

# NERL REVIEW METHODOLOGY

*Final Decision*

March 2014



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The Essential Services Commission of South Australia is the independent economic regulator of the electricity, gas, ports, rail and water industries in South Australia. The Commission's primary objective is the *protection of the long-term interests of South Australian consumers with respect to the price, quality and reliability of essential services*. For more information, please visit [www.escosa.sa.gov.au](http://www.escosa.sa.gov.au).

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## GLOSSARY OF TERMS

AEMA	Australian Energy Market Agreement
AEMC	Australian Energy Market Commission
AEMC Competition Report	AEMC annual Retail Competition Review (from 2014)
AEMC Price Trends Report	AEMC 2013 Residential Electricity Price Trends report
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
APR	Annual Performance Report. The Commission's report on energy retailers' performance for the period July to December 2012 was the Commission's final APR on the overall performance of the energy retail market
Commission	Essential Services Commission of South Australia
ESC Act	<i>Essential Services Commission Act 2002 (SA)</i>
ESCV	Essential Services Commission of Victoria
EWOSA	Energy & Water Ombudsman SA
Final Decision	NERL Review Methodology-Final Decision (this paper)
HES	ABS Household Expenditure Survey
Issues Paper	NERL Review Issues Paper, released by the Commission in November 2013
Minister	Minister for Mineral Resources and Energy
Ministerial Pricing Report	The report required under Regulation 12 of the <i>Electricity (General) Regulations 2012</i> and Regulation 6 of the <i>Gas Regulations 2012</i>
MWh	Mega Watt hour, which is the equivalent of 1,000 kWh
NECF	National Energy Customer Framework
NEM	National Electricity Market

NERL	National Energy Retail Law, Schedule to the <i>National Energy Retail Law (South Australia) Act 2011</i>
NERL Review	The review of the operation of the NERL in South Australia, required under section 30 of the NERL
NERR	National Energy Retail Rules, made in accordance with the NERL
REES	Residential Energy Efficiency Scheme
RPM	Relative Price Movement
SCER	Standing Council on Energy and Resources (formerly Ministerial Council on Energy (MCE))
Schedule 1 average price	The average energy price derivable from data supplied by retailers in accordance with Schedule 1 of this paper
TJ	One terajoule (one million MJ), a unit of energy
Terms of Reference	NERL Review terms of reference



## EXECUTIVE SUMMARY

The Essential Services Commission of South Australia (**Commission**) is the independent economic regulator of essential services in South Australia. The Commission's primary objective is the *protection of the long-term interests of South Australian consumers with respect to the price, quality and reliability of essential services*.

On 1 February 2013, the principal regulation of South Australia's retail energy market transferred to the Australian Energy Regulator (**AER**) with the introduction of the National Energy Customer Framework (**NECF**). The AER is now responsible for consumer protection and performance monitoring in the electricity and gas retail market.

Under the legislation establishing the operation of the National Energy Retail Law (**NERL**) in South Australia (which in turn establishes NECF), the Commission is required to conduct a review of the operation of the NERL after 1 February 2015 (**NERL Review**).<sup>1</sup>

The requirements on the Commission in undertaking the NERL Review are contained in Section 30, National Energy Retail Law (South Australia) Act 2011:<sup>2</sup>

### 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.*
- (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.*

This NERL Review Methodology-Final Decision (**Final Decision**) provides the methodology the Commission will use in undertaking the NERL Review, setting a baseline for the review and ensuring that key factors will be monitored in the period leading up to the review. While the Commission reserves the right to vary its approach to conducting the review (or

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<sup>1</sup> 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.

<sup>2</sup> Section 30, *National Energy Retail Law (South Australia) Act 2011*; 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).

aspects of the review) in the light of new information, it is intended that the NERL Review will be conducted in accordance with that methodology.

This Final Decision has been informed by submissions received to the NERL Review Issues Paper released in November 2013.<sup>3</sup> As a consequence, this Final Decision varies in a number of aspects from the draft approach, designed to maximise the benefits of the review whilst minimising associated costs.

The NERL Review terms of reference (**Terms of Reference**) require the Commission to:

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

The Terms of Reference require the Commission to focus on the *impact* of the NERL on energy consumers. This will be done by comparing the performance of a core set of indicators that have been collected and reported before and after the commencement of NECF. Regard will also be had to other measures collected by the AER where these may assist interpretation of core indicators.

The Commission will commence the NERL Review in February 2015. It may be the case that not all National Electricity Market (**NEM**) jurisdictions will have commenced NECF by that time, and the potential efficiencies from adopting a national scheme may not have been achieved. There should, however, be sufficient experience with the operation of NECF in South Australia by that time to assess its performance in meeting customer protection objectives for South Australians.

The primary interaction energy customers have, particularly in relation to customer protection issues, is with their retailer; however, NECF also governs the customer-distributor interaction and the NERL Review will also address that relationship.

A broad economic interpretation of the term 'efficiency' will be adopted, which in addition to assessing any impact on energy company operating costs (technical efficiency) will also consider other efficiency aspects such as the level of competitiveness of the South Australian energy retail market (allocative efficiency).

The performance of the customer protection regulatory framework will be assessed within the context of the market it operates within at the time of the review – a competitive market with deregulated energy retail prices.

An assessment of retail energy pricing outcomes is integral to the NERL Review as an explanatory variable. For example, if there were an increase in the number of hardship

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<sup>3</sup> Essential Services Commission of South Australia, *NERL Review, Issues Paper, Methodology for Review*, November 2013; available at <http://www.escosa.sa.gov.au/projects/204/nerl-review.aspx#stage-list=0>

customers and disconnections during a period of price decreases then it may raise concerns about the customer protection framework. An increase in hardship customers in the absence of pricing information would be harder to interpret.

Assessing energy price movements is also important in assessing the competitiveness of the South Australian energy retail market. Competition is not an end in itself but, where effective, is most likely to deliver prices that are in the long term interests of consumers.

Trends in customer protection indicators will be reviewed against a set of external indicators, as well as with each other (e.g., comparing trends in disconnection rates with trends in the number of hardship customers).

The following customer protection indicators will be adopted for assessing energy retailer performance:

- ▲ telephone and written responsiveness (all customers combined, combined energy);
- ▲ complaints (all customers combined, combined energy<sup>4</sup>);
- ▲ hardship program customers (residential customers only, separate electricity & gas);
- ▲ disconnection for non-payment (residential & small business, separate electricity & gas);
- ▲ reconnection in same name (residential & small business, separate electricity & gas);
- ▲ instalment/payment plans (residential customers only, separate electricity & gas); and
- ▲ security deposits (residential & small business, combined energy).

The Commission collected and reported on these indicators prior to NECF commencement, with the AER doing so from NECF commencement.

Telephone and written responsiveness and complaints data will also be reviewed for energy distributors to the extent data are available.

The Commission will utilise public sources of data and information held by other regulators as much as possible, only requesting information from retailers and distributors to the extent not available from other sources (or required for consistent application).

Retailers will be requested to provide limited revenue and sales billing data separated into: electricity and gas; residential and small business; and standard and market retail contracts, consistent with pre-NECF reporting.

Retailers and distributors will be requested to provide information on actions taken and savings achieved associated with the (progressive) adoption of NECF nationally, to quantify any savings to the extent possible. Noting that expenditures may have occurred pre-NECF commencement nationally (taken as pre-1 July 2012), information will be sought for pre-July 2012, 2012/13, 2013/14 and 2014/15.

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<sup>4</sup> Pre-NECF the Commission collected retailer complaints data on the basis of all customers combined, separated into electricity and gas. The AER collects data on the basis of a single 'energy' category, separated into residential and small business customers.

A template has been developed for retailers to provide the Commission with a limited set of relevant data (for 2 years only), as well as advice from retailers and distributors on actions taken and savings associated with the (progressive) adoption of NECF nationally.

In assessing the level of effective retail energy competition in South Australia for the purposes of the NERL Review the Commission intends to rely on the AEMC competition review findings.

Advice from members of the community on the operation of the NERL in South Australia will be important for the NERL Review. Public submissions will be invited early in 2015, in addition to inviting submissions on the draft NERL Review report in late 2015. Input from members of the community at any time on matters associated with the Terms of Reference would be welcomed.

An indicative timetable for the review is as follows:

#### ***Timetable for NERL Review***

<b>Stage</b>	<b>Timing</b>
Final NERL Review Methodology released (this paper)	March 2014
First annual retailer return due <sup>5</sup>	31 August 2014
First annual distributor cost impact advice due	31 August 2014
NERL Review commences	February 2015
Initial call for submissions	February 2015
Submissions to initial call due	May 2015
Second annual retailer return due	31 August 2015
Second annual distributor cost impact advice due	31 August 2015
Draft Report-NERL Review released	October 2015
Submissions to Draft Report due	mid-December 2015
Final Report-NERL Review released	February 2016

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<sup>5</sup> Given the limited data request from retailers, a separate reporting guideline will not be released, with the reporting requirements defined in Schedule 1 to this Final Decision.

# 1. INTRODUCTION

The Essential Services Commission of South Australia (**Commission**), established under the *Essential Services Commission Act 2002*<sup>6</sup> (**ESC Act**), is the independent economic regulator of essential services in South Australia. In undertaking its regulatory functions, the Commission's primary objective is the ***protection of the long-term interests of South Australian consumers with respect to the price, quality and reliability of essential services.***<sup>7</sup>

On 1 February 2013, the principal regulation of South Australia's retail energy market transferred to the Australian Energy Regulator (**AER**) with the introduction of the National Energy Customer Framework (**NECF**) in South Australia. At the same time, the South Australian Government removed retail energy price regulation.<sup>8</sup>

The AER is now responsible for consumer protection and performance monitoring in the electricity and gas retail market, including:

- ▲ regulating the retailer-customer relationship and associated rights, obligations and consumer protection measures for on-grid electricity and natural gas;
- ▲ regulating distributor (SA Power Networks and Envestra) interactions with customers and retailers, and associated rights, obligations and consumer protection measures;
- ▲ issuing retailer authorisations (replacing retail licences issued by the Commission) and issuing exemptions from the requirement to be authorised;
- ▲ monitoring, enforcing and reporting retailer compliance obligations;
- ▲ reporting on the performance of the energy market and retailer businesses; and
- ▲ administering an energy price comparison service.

Tasmania and the ACT commenced NECF on 1 July 2012, NSW commenced on 1 July 2013, with Victoria and Queensland yet to adopt NECF.<sup>9</sup>

The Commission's previous price regulation role (through setting electricity and gas standing contract prices) was replaced by a price monitoring and reporting regime administered by the Minister for Mineral Resources and Energy (**Minister**) informed by reports from the

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<sup>6</sup> Refer <http://www.legislation.sa.gov.au/LZ/C/A/Essential%20Services%20Commission%20Act%202002.aspx>.

<sup>7</sup> ESC Act 2002, section 6(a).

<sup>8</sup> Media release; available at

[http://www.premier.sa.gov.au/images/news\\_releases/12\\_12Dec/energyprice.pdf](http://www.premier.sa.gov.au/images/news_releases/12_12Dec/energyprice.pdf).

<sup>9</sup> The Standing Council on Energy and Resources (SCER) website advises that "Victoria will implement the NECF, subject to the resolution of state-specific issues. Queensland (QLD) aims to implement the NECF in 2014, subject to SCER agreeing to state-specific variations to support customers outside of south east QLD" (<http://www.scer.gov.au/workstreams/energy-market-reform/national-energy-customer-framework/>).

Commission, AER, the Australian Energy Market Operator (**AEMO**) and the Australian Energy Market Commission (**AEMC**) from time to time.

Under the legislation establishing the operation of the National Energy Retail Law (**NERL**) in South Australia (which in turn establishes NECF), the Commission is required to conduct a review of the operation of the NERL after 1 February 2015 (**NERL Review**).<sup>10</sup>

The requirements on the Commission in undertaking the NERL Review are as follows:

*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.*
- (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.*<sup>11</sup>

## 1.1 Review process & consultation

The nature of the NERL Review warrants the development of a methodology paper to enable a clear methodology to be set for undertaking the review, to set a baseline and ensure that key factors will be monitored in the period leading up to the review.

To assist members of the community engage in the development of the methodology, in November 2013 the Commission released a NERL Review Issues Paper (**Issues Paper**) setting out key issues and matters for consideration, which included:<sup>12</sup>

- ▲ the merits of a suggested list of customer protection indicators and considerations required for the NERL Review;

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<sup>10</sup> 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.

<sup>11</sup> Section 30, *National Energy Retail Law (South Australia) Act 2011*; 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).

<sup>12</sup> Essential Services Commission of South Australia, *NERL Review, Issues Paper, Methodology for Review*, November 2013; available at <http://www.escosa.sa.gov.au/projects/204/nerl-review.aspx#stage-list=0>.

- ▲ whether the NERL Review should adopt a broad interpretation of the term ‘efficiency’, to encompass reviewing the extent of energy retail market competitiveness and pricing outcomes; and
- ▲ determining the need and nature of potential retailer price data reporting requirements.

