

10 January 2014



Mike Philipson

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Cc: Hon Ian Hunter MLC, Minister for Sustainability, Environment and Conservation
Allan Holmes, Chief Executive, Government of South Australia Department of
Environment, Water and Natural Resources

**RE: Review of the operation of the National Energy Retail Law (NERL)
in South Australia,**

Dear Mike,

The Conservation Council of South Australia welcomes the opportunity to provide input to the review of the operation of the National Energy Retail Law (NERL) in South Australia.

Conservation Council SA is an independent, non-profit and strictly non-party political organisation representing around 50 of South Australia's environment and conservation organisations and their 90,000 members. Conservation Council SA has developed a comprehensive view of environment policy in *South Australia in a Changing Climate: A Blueprint for a Sustainable Future*¹. This document sets out, at a strategic level, policy positions in six key environmental areas, including energy issues.

In this submission we highlight our concerns that the National Energy Retail Law and its implementation have failed to maintain and improve a standard for greenhouse gas emissions disclosure that was established under South Australian legislation. At a critical time when carbon pricing was introduced, emissions associated with electricity sold and carbon pass through costs have not been clear. In addition, it is our view that the NERL does not serve the long term interests of those customers that pay extra for renewable energy. When standards for greenhouse disclosure were not included by the NERL, many issues for reform that should have been addressed were masked and avoided because it did not maintain disclosure that related to carbon pass through costs.

¹ <http://www.conservationsa.org.au/blueprint.html>

Much is made of the NERL and the National Electricity Customer Framework, yet it provides no focus or protection for electricity customers paying extra for renewable and low emissions electricity. Given the need to transition to low emissions and renewable energy as quickly as possible to protect the long term interests of current and future generations, it is surprising that there is still such a disintegrated policy and regulatory framework that maintains a virtual separation of retail electricity markets from the renewable and low emissions electricity energy products that many consumers are seeking to buy.

RESPONSE TO ISSUES PAPER QUESTIONS

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.**

The above metrics deal electricity as if it were unrelated to greenhouse gas emissions, environmental impacts, use of fossil fuels and ignore aspects such as GreenPower which continues to be marketed as a product that can reduce the greenhouse gas emissions of electricity consumption². The NECF provides no protection for these customers. There is no capacity for GreenPower consumer representation provided in the National GreenPower Steering Group or the National Electricity Customer Framework and some in the Australian Energy Regulator and Australian Energy Market Commission continue to be puzzled as to exactly what GreenPower is and who administers the program. To address the problem of silos that have been created, it is recommended that the South Australia either advocates for a National change or introduces a state based approach to ensure that there be a quantitative assessment of **product attributes** (such as emissions, GreenPower and integrity of pricing differentiated products). The inclusion of this new aspect would then begin to facilitate engagement with renewable electricity consumers and potentially with other customer types towards the long term benefit of customers.

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?

² See GreenPower Marketing Guidelines Section 2.2, clause 8.1 "8.2 Carbon claims may refer to the individuals or entities reduction in emission intensity of their electricity consumption".

The former SA Electricity Regulations (General) section 7ABB and Electricity Act Section 24 (da) (iv) required disclosure of greenhouse gas emissions on electricity bills.

The regulations required that “the amounts of the greenhouse gas emissions referred to in paragraphs (a) (iv) and (a) (v) must be calculated, in a manner approved by the Commission, by reference to material about emissions coefficients published by the Australian Greenhouse Office of the Department of the Environment and Heritage of the Australian Government”. Whilst there was ongoing concern regarding the suitability of the factors promoted by the Federal Government, there was at least some attempt for a documented approach to provide the greenhouse gas information.

When the NERL came into effect, consumers in South Australia were disadvantaged in two ways. Firstly, the information provided to them on greenhouse gas disclosure is a key piece of information relating to their purchase was not required. If provided at all, there was no need to calculate the emissions in accordance with a defined method. It is not a role for regulators to decide that this information is not needed, nor can regulators predict how consumers will use this information in their energy choices that relate to purchasing or demand management. The subsequent ad hoc and undefined approaches to greenhouse gas disclosure have not enabled consumers to make informed choices.

Secondly, consumers have been disadvantaged where carbon pass through costs are not able to be tracked together with the greenhouse gas emissions associated with electricity bills. Consumers now have no idea if the greenhouse information on their bills is based on a National Greenhouse Accounts (NGA) factors emission rate for a state, the combined factor across all states, an NEM factor or an emission rate relating to the carbon liabilities of a generator/retailer. Whilst carbon pass through costs should have been charged in an open and transparent manner, consumers have had no assurance that the carbon pass through costs that they are paying for actually relate to the emissions printed on an electricity bill.

