and Victoria.

2.2.2 Allocative efficiency

There is some concern that any review of the competitiveness of the South Australian energy retail market will duplicate work already undertaken by regulator elsewhere. Origin would not support a separate stand-alone analysis if relevant data can be obtained from existing reports (from the Australian Energy Market Commission [AEMC] for example).

2.2.3 Dynamic efficiency

Retail market innovation (that leads to dynamic efficiency gains) is not just a function of the NECF. There are existing barriers to innovation (for example exit fees on small customer metering installations) that are unrelated to the NECF and typically manifest in demand response markets. The NERL itself in this example is not holding back innovation or increased competition.

Question 3

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

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?

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?

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?

Question 3

As discussed above, while the need for the Commission to define efficiencies may be necessary in the context of the review, a theoretical interpretation of productive, allocative and dynamic efficiency to actual market data will require some interpretation and recognition of outcomes in the market itself.

With respect to the Commission deriving an estimate of retail operating costs, Origin notes that the AEMC has recently commented on the risks associated with deriving estimates of such costs and retailer margins:

...we note it is very difficult to accurately measure profit margins or define what an appropriate margin may be. Businesses have different cost structures and strategies and so may require different rates of return for their investments.

Further, profit margins are not a stable indicator. As costs and risks vary over time, so too will profit margins. Consequently, while they provide an indicator of competition and may be considered in the AEMC's annual competition reviews, they are not in themselves determinative.²

The estimation of wholesale costs presents challenges in the context of the review. Origin notes that regulators and consultants alike have struggles with estimating wholesale costs, that retailer's wholesale costs vary as a consequence of different hedging strategies and asset ownership and that any such estimate will need to be of a broad range. In some respects, the approach suggested on pages 9 to 10 of the issues paper, if adopted by the Commission, revisits its earlier role as price regulator, with all of the attendant complexities associated with estimating the 'right' wholesale purchasing cost, or accurate retail operating costs. The Commission's current role as price monitor and having oversight of retail reporting places it in a good position to examine the current range of market prices over the period of the review.

² Australian Energy Market Commission (2013), *Final Report- Review of Competition in the Retail Electricity and Natural Gas Markets in New South Wales*, page 69.

Therefore, while Origin does think there is a role to monitor prices and trends as part of the Review, we do not believe an approach involving the decomposition of various retail offers, wholesale purchase costs and operating costs will be a reliable approach to measuring the impact of NECF on South Australian energy consumers.

Question 4

Origin understands that the purpose of assessing the effectiveness of competition in the South Australian energy retail market is to determine changes in allocative efficiency. Origin believes that the effectiveness of competition in South Australia has already been established (for gas and electricity) and revisiting this question is likely to confirm earlier analysis by the Commission and the Australian Energy Market Commission (AEMC). The AEMC also point out that duplicative reporting and monitoring should be avoided:

We further note that the AEMC and the AER already have or will have from 2014, a number of NEM-wide market monitoring functions. We consider these processes are sufficient and that it would be unnecessarily duplicative to produce a specific market monitoring report...³

We recognise the Commission will need to gather information over the course of the review, but would seek that to the extent possible, existing reporting processes not be duplicated.

Question 5

If the assessment deemed necessary, Origin believes use of indicators previously used by the Commission would be appropriate to ensure reporting is limited to that data actually required to inform the analysis. Aligning these closely with other reporting processes (e.g. to the AER) would reduce the cost of undertaking the Review.

Section 2.3- Review of pricing outcomes

Question 7

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

Origin supports price monitoring as part of the Review process. However, we do not believe that this requires the collection of data on all closed (but still active) offers over what is a relatively long period allocated for the Review, due to the complexity involved and the diminishing returns such an exhaustive approach will yield. The reporting of offers active and available from 2014 onward would be a more administratively simple approach. Furthermore, as the Commission knows, much of this data is currently available on the *Energy Made Easy* website.

The Commission states on page 13 of the issues paper that stickiness could be the result of perceptions of high transactions costs to churn. This could be addressed by “making more (or better) information available and/or reduce any barriers to transfer”. While Origin acknowledges there is always more that can be done, we note that existing tools (such as *Energy Made Easy*) assist customers in assessing their circumstances and offers available, as well as recent improvements made by retailers including informing customers of the end of any benefit period that may apply to their market offer. In addition, where technology permits, Origin has invested heavily in online

³ AEMC (2013), *op. cit.*, pages 66-67.

portals and in home displays to accurately present customers with information on their consumption and cost in an easily digestible and timely format.