Submissions on the Issues Paper closed on 13 December 2013, with 11 written submissions received:<sup>13</sup>

#### Retailers (8)

- ▲ AGL
- ▲ Alinta Energy
- ▲ Energy Australia
- ▲ Energy Retailers Association of Australia (ERAA)
- ▲ Lumo Energy
- ▲ Origin Energy
- ▲ Red Energy
- ▲ Simply Energy.

#### Consumer Groups (3)

- ▲ Business SA
- ▲ South Australian Council of Social Service (SACOSS)
- ▲ Conservation Council of South Australia (Conservation Council SA).

The Commission appreciates the contribution made by members of the community in making submissions to the Issues Paper, and acknowledges the valuable input that those submissions have provided into the preparation of this NERL Review Methodology-Final Decision (**Final Decision**).

In preparing this Final Decision, the Commission has considered each of the submissions received. Where appropriate, the Commission has, either by direct quotation or by reference to themes or arguments, mentioned certain arguments and submissions in the text to assist stakeholders to understand the positions it has reached; however, a failure to reference an argument or submission does not mean that the Commission has not taken that argument or submission into account in its deliberations.

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<sup>13</sup> Submissions are available at <http://www.escosa.sa.gov.au/projects/204/nerl-review.aspx>.

## 2. SCOPE OF NERL REVIEW

As outlined in the Issues Paper, the Commission consulted on a scope for the NERL Review to meet the NERL Review terms of reference (**Terms of Reference**) that would require the Commission to:

- ▲ make a finding as to whether overall the operation of the NERL has furthered the interests of South Australian energy consumers (supported by the Terms of Reference requiring the Commission to conduct a review of the operation of the NERL);
- ▲ assess whether the NERL has resulted in increased efficiencies (a focus set by the Terms of Reference); and
- ▲ assess whether the NERL has adversely affected customer protection in pursuit of national consistency (a focus set by the Terms of Reference).

It was proposed that a broad economic interpretation of the term ‘efficiency’ would be adopted, which in addition to assessing any impact on energy company operating costs (technical efficiency) would also consider other efficiency aspects such as the level of competitiveness of the South Australian energy retail market (allocative efficiency).

Given the Commission’s primary objective of the ***protection of the long-term interests of South Australian consumers with respect to the price, quality and reliability of essential services***, the specific NERL Review requirements would be addressed by first seeking to determine if there is any indication that the NERL has *adversely affected customer protection in pursuit of national consistency*.

The performance of the customer protection regulatory framework would be assessed within the context of the market it operated within at the time of the review –a competitive market with deregulated energy retail prices.

An assessment of retail energy pricing outcomes is integral to the NERL Review as an explanatory variable. For example, if there were an increase in the number of hardship customers and disconnections during a period of price decreases then it may raise concerns about the customer protection framework. An increase in hardship customers in the absence of pricing information would be harder to interpret.

Assessing energy price movements is also important in assessing the competitiveness of the South Australian energy retail market. Competition is not an end in itself but, where effective, is most likely to deliver prices that are in the long term interests of consumers.

### 2.1 Submissions

Most of submissions made some comment on the proposed scope of the NERL Review, with retailers generally seeking reduced scope, whereas suggestions for increased scope were received from the consumer groups.

A number of submissions raised concern with undertaking a review of the NERL in 2015, given the non-uniform commencement in NEM jurisdictions, with NECF yet to commence in Victoria and Queensland. It was also seen as important by many respondents that the network sector be included in the review.

Energy Australia put the view that:<sup>14</sup>

*Recognising that the AER is the regulator of South Australia's retail energy market, we believe that the Issues Paper, in a number of areas, exceeds the intent of the requirements of the review and ESCOSA's terms of reference in conducting it, specifically:*

- ▲ *Competition;*
- ▲ *Pricing; and*
- ▲ *Matters impacting the market which are unrelated to NERL implementation.*

Lumo Energy commented that:<sup>15</sup>

*When considering how best to review the National Energy Retail Law (NERL) it is important to recognise the original intent of the National Energy Customer Framework (NECF) and to test the proposals outlined in the Issues Paper against the original objectives as set down by the Standing Council on Energy and Resources (SCER).*

*... The Benefits of the NECF were to include an expected increase in retail competition by reducing regulatory complexity and lowering barriers for energy retailers to enter into the market across participating states and territories.*

Concern over duplication with work undertaken by other bodies and the level of data potentially being sought was raised in a number of retailer submissions. Origin Energy commented that:<sup>16</sup>

*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).*

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<sup>14</sup> EnergyAustralia, *Submission to NERL Review Issues Paper – Methodology for Review*, 13 December 2013, page 1; available at <http://www.escosa.sa.gov.au/library/131220-NEERLReviewIssuesPaperSubmission-EnergyAustralia.pdf>.

<sup>15</sup> Lumo Energy, *Submission to NERL Review: Issues Paper*, 13 December 2013, page 1; available at <http://www.escosa.sa.gov.au/library/131220-NEERLReviewIssuesPaperSubmission-LumoEnergy.pdf>.

<sup>16</sup> Origin Energy, *Response to National Energy Retail Law – Issues Paper – Methodology for Review*, 13 December 2013, page 3; available at <http://www.escosa.sa.gov.au/library/131220-NEERLReviewIssuesPaperSubmission-OriginEnergy.pdf>.

On the issue of data requests, Business SA submitted:<sup>17</sup>

*We are also conscious of minimising the costs on retailers and advise ESCOSA to ensure any data requests are strictly for essential analysis, rather than a 'nice to know' basis.*

Simply Energy raised a range of issues with the proposed methodology:<sup>18</sup>

*The issues we have with the methodology are as follows:*

- ▲ *It presumes there is national consistency in retail regulation where no such national consistency exists.*
- ▲ *It ignores the derogations that South Australia made to the National Energy Customer Framework (NECF) which has forced us to maintain state-specific processes to manage those derogations.*
- ▲ *ESCOSA has not addressed how the methodology will distinguish the impact of NECF upon the outcomes ESCOSA observes, from changes deriving from other broader industry developments and economic trends.*

Simply Energy also referred to the Standing Council on Energy and Resources (**SCER**) website on the source of NECF benefits arguing that “*SCER does not reference operational efficiencies as a benefit arising from the NECF*”.<sup>19</sup>

SACOSS was supportive of various aspects of the scope as outlined in the Issues Paper but proposed additional areas be covered:<sup>20</sup>

*SACOSS is however of the view that observable trends over the two-year review period from Feb 2013 to Feb 2015 are as important as any changes from the pre-NECF period. As such, it is important that ESCOSA incorporate analysis of metrics that may not have been part of its previous performance monitoring regime.*

*South Australian specific provisions are also important to analyse (see Division 3 of the NERL Act 2011 “South Australian arrangements”) as is the influence of any SA specific context for the NERL’s operation such as:*

- ▲ *Heat waves*
- ▲ *Limited competition for gas*
- ▲ *The significant proportion of solar PV customers*
- ▲ *The overwhelming extent of vertical integration between wholesale and retail in the state.*

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<sup>17</sup> Business SA, *Response to Review of the NERL*, 13 December 2013, page 2; available at <http://www.escosa.sa.gov.au/library/131220-NEERLReviewIssuesPaperSubmission-BusinessSA.pdf>

<sup>18</sup> Simply Energy, *Response to NERL Review: Methodology for Review*, 13 December 2013, page 1; available at <http://www.escosa.sa.gov.au/library/131220-NEERLReviewIssuesPaperSubmission-SimplyEnergy.pdf>.

<sup>19</sup> *ibid*, page 1.

<sup>20</sup> SACOSS, *Response to NERL Review Methodology Issues Paper*, 13 December 2013, page 3; available at <http://www.escosa.sa.gov.au/library/131220-NEERLReviewIssuesPaperSubmission-SACOSS.pdf>.

SACOSS also sought that the NERL Review analysis be undertaken at a detailed level:<sup>21</sup>

*In answering these questions it will be important to distinguish the performance of individual retailers from state-wide trends. Further it will be important to answer these questions for electricity and gas and, separately, for dual fuel customers (i.e. those who are supplied both energy sources by the same retailer).*

Business SA requested that:<sup>22</sup>

*ESCOSA review the NERL in terms of how it caters for the needs of small business and how it measures energy affordability from this perspective.*

Business SA raised concern that the needs of small business had not been given an appropriate level of consideration in the first annual performance report released since the commencement of NECF.<sup>23</sup>

The Conservation Council SA sought more emphasis being placed on environmental factors:<sup>24</sup>

*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.*

A number of submissions commented on the timing of the NERL Review, with Alinta Energy cautioning against the review being undertaken at this stage of NECF development:<sup>25</sup>

*In the current environment it remains unclear as to when Victoria and Queensland will adopt the NECF. The existing lack of national adoption impacts the level of market efficiency and we would caution the Commission in attempting to undertake an efficiency review where full adoption has not occurred or has not been in place for a sufficient period of time, as such an assessment is likely to result in an inaccurate assessment of the efficiency and potential gains that are likely to be realised when the remaining jurisdictions adopt the NECF.*

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<sup>21</sup> Ibid, page 3.

<sup>22</sup> Business SA *op. cit.*, page 1.

<sup>23</sup> Ibid, page 1.

<sup>24</sup> Conservation Council SA, *Review of the operation of the National Energy Retail Law (NERL) in South Australia*, 10 January 2014; page 1; available at <http://www.escosa.sa.gov.au/library/140211-NEERLReviewIssuesPaperSubmission-ConservationCouncil.pdf>.

<sup>25</sup> Alinta Energy, *Submission to National Energy Retail Law Methodology for Review Issues Paper*, 13 December 2013, page 2; available at <http://www.escosa.sa.gov.au/library/131220-NEERLReviewIssuesPaperSubmission-AlintaEnergy.pdf>.

In the same vein, the ERAA submitted that:<sup>26</sup>

*Whilst recognising [the] terms of reference, an assessment of the impact of the NECF in the two years since its introduction is different to a longer-term cost-benefit analysis. Whilst this progression to a national approach may require investments from retailers to facilitate this change, the efficiencies achieved in the medium and long-term through a common approach will make this transition worthwhile. This view is supported in the Issues Paper, with the Commission stating that “such efficiencies...may not be demonstrated (at least to their full potential) in the timeframe of the NERL Review.” The ERAA recommends that the Commission clearly notes this distinction in future stages of the NERL Review.*

Some submissions, principally from retailers, suggested that further discussion was required before finalising the methodology for the NERL Review.

Other matters raised in submissions included:

- ▲ that the Review should include the network sector, consistent with the coverage of NECF (retailers);
- ▲ the need to emphasise the importance of disconnections of households to the NERL Review (SACOSS);
- ▲ that, rather than price, the NERL Review should instead focus on the variety of product offerings available and the non-price benefits which customers can select (EnergyAustralia); and
- ▲ specific matters concerning the approach to be adopted in undertaking analysis (SACOSS).

## 2.2 Commission’s Considerations

The Commission’s consideration of the matters to take into account in considering the scope of the NERL Review are summarised below, grouped and assessed according to the following areas:

- ▲ coverage or overall scope;
- ▲ timing of review (given full efficiencies are unlikely to be achieved by 2015 even if remaining NEM jurisdictions proceeded to implement in 2014);
- ▲ data issues (at the general level); and
- ▲ further consultation.

### 2.2.1 Coverage

As indicated above, in responding to the Issues Paper retailers generally sought reduced scope, whereas suggestions for increased scope were received from the consumer groups.

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<sup>26</sup> ERAA, *Response to NERL Review: Issues Paper*, 13 December 2013, page 1; available at <http://www.escosa.sa.gov.au/library/131220-NERLReviewIssuesPaperSubmission-ERAA.pdf>.

### *Submissions seeking reduced coverage*

The level of competitiveness of the South Australian energy retail market and energy prices will only be assessed to the extent required to address the Terms of Reference, with a broad definition of the term "efficiency" to be adopted.

To provide context, it is noted that the second-reading speech for the NERL provided an overview of its intended benefits.

**National Energy Retail Law (South Australia) Bill**

**Second Reading Speech (excerpt)**

*Key Benefits of this Bill*

The *National Energy Retail Law (South Australia) Bill 2010* seeks to achieve a national regulatory regime for retailers and distributors selling and supplying energy to customers. The Customer Framework will be under the jurisdiction of the Australian Energy Regulator as regulator and enforcement body and the Australian Energy Market Commission as rule maker. Its primary aims are to streamline regulatory requirements, increase efficiency through regulatory harmonisation and maintain best practice consumer protection. As a result, the Bill is expected to facilitate an increase in retail competition by reducing regulatory complexity and lowering barriers to entry, as well as by encouraging consumers to participate in this competitive market by providing strong and equitable consumer protections across participating jurisdictions.

