



1 March 2010

Manager, MCE Secretariat
Department of Resources, Energy and Tourism
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Dear Sir/Madam

NATIONAL ENERGY CUSTOMER FRAMEWORK - SECOND EXPOSURE DRAFT

Origin Energy (Origin) welcomes the opportunity to comment on the Ministerial Council on Energy (MCE) Standing Committee of Officials' Second Exposure Draft of the National Energy Customer Framework. Detailed comments on the various regulatory instruments are also attached in a table format similar to the template provided for the First Exposure Draft consultation.

It was positive to hear from the legal project manager at the Second Exposure Draft workshop that the Standing Committee of Officials (SCO) and the Retail Policy Working Group (RPWG) were now contemplating the implementation of the National Energy Customer Framework (NECF). Origin reiterates comments from our previous submission that it should not simply remain up to the jurisdictions to determine if and when they will introduce the framework. This would undermine the very benefits that the framework seeks to capture and its potential contribution to the broader process of national competition reform.

Origin is very concerned when it hears that a "one jurisdiction at a time approach" will be used for the implementation of NECF. This is the worst possible outcome for Origin; it would have the same effect as adding another jurisdiction with different regulations and compliance obligations to our systems, rather than eliminating differences. More comment on this will follow later in our submission.

Ministers agreed under Australian Energy Market Agreement that the initial NECF would minimise the regulatory burden and associated costs of regulation on industry participants. It is somewhat disconcerting to find now that many of the most onerous regulatory obligations from particular jurisdictions have progressively filtered into the NECF Second Exposure Draft (NECF 2). We assume that this has occurred to accommodate individual jurisdictions' current approaches, based on the presumption that jurisdictions will then more readily embrace the NECF. Origin points out that this trend will negate the very benefits that the Ministers expected the NECF to deliver and we strongly suggest that individual jurisdictions take a more holistic and positive view of reform rather than seeking to retain specific individual customer protection provisions. We would highlight that under the NECF the regulatory process should not be one of enshrining the past, but of seriously considering how regulation can be made more efficient and effective, protecting consumers generally where clear market failure is



evidenced (and noting the protections in general legislation as well). It is not clear to us that the recent modifications to the NECF have always been based on this objective assessment.

Furthermore, some jurisdictions in Australia have experienced the highest rate of customer transfers in the world indicating the existence of robust competitive markets where customers are willing to participate. There is no evidence of market failure in these markets that suggests more onerous regulation is required in the NECF.

The addition - without prior consultation - of:

- an interpretive clause with regard to the National Energy Objective; and
- new wide ranging information orders under the Retailer of Last Resort (RoLR) provisions directly into the Second Exposure Draft

was unexpected by Origin even though we have provided consistent input in this long running national regulatory development project. These provisions are not supported by Origin and we seek further consultation on both before they are finalised.

The allocation of civil penalties to both the law and rules in NECF 2 is noted by Origin and as the NECF penalty regime is now more transparent we urge the RPWG to reconsider its application due to the following issues:

- the Civil penalty regime should be consistent with similar regimes and this does not appear to be the case;
- there is duplication between civil penalty regimes applying to similar obligations in the law and the rules;
- civil penalties should only be used for deliberate breaches;
- compliance breaches from systemic deficiencies in systems, processes and behaviours are better addressed through other enforcement mechanisms; and
- the civil penalty regime imposes a significant compliance cost on retailers which is disproportionate to the current jurisdictional regimes.

Main Areas of Concern with NECF 2

1. NECF Implementation

Origin is of the view that the “one jurisdiction at a time implementation” of the NECF is sub-optimal and not in the long term best interests of industry and customers. There is no reason why, following the development of an implementation plan carefully structured with stakeholder input, that several or all jurisdictions could not implement the NECF simultaneously. At the very least Origin sees no reason why South Australia, Queensland and Victoria could not work towards a common implementation date.

Origin (like many other retailers) operates on a national basis and as the NECF provisions fundamentally affect the manner in which we manage and service customers it is vital that we have certainty on the national implementation of this framework. A defined NECF rollout schedule will allow Origin to plan and optimise the changes to its customer management systems to achieve the benefits that national consistency will deliver.



2. Objective

The national energy retail objective is a reflection of the National Electricity Law (NEL) and National Gas Law (NGL) objective and is used as an initial test or principle for the assessment of all existing and new energy laws and rules. The objective establishes a control mechanism for new obligations imposed on energy market participants.