The Conservation Council raised its concern that the method of allocating carbon pass through costs to customers and the transparency of doing so has not yet been properly addressed in regulation methods during recent consultation for Best Practice Retail Price Regulation Methodology³, the AEMC agreed that:

“Carbon costs form part of the wholesale energy purchase cost allowance. The Commission considers that it is important that the assumptions associated with the estimation of this allowance, which include those associated with carbon costs, should be clearly specified to promote transparency⁴.

³ See <http://www.aemc.gov.au/Media/docs/Conservation-Council-of-South-Australia-1ab0a02a-44af-450c-9ee3-b4fd9432f0c3-0.PDF>

⁴ See AEMC response, AEMC Review final Report, p.113, <http://www.aemc.gov.au/market-reviews/completed/advice-on-best-practice-retail-price-regulation-methodology-.html>

Despite this agreement that carbon pass through costs and related assumptions should be clearly specified there is no evidence of National movement towards amending the NERL for such reform.

It is also important that regardless of whether carbon pricing is dismantled in Australia in the near future, that the methods for allocating emissions and charging potential carbon costs remain in place. This is because the science describes a need for significant and sustained action to transform our economies towards deep cuts in emissions. As the scientific case remains compelling, there is a likelihood that carbon pricing or carbon liabilities of some kind will ultimately become an accepted necessity.

The opportunity for South Australia to provide a future focussed lead policy role is even more important given that the AEMC has stated that “The AEMC considers that the matters relating to sustainability are beyond the AEMC's remit⁵”. The Conservation Council disagrees with the AEMC view that matters relating to sustainability could be disintegrated from the regulatory remit where retail markets regulation covers the protection of the interests of customers (many of whom are seeking sustainable choices). It is not appropriate for the AEMC to pre-determine that certain interests of customers are unimportant. South Australia has a valuable role to lead and or advocate for reform in this important area.

Question 3:

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

The Conservation Council of South Australia supports that the term efficiency be used in the broadest possible way to cover all aspects of customer interests in retail markets including those relating to choice for different electricity products, GreenPower, greenhouse gas disclosure and the general need for retail law to be contributing to and facilitating a more sustainable low emissions electricity market.

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?

Through leading in policy, market advocacy and reforms that provide consumers with the information, choice, and protections that they need, South Australia will be creating the most competitive long term electricity markets. Several years ago the State Government promoted South Australia's low carbon advantage. Effort to support low carbon consumers and markets in the states should be increased to maintain opportunities and preparedness for carbon constrained and expanding renewable electricity markets in South Australia.

⁵ See AEMC Review final Report, p.13, <http://www.aemc.gov.au/market-reviews/completed/advice-on-best-practice-retail-price-regulation-methodology-.html>

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?

No, the Commission's approach to technical, allocative and dynamic efficiency are founded on the treatment of electricity as a single product, and ignore other attributional qualities marketed in electricity products. The complete rejection of treating GreenPower and renewable energy as part of electricity markets by the NERL is evidence that the current framework cannot assess effective competition.

Given that sources of renewable energy such as wind power are now cost competitive with gas produced electricity in South Australia and in many markets globally, it is time to challenge the way that GreenPower is charged as a penalty on top of standard electricity charges. As renewables continue to become cheaper, it would be wrong for market frameworks to allow that the retail price of renewables always remains artificially higher than non-specified standard electricity.

The situation is complicated by the Renewable Energy (Electricity) Act which creates a requirement and subsequent market for renewable energy certificates that dominates the renewables price setting. In all other aspects however, renewables are a price taker in the National Electricity Market. Even within the complex and overlapping regulatory frameworks, there is still ample opportunity for reforms that would enable a better and fairer way to determine how renewable electricity retail products are defined and how pricing is undertaken.

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?

No response to this question.

Question 7:

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

It is suggested that the Commission incorporate a review of GreenPower renewable energy products and pricing offers in South Australia. For context, the Commission should consider that by 2050, South Australia and all jurisdictions around the world will need to have made substantial reductions in greenhouse gas emissions. Australia has ample potential resources for renewable energy for its stationary needs and should it continue on this pathway, all our retail markets will need to provide real renewable energy products with integrity and cost reflective pricing.

If the commission considered just the renewable energy components of retail markets, it may find that there is little choice, little competition, and little consumer protection when it comes to renewable electricity products in retail markets.

At some point, preferably sooner rather than later, there is a need to reverse the current situation where renewables are charged as a penalty on standard

electricity, to a retail framework where the fossil fuel based electricity products are the ones to be segregated out and charged with carbon penalties. Alternatively there could be a strategy towards contractual arrangements providing complete choice as to the source of generation.

I would be happy to discuss our submission in more detail.

Kind regards,

A handwritten signature in blue ink, appearing to read 'Craig Wilkins', with a stylized flourish at the end.

Craig Wilkins
Chief Executive