*Increased efficiency from national regulatory arrangements for energy*

The separate regulation of energy retail markets by individual States and Territories is inefficient and imposes costs on retailers operating across State borders. There is duplication of processes and systems, which leads to higher compliance costs.

At the request of the Council of Australian Governments, the Ministerial Council on Energy has driven this current legislative reform with a key aim to achieve a national, harmonised regulatory regime for energy retailing. As a result, this reform removes many of the current inconsistencies for energy retailers and cuts red tape and compliance costs for Australian retailers operating across State borders.

*Promoting competition via national authorisation framework*

This Bill contains significant measures to facilitate retailers moving beyond individual State borders and to operate nationally. This brings benefits to customers from increased competition. One of these measures is the establishment of a national retailer authorisation, allowing a retailer to obtain one authorisation to operate nationally across all participating jurisdictions, rather than the six separate retail licences that would currently be required.

*Consumer benefits*

This Bill seeks to provide a comprehensive package of robust energy-specific consumer protections. The Customer Framework is intended to complement other general consumer protection laws such as the Australian Consumer Law and privacy legislation. Small customers will also have an efficient and effective option to deal with complaints and disputes via access to jurisdictional energy ombudsman schemes.

A further key benefit of the Customer Framework to consumers of electricity and gas is greater consistency of consumer rights across all participating jurisdictions. Energy consumers living in different parts of Australia benefit from having the same access to information and level of protection irrespective of which jurisdiction they reside in. Particular benefits flow to vulnerable consumers in financial hardship under national hardship requirements forming part of the framework.

The NERL Review will seek to determine the extent to which these benefits have been achieved at the time of the review.

An objective of NECF is to promote retail competition, as evidenced by the Second Reading Speech. This provides further support for having regard to the level of competition pre- and post-NECF.

Whilst it is acknowledged that the Australian Energy Market Agreement (**AEMA**) gives the AEMC responsibility for assessing the state of competition *for the purpose of decisions on the retention, removal or reintroduction of retail energy price controls*<sup>27</sup>, the findings of such assessments are relevant for the purposes of the NERL Review.

Consistent with the approach adopted in the Issues Paper, reducing regulatory complexity should have the outcome of improving the operational efficiency of retailers.

The Second Reading Speech makes it clear that the intent of the reform is to bring benefits to customers, e.g., from increased competition. This outcome cannot be assessed without examining energy prices, even if it proves hard to unbundle NECF from other price drivers.

It is also appropriate to note that the national energy retail objective states that the objective of the NERL is to:

*promote efficient investment in, and efficient operation and use of, energy services for the long term interests of consumers of energy with respect to price, quality, safety, reliability and security of supply of energy*'. (emphasis added)<sup>28</sup>

### **Submissions seeking increased coverage**

The Commission, in determining the NERL Review coverage, has identified factors either directly required to address the Terms of Reference or to act as explanatory factors when seeking to interpret trends.<sup>29</sup>

State-specific schemes, such as feed-in tariffs and energy efficiency schemes, are not incorporated into the NERL<sup>30</sup> and in the absence of any South Australian Government action will exist in the same form pre and post-NECF. Unless material change occurs in the operation of such schemes, they are not expected to factor largely in the NERL Review.<sup>31</sup>

The experience of Solar PV and GreenPower customers may be relevant in assessing the overall level of retail competition. While the NERL does not directly impact on the operation of such schemes, the NERL Review will be examining the extent to which the NERL promotes an overall increase in the level of competition.

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<sup>27</sup> Standing Council on Energy and Resources, *Australian Energy Market Agreement*, 9 December 2013, clause 14.12, page 31; available at <http://www.scer.gov.au/governance/agreements/>.

<sup>28</sup> Section 13 of the National Energy Retail Law (South Australia) Act 2011.

<sup>29</sup> Section 30(2) of the National Energy Retail Law (South Australia) Act 2011.

<sup>30</sup> Whilst such schemes are not incorporated into the NERL, in many instances the NERL has regard to such schemes. For example, section 154(2)(h) of the NERL requires certain information on solar PV customers covered by prescribed feed-in arrangements to be provided in the event of a Retailer of Last Resort event. But here the NERL only seeks to manage an event in an appropriate manner rather than the NERL encompassing the operation of such state-based schemes.

<sup>31</sup> The experience of Solar PV and GreenPower customers may be relevant in assessing the overall level of retail competition. While the NERL does not directly impact on the operation of such schemes, the NERL Review will be examining the extent to which the NERL promotes an overall increase in the level of competition.

While it will be important to have regard to other specific South Australian provisions under NERL (e.g. heatwave disconnection requirements) and competition issues (e.g., limited competition for gas in certain areas), as the commencement of NECF has not changed the circumstances under which these factors operate, there is not considered a need to analyse such matters in detail.

In undertaking the NERL Review, regard will be had to a number of external factors (eg the level of unemployment) as explanatory variables - to place any movement in NERL customer protection indicators in context. These matters are discussed in more detail in subsequent chapters of this paper. However, importance will also be placed on assessing interactions between customer protection indicators (e.g., movement of hardship customer numbers relative to movements in disconnection trends).

The NERL Review will assess state-wide trends rather than examine the performance of individual retailers. However, assessments will be made distinguishing the top three or four retailers (in terms of market share) as a group from the remaining retailers as a group, given the level of concentration in the South Australian electricity retail market.<sup>32</sup>

There will be no independent assessment undertaken of the extent to which individual NERL provisions are being complied with. The Commission no longer has a regulatory role in this area; however to the extent that non-compliance is reported by the AER and/or is identified as an issue in submissions such evidence may be noted.

The Commission will not be assessing the performance of other regulators, such as the AER. Reviewing the performance of national energy bodies is the function of SCER.

Similarly, whilst raised in submissions to the Issues Paper, the nature of performance reporting post-NECF will not be reviewed. Any member of the community having comments in such areas should direct them to the relevant organisations, who should welcome the feedback.

Whilst the NERL Review will examine movements in small business customer protection indicators, it needs to be recognised that energy affordability hardship is confined to residential customers under the NERL.

Changes in energy prices faced by small business is nevertheless important, but from an economic viewpoint. Information on the level of switching and the availability of lower market prices will be assessed to see the extent to which small businesses are accessing potential lower energy prices.

Whilst the importance to the community of good environmental policy is recognised, the NERL has not introduced changes in the interaction of the energy customer protection

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<sup>32</sup> The South Australian electricity retail market remains concentrated; with three retailers, AGL, Origin Energy and EnergyAustralia, having a combined South Australian residential market share of 80%, holding 49%, 20% and 11% of the market respectively. Source: Australian Energy Regulator, *Annual Report on the Performance of the Retail Energy Market 2012-13*, 26 November 2013; available at: <http://www.aer.gov.au/node/22827>.

framework with environmental policy. Noting the extensive consultation that occurred in the development of the NECF, the NERL Review will be limited to assessing its operation as legislated.

That the NERL Review should include an assessment of relevant distributor matters and performance is acknowledged. The relationship between distributors and customers is dealt with in Part 3 of the NERL and covers:

- ▲ obligation to provide customer connection services;
- ▲ customer connection contracts generally;
- ▲ deemed standard connection contracts;
- ▲ deemed AER approved standard connection contracts; and
- ▲ negotiated connection contracts.

### 2.2.2 *Timing of Review*

The delayed and progressive implementation of NECF is acknowledged, as is the fact that at the time of the NERL Review (2015) not all potential benefits may have been achieved.

Whilst the legislation only requires that the NERL Review not commence before 1 January 2015, it is considered that Parliament would have expected a timely review and hence the NERL Review will commence in February 2015. Parliament or the Minister has the ability to seek an additional review should they wish to have an assessment undertaken when all NEM jurisdictions are part of NECF.

The difficulty of identifying operational efficiencies was recognised in the Issues Paper: if only limited action has been taken, with limited savings identified, then the NERL Review can recognise that without seeking to identify benefits that are yet to be achieved.

### 2.2.3 *Data*

The call for the NERL Review to make an assessment using the full suite of post-NECF measures (noting that the Issues Paper proposed to only employ post-NECF indicators that had a pre-NECF counterpart) has been considered, having regard to the need to make a finding as to whether overall the operation of the NERL has furthered the interests of South Australian energy customers.

As discussed above, the focus of the review is a before and after comparison, noting the reference to *impact of* the NERL. Therefore, any quantitative assessment will have that focus.

Having considered submissions, regard will be had to other measures collected by the AER where these may assist interpretation of the core indicators post-NERL.

The information sourced directly from retailers and distributors will be limited, with specific requirements outlined in Chapter 6 of this paper. That scope of information is narrower than was proposed in the Issues Paper, striking a balance between the concerns expressed as to regulatory impositions and the necessary data requirements for the NERL Review.

For the avoidance of doubt, public sources of data and information held by other regulators will be utilised as much as possible, with information only requested from retailers and distributors to the extent not available from other sources or required for consistency over time.

Data collected from retailers and distributors will be treated in accordance with Part 5 of the ESC Act. For example, Sales and Revenue data will only be used to determine a global average price. Were some retailer results to show marked differences, the fact that such differences exist may be commented on, but an individual retailer's results would not be identified.<sup>33</sup>

In submissions, retailers raised a concern that the Commission might undertake analysis which was more appropriately the mandate of other regulators and/or seek data at a level of detail that was not warranted given the cost of provision. The concern is recognised and the NERL Review will rely wherever possible on the investigations of other parties (e.g. reviews and assessments undertaken by other regulatory bodies) to reduce regulatory overlap and to minimise any additional regulatory burden and costs.

In relation to small business data requirements, a number of the AER indicators to be relied upon for the NERL Review are separately collected for small business. If, for whatever reason, the AER were not to publish those data, then the Commission would request the data from the AER so that small business pre and post-NECF outcomes can be determined.

In relation to energy prices, the Commission's annual energy pricing report (**Ministerial Pricing Report**) covers movements in energy prices for small business.<sup>34</sup> As outlined in Chapter 6, the Commission will be seeking further pricing information from retailers, disaggregated for small business.

#### 2.2.4 Further Consultation

It is noted that some members of the community would welcome the opportunity to further discuss aspects of the NERL Review methodology.

The Commission has paid close attention to the matters raised in submissions and this Final Methodology paper has addressed the key issues raised in submissions.

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<sup>33</sup> As discussed in section 2.2.1, however, it is expected that assessments will be made distinguishing the top three or four retailers in terms of market share as a group from the remaining retailers as a group, given the level of concentration in the South Australian electricity retail market

<sup>34</sup> Essential Services Commission of South Australia, *Energy Retail Prices in South Australia-Ministerial Pricing Report 2013*, August 2013; available at <http://www.escosa.sa.gov.au/article/newsdetail.aspx?p=16&id=1183>.

Aside from the data requests of retailers and distributors (discussed in the previous section),<sup>35</sup> the NERL Review will seek further submissions to allow members of the community to raise new issues or present new information on issues previously put to the Commission.

## 2.3 Approach

The NERL Review will require an assessment to be made as to whether the overall operation of the NERL has furthered interests of South Australian energy consumers, with a focus on:

- ▲ assessment of whether NERL has adversely affected customer protection in pursuit of national consistency; and
- ▲ assessment of whether NERL has resulted in increased efficiencies.

A broad economic use of the term ‘efficiency’ will be adopted, covering:

- ▲ technical efficiency: assessed through extent of improvements in the efficiency of the operation of retailers and distributors;
- ▲ allocative efficiency: assessed through reviewing the competitiveness of the South Australian energy retail market; and reviewing price movements; and
- ▲ dynamic efficiency: assessed through evidence of innovation.

Monitoring the level of competitiveness will be undertaken to assess how well NECF customer protections operate within a competitive market. Monitoring retail energy price movements also to be undertaken to provide context to any trends in the customer protection indicators adopted for the purposes of the NERL Review.

As noted above, publicly available reports and sources of data will be relied upon to the extent possible, with any data received through specific information requests to be treated in accordance with Part 5 of the ESC Act.

Consistent with NECF coverage, for the purposes of the NERL Review a “customer” will be defined as:

- ▲ residential or small business (excluding large business);
- ▲ electricity and/or gas;
- ▲ small business electricity customer - annual electricity consumption of less than 160MWh; and
- ▲ small business gas customer - annual gas consumption of less than 1TJ.

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<sup>35</sup> Noting that the first annual return for the NERL Review will be required to be submitted to the Commission by 31 August 2014. As noted in section 6.3, the Commission will liaise with individual retailers on the billing data request on the basis that it would be prepared to accept data in an alternative format to that requested in Schedule 1 where it can be demonstrated to better serve the NERL Review purposes.

Having regard to matters raised in submissions, the NERL Review will:

- ▲ explicitly include customer-distributor arrangements;
- ▲ incorporate a larger range of external indicators (specific indicators identified in subsequent sections), without detracting from the importance of assessing the interaction of customer protection indicators; and
- ▲ examine the extent and diversity of South Australian and other jurisdiction derogations to the NERL, to gain a sense of the extent to which there could be a materially reduced level of harmonisation benefits flowing from NECF when (hopefully) all jurisdictions have adopted the NERL.