Given that the objective includes a test of the impact on the long term interests of consumers, we see no reason why some customer protection provisions should now not be subject to the test of addressing their long term interests. We believe that such an exclusion will surely have a negative impact on the effectiveness and commercial viability of the energy market.

Moreover, the introduction of exclusions or carve outs from this objective leaves market participants exposed to infinite commercial risk and establishes a precedent for further exclusions to the objective.

Origin does not support this amendment to the Second Exposure Draft and questions why such an important issue has not been consulted on with retailers before its introduction into draft legislation.

3. Ombudsman

The functions and powers of an ombudsman scheme are established in an ombudsman's constitution. A retailer's authority should include an obligation for a retailer to become a member of a relevant ombudsman scheme for each jurisdiction in which it has customers.

In Vic and NSW the ombudsman schemes are independent corporate entities with industry board representatives. This ensures the ombudsman schemes are suitably funded by industry and operate under the control of their board, providing industry with ongoing confidence on the scope of the ombudsman's operation. While it is understood that this is not the case in all jurisdictions (in some cases the ombudsman scheme is established under legislation), this should not dictate the arrangement under the NECF.

Origin believes that independent ombudsman schemes as operating in Vic and NSW have been successful and suggests that this model should be extended nationally. There is no need for the functions and powers of the energy ombudsman to be included in the National Electricity Retail Law (NERL).

4. Market Contract Variations

Throughout the various rounds of consultation of the NECF there has been a gradual erosion of the number of contract provisions that can be varied under a market contract, while little data has been provided to support the actual need for such restrictions, particularly given the extensive protections under general consumer law (which have recently been expanded).

The standing contract terms and conditions are established to regulate a minimum service offering to small customers and when you consider that small customers includes small business customers, the extension of broader regulation to market contracts will undoubtedly stifle innovation and the ability for consenting small customers to achieve contracts that can meet their risk and reward expectations. For example the area of security deposits can no longer be varied for small customers, yet many small customers are business customers, who would benefit from variations under a market contract.



It is Origin's strong view that the recent changes have added constraints when there has been no demonstrable cause, while reducing the flexibility for the market to evolve to meet consumers changing needs - and in particular reducing the opportunity for customers to benefit from the flexibility in products and services enabled by advanced metering.

5. Civil Penalties

Origin Energy acknowledges and supports the imposition of civil penalties for breaches of the NERL and National Energy Retail Rules (NERR) in those circumstances where the imposition of a civil penalty is the most effective way to censure a retailer by imposing a monetary penalty for non-compliance. For example, intentional breaches of the NERL and the NERR.

This approach would ensure that civil penalties are:

- applied to correct and effectively address non-compliance when other enforcement tools available to the Australian Energy Regulator (AER), such as enforceable undertakings, are insufficient;
- a proportionate response to compliance breaches by retailers where the punishment fits the breach;
- not creating higher compliance costs for retailers and the AER with no concomitant beneficial impact on consumers;
- applied consistently with the approach taken to civil penalties under other consumer protection focused regimes such as the *Trade Practices Act 1974 (Cth)*;
- applied to breaches that are intentional and where ascertaining the breach is unambiguous.

Applying these principles will ensure that the civil penalty regime under the NERL and NERR is consistent with promoting the national energy retail objective to ensure effective and efficient investment in, and operation of, energy services for the long term interests of consumers.

The proposed civil penalty regime should be amended so that:

- civil penalties only apply to provisions the breach of which can be readily understood by a retailer (or other person on whom they are imposed);
- civil penalties do not apply to provisions the satisfaction of which depends upon a qualitative assessment by the AER as to whether a specific person's actions are sufficient to meet the required standard;
- civil penalties are only imposed when non-compliance was intentional and not caused by inadvertent system or process errors;
- a monetary penalty is only imposed when:
 - that form of punishment is in the best interests of the general operation of the market and the long terms interests of consumers (in order to promote the national energy retail objective); and
 - it is not disproportionate to the impact of the breach thereby causing undue risk and increased costs of compliance to retailers;
- civil penalties are applied to provisions in the National Energy Retail Law or the National Energy Retail Rules but not both (to avoid a duplication); and
- it is administered in a manner consistent with other similar penalty regimes, particularly the Commonwealth's proposed Australian Consumer Law.



