

Executive summary

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

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

Purpose

The Essential Services Commission (**Commission**) has conducted a review of the operation of the National Energy Retail Law (**NERL**) as applied in South Australia (**NERL review**), pursuant to section 30 of the National Energy Retail Law (South Australia) Act 2011. The NERL came into effect in South Australia on 1 February 2013.

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

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

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

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

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

The NERL review is a comparison of the operation of the NERL (**NERL regime**) with the pre-NERL regime that operated in South Australia, and an assessment of the NERL's comparative effectiveness.

Importantly, it does not include an assessment of the impact of retail energy price deregulation,¹ which was an event separate from, but coincided with, the commencement of the NERL.² Accordingly, while stakeholders may have views on movements in, and the impacts of, energy prices, those matters are beyond the scope of this review.

This Final Report sets out the Commission's findings as submitted to the Minister for Mineral Resources and Energy in April 2016.

¹ Prior to deregulation, the Commission set the maximum prices energy retailers could charge for standing contracts.

² Media release; available at http://www.premier.sa.gov.au/images/news_releases/12_12Dec/energyprice.pdf.

Customer protection

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

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

In addition, through its public consultation processes during the review, the Commission has been presented with a clear, specific and positive message from stakeholders as to the impacts of the NERL. It has resulted in improved customer access to hardship programs and better data to analyse the experiences of and outcomes for hardship customers. While the pre-NERL regime (which was established prior to market commencement in 2003) did place hardship obligations on retailers, the NERL adopts an approach of requiring retailers to implement specific and approved hardship policies.

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

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

Having regard to that context, while there has been an increase in the number of hardship customers since NERL commencement, this has occurred during a time of increasing economic challenge for South Australia. Despite this, for most of the period following the commencement of the NERL the rate of disconnections for residential electricity customers has remained consistent. Further, there continues to be a high rate of instalment payment plan participation by customers (allowing them to actively manage energy payment obligations).

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

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

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

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

Of note, in more recent times this trend has slowed and, importantly, there has been a reduction in the overall level of complaints to the Energy and Water Ombudsman SA. The Energy and Water Ombudsman SA is of the view that this reduction can be partially attributed to improvement in the efforts of retailers to deal with customer complaints directly, which is a positive outcome for customers. It is also of the view that the decrease is partly a result of a higher base level of complaints around the time of NERL commencement (due to an increase in complaints regarding issues associated with new billing systems), with a subsequent decline once those problems were addressed. No issues have been identified with the complaint performance of network entities under the NERL.

Efficiency

The Commission adopted a broad economic definition of the term 'efficiency' for the NERL review, to include:

- ▶ the level of competitiveness in the energy retail market (allocative efficiency)
- ▶ evidence of innovation (dynamic efficiency), and
- ▶ movement in retailer and distributor operational costs (technical efficiency).

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

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

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

There was only one instance of concern raised with the Commission that the NERL had removed a protection previously available to South Australian energy customers, with associated efficiency considerations. The Conservation Council of South Australia (**Conservation Council of SA**) submitted that the fact that the previous requirement for retailers to include greenhouse gas information on customer bills on a consistent basis was not carried forward into the NERL has been a detriment. It put the view that the resulting lack of information for customers is a market failure and may affect the competitiveness of the energy market.

The question raised is therefore whether mandating greenhouse gas information on bills is the best or only source of information for customers with concerns over the environmental impact of their energy consumption. The NERL requires energy bills to contain information designed to assist customers to make informed choices in relation to the level of their consumption (for example information included in bills to enable a customer to compare their average consumption with households of a similar size), which in turn impacts on the level of their contribution to greenhouse gas. The NERL also requires the AER to maintain an energy offer comparison website (EnergyMadeEasy) which allows customers to compare offers to facilitate choice of retailers. This comparison website allows customers to compare available GreenPower and solar photovoltaic (PV) offers. On balance, the change in billing requirements alone is not considered sufficient to show that the NERL has adversely affected efficiency or customer protection in pursuit of national consistency.

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

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

Retailers stressed to the Commission that any difference in regulatory requirements between states leads to increased costs (or loss of efficiency) for retailers. Those costs are passed on to customers. South Australia has a limited set of derogations or modifications from the standard terms of the NERL, with retailer telephone responsiveness and the small business definition threshold of 160 MWh per annum singled out by retailers as being of material concern to them. Consideration of the merits of these derogations is outside the terms of reference for the NERL review, as the derogations have not adversely impacted on customer protection and efficiency relative to the Commission's pre-NERL regime. Consideration should be carried out as a separate exercise, employing benefit cost techniques.

Other matters

Some other matters were raised during consultation that were out of scope under the terms of reference (with the terms of reference focusing on identifying any adverse changes arising from the NERL as compared to the pre-NERL regime). While such matters were not taken into account by the Commission in forming its view on the impact of the NERL for South Australian energy customers, they may be of interest to policy makers and other stakeholders.

For example, the Conservation Council of South Australia's submissions covered other environmental issues, in addition to greenhouse gas information on bills. It submitted that the NERL review should consider the support customers need for an orderly transition to a low carbon electricity supply. Specific concerns raised included carbon pricing, whether under the previous scheme or any future emissions trading or pricing scheme. In particular, the Conservation Council of South Australia put the view that the method for allocating carbon pass through costs to customers and associated transparency has not been properly addressed in regulation. Currently accredited renewable products for retail customers are typically structured as a separate additional component (at an additional cost) rather than being a fully alternative product that integrates the electricity, renewable and low emission attributes.

Uniting Communities raised concerns that, although it supports the finding that the NERL has not adversely affected customer protection, there is a continuing issue of energy affordability in South Australia.

Representations were also received to the effect that the NERL in its current form may not adequately accommodate market or technological developments that have occurred in the energy industry since it was drafted (during the period 2006 to 2011). For example, lease arrangements for provision of solar photovoltaic roof panels and battery storage, and the competitive provision of meters, were considered in those submissions to be matters that should be better addressed under the NERL.

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

Consultation

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

Nine submissions were received to the NERL review Issues Paper. A public forum was held in the Adelaide Town Hall – Meeting Hall on Friday, 1 May 2015 and a retailer forum held in Melbourne on Friday, 8 May 2015. Seven submissions were received to the NERL review Draft Report. The Commission has appreciated the extent of engagement of stakeholders during the course of this review and thanks all those that have made a contribution.