Submissions will be invited early in 2015, in addition to submissions being sought on the draft NERL Review report. This will enable the draft report to be informed by the views of members of the community on the operation of the NERL, rather than limited to the Commission's assessment covering aspects such as trends in relevant indicators.

While the Commission reserves the right to vary its approach to conducting the review (or aspects of the review) in the light of new information, it is intended that the NERL Review will be conducted in accordance with the methodology outlined in this paper. Consequently, the Commission will not consult further on the NERL Review methodology.

### 3. CUSTOMER PROTECTION

As noted in the Issues Paper, it is expected that NECF (incorporating the NERL, National Energy Retail Rules (**NERR**) and associated State instruments) should contain consumer protections at least equal to those applying pre-NECF in South Australia.

Nevertheless, the NERL Review will examine the extent to which the NERL provisions reflect the pre-NECF South Australian energy customer protection framework.

The view was taken in the Issues Paper that it would not be necessary to separate out (normalise for) any adverse outcomes from ad hoc issues such as the implementation of a new billing system that might occur during the period of the NERL Review, as such issues have impacted the pre-NECF period and the expectation is that having a common customer protection framework should reduce the instances of such issues.

The Issues Paper noted the intention to rely on using the time series of customer protection indicators it previously collected as a base from which to discern broad trends in consumer protection outcomes. Whilst noting that there are differences in the indicators being collected by the AER and those previously collected by the Commission, the Issues Paper proposed adopting the following core set of customer protection indicators, based on information already being collected by the AER:

- ▲ telephone and written performance;
- ▲ complaints (separate electricity & gas);
- ▲ hardship program customers (residential customers only, separate electricity & gas);
- ▲ concession recipients;
- ▲ disconnection for non-payment (separate electricity & gas, residential & small business);
- ▲ reconnection in same name (separate electricity & gas, residential & small business);
- ▲ instalment plans;
- ▲ customer numbers (by retailer); and
- ▲ security deposits (separate electricity & gas, residential & small business).

This would achieve a time series of data covering both the pre-NECF and post-NECF period covered by the NERL Review.

Other sources of data previously relied upon would also be considered, such as the number of customer complaints to the Energy and Water Ombudsman SA (**EWOSA**).

It was only considered feasible in a *quantitative* sense to determine if customer protection has deteriorated or not under NECF by comparing a core set of performance indicators under NECF with performance prior to NECF (i.e., for a set of indicators collected and reported before and after the commencement of NECF in South Australia). Where the AER reports a broader range of hardship indicators, there will be no pre-NECF performance against which to compare for these additional indicators.

It was noted in the Issues Paper that it would be more difficult to make *qualitative* assessments in the NERL Review, such as the extent to which customers consider dealings with retailers have improved; although in that case an examination of trends in complaints to retailers and ombudsman would assist. Customers would be encouraged to make submissions at the time of the NERL Review which may raise qualitative issues with the operation of the NERL at that time.

One potential adverse outcome of a standardised national framework could be a loss of innovation to deal with specific South Australian issues. The extent to which this may be occurring might be discernible from submissions closer to the NERL Review reporting time.

### 3.1 Submissions

There was some support in submissions for the customer protection indicators proposed in the Issues Paper, albeit that retailers requested that as much of the data as possible be sourced from other than them. However, concern was raised on the ability for the Commission to unambiguously interpret movements in the customer protection indicators and/or be able to distinguish impacts resulting from the NERL from external impacts.

AGL submitted that:<sup>36</sup>

*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 further submitted that:<sup>37</sup>

*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 ...*

*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.*

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<sup>36</sup> AGL, *Response to NERL Review: Issues Paper*, 11 December 2013, page 1; available at <http://www.escosa.sa.gov.au/library/131220-NERLReviewIssuesPaperSubmission-AGL.pdf>.

<sup>37</sup> *Ibid*, page 2.

Red Energy submitted that:<sup>38</sup>

*... we have concerns surrounding the analysis to be undertaken of impacts of the introduction of the NERL when compared with other external impacts outside of the NERL. ....*

*In further reviewing the Issues Paper, Red Energy believe a number of the “key performance indicators” intended to be analysed by the Commission are inappropriate. Indicators such as the number of customers in retailer hardship programs under the NERL compared with numbers under the old regime do not necessarily provide an indication that the consumer protections under the NECF are falling, but rather that they are succeeding.*

Lumo Energy submitted that:<sup>39</sup>

*There are many factors that influence and drive trends and the NERL review should be considered in tandem with all aspects. Energy affordability has widely been recognised as an increasing issue for Australians in general and increases in the general cost of living will have a direct impact on reporting indicators, such as disconnection and hardship rates. Lumo Energy would caution the Commission in drawing the conclusion that a ‘step up change’ from a reporting indicator is indicative of a potential failure of the NECF.*

Alinta Energy sought clarification on the use of two of the proposed indicators:<sup>40</sup>

*In considering the proposed metrics as outlined in the Issues Paper we seek clarification on the use of “concession recipients” as a metric. Concession schemes are determined by the government of the day, while retailers have responsibility for aspects of administration and delivery of the policy only. A consumer’s access to a concession is not determined by the retailer, and therefore the “concessions recipients” metric is of limited value, if any, to the Commission in its review of the NERL. If the intent is to use the metric to determine affordability then we question this use and the validity of its inclusion in the review. The number of concession recipients is simply a representation of the number of people within the jurisdiction who have access to the relevant government concession scheme at a particular point in time.*

*Additionally the Commission needs to provide clear and additional explanation and guidance on what is meant by “instalment plans” as a proposed metric. It is assumed the Commission is referring to instalment plans offered to consumers who may be experiencing financial stress and not those offered as part of a market product offer. Again this points to the issue of clarity and transparency in reporting.*

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<sup>38</sup> Red Energy, *Response to NERL Review-Methodology for review Issues Paper*, 13 December 2013, page 1; available at <http://www.escosa.sa.gov.au/library/131220-NERLReviewIssuesPaperSubmission-RedEnergy.pdf>.

<sup>39</sup> Lumo Energy *op. cit.*, page 3.

<sup>40</sup> Alinta Energy *op. cit.*, page 2.

SACOSS sought a focus on disconnection outcomes:<sup>41</sup>

*The NECF conceives of disconnections as a 'last resort' option (section 47 of the NERL) but SACOSS is also increasingly of the view that energy bills are becoming simply unaffordable for many households and the NECF simply codifies a path to exclusion from the market. SACOSS would like to see this intent of "last resort" tested by the NERL Review.*

Conservation Council SA was concerned that there had been a deterioration in the quality of greenhouse gas disclosure on electricity bills in South Australia following the adoption of NECF:<sup>42</sup>

*The subsequent ad hoc and undefined approaches to greenhouse gas disclosure have not enabled consumers to make informed choices.*

## 3.2 Commission's Considerations

Consideration of the matters to be taken into account in reviewing customer protection performance are grouped and assessed according to the following areas:

- ▲ customer protection indicators;
- ▲ distributors; and
- ▲ external factors.

### 3.2.1 Customer Protection Indicators

It is accepted that there are issues in using the concession recipient indicator as a reliable indicator of energy customer affordability, with specific hardship indicators collected in more recent times. Accordingly, this metric will not be included in the core set of indicators to be used for the NERL Review.

It will be important to analyse how the suite of hardship indicators interact with each other and the 'story' that tells rather than focus on trends in individual indicators. For example, it is accepted that an increase in hardship customers cannot be interpreted in isolation and that an increase may be a favourable outcome, but that the Commission, with its experience, will seek to interpret any changes in hardship customer numbers appropriately.

While the impact on NERL Review indicators of known events, such as issues associated with the introduction of a new billing system, will be taken into account, it is not generally expected that such events will be found attributable to NECF per se.

Whilst, in accordance with the Terms of Reference, the review will attempt to isolate the impact of the NERL on energy customers, it is recognised that the chosen customer protection indicators will be influenced by other factors. As stated previously in this paper, this is why competition and price movements will be used as 'explanatory variables'. These

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<sup>41</sup> SACOSS *op. cit.*, page 2.

<sup>42</sup> Conservation Council SA *op. cit.*, page 3.

'external factors' will be supplemented by additional external factors suggested in a number of the submissions received.

Notwithstanding external impacts, the interaction of the customer protection indicators with each other can be more important than explaining the absolute change in any individual indicator. For example, were increasing disconnections to be experienced against a reducing number of hardship customers, this could indicate that retailers were not adhering as tightly to their hardship program as at some earlier time.

The Commission has found it useful to monitor the level of EWOSA complaints as percentage of an energy company's complaints to determine how well front-line staff are dealing with complaints, a level of performance that should be largely independent of changes in external factors.

A major incident such as a failed implementation of a billing system might be expected to generate a large number of complaints that may be difficult for the retailer to handle, which could lead to overflow to EWOSA. However, such a circumstance is considered to be largely under the control of the retailer, in terms of performance of the billing system and responding to any marked increase in telephone calls. For example, retailers should plan for an increase in telephone calls and complaints when installing a new billing system and staff their call centres accordingly and to the extent they do not, this should not necessarily be interpreted as a failing of the regulatory system.

The concerns raised in a number of the submissions to the Issues Paper over the delayed and progressive implementation of NECF and the ability to separately identify the impacts of NERL from other factors is noted. However, were a conclusion of the NERL Review to be that no discernible impact of the NERL on energy customers could be identified, then this would not necessarily be an adverse outcome. Given the implementation of NECF is in transition, if no material failings were evident then there could be an expectation that, in time, the efficiencies would flow once NECF had commenced in all jurisdictions.

It is agreed that the NERL Review should test that the last resort disconnection provision is working as a key factor in assessing the Terms of Reference as to whether NERL has adversely affected customer protection and in terms of overall assessment of operation of the NERL.

The requirement for the contents of retail energy bills is covered by clause 25 of the NERR, which does not include a requirement for bills to disclose the level of greenhouse gas emissions. A review of a small sample of electricity bills indicates that at least some retailers are continuing to provide this information. However, Conservation Council SA raised concern in its submission that there was now uncertainty on what basis this information has been derived. This issue may be pertinent to the Terms of Reference requiring an assessment as to whether the implementation of the NERL has *adversely affected customer protection in pursuit of national consistency*. Rather than a NERL Review methodology issue, this is an example of the type of information that would be useful to receive through submissions when the NERL Review commences.

### 3.2.2 Distributors

As stated above, it is accepted that the NERL Review should include the impact of the NERL on the distributor-customer interaction. The NERL has introduced a triangular contractual relationship for both electricity and gas customers, with distributors required to contract directly with customers in relation to connection and supply (in addition to the contractual relationship customers have with retailers). This reflects the pre-NECF approach for SA Power Networks (electricity distributor), but represents a change for Envestra (gas distributor).

Of the available suite of pre-NECF customer protection indicators, the chosen NERL indicators for distributors will be telephone and written responsiveness, and complaints (including complaints received by the EWOSA). Whilst these are customer service measures, they are important in monitoring customer protection insofar as high levels of customer service are integral to ensuring customer protection.

To date, the AER has only undertaken limited reporting on customer performance for distributors. The AER did not report on distributor performance in its first annual retail energy market report.<sup>43</sup> Whilst the AER did report on electricity distributor telephone responsiveness performance in its 2013 state of the energy market report, it did so only up to 2011/12 based on the Commission reporting.<sup>44</sup>

The AER has advised the Commission that it is in the process of reviewing distributor reporting requirements and to the extent that it reports on relevant indicators for the NERL Review, the Commission will utilise the AER reports, or seek relevant data from the AER.

#### *Telephone and written responsiveness*

In the recently released draft decision on SA Power Networks service standards<sup>45</sup> the Commission proposed to retain the current telephone and written responsiveness standards, with SA Power Networks currently providing this information to the Commission through Electricity Industry Guideline No.1<sup>46</sup>. As a result, this information will be available for SA Power Networks for the purposes of the NERL Review.

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<sup>43</sup> Australian Energy Regulator, *Annual Report on the Performance of the Retail Energy Market 2012-13*; available at <http://www.aer.gov.au/sites/default/files/801%20AER%20Performance%20Annual%20Report%20FA%20O.P.DF>

<sup>44</sup> Australian Energy Regulator, *State of the Energy Market 2013*; available at <http://www.aer.gov.au/node/23147>

<sup>45</sup> Essential Services Commission of South Australia, *SA Power Networks Jurisdictional Service Standards for the 2015-2020 Regulatory Period, Draft Decision*, November 2013, page 3; available at <http://www.escosa.sa.gov.au/library/131122-SAPowerNetworksServiceStandardsFramework-DraftDecision.pdf>

<sup>46</sup> Essential Services Commission of South Australia, *Electricity Regulatory Information Requirements – Distribution, Electricity Industry Guideline No.1 (G1/11)*, September 2013, page 16; available at [http://www.escosa.sa.gov.au/library/130905-GuidelineNo1\\_ElectricityDistribution\\_G1-11.pdf](http://www.escosa.sa.gov.au/library/130905-GuidelineNo1_ElectricityDistribution_G1-11.pdf)

As, pre-NECF, Envestra did not have a direct relationship with customers, similar telephone and written responsiveness standards were not set for Envestra and, as a result, Envestra is not currently providing this information through Gas Industry Guideline No.1.<sup>47</sup>

Work is due to commence on Envestra's service standard framework to cover the next regulatory period to apply from 1 July 2016, which is outside the period for the NERL Review. Consequently, the equivalent telephone and written performance standard data will not be available for the purposes of the NERL Review, even if it were to be introduced for the next regulatory period.