As this is the first opportunity where the NECF allocation of civil penalties has been made evident Origin is firmly of the view that the RPWG should reconsider the allocation in light of the issues raised above and the detailed suggested amendments that we have provided in our attached table of comments.

6. Outstanding Work Streams

While the NECF 2 explanatory memorandum sought feedback on several smart meter customer protection issues Origin is of the view that there are several more fundamental issues that need to be consulted on and that this work should not be rushed to meet the current NECF timetable. The smart metering customer protection issues would be better addressed as a complete package. It is unfortunate that the Victorian jurisdiction will now attempt to address this area without considering it from a national perspective. Smart meter provisions can be developed via the rule change process.

Similarly with bill benchmarking; consultation on this has been through many phases and there seems no value in rushing to insert specific provisions covering this issue until such time as it is finalised. This could be done at any time via the rule change process.

7. General Approach

The general approach of the NECF 2 provisions and structure are supported by Origin. We note the transfer of the retailer credit support provisions from the guidelines to the rules and we also support the inclusion of the electricity and gas connections rules as amendments to their respective National Electricity and Gas Rules.

A comprehensive list of comments on specific provisions is attached to this submission and we hope they will be thoroughly reviewed and evaluated. It was disappointing to observe that, from our last submission, several non-contentious changes were not adopted and re-appear in the second exposure draft. Moreover, no valid reason or argument for ignoring these comments has been provided.

The recent workshops conducted by the Retail Policy Working Group (RPWG) once again provided constructive and informative clarification of the law and rules and this was much appreciated by all stakeholders. Origin thanks the RPWG for organising these workshops as they have assisted us in preparing this submission.

Should you require further information regarding this submission please do not hesitate to contact Randall Brown on 03 9652 5880.

Yours sincerely

A handwritten signature in cursive script that reads "Beverley Hughson".

Beverley Hughson
Regulation & Relationship Manager

Origin Energy Comments:

Second Exposure Draft of the National Energy Customer Framework: Law, Rules, Regulations and Contracts

This table provides a template for stakeholders to make comments on the National Energy Customer Framework (NECF).

National Energy Retail Law		
Part 1 - Preliminary		
Section	Subject Matter	Comment
Definition	Local instrument	The definition of local instrument refers to “this jurisdiction”. In the context of the NERL it would not be clear what “this jurisdiction” refers to and should be clarified eg “the application Act of the relevant jurisdiction”.
Definition	Public holiday	The definition “means a day that is observed as a public holiday in the area concerned...” is not very precise and leaves it open for ambiguous interpretation.
104	Civil penalties (Scope of civil penalty provisions)	<p>Origin Energy acknowledges and supports the imposition of civil penalties for breaches of the National Energy Retail Law (NERL) and National Energy Retail Rules (NERR) in circumstances where the imposition of a civil penalty is the most effective way to censure a retailer by imposing a monetary penalty for non-compliance. For example, intentional breaches of the NERL and the NERR.</p> <p>This approach would ensure that civil penalties are:</p> <ul style="list-style-type: none"> • applied to correct and effectively address non-compliance when other enforcement tools available to the AER, such as enforceable undertakings, are insufficient ; • a proportionate response to compliance breaches by retailers where the punishment fits the breach; • not a disproportionate response to non-compliance leading to higher compliance costs for retailers and the AER which may have a negative impact on consumers; • applied consistently with the approach taken to civil penalties under other consumer protection focused regimes such as the <i>Trade Practices Act 1974 (Cth)</i>; • applied to breaches that are intentional and where ascertaining the breach is unambiguous.

