

27 August 2004

NE Rule Change Process
c/- MCE Market Reform
Department of Industry, Tourism and Resources
GPO Box 9839 Canberra ACT 2601

Email: MCEMarketReform@industry.gov.au

Attention: Neville Henderson

Dear Mr Henderson,

Proposed National Electricity Rule Change Process

Origin appreciates this opportunity to provide a further submission to the Ministerial Council of Energy (MCE).

Origin is pleased that the revised consultation paper of August 2004 addresses many of the concerns outlined by participants in their submissions to the first round of consultation. In particular, Option 3, which changes the National Electricity Code to a set of statutory rules, appears to largely remove the potential for unauthorised rule changes to expose participants to breach of the TPA.

We also support the amendment to the primary market objective, which places investment alongside price, quality and reliability as long term interests of consumers. This makes more explicit that long-term consumer interests are best served by prices that reflect an appropriate allowance for infrastructure investment.

Origin also considers that the requirement for the MCE Policy Principles to be consistent with the market objectives will help achieve consistency in policy decisions over time, enhancing certainty for industry participants.

Notwithstanding the many positive aspects of the revised consultation paper, Origin does have a number of remaining issues on which we seek clarification. These are discussed briefly below.

Merits based Review

Origin considers that wherever a regulatory body is in a position to exercise significant discretion, or make decisions requiring a substantial degree of judgement, that merits based review is an important discipline on the quality and integrity of decision-making. Judicial review on its own is insufficient because it relates to errors in law only, rather than to errors of fact or whether a decision "is the correct and preferable decision"¹.

¹ Productivity Commission review of the Gas Access Regime: p, 486

The AEMC has considerable discretionary power in determining whether to accept or reject rule change proposals, interpreting the market objectives and applying the net benefit test. The AER too, has substantial discretion with respect to economic regulatory decisions; including terms and conditions of access, access prices and transmission revenues, and applying the regulatory test with regard to network investment. Further, in 2005, gas pipeline regulation will be transferred to the AER and will therefore require the AER to make decisions on pipeline coverage and access prices, again implying a significant degree of discretionary power.

Origin considers that the inclusion of a merits based review would enhance the accountability and quality of decision-making by the AER and AEMC.

Rule Making Criteria

While Origin supports the inclusion of a net benefits test to determine the appropriateness of rule change proposals, it would be useful if the MCE could provide some guidelines covering:

- the definition of net benefits test;
- a transparent process of how the net benefits test would be applied to the market objectives and how potentially conflicting objectives will be weighted;
- the relevant underlying assumptions to such analysis;
- the scope of costs and benefits to be included, both qualitative and quantitative; and
- a methodology for considering the distributional impacts of the proposal.

It is also important that any draft determination on a rule change proposal contains sufficient detail of the analysis and assumptions to enable replication of the results.

Considerations for the gas market

The MCE is considering the rule change process for the electricity industry independently of the gas industry, which is appropriate given the different nature of the industries (particularly the absence of a wholesale gas market) and the forthcoming MCE consultation on gas market developments.

Origin notes that while the new NE Rule Change Process requires extensive consultation, ultimately no decision-making power rests with participants. This contrasts with the arrangements currently in place in the various jurisdictions with respect to gas retail markets, which reflect an industry-governed model for managing code changes.

Whilst Origin supports convergence of the gas and electricity regulatory regimes, we generally prefer industry-governed models over government regulation and therefore we do not consider that the proposed NE rule change model should be adapted for the gas market.

Information sharing

Origin is concerned with the proposal requiring industry participants to provide *confidential* information and then allow that *confidential* information to be shared between the AEMC, AER and ACCC. Such a requirement from regulators may place companies in an intractable position of breaching the terms of their confidentiality agreements.



Origin therefore requires a mechanism for sharing of information that recognises participants legitimate legal constraints over provision of confidential material.

If you have any questions or wish to discuss and aspect of this submission further please do not hesitate to contact me on the details provided below.

Yours Sincerely,

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