However, should the AER collect data for Envestra which is comparable to that it collects for SA Power Networks (i.e. fault line response times) then this would be sought from the AER for the purposes of the NERL Review. Whilst there would be no comparable pre-NECF Envestra data, any post-NECF data would be considered in conjunction with retailer data to determine the extent to which the overall customer experience may have changed post-NECF.

### **Complaints**

The NERL requires distributors to have a standard complaints and dispute resolution procedure (clause 81).

The Commission expects to have access to energy distributor complaints data of sufficient quality and categorisation for the NERL Review, albeit sourced from a number of areas.

The AER has advised the Commission that SA Power Networks is required to report on complaints to the AER according to the following comprehensive range of categories:

- ▲ reliability of supply;
- ▲ technical quality of supply;
- ▲ administrative process or customer service;
- ▲ connection or augmentation; and
- ▲ other.

The Commission will seek access to those data, to be supplemented with EWOSA data to compare the performance of SA Power Networks at first point of customer contact in dealing with complaints.

Gas Industry Guideline No.2 (GIG 1/5)<sup>48</sup> requires Envestra to report annually on complaints by a range of categories. The Commission would seek access to any data the AER collects in this area.

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<sup>47</sup> Essential Services Commission of South Australia, *Gas Regulatory Information Requirements – Distribution System, Gas Industry Guideline No.1 (GIG 1/5)*, September 2013; available at [http://www.escosa.sa.gov.au/library/130905-GuidelineNo1\\_GasDistribution\\_G1-5.pdf](http://www.escosa.sa.gov.au/library/130905-GuidelineNo1_GasDistribution_G1-5.pdf).

<sup>48</sup> Ibid.

As the case for electricity, gas distributor complaints data will be assessed alongside EWOSA data to compare the performance of Envestra call centre operators in dealing with complaints.

### 3.2.3 External Factors

The proposition made in submissions of the need to have regard to external factors when seeking to isolate the impact of NERL is accepted and many of the external factors proposed in submissions to the Issues Paper will be adopted. Regard will also be had to any other external factors that might be identified as having a material impact on changes in the selected energy customer protection measures to be monitored for the NERL Review. Energy price movements and the level of competition have previously been identified as external factors for this purpose.

Additional external factors adopted include:

- ▲ changes in the level of concessional rebates (if any changes: State Government policy);
- ▲ household incomes, State GSP and unemployment rate (as indicators of any potential deterioration in customer incomes);
- ▲ average energy consumption (as a driver of bill changes, to complement analysis of price movements); and
- ▲ trends in the level of complaints to Ombudsman SA, the Telecommunications Industry Ombudsman and complaints to SA Water (as indicators of any general increase in society's preparedness to complain);<sup>49</sup>

## 3.3 Approach

The following core customer protection indicators will be adopted for assessing energy retailer performance, comprising:

- ▲ telephone and written responsiveness (all customers combined, combined energy);
- ▲ complaints (all customers combined, combined energy<sup>50</sup>);
- ▲ hardship program customers (residential customers only, separate electricity & gas);
- ▲ disconnection for non-payment (residential & small business, separate electricity & gas);
- ▲ reconnection in same name (residential & small business, separate electricity & gas);
- ▲ instalment/payment plans (residential customers only, separate electricity & gas); and
- ▲ security deposits (residential & small business, combined energy).

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<sup>49</sup> noting that energy retailer complaints will also be assessed against complaints received by EWOSA to determine the extent to which energy companies are resolving complaints at the first point of contact.

<sup>50</sup> Pre-NECF the Commission collected retailer complaints data on the basis of all customers combined, separated into electricity and gas. The AER collects data on the basis of a single 'energy' category, separated into residential and small business customers.

The Commission will rely on sourcing these indicators post-NECF from the AER. To the extent such data are not published, the Commission will seek access from the AER rather than request retailers to provide directly to the Commission.

A subset of these indicators will be adopted to assess energy distributors' performance, comprising:

- ▲ telephone and written responsiveness; and
- ▲ complaints.

South Australian external indicators (external to energy customer protection indicators) to be monitored include:

- ▲ level of competition;
- ▲ retail energy prices;
- ▲ level of concession rebate;
- ▲ household income;
- ▲ average energy consumption;
- ▲ gross state product;
- ▲ unemployment rate;
- ▲ complaints to Ombudsman SA;
- ▲ complaints to Telecommunications Industry Ombudsman; and
- ▲ complaints to SA Water.

Complaints to EWOSA will be sought from the Ombudsman and considered in conjunction with the customer protection indicators.

Required information and sources of data for the NERL Review are discussed further in Chapter 7, with a proforma for annual retailers' return (for 2 years only) contained in Schedule 1. However, billing data will also be requested for 2012/13 to enable continuity with the data previously collected by the Commission.

## 4. EFFICIENCY

The NERL Review will determine whether or not the NERL has resulted in increased efficiencies, quantifying impacts to the extent possible.

It was proposed in the Issues Paper that the NERL Review would adopt a broad economic definition of the term “efficiency”:<sup>51</sup>

- ▲ Productive efficiency - which incorporates technical efficiency, requiring that goods and services be produced at lowest possible cost:
  - in the context of the NERL Review, this would cover questions such as whether electricity prices have reduced relative to retailer operating costs;
- ▲ Allocative efficiency - which relates to ensuring the community receives greatest return from its scarce resources:
  - in the context of the NERL Review, this would cover questions as to whether the energy retail market is competitive; and
- ▲ Dynamic efficiency – which covers the allocation of resources over time:
  - in the context of the NERL Review, this would cover questions such as the extent of innovation occurring in market contract offers and terms and conditions, including retailer approaches to customer billing.

The Issues Paper noted that a key objective of NECF is to improve the efficiency of the operation of retailers, given that most retailers in the National Electricity Market (**NEM**) operate in more than one State or Territory. A premise underlying NECF is that differing regulatory requirements in each jurisdiction result in additional costs being incurred by retailers. This would occur through retailers either tailoring their operations to the individual requirements of each jurisdiction or adopting an approach of applying the most stringent requirement (and hence costly) identified in any jurisdiction on a national basis.

In assessing the extent of any improved retailer efficiencies (productive efficiency) it was proposed to:

- ▲ rely on submissions from retailers that efficiencies have occurred and the level of savings made;
- ▲ request retailers to specify the actions taken and the type of savings, and monetary value of such savings, at each point of NECF national rollout; and

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<sup>51</sup> Productivity Commission, *On Efficiency and Effectiveness: Some Definitions*, Staff Research Note, May 2013, Canberra, for a discussion on meaning of the term ‘economic efficiency’; available at <http://www.pc.gov.au/research/staff-notes/efficiency-effectiveness>.

- ▲ consider undertaking some independent analysis in addition to the advice it receives from retailers.

One option raised for independent analysis was to undertake a retailer margin analysis, noting that forms of such analysis have been undertaken by the U.K. regulator Ofgem<sup>52,53</sup> and the Essential Services Commission of Victoria (**ESCV**)<sup>54</sup>.

It was proposed to assess the competitiveness of the South Australian energy retail market as the primary basis for assessing the extent to which the adoption of NECF has achieved allocative efficiency gains.

The Issues Paper also noted a further question for consideration - if efficiencies have been achieved, on what basis have the benefits been distributed? That is, have consumers received a share of the benefits, perhaps through lower contract prices, or have retailers (or shareholders) captured all of the benefits?

Depending on the size of the efficiencies gained, it may be difficult to determine the beneficiaries of any shared benefits. Nevertheless, in accordance with the Commission's primary objective, the focus of assessment was to be the extent to which the long term interests of South Australian consumers have been served, i.e. the extent to which customers have benefitted.

## 4.1 Submissions

Whilst some of the submissions provide support for the proposed broad interpretation of the term 'efficiency', retailers were generally concerned with the ability to measure any changes in efficiency associated with the adoption of the NERL. The retention by jurisdictions of state-specific measures, termed 'derogations' in this paper, is seen by many retailers as eroding potential efficiencies.

AGL submitted that:<sup>55</sup>

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

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<sup>52</sup> Ofgem, *Methodology for Supply Market Indicators*, January 2012; available at <https://www.ofgem.gov.uk/publications-and-updates/methodology-supply-market-indicators> and *Electricity and Gas Supply Market Indicators*; available at <https://www.ofgem.gov.uk/publications-and-updates/electricity-and-gas-supply-market-indicators-25092013>.

<sup>53</sup> Note that U.K. retailers are also required to produce Consolidated Segmental Statements that provide comprehensive, backward looking, information on individual energy company revenues, costs and profits.

<sup>54</sup> Essential Services Commission of Victoria, *Analysis of Electricity Retail Prices and Retail Margins 2006-12*; available at <http://www.esc.vic.gov.au/Energy/Analysis-of-Electricity-Retail-Prices-and-Retail-M.>

<sup>55</sup> AGL *op. cit.*, pages 2 to 3.

*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.*

AGL further submitted that:<sup>56</sup>

*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.*

Lumo Energy commented that:<sup>57</sup>

*... delays across all jurisdictions in adopting the NECF have meant implementation costs have significantly escalated and the efficiencies of a single execution have been lost.*

Red Energy commented that:<sup>58</sup>

*Red Energy also feels that the Commission's requirement that there would be hard evidence provided by retailers to prove the increased efficiencies of the NERL at this stage seem short sighted. Given that a number of states have not yet signed on to the NECF, it is understandable that the full benefits of the nationalised schemes will not yet be realised. If the Commission sees system efficiencies to be an imperative indicator of NERL success, then we believe a more reasonable approach would be to rely on retailer submissions detailing the future benefits in development across the entire NEM and utilise that information as a comparison in a separate future review.*

## 4.2 Commission's Considerations

The Issues Paper stated that, in relation to technical efficiency (cost impacts):<sup>59</sup>

*The Commission will be seeking as much hard evidence as possible, rather than rely on assertions. As indicated in the introduction, four jurisdictions have now adopted NECF, and at varying times. It is proposed to ask retailers to specify the actions taken and the type of savings and monetary value of such savings at each point of the NECF rollout, namely:*

- ▲ 1 July 2012 (NECF adopted by ACT and Tasmania);
- ▲ 1 February 2013 (NECF adopted by SA);

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<sup>56</sup> Ibid, page 3.

<sup>57</sup> Lumo Energy *op. cit.*, pages 2 to 3.

<sup>58</sup> Red Energy *op. cit.*, page 1.

<sup>59</sup> Essential Services Commission of South Australia, *NERL Review, Issues Paper, Methodology for Review*, November 2013, page 9; available at <http://www.escosa.sa.gov.au/projects/204/nerl-review.aspx#stage-list=0>

- ▲ 1 July 2013 (NECF adopted by NSW);
- ▲ Date to be determined when NECF adopted by Victoria and Queensland.

*This will enable retailers to report as early as possible, rather than wait until the time the NERL Review is undertaken when such information may be lost.*

*Nevertheless, the Commission may also have to undertake some independent analysis in addition to the advice it receives from retailers.*

At the instigation of the Victorian Government the Essential Services Commission has been undertaking an exercise for harmonising the Victorian Energy Retail Codes and Guidelines with NECF.<sup>60</sup> Whilst at the time of drafting this paper the final decision was pending, to the extent that harmonisation can be achieved, then NECF may effectively be operating in NEM jurisdictions by the time the NERL Review commences.

A key question for the NERL Review is whether having staged implementation (whether directly or by harmonisation) of the NECF (possibly with state-based derogations) will lead (ultimately) to material benefit compared to the position prior to NECF commencement.

Retailer submissions argued that material savings are yet to be achieved from the commencement of NECF. Nevertheless, detail of savings and efficiencies over time – even if in a staged manner – are important for the NERL Review. The focus will be on national actions, which is appropriate for a national scheme, with South Australian customers assumed to share in any savings roughly in line with the share of customer sales.

Accordingly, the Commission will seek information on actions taken and savings achieved as an additional part to complete in the two annual returns seeking limited billing data (refer Schedule 1, Part B).

As discussed in the Issues Paper, it is likely to be difficult to identify the distribution of any savings made, particularly at this stage of NECF rollout.<sup>61</sup> Nevertheless, it is important to make an attempt, consistent with identifying the extent to which the *long-term interests of South Australian consumers with respect to price, quality and reliability of essential services* has been advanced by the NERL. Consumers should share in any identified improvements in the operation of the energy regulatory framework.