		<p>Applying these principles will ensure that the civil penalty regime under the NERL and NERR is consistent with promoting the national energy retail objective to ensure effective and efficient investment in, and operation of, energy services for the long term interests of consumers.</p> <p>Our specific comments below set out the basis for amending the proposed civil penalty regime in the NERL and NERR to give effect to the above principles.</p> <p>1. Civil penalty regime should be consistent with similar regimes:</p> <p>The civil penalty regimes under the <i>Do Not Call Register Act 2006 (Cth) (DNCR Act)</i> and the proposed <i>Trade Practices Amendment (Australian Consumer Law) Bill 2009 (Australian Consumer Law)</i> do not apply civil penalties to all provisions as a matter of course. Civil penalties are only imposed in relation to a limited number of breaches where enforcement of other breaches are addressed by formal warnings and enforceable undertakings. Both the Australian Consumer Law and the DNCR Act take into account the prior record of the party in relation to breaches of a civil penalty provision prior to imposing the penalty. In addition, the DNCR Act recognises that multiple breaches of the same civil penalty provisions should not be subject to multiple penalties. See point 5 below for further discussion of this issue.</p> <p><i>Suggested amendment:</i> The civil penalty regime should be focused on imposing civil penalties for breaches where no other enforcement mechanism is suitable and where there will be a significant adverse impact on the market or a large proportion of consumers if the breach were to reoccur. At present, it appears that a breach of any substantive provision of the NERR or the NERL attracts a civil penalty.</p> <p>2. Duplication of civil penalty regimes:</p> <p>There is substantial overlap in the matters which are the subject of civil penalty provisions in the NERR and the NERL. For example both the NERL and the NERR impose obligations on retailers with respect to payment plans with the NERL setting out the high level obligation and the NERR containing the rules prescribing how a retailer must discharge that obligation in practice.</p> <p>At present both sets of obligations under the NERL and the NERR are civil penalty provisions. As a consequence, it is possible that a participant could be subject to a civil penalty for the same substantive breach under both the NERL and the NERR - effectively a dual enforcement regime for the same breach. While the NERL provides that a participant will only be liable for one civil penalty where its conduct breaches more than one civil penalty provision, it is unclear as to whether this limitation will apply to the duplication in civil penalty provisions between the NERL and NERR.</p> <p>This is in contrast to the situation under the National Electricity Law and the National Electricity Rules (and the corresponding gas legislation) which only imposes civil penalties with respect to breaches of such</p>
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		<p>obligations under the Rules.</p> <p><i>Suggested amendment:</i> Exclude National Energy Retail Law provisions from the civil penalty regime if the subject matter is also contained in the Rules. The relevant provisions are sections 225 (customer hardship policies), 231 (payment plans) and 238 (prepayment systems) of NERL and 403(5) (compliance with energy laws for connection services), 602 (de-energisation), 1003 (retail market performance report) of the NERR.</p> <p>3. Civil penalties should only be used for deliberate breaches: Imposing a civil penalty is not an appropriate enforcement mechanism for breaches of obligations which are not the result of a deliberate act or omission by retailers. Such breaches will relate to:</p> <ul style="list-style-type: none"> • provisions which rely on a qualitative assessment of whether a particular standard has been satisfied which may be dependent on the individual circumstances of the case. For example: whether or not a retailer has adequate systems to meet the RoLR criterion is a subjective assessment and the AER and the participant may have differing views of compliance (s. 605(7), NERL). • the discharge of a wide range of activities and/obligations not all of which if breached will materially impact on the market or consumers. e.g. An obligation to comply with the Retail Market Procedures (s. 1217) is actually an obligation to comply with numerous Procedures and obligations not all of which should be subject to a civil penalty or if breached will have material adverse consequences. <p>The basis or test for determining whether a civil penalty provision is breached should be clear and unambiguous. A provision imposes a penalty designed to punish a retailer should not be subjective or open to differing interpretations.</p> <p><i>Suggested amendment:</i> Exclusion from the civil penalty regime of provisions which are not straight forward or which involve broad obligations. Such provisions include sections 209 (compliance with standard form contract) 605(7) (compliance with RoLR criterion) and 1217 (compliance with Retail Market Procedures) of the NERL and clauses 240 (referral to interpreter), 252 (ensure compliance of marketing associates); 302 (payment plans) 403 (arranging connection services), 515 (compliance with Retail Market Procedures), 815 (ensuring concession entitlements), of the NERR.</p> <p>4. Compliance breaches from systemic deficiencies in systems, processes and behaviours are better addressed through other enforcement mechanisms:</p> <p>Where breaches relate to the systems, processes and day-to-day behaviour of participants, the aim of the enforcement should be to improve these systems, processes and behaviours to prevent future breaches rather than to penalise the participant financially for a previous breach which is unlikely to have been intentional. In these circumstances open dialogue with the AER is more constructive and if necessary, the AER can impose</p>
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		<p>enforceable undertakings or in relation to customer disputes, the Ombudsman can identify corrective action. For example, a failure to apply a hardship policy in accordance with the NERL and NERR is more likely the result of a difference of opinion between the AER and the participant rather than a wilful act of the participant to breach the requirement to apply and maintain a hardship policy. Giving the AER the option to impose civil penalties for these provisions does not promote the national energy retail objective of ensuring the long term interests of consumers.</p> <p><i>Suggested outcome:</i> Where enforceable undertakings and/or dialogue with the AER is a more suitable enforcement mechanism such as in circumstances where the objective is to improve behaviours and systems, these provisions should not be civil penalty provisions. These provisions include clauses 244 (timing and disclosure of market contract information) 802 (disclosure requirements for prepayment contracts), 805 (operating instructions regarding prepayment), 615 (re-energisation) and 814 (customer enquiries - prepayment) of the NERR</p> <p>5. Significant financial risk to retailers:</p> <p>Assigning civil penalties to a broad range of provisions exposes retailers to significant financial risk. Under the proposed rules, a retailer that breaches one provision with multiple customers will frequently be taken to have committed multiple breaches, with each breach potentially attracting a civil penalty. This is noticeably different from the current civil penalty regime under the National Electricity Rules and National Gas Rules, where it is rare that a breach of one provision repeated across a number of customers will constitute grounds for multiple civil penalties. Thus as currently drafted, the civil penalty provisions are far-reaching, imposing significant compliance costs on retailers in a manner disproportionate to current jurisdictional regimes. This is likely to lead to increased costs in operating retail businesses, which will inevitably be passed on to consumers.</p> <p><i>Suggested amendment:</i> Civil penalties in relation to breaches of the NERL and NERR should be imposed on the type of breach not on the number of instances of the same breach. As noted above, the prior record of retailers should be taken into account in imposing a civil penalty. An alternative to this approach is to adopt a similar approach taken in the DNCR Act which treats 50 instances of the same breach as the same breach for the purposes of a civil penalty. Relevant provisions are section 220 (explicated informed consent) of the NERL and clauses 213 (content of bills), 218 (undercharging), 219 (overcharging), 220 (Payment methods), 221 (Payment difficulties), 222 (Shortened collection cycles), 225 - 230 (Security deposit requirements) 236 (requirements regarding cooling off and records of withdrawal), 810 (overcharging -prepayment), 811 (undercharging - prepayment) of the NERR.</p>
113 (2)	National Energy Retail Objective	The national energy retail objective is a reflection of the NEL and NGL objective and is used as an initial test or principle for the assessment and interpretation of all existing and new energy laws and rules. It is unclear