### 4.3 Approach

Given that the retailer submissions to the Issues Paper could be taken as initial advice on the level of efficiencies achieved by NECF, the Commission will seek further advice from retailers by 31 August 2014 and 31 August 2015 as to the actions taken and the type of savings and annual monetary value of such savings achieved to the relevant 30 June.

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<sup>60</sup> Essential Services Commission of Victoria, *Harmonisation of Energy Retail Codes and Guidelines with the National Energy Customer Framework*, Project; available at <http://www.esc.vic.gov.au/Energy/Harmonisation-of-Energy-Retail-Codes-and-Guideline>.

<sup>61</sup> NERL Review Issues Paper, *op. cit.*, page 11.

So that a pattern of actions and results can be identified over the period of preparing for NECF and implementation, retailers will be requested to provide the information sought according to the timelines of pre-July 2012; 2012/13; 2013/14.

As the NERL also impacts on the way energy distributors interact with customers, the two South Australian energy distributors (SA Power Networks and Envestra) will also be requested to provide similar advice on actions and cost impacts.

This timing (i.e., August 2014 and 2015) is designed to correspond with the timing of the request for limited billing data from retailers (refer Chapter 6), which should further reduce any regulatory burden associated with this NERL Review (refer Schedule 1).

Noting the comments made in some submissions, the extent of derogations to NECF for those jurisdictions that have adopted NECF will also be considered. This will be to form a view as to whether they might materially affect efficiency of the national scheme to retailers with consequential impact on the benefits from the operation of the NERL in South Australia. If the extent of derogations is material in each jurisdiction, then this would impact the overall efficiency of NERL.

Potential gains to South Australian consumers through a harmonised national scheme are not just impacted by South Australian derogations, but also the extent to which other jurisdictions have derogated from the national uniform scheme. This is expected to be more of an issue if each jurisdiction has derogated in different areas, meaning reduced uniformity overall.

## 5. ASSESSING COMPETITION

The Issues Paper outlined a proposal to assess the competitiveness of the South Australian energy retail market:

- ▲ to enable the performance of the customer protection regulatory framework to be assessed within the context of the market it operates (act as an explanatory variable); and
- ▲ the primary basis for assessing the extent to which the adoption of NECF has achieved allocative efficiency gains.

A key element in assessing the performance of the market is to determine the level of retail competitiveness: are consumers gaining access to competitively set prices and is the NERL consumer protection framework robust enough to operate in such an environment?

The Commission<sup>62</sup> and the AEMC<sup>63</sup> have previously undertaken formal reviews into the competitiveness of the South Australian energy retail market (in 2007 and 2008 respectively), with the Commission undertaking a monitoring and reporting role until 1 February 2013.

The Commission has previously developed a framework for monitoring the development of retail competition in South Australia, with a Final Decision released in September 2004.<sup>64</sup> The key monitoring indicators identified were:

- ▲ Indicator 1: number of retailers
- ▲ Indicator 2: small customer switching
- ▲ Indicator 3: barriers to entry
- ▲ Indicator 4: information asymmetries
- ▲ Indicator 5: price/service mix
- ▲ Indicator 6: impacts on low-income groups
- ▲ Indicator 7: innovation.

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<sup>62</sup> In January 2007, the Commission appointed NERA Economic Consulting to undertake a *Review of the Effectiveness of Energy Retail Market Competition for small customers in South Australia* (incorporating both electricity and gas), various reports available at <http://www.escosa.sa.gov.au/projects/86/review-of-the-effectiveness-of-energy-retail-market-competition-in-south-australia.aspx#stage-list=4>.

<sup>63</sup> AEMC conducted a *Review of the Effectiveness of Competition in Electricity and Gas Retail Markets in South Australia* in 2008, various reports available at <http://www.aemc.gov.au/Market-Reviews/Completed/review-of-the-effectiveness-of-competition-in-electricity-and-gas-retail-markets-in-south-australia.html>.

<sup>64</sup> Essential Services Commission of South Australia, *Monitoring the Development of Energy Retail Competition in South Australia*, Final Decision, September 2004; available at <http://www.escosa.sa.gov.au/library/040917-MonitorEngyRetailComp-FinDec.pdf>.

Reviewing price movements against total cost movements was also considered to be instructive in indicating the direction of any changes in allocative efficiency.

## 5.1 Submissions

While there was some support for the indicators proposed in the Issues Paper, the ability to measure any material effect on competition from the adoption of NERL was questioned.

AGL commented:<sup>65</sup>

*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.*

Origin Energy raised issues in relation to the Commission's 'innovation' competition indicator:<sup>66</sup>

*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.*

## 5.2 Commission's Considerations

Despite some submissions opposing assessing the level of competition, an assessment of the level of competition is considered relevant to the NERL Review for the reasons outlined in the introduction to this chapter and in Chapter 2 dealing with scope.

However, there is a need to avoid regulatory overlap and, consequently, external reviews and data sources will be relied upon to the extent possible.

The AEMC recently released an Approach Paper outlining its proposed approach to undertaking annual competition reviews in accordance with revised terms of reference provided by the SCER to the AEMC on 13 January 2014, with the first review to be undertaken in 2014.<sup>67</sup>

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<sup>65</sup> AGL *op. cit.*, page 3.

<sup>66</sup> Origin Energy *op. cit.*, page 3.

<sup>67</sup> Australian Energy Market Commission, *2014 Retail Competition Review, Approach Paper*, 17 January 2014; available at <http://www.aemc.gov.au/News/Whats-New/aemc-starts-new-annual-retail-competition-review.html>

The AEMC is responsible under the AEMA for assessing the effectiveness of competition in the electricity and natural gas retail markets, *for the purpose of decisions on the retention, removal or reintroduction of retail energy price controls.*<sup>68</sup>

The new annual AEMC competition reviews, to commence in 2014, will assess the level of competition in all NEM jurisdictions on an annual basis and hence provide a source of publicly available information. The results of two AEMC competition reviews should be available for the purposes of the NERL Review (2014 and 2015), with the terms of reference given to the AEMC requiring the AEMC to publicly release its NEM-wide report by 30 June each year.

The AEMC is required to consider the following criteria (subject to practicality, data availability and resourcing constraints):<sup>69</sup>

- ▲ independent rivalry within the market;
- ▲ the ability of suppliers to enter the market;
- ▲ the exercise of market choice by customers;
- ▲ differentiated products and services;
- ▲ price and profit margins; and
- ▲ customer switching behaviour.

Whilst it will be important to understand any developments in non-price factors in promoting competition, price has previously been identified in Commission work as the key consideration. Differences pre and post-NECF in this variable will be monitored for the NERL Review (refer to Chapter 6 of this paper for further discussion on price monitoring).<sup>70</sup>

Many of the AEMC criteria cover the Commission's key competition indicators, which were stated in the Issues Paper<sup>71</sup> and restated in the introduction to this Chapter. However, there are some indicators that are considered relevant that are unlikely to be covered by the AEMC Competition Report competition criteria.

The Commission has previously assessed impacts on low-income groups as one of the key competition indicators, to identify the extent to which low-income groups might be benefiting from the energy market reforms. More recently the Commission undertook an analysis of the South Australian household utility expenditure as reported in the ABS Household Expenditure Survey (**HES**) 2009-10, published in September 2011.<sup>72</sup>

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<sup>68</sup> Standing Council on Energy and Resources, *Australian Energy Market Agreement*, 9 December 2013, clause 14.12, page 31; available at <http://www.scer.gov.au/governance/agreements/>.

<sup>69</sup> Australian Energy Market Commission, *Approach Paper*, *op. cit.*, page 2.

<sup>70</sup> For example: Colmar Brunton, *Monitoring the Development of Energy Retail Competition in South Australia and Consumer Preference for Market Contract* Information, report prepared for the Essential Services Commission of South Australia, August 2010; available at <http://www.escosa.sa.gov.au/library/100806-ConsumerPreferenceColmarBruntonReportFinal.pdf>.

<sup>71</sup> NERL Review Issues Paper, *op. cit.*, page 11.

<sup>72</sup> Essential Services Commission of South Australia, *South Australian Expenditure on Utilities*, November 2012; available at [http://www.escosa.sa.gov.au/library/121129-APR\\_2012-HouseholdUtilitiesExpenditure.pdf](http://www.escosa.sa.gov.au/library/121129-APR_2012-HouseholdUtilitiesExpenditure.pdf)

Unfortunately, the HES is only conducted every six years so the next survey (2015-16) would not be expected to be released before September 2017, which is outside the NERL Review timeline.

Regard will be had to any analysis or data available at the time of undertaking the review, but in its absence the merits of employing some earlier approaches used by the Commission will be considered, such as examining South Australian electricity price movements against movements in weekly allowances and pensions.<sup>73</sup>

### 5.3 Approach

In assessing the level of effective retail energy competition in South Australia, the NERL Review will rely on the AEMC Competition Report findings to the extent they are sufficiently comprehensive. Any independent analysis would be in accord with the Commission's previously developed competition monitoring framework. A call will be made on the extent that independent competition analysis is required following the release of the 2014 AEMC Competition Report.

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<sup>73</sup> Essential Services Commission of South Australia, *Monitoring the Development of Energy Retail Competition in South Australia, Statistical Report*, March 2006, page 45; available at <http://www.escosa.sa.gov.au/library/060406-MarFRCMonStatsReport.pdf>.

## 6. MONITORING PRICES

The Issues Paper proposed that the NERL Review would assess movements in South Australian retail energy prices:

- ▲ as reviewing energy price outcomes was considered integral to the NERL Review as an explanatory variable (e.g., assessing trends in disconnection levels within the context of movement in energy prices);
- ▲ as a key indicator in assessing the effective competitiveness of the South Australian energy market; and
- ▲ to assist in determining the extent to which technical efficiency has been achieved, through comparing cost movements against price movements.

Prices are important in assessing the effective competitiveness of the South Australian energy retail market. Competition is not an end in itself, but, where effective, is most likely to deliver prices that are in the long term interests of consumers.

The Issues Paper placed a heavy emphasis on the need to assess movement in prices for what might be termed ‘closed offers’ at any given point in time (i.e. still operating, but are closed to new customers), in addition to ‘open offers’ (those available to customers on request).

By reviewing open and closed offers, comment could be made on the extent to which retailers differentiate prices for new and existing customers. Retailers may only be offering significant discounts to new customers, meaning that retailers may be relying on customer inertia (‘sticky customers’) to increase prices for existing customers.

While “sticky” customers have the ability to seek the best offers available to them, it was suggested that it would only be by observing any evidence of stickiness that a potential market failure might be identified. For example, sticky customers may perceive high transaction costs in any decision to move to a new contract (which may be real, or only perceived) which might be addressed through making more (or better) information available and/or reduce any barriers to transfer.

It was also considered important to understand the movement in weighted average prices of each type of contract, in order to provide an informed comment on the situation for customers as a whole (typical customer). Reviewing movements in individual contract prices with no regard to the level of take up of specific contracts would lead to a finding that might have little bearing to that experienced by the majority of customers.

The Issues Paper provided two options for collecting required pricing data:

- ▲ Pricing Option 1-Modified Relative Price Movement (**RPM**): based on the Commission’s previously employed RPM methodology for fixing electricity standing contract prices. It was recognised that this option would be data intensive, but would provide a sound

basis for assessing the movement of weighted average electricity prices across a year; and

- ▲ Option 2-Average Price: based on the requirement of retailers under the previously operating Industry Guideline No.2, with retailers required to provide aggregate sales and revenue from sales data according to a number of categories (including separately for open and closed contracts).

It was not proposed to monitor movements in the level of administrative and related charges (e.g. account establishment fees). That those charges tended to be one-off and so it would be more difficult to determine the impact of any price movements in such charges for the 'typical' customer. Such charges are also generally not material, on average, when compared to the annual bill paid by the typical customer over time (i.e., most customers would not be expected to incur such sundry charges each year).

In terms of timing, the Issues Paper stated that the detailed pricing information would be required for each financial year ending 30 June, starting with financial year 2013/14, as the first full year of operation post-NECF and price deregulation. Consequently, retailers would be required to provide two 'annual returns' for the purposes of the NERL Review (for 2013/14 and 2014/15), noting the intended NERL Review Draft Report date of October 2015. These annual returns would be required to be provided to the Commission no later than 31 August of the relevant year.

## 6.1 Submissions

There were opposing views in submissions as to the merits of seeking detailed pricing data, particularly in relation to Pricing Option 1. Comments were also received on specific aspects of the proposed approach to monitoring prices.

Retailers argued that publicly available data and reviews should be relied up, only requesting retailers to complete information gaps.

AGL did not support Pricing Option 1 commenting:<sup>74</sup>

*... 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 ...*

*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. ...*

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<sup>74</sup> AGL *op. cit.*, page 4.

*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.*

ERAA commented that:<sup>75</sup>

*A reinstatement of extensive annual reporting obligations would result in increased costs for retailers. The ERAA does not believe that this change would provide sufficient benefits to justify these costs. Any potential reintroduction of price monitoring in South Australia should be based on a carefully considered cost-benefit analysis, and is a separate policy decision for Government. Should the Commission wish to utilise pricing data to perform this review, a more proportionate approach would be to make use of current publicly available sources.*

Consumer groups were in favour of the NERL Review having access to as much pricing information as it needs to undertake rigorous analysis.

Subject to the caveat that the Commission only requests data essential for analysis, Business SA submitted that:<sup>76</sup>

*In terms of pricing information, Business SA prefers ESCOSA have access to enough data to ensure they can undertake rigorous analysis of electricity and gas market movements, particularly as they relate to small business. Having access to detailed gas market data will become increasingly important given the potential for structural changes in the gas market over the next few years.*

SACOSS showed a strong preference for Pricing Option 1, commenting that:<sup>77</sup>

*SACOSS expects retailers to resist Option 1 and favour Option 2 on the basis of the administrative effort required to provide more detailed information or that it compromises confidentiality and hence undermines competition. SACOSS pre-emptively rejects this as a reasonable position and asserts that it is in the interest of retailers to openly demonstrate that competition is effective and that the NECF is in fact advancing the consumer interest. Any resistance of transparency can only exacerbate the feelings of mistrust toward energy businesses that exist in the community.*

A number of comments were received on specific aspects of the proposed approach to monitoring prices. On performing an analysis of retail margins Simply Energy commented:<sup>78</sup>

*It is very unclear to us what an analysis of retail margins will tell ESCOSA about the success or failure of the NECF. Besides the difficulties of establishing a meaningful estimate of retail margins, whether margins have increased, decreased or stayed*

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<sup>75</sup> ERAA *op. cit.*, page 2.

<sup>76</sup> Business SA *op. cit.*, page 2.

<sup>77</sup> SACOSS *op. cit.*, page 7.

<sup>78</sup> Simply Energy *op. cit.*, page 5.

*the same since February 2013 will be influenced by such a broad sweep of factors outside of NECF that it will be impossible for ESCOSA to make any substantive conclusions. Price and costs fluctuate continually as industry factors and competitive dynamics change and retail margins constantly change in response to these dynamics.*

On the proposal to monitor prices for contracts with closed offers, Origin Energy commented:<sup>79</sup>

*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.*

SACOSS was not comfortable with the proposal to not monitor movements in the level of administrative and related charges, commenting:<sup>80</sup>

*SACOSS is not comfortable that the importance of fees and charges can be so readily dismissed. In our experience, many consumers do not agree that these are not “material” and in our view the NERL review provides an opportunity to demonstrate the materiality or otherwise of the incidence of these charges. The presence of early termination fees is one example.*

## 6.2 Commission’s Considerations

Submissions were divided on the extent and detail of the energy price monitoring that should be undertaken for the NERL Review.

As with other areas of information requirements, the Commission would first utilise published sources of data and reviews to the extent they meet the needs of the NERL Review. To this end, there are a number of public sources of pricing information that can be used, including the Ministerial Pricing Report prepared by the Commission. However, these public sources of pricing information do not provide information in relation to closed offers.

The AEMC 2013 Residential Electricity Price Trends report (**AEMC Price Trends Report**) provides potentially useful information, with the December 2013 report the first time this annual report considered trends for both standing and market offer prices (provides trends for Queensland, NSW, Victoria and South Australia).<sup>81</sup> However, in addition to not covering

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<sup>79</sup> Origin Energy *op. cit.*, page 5.

<sup>80</sup> SACOSS *op. cit.*, page 5.

<sup>81</sup> AEMC, *2013 Residential Electricity Price Trends*, Final Report, 13 December 2013; available at <http://www.aemc.gov.au/media/docs/2013-Residential-Electricity-Price-Trends-Final-Report-723596d1-fe66-43da-aeb6-1ee16770391e-0.PDF>

closed offer prices, this AEMC report does not cover small business prices, weighted average prices and gas prices.

It is recognised that some customers have concerns with the level of individual fees and charges (e.g., account establishment fees). This would require the collection of pre-NECF information would be required which is not currently available and hence would require a separate data request to retailers. As the Terms of Reference require the Commission to make a broad overall assessment, concentrating on key areas, rather than assess the performance of each individual aspect of NERL operations, this specific matter is not considered central to the NERL Review. As a result, such data will not be sought.

### 6.2.1 Price Monitoring – assessing closed contracts

The importance of reviewing the full range of contracts, incorporating ‘closed offer contracts’, is outlined in the Issues Paper.<sup>82</sup> This would allow comment to be made on the extent to which retailers differentiate prices for new and existing customers and enable the derivation of weighted average electricity and gas prices that are a more representative ‘typical’ price faced by customers than can be derived from open offer contracts alone.

Noting the AEMC expanded energy retail price monitoring role (though the AEMC is not identifying ‘closed contract’ prices) and given the Commission’s current limited price reporting role, there is a limit to which a detailed price analysis undertaken by the Commission can be justified for the sole purpose of the NERL Review.

Consequently, the Modified RPM (Option 1) data request will not be employed. Instead, a range of public sources and average price data collected by the Commission (modified Option 2) will be relied upon, the detail of which is outlined in Section 6.3 below.

Should the Commission at some future point receive a mandate to review closed offer contracts, then the results would be available for the purposes of the NERL Review at no extra cost.

It is also noted that the AEMC proposes to consider the extent to which customers actively choose products offered by their existing retailer.<sup>83</sup>

*Customers changing plans with a retailer [will be considered] to see whether customers are actively choosing new products or services offered by their existing retailer. This is to reflect customer switching activity that is not picked up in churn rates. (emphasis added).*

Providing the AEMC is able to obtain information on the level of customers actively choosing new products or services by their existing retailer, and not simply customers being placed on new contracts when their current arrangements expire, this would provide a useful data source to complement average price data.

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<sup>82</sup> NERL Review Issues Paper, *op. cit.*, page 13.

<sup>83</sup> Australian Energy Market Commission, Approach Paper, *op. cit.*, page 10.

## 6.2.2 Price Monitoring – assessing retail margins

The potential for undertaking some form of energy retailer margin analysis was raised in the Issues Paper, noting the difficulties experienced by other organisations that have attempted such a task.<sup>84</sup>

As noted above [section 5.2], the AEMC assessment criteria include assessing profit margins, with the AEMC stating in its Approach Paper:<sup>85</sup>

*It is very difficult to accurately measure profit margins or identify an appropriate benchmark with which to compare profit margins in the retail market. Our analysis of this market indicator will consider:*

- *competitive retail market costs in all NEM jurisdictions, drawing on the AEMC's 2013 Residential Electricity Price Trends Report; and*
- *Victorian competitive retail market costs, which appeared higher than other jurisdictions in the analysis for the above price trends report. Differences in costs are expected between jurisdictions, however these differences appeared to be larger than expected and we will consider this issue as part of this review.*

Noting the difficulty in deriving a robust value for retail margins, that undertaking such analysis is not a core responsibility for the Commission, and that the AEMC is proposing to undertake analysis in this area, it is not proposed to undertake an independent retail margin assessment for the purposes of the NERL Review.

## 6.3 Approach

In the absence of being provided with a general mandate to monitor closed offer contracts (i.e. as part of a regular energy price monitoring role), the only pricing information the Commission seeks from retailers will be to enable a weighted average price of open and closed offer contracts to be derived based on annual billing data according to categories of:

- ▲ standing contract/standard retail contracts and market contract/market retail contracts;
- ▲ electricity and gas; and
- ▲ residential and small business customers.

Comparison of the average price derived from the annual retailers' return required for the NERL Review with the open offer prices available from other sources, will allow an inference to be drawn as to any material difference in closed and open offer contract prices. Where such differences are observed, further investigation can occur.

The template for the specific pricing data requirements is provided as Part A to Schedule 1 to this paper. To enable continuity with the data previously collected, retailers will be

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<sup>84</sup> NERL Review Issues Paper, *op. cit.*, page 9.

<sup>85</sup> Australian Energy Market Commission, Approach Paper, *op. cit.*, page 11.

requested to provide the pricing information for both 2012/13 and 2013/14 in the return (to be submitted by 31 August 2014).

It will be important that the weighted average price (for electricity: revenue\$/MWh) derived from Schedule 1 data can be made comparable with other public sources of pricing information.

The ‘Sales’ figures provided by retailers through Schedule 1 will be the quantity of electricity (MWh) and gas (GJ) supplied to customers. No adjustment is considered necessary, providing retailers report the quantity of energy supplied and do not net off sales associated with solar PV credits.

The ‘Revenue from sales’ data will represent the total value (\$) due and payable by the customer to the retailer. However, for electricity, this billed figure in many cases will not correspond directly with the value that would result from multiplying the quantity of energy supplied by the applicable tariff. This is because the final billed figure could incorporate various adjustments such as solar PV credits and concession rebates. Consequently, adjustments will need to be made to the Schedule 1 Revenue from sales data received in order to place the derived weighted average price on a similar basis to the available data on open offer prices.

The following adjustments will be made to the Schedule 1 Revenue from sales figures for electricity:<sup>86</sup>

Revenue from sales data supplied from retailer (GST inclusive) [sourced Schedule 1]	<b>\$A</b>
<u>Add</u> value of concession rebates <b>\$Conc</b> [sourced Schedule 1]	<b>+ \$Conc</b>
<u>Add</u> value of solar credits <b>\$SC</b> [sourced Schedule 1]	<b>+ \$SC</b>
Adjusted Revenue from sales data supplied from retailer (GST inclusive)	<b>= \$B</b>

The value of solar credits (\$) is not available from other sources so will be requested from retailers.

Whilst an estimate of the value of concession rebates might be derivable from a range of public sources, to ensure a reliable value that is consistent with the other billing information, the value of concession rebates will also be requested from retailers.<sup>87</sup>

This level of adjustment might appear overly complicated given that the actual information sought is the revenue directly associated with supply (i.e., to derive the equivalent of a weighted average tariff). However, the Commission is seeking to minimise the cost to retailers of providing the information, noting that the Schedule 1 Revenue from sales and

<sup>86</sup> Both solar PV credits and concession rebates should only appear on the electricity account.

<sup>87</sup> Noting that the Commission is seeking to determine a weighted average price separately for standard and market retail contracts.

Sales data is consistent with the data previously sought from retailers by the Commission under Energy Industry Guideline No.2.<sup>88</sup>

By using previous definitions and reporting formats it is hoped that the quality of data supplied to the Commission will be better than by making a special request. However, the Commission will liaise with individual retailers and will be happy to accept data in an alternative format to that requested in Schedule 1 where that better serves the NERL Review purposes.

This is intended to produce a weighted average electricity price that incorporates open and closed offer contracts (referred hereafter as the **Schedule 1 average price**), calculated as \$B (see above table) divided by Sales (Schedule 1). This figure can be compared with other public sources that only include open offer contract prices.

The extent that the size and movements in the Schedule 1 average price differs from sources that only report open offer prices will provide some indication of the extent to which closed offer contract prices may differ from open offer contracts. The revenue from sales will also include payments for any premium products such as GreenPower.<sup>89</sup> The Commission will monitor the level and movements in GreenPower prices as part of its work for the Ministerial Pricing Report. However, in 2011 GreenPower sales in South Australia represented less than 5% of total electricity sales - around 2% for residential.<sup>90</sup> Thus, whilst a factor to have regard to, it is not one expected to impact on the assessment.

In the same vein, the Revenue from sales figures will also include revenue from miscellaneous fees and charges. Over the whole customer base this represents a small portion of total billed revenue and, similar to the GreenPower argument, is not expected to impact on the high level analysis proposed.

While billing data may not incorporate the most recent offers (to the extent that customers have yet to be billed on those rates), the proposed approach will pick up any such offers in the subsequent period. A risk with focussing solely on offers is that, in practice, a low price by itself may not result in a high take up rate if other conditions associated with the offer are not to the satisfaction of prospective customers.

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<sup>88</sup> Essential Services Commission of South Australia, *Energy Retailer Operational Performance Information, Energy Industry Guideline No.2, EG2/03*, July 2004 (As last varied on 1 July 2010); available at [http://www.escosa.sa.gov.au/library/100618-EnergyIndustryGuidelineNo2-V2\\_03.pdf](http://www.escosa.sa.gov.au/library/100618-EnergyIndustryGuidelineNo2-V2_03.pdf).

<sup>89</sup> GreenPower is Government accredited program that enables retailers to purchase renewable energy on behalf of customers. For more information refer <http://www.greenpower.gov.au/About-Us/What-Is-GreenPower/>.