		<p>why some customer protection provisions are now excluded from this test as, their exclusion has an impact on the effectiveness and commercial viability of the energy market. The objective establishes a control mechanism for new obligations imposed on energy market participants. The introduction of exclusions or carve outs from this objective leaves market participants exposed to infinite commercial risk and establishes a precedent for further carve outs to the objective. Origin does not support this amendment to the second exposure draft and questions why such an important issue has not been consulted on with retailers before its introduction into draft legislation.</p> <p>The reference to “long term interests of consumers of energy ...” is sufficient to ensure that consumer protection is taken into account as part of the NERL objective. Further, it is more appropriate because it ensures that consumer protection is appropriately balanced against other factors. Section 113(2) should be deleted.</p> <p>As a secondary point the provision as drafted seems to provide not only the exclusion of the objective for the application of protection provisions for hardship customers but also to small customers which also includes business customers. This provision should be deleted.</p>
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National Energy Retail Law		
Part 2 – Relationship between retailers and small customers		
Section	Subject Matter	Comment
205 (2)	Variation of standing offer prices	The current drafting of the clause refers to <u>the</u> standing prices which could imply that all standing offer prices can be amended from time to time. Retailers should have the flexibility to vary different standing offer prices at different times within the constraints imposed by the law therefore the reference should refer to varying a standing offer price.
209	Obligation to comply with Standard Retail Contract	The retailer has a contractual obligation to comply with a standard retail contract. It is not necessary or appropriate for the retailer to also have a regulatory obligation, with penalties, to comply with its contractual obligations. At the very least this provision should not be a civil penalty provision as set out in section 104 above.
223 (b)(ii)	No or defective explicit informed consent	The set off amounts payable between the two retailers must also take into account the time limit within which the transfer will be corrected in the wholesale market and ensure that the original retailer is suitably compensated.
232	Retail marketer	The words “or an associate of a retailer” should be deleted. Associates of a retailer are captured in “another person”, and as currently drafted all associates of a retailer would be captured, regardless of whether or not they engage in marketing.
240(2)(a)	Small customer on life support equipment	Origin would have sincere sympathy for any customer that suddenly required life support but placing the obligation on the retailer to pay for the cost of a standard meter to replace any existing prepayment meter is not appropriate. A customer will have chosen to move to a prepayment meter so surely any transition should be funded by the customer or be the social responsibility of the government to fund.

National Energy Retail Law		
Part 3 – Relationship between distributors and customers		
Section	Subject Matter	Comment
307	Direct billing arrangements	<p>Inconsistent with the National Electricity Rules and existing jurisdictional arrangements this section appears to provide distributors with the discretion as to whether retailers can establish energy only contracts with their own large customers.</p> <ul style="list-style-type: none"> • Vic Use of System Agreement 3(a)(1) <ul style="list-style-type: none"> • The parties agree that the DB will provide distribution services to the Retailer in respect of each customer except to the extent that the Retailer and the Customer have entered into an agreement under which the Retailer does not provide or procure and UoS services to the customer. • NSW Market Operations Rule (NUSA) No.2 <ul style="list-style-type: none"> • Where a customer (who is not a small retail customer or a Registered Customer) and a Retail Supplier agree, the DNSP may require payment of, and issue bills for, NUOS Services Charges, in respect of that customer’s Agreed Points of Supply. • NER 6.20.1(c): <ul style="list-style-type: none"> • If a Distribution Customer and the Market Customer from whom it purchases electricity agree, the Distribution Network Service Provider may bill the Distribution Customer directly for distribution services used by the Distribution Customer in accordance with paragraph (a)(2)."

National Energy Retail Law		
Part 4 – Small customer complaints and dispute resolution		
Section	Subject Matter	Comment
401 (1)(a)(vi)	Definitions	The reference to retailer in this clause should be deleted as Division 3 of Part 7 only applies to distributors.
406	Functions and powers of energy ombudsman	The functions and powers of an ombudsman scheme are established in an ombudsman’s constitution. A retailer’s authority should include an obligation for a retailer to become a member of a relevant ombudsman scheme for each jurisdiction in which it has customers. In Vic and NSW the ombudsman schemes are independent corporate entities with industry board representatives. This ensures the ombudsman schemes are suitably funded by industry and operate under the control of their board providing industry with ongoing confidence on the scope of the ombudsman’s operation. While it is understood that this is not the case in QLD where the ombudsman scheme is established under legislation this should not dictate the arrangement under the NECF. Origin believes that independent ombudsman schemes as operating in Vic and NSW have been successful and tested over a significant period of time. We suggest that this model should be extended nationally. There is no need for the functions and powers of the energy ombudsman to be included in the NERL.
406 (1)(d)	Functions and powers of energy ombudsman	The function to “resolve those complaints and disputes” should be deleted as it is an inappropriate extension of the power under 406 1(c) to facilitate the resolution of complaints and disputes. The ombudsman should not be given the open ended power to resolve disputes this is a matter for the disputing parties.
407 (2)	Information and assistance requirements	As mentioned above this provision designed to ensure that retailers and distributors abide by the ombudsman’s decision regarding the nature or scope of information requirements would be better located in the ombudsman constitution. It should therefore be removed from the NERL.