<sup>90</sup> The 2011 South Australian GreenPower sales figures are available from NSW Trade & Investment, *National GreenPower Accreditation Program, Annual Compliance Audit for 1 January 2011 to 31 December 2011*, A report for the National GreenPower Steering Committee, March 2013, Table 8, page 18; available at <http://www.greenpower.gov.au/About-Us/Audits-And-Reports/~media/Business%20Centre/Audit%20Reports/GreenPower%202011%20Annual%20Compliance%20Audit%20Report.pdf>. The total South Australian electricity sales figures taken as an average of 2010/11 and 2011/12 sourced from the Commission's *Energy Retail Market Time Series Data 2000-01 to 2012*; available at <http://www.escosa.sa.gov.au/electricity-overview/reporting-and-compliance/annual-performance-reports.aspx>.

As is standard Commission practice, the Annual Retailers' Return will include a Responsibility Statement to verify the quality of data being submitted (Schedule 1).

## 7. INFORMATION REQUIREMENTS

This chapter consolidates the information requirements for conducting the NERL Review, as discussed in earlier chapters of this paper.

The information requirements are outlined in Table 1. As indicated in the above discussion, most of the information is intended to be sourced from public reports and reviews, in an effort to limit data to be directly sourced from energy retailers and distributors.

**Table 1: NERL Review information requirements**

INDICATOR	SOURCE				TIMING
	Public <sup>1</sup>	Regulator/ Ombudsman	Retailer/ Distributor	Submission	
<b>Customer Protection</b>					
Retailer: <sup>2</sup>					
- telephone & written performance	Yes				routine reporting
- complaints	Yes	EWOSA <sup>3</sup>			routine reporting/ ad hoc request
- hardship program customers	Yes				routine reporting
- disconnections	Yes				routine reporting
- reconnections	Yes				routine reporting
- instalment plans	Yes				routine reporting
- security deposits	Yes				routine reporting
Distributor: <sup>2</sup>					
- telephone & written performance					
• electricity distributor		ESCOSA <sup>4</sup>			routine reporting
• gas distributor (if available)		AER			ad hoc request
- complaints					
• electricity distributor		AER <sup>5</sup> /EWOSA			ad hoc request
• gas distributor (if available)		AER <sup>6</sup> /EWOSA			ad hoc request
External factors:					
- level of concession rebate	Yes				announcements
- household incomes	Yes				routine ABS release
- average energy consumption			Yes, D <sup>7</sup>		August 2013 & 2014
- Gross State Product	Yes				routine ABS release
- unemployment rate	Yes				routine ABS release
- complaints to Ombudsman SA	Yes				Annual Report <sup>8</sup>
- complaints to Telecomm- unications Industry Ombudsman	Yes				Annual Report
- complaints to SA Water	Yes				Annual Report
<b>Energy Prices</b>					
- retail prices on offer	Yes	ESCOSA <sup>9</sup>			routine reporting
- average retail prices			Yes, R <sup>10</sup>		August 2013 & 2014
- network prices	Yes				as published
<b>Cost Impacts</b>					
Efficiencies achieved by retailers			Yes, R		August 2013 & 2014
Efficiencies achieved by distributors			Yes, D		August 2013 & 2014

To the extent the Commission were to undertake an independent assessment of the level of competitiveness in the South Australian energy market, it would have regard to the indicators outlined in Table 2.

**Table 2: NERL Review information requirements - Competition**  
(Were the Commission to undertake its own analysis)

INDICATOR	SOURCE				TIMING
	Public <sup>1</sup>	Regulator/ Ombudsman	Retailer/ Distributor	Submission	
<b>Competition<sup>11</sup></b>					
- number of retailers		AEMO/AER			routine reporting
- small customer switching		AEMO			routine reporting
- market share	Yes				August 2013 & 2014
- barriers to entry	Yes				June 2013 & 2014
- information asymmetries	Yes			Yes <sup>12</sup>	May 2015
- price/service mix	Yes <sup>13</sup>				regular monitoring
- impacts on low-income groups	Yes			Yes	as published/ May 2015
- innovation	Yes			Yes	May 2015

**Notes to Table1 & Table 2:**

- 1 Which may mean released by a regulator such as the AER.
- 2 For detail on customer and energy categories refer to section 3.3 of this paper.
- 3 ESCOSA will request EWOSA to provide data on complaints it receives from retailers and distributors as required for the NERL Review. A similar request will be made to the AER for distributor complaint data to the extent this is available and not publicly reported.
- 4 Electricity distributor data consistent with ESCOSA Electricity Distribution Code clause 1.1.2; available at <http://www.escosa.sa.gov.au/library/130131-ElectricityDistributionCode-EDC10.pdf>
- 5 Supplemented to the extent required by data reported directly to ESCOSA under an existing information guideline.
- 6 Supplemented to the extent required by data reported directly to ESCOSA under an existing information guideline.
- 7 'D' means a distributor requirement, while 'R' means a retailer requirement. If this information is not public then a special request will be made to SA Power Networks and Envestra. Average annual consumption data will be sought disaggregated into residential and small business.
- 8 Reference to Annual Report refers to report released by the organisation being referred to
- 9 Refers to annual Ministerial Pricing Report prepared by ESCOSA, with information based on retailer offers available on the AER Energy Made Easy website <http://www.energymadeeasy.gov.au/>
- 10 'R' means a retailer requirement. Information for this indicator will be derived from data requested in Schedule 1 to this paper.
- 11 On the basis that the Commission determines to supplement results of competition-effectiveness reviews undertaken by other bodies. Otherwise, will rely on results of the annual AEMC Competition Report.
- 12 Initial public call for submissions in February 2015, with submissions due May 2015.
- 13 See above for approach to monitoring prices, this reference is to service mix.

The Issues Paper advised that at the time of release of the final framework for the NERL Review (this paper) the Commission would release a proposed reporting Guideline, should it be determined that detailed data would need to be required of retailers (and distributors). Given the limited requirement for data to be supplied directly from retailers and

distributors, a separate reporting Guideline will not be released, with the information requirements contained in Schedule 1 to this paper.

## 8. NEXT STEPS

This paper provides the final framework that the Commission intends to adopt in conducting the NERL Review, to be commenced in February 2015. An indicative timetable for the review is set out below:

### *Timetable for NERL Review*

Stage	Timing
Final NERL Review Methodology released (this paper)	March 2014
First annual retailer return due <sup>91</sup>	31 August 2014
First annual distributor cost impact advice due	31 August 2014
NERL Review commences	February 2015
Initial call for submissions	February 2015
Submissions to initial call due	May 2015
Second annual retailer return due	31 August 2015
Second annual distributor cost impact advice due	31 August 2015
Draft Report-NERL Review released	October 2015
Submissions to Draft Report due	mid-December 2015
Final Report-NERL Review released	February 2016

Advice from members of the community on the operation of the NERL in South Australia will be important to the success of the NERL Review.

Initial submissions will be invited early in 2015, with further submissions to be sought on the draft NERL Review report later in 2015. Given the background provided by this Final Decision on methodology, the February 2015 public call for submissions will be accompanied by a short fact sheet highlighting specific areas where feedback is sought, noting that this will not restrict the coverage of submissions.

Input from members of the community at any time on matters associated with the Terms of Reference is welcomed.

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<sup>91</sup> Given the limited data request from retailers, a separate reporting guideline will not be released, with the reporting requirements defined in Schedule 1 to this Final Decision.

# SCHEDULE 1

## South Australian NERL Review

### Annual Retailers' Return

This Return is required to be completed by all retailers that sold to South Australian small customers in the nominated year.<sup>92</sup>

Please note that information is required separately for standing/standard retail contracts and market contracts.

#### PART A

##### Statistical Information Proforma

##### Electricity – Standing Contract/Standard Retail Contracts

South Australian Residential Customers	2012/13	2013/14	2014/15
Revenue from sales [inclusive of GST] (\$million)			
Solar FiT credits paid to customers (\$million)			
Concession rebates paid to customers (\$m)			
Sales (MWh)			
<b>South Australian Small Business Customers</b>			
Revenue from sales [inclusive of GST] (\$million)			
Solar FiT credits paid to customers (\$million)			
Sales (MWh)			

##### Electricity – Market Contract/Market Retail Contracts

South Australian Residential Customers	2012/13	2013/14	2014/15
Revenue from sales [inclusive of GST] (\$million)			
Concession rebates paid to customers (\$m)			
Solar FiT credits paid to customers (\$million)			
Sales (MWh)			
<b>South Australian Small Business Customers</b>			
Revenue from sales [inclusive of GST] (\$million)			
Solar FiT credits paid to customers (\$million)			
Sales (MWh)			

<sup>92</sup> Essential Services Commission of South Australia, *NERL Review Methodology-Final Decision*, March 2014; available at <http://www.escosa.sa.gov.au/projects/204/nerl-review.aspx>.

#### Gas – Standing Contract/Standard Retail Contracts

South Australian Residential Customers	2012/13	2013/14	2014/15
Revenue from sales [inclusive of GST] (\$million)			
Sales (TJ)			
South Australian Small Business Customers			
Revenue from sales [inclusive of GST] (\$million)			
Sales (TJ)			

#### Gas – Market Contract/Market Retail Contracts

South Australian Residential Customers	2012/13	2013/14	2014/15
Revenue from sales [inclusive of GST] (\$million)			
Sales (TJ)			
South Australian Small Business Customers			
Revenue from sales [inclusive of GST] (\$million)			
Sales (TJ)			

#### Definitions

**Revenue from sales:** defined as the total value (expressed in dollars) due and payable to the retailer in respect of connection points billed during the relevant financial year. As a result, it will be net of Government funded concessional rebates. It is to be inclusive of GST. Figures to be provided to one decimal place.

**Solar PV credits paid to customers:** defined as the total value (expressed in dollars) paid to customers for solar feed-in tariffs (FiT) credits, both distributor (D-FiT) and retailer (R-FiT).

**Concession rebates paid to customers:** defined as the total value (expressed in dollars) paid to customers eligible to receive the State Government energy (electricity) concession during the relevant reporting period, including both permanent concession cardholders and beneficiaries.

**Sales:** means the quantity of electricity (MWh) or gas (GJ) supplied to customers as reflected in all bills issued in respect of the connection points. Sales associated with solar PV credits are not to be netted off. Figures to be provided to at least one decimal place.

The definitions for Revenue from sales and Sales are the same as those used in the former Energy Industry Guideline No.2.<sup>93</sup>

<sup>93</sup> Essential Services Commission of South Australia, *Energy Retailer Operational Performance Information, Energy Industry Guideline No.2, EG2/03*; available at [http://www.escosa.sa.gov.au/library/100618-EnergyIndustryGuidelineNo2-V2\\_03.pdf](http://www.escosa.sa.gov.au/library/100618-EnergyIndustryGuidelineNo2-V2_03.pdf).

## **PART B**

Please list actions taken and savings achieved associated with the (progressive) adoption of NECF nationally, accordingly to the following time periods.

Please provide monetary values to the extent possible for both actions and savings.

**Up to 1 July 2012**

**2012/13**

**2013/14**

**2014/15**

*(If require more space then please provide in a separate attachment to this Return)*

### **Notes:**

*In this section retailers are asked to specify the actions taken and the type of savings and monetary value of NECF related expenditures and savings. As indicated, quantification of any savings made, even if an estimate, is important.*

*In an effort to achieve consistency in approach across retailers, this information should be provided at the national level (ie, not at the South Australian level).*

*The 2013/14 return (due by 31 August 2014) should cover actions and savings undertaken up to and including 30 June 2014 associated with NECF (according to each separate timeline). Note that this return includes actions taken in the lead up to NECF commencement (taken as 1 July 2012), directly associated with the commencement of NECF.*

*The 2014/15 return (due by 31 August 2015) will not need to include details for years prior to 2014/15, unless an amendment is being made to the earlier return.*

## Further Information

For further information please email [escosa@escosa.sa.gov.au](mailto:escosa@escosa.sa.gov.au)

Also refer to the NERL Review Methodology Final Decision available at <http://www.escosa.sa.gov.au/projects/204/nerl-review.aspx>

## Deadline for Returns

31 August 2014	Part A for 2012/13 and 2013/14 Part B up to 30 June 2014
31 August 2015	Part A for 2014/15 Part B up to 30 June 2015

## Confidentiality

The Confidentiality provisions set out in Part 5 of the Essential Services Commission Act 2002 (“Collection and use of information”) will apply to any information collected by the Commission in accordance with this Guideline.

## Responsibility Statement

Having reviewed this Annual Return, in my opinion the data provided in this report are true and accurate.

Signed: \_\_\_\_\_

Name of Chief Executive<sup>94</sup> \_\_\_\_\_

(please print)

Energy retailer: \_\_\_\_\_

(please print name of retailer)

Date: \_\_\_\_\_

When completed, this return should be sent to the Commission either in hard copy to GPO Box 2605, Adelaide SA 5001 or a signed PDF version via email to [escosa@escosa.sa.gov.au](mailto:escosa@escosa.sa.gov.au).

Please note that this return needs to be received no later than **31 August** of the relevant year.

<sup>94</sup> Chief Executive or Commission approved Senior Officer.



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