National Energy Retail Law		
Part 5 – Authorisation of retailers and exempt selling regime		
Section	Subject Matter	Comment
514?	New clause Transfer by trade sale	In addition to the right transfer an authority, Origin suggests that a right to transfer customers in the event of a trade sale of a retailer is also required. In Victoria, clause 4.1(b)(ii) of the Electricity Customer Transfer Code provides that EIC is not required in connection with an assignment of a customer’s contract which forms part of a transfer to a third party of all or substantially all of the retailer’s retail sales business. A similar provision is appropriate for the NERL so that trade sales and other merger activity can proceed in an efficiently and without disruption to customers. This would stimulate new entry and resulting competitive activity as new entrants may enter, build up a customer base and then exit. It may also assist to avoid RoLR events, as customer’s could be transferred by way of trade sale before the event occurs, which is less costly and disruptive to the market place.
520(b)	Power to revoke	Clause 520(b) provides the AER with a very broad power to revoke an authorisation. Such revocation, which will take away a retailer’s ability to carry out a core function of its business or in some cases the core function, should only be made in extreme circumstances. In particular, the AER should only be able to revoke an authorisation if a retailer has failed to meet, or there are strong grounds to indicate that a retailer is unlikely to meet, an obligation which is fundamental to the operation of the energy market. In conjunction with a clearly defined civil regime (see previous comments), this is sufficient to drive the correct behaviour without the all encompassing threat to revoke an authorisation. Revocation should not be attached to all obligations on a retailer where there is “reasonable apprehension” of a likely failure. Such grounds are not a sufficient basis to require a business to suspend operations. At the very least revocation should only apply if the retailer has failed to comply with the enforcement regime.
529 (1)(a) (e) & (f)	Exempt seller related factors	Whether or not selling energy is or will be a core part of the exempt seller’s business or incidental to that business is not a valid exemption factor as a very large company like BHP could sell a significant amount of energy before it could be argued that it was a core part of its business. This factor should be removed. The factor which considers the extent to which conditions imposed on an exemption could be taken as a substitute for an authorisation in some instances, and whether other laws provide appropriate obligations to govern behaviour of an exempt seller, should not exist. This has the likely potential to create a two-tiered market, those customers served by onsellors (with limited oversight) and those served by an authorised retailer. There are many existing examples of Fair Trading legislation that could apply to energy retailing but more

		<p>onerous specific energy regulation has been deemed necessary. Why should some energy retailers get exemption?</p> <p>The likely cost of a retailer authorisation compared to the benefits to the exempt customer should also be removed as this could quite often be the case with supply to small numbers of customers. The issue is that these small customers will not receive the essential protections that authorised retailers are mandated to provide.</p>
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National Energy Retail Law		
Part 6 – Retail of last resort scheme		
Section	Subject Matter	Comment
		See our comments in relation to Part 8 which are equally relevant here.
606(1)	Registration following lodgement of RoLR register register EOI	The imposition of an annual expression of interest process from retailers interested in becoming a registered RoLR is costly and unnecessary. Rather retailers could be advised to reconfirm their previously approved registration.
614	Transfer of customers	Consistent with some existing industry processes, this section should allow pending transfers being completed at the time of a RoLR event for customers to transfer to their preferred retailer rather than the RoLR. This provision needs to be in the law to avoid ambiguity and to direct any RoLR procedures.
622(3) & (4)(a)(c)	Contractual arrangements for sale of energy to transferred large customers	<p>The RoLR deemed terms and conditions for large customers should not require approval by the AER. It is inappropriate to provide this additional protection mechanism for large customers. The RoLR should only be required to offer large customers a fair and reasonable contract which will be a suitable market contract, that adequately reflects the risks facing a retailer when exposed to a large customer. Large customers have the ability to negotiate alternative arrangements at any time after a RoLR event if they are unsatisfied with this contract. Moreover, if this is a concern, then a provision could be included into the law or rules which allow large customers to pre-contract with an alternative retailer in the event of their current retailer failing. This type of provision currently exists in NSW.</p> <p>Under section (4)(a) and (c) of this provision it prescribes that large customer’s prices will include the “actual wholesale energy costs of the designated RoLR” as well as a “margin approved by the AER”. The wholesale energy costs should be amended to include the half hourly spot prices in the national market (as currently exists in Vic and QLD). Wholesale energy costs for a particular retailer, at a particular time, are difficult to calculate as they can include a wide array of financial hedging contracts and various other long and short term contracts. Therefore a much simpler and transparent price to apply is the half hourly spot price that has parallels with the gas spot markets. The margin applied to large customers should also be based on what is “fair and reasonable” with the RoLR to determine rather than the AER. Large customers will make their own assessment of the margin charged by retailer and use the competitive market to manage this issue.</p>

624	Duration of arrangements for large customers	As mentioned above the entire contractual process for large customers could be simplified if the deemed contract (approved by the AER) did not exist. Large customers should be offered a fair and reasonable market contract by the RoLR with the customer free to participate in the competitive market at any time. If these current provisions are perpetuated then the RoLR should not be forced to continue the deemed contract for a period of six months. Notice should be given after one month with the contract terminated after a further month. Large customers can expose retailers to significant load profile and credit risks that can only be adequately managed via an agreed market contract.
627 & 629	Meaning of RoLR General regulatory information order	<p>The implications of these new wide ranging general information powers under the auspices of a ROLR event or an apprehended RoLR event are significant and of concern to Origin. These provisions will allow the AER to request a variety of confidential, financial, customer and individual wholesale market contract data of all retailers regardless of their involvement in any purported RoLR event. These information provisions are too broad and unacceptable to Origin.</p> <p>The rationale for this information requirement is not evident and it is not clear how the AER will interpret the information which may not be in the best interests of the market. As these RoLR provisions are new in NECF 2 we request a separate session with the RPWG and more consultation on these RoLR provision.</p>
634 (2)	Further provision about the information that may be described in a RoLR regulatory information instrument	This provision allows the AER to request a plethora of financial, forecast, cash flow, parent-company and hedging contract data from any retailer without any explanation as to what it will be used for or how it will assist in managing the RoLR event. As mentioned under 627 above Origin does not support or believe the extent of these information powers are warranted.
643(4)(b) & (7)	RoLR plans	The requirement to review RoLR plans annually is excessive and at the very least should be extended to biannually which is currently the case for NSW. The obligation to participate in regular RoLR exercises is also an expensive compliance obligation for a low occurrence event. Origin suggests that an assessment of operational readiness by the AER every two or three years may be a much more efficient process to monitor market readiness.
648	RoLR Cost Recovery Schemes	<p>The default RoLR needs further protection and the opportunity for cost recovery for both the costs associated with the event and for the general requirement to maintain systems and manage audit processes.</p> <p>It should be noted that costs will vary by circumstance too. For instance a RoLR event occurring at the start of summer may have far higher costs than at other times (due to the need to contract quickly at peak times). In</p>

		<p>addition, the administration costs of the RoLR event are affected by the quality of the data provided by the receiver of the failed retailer. A RoLR should also be protected from penalties associated with non-compliance with the retail obligations for at least 3 months, as accounts may be in error through no fault of that retailer. Cost recovery after the event, however, is problematic from a timing perspective - so even in the case of a default retailer, the principles of cost recovery need to be clearly articulated in advance (even if the details reflect the individual event).</p>
652(2)	Information to be included in customer retail contracts	<p>It is unnecessary, costly and excessive for the AER to impose a standard form for the ROLR information notice, and specify how the notice is to appear in the contract. No jurisdiction currently adopts such an approach.</p>

National Energy Retail Law		
Part 7 – Small compensation claims regime		
Section	Subject Matter	Comment
		No comments.

National Energy Retail Law		
Part 8 – Functions and powers of the Australian Energy Regulator		
Section	Subject Matter	Comment
804, 814	Power to obtain information and documents, Use of information provided under a notice under section 804	<p>Section 804 (or alternatively Division 6 of Part 6) should be amended to make clear that the AER cannot rely on information obtained as part of the RoLR provisions in the exercise of any of its other functions and powers. The information provided by retailers as part of the RoLR provisions will include highly sensitive commercial information which when used or applied for other purposes by the AER could be taken out of context and may be misleading. The AER should also be required to destroy or otherwise return all information obtained under Part 6 when no longer needed for RoLR purposes.</p> <p>Origin Energy is concerned that the wide range of information obtained by the AER in relation to the RoLR arrangements may be used by the AER as part of its exercise of other functions and powers. While the AER's power to use information obtained under section 804 does not extend to information obtained under the RoLR provisions, as currently drafted, the AER could obtain the RoLR information under section 804 and therefore would be entitled to use it for other purposes under section 14.</p>
812	Disclosure of Confidential Information	<p>Given the impact of disclosing confidential information it would be more appropriate if the introduction to subsection (1) read:</p> <p>Despite sections 809, 810 and 811 but subject to this section, the AER is authorised to disclose information given to it in confidence after the restricted period if the AER is of the <i>“reasonable opinion that the disclosure is necessary and:”</i></p>

National Energy Retail Law		
Part 9 – Functions and powers of the Australian Energy Market Commission		
Section	Subject Matter	Comment
906	Rule Making Powers	It appears that the reference to Part 8 in this section is incorrect as Part 8 applies to the AER not the AEMC.

National Energy Retail Law		
Part 10 – National Energy Retail Rules		
Section	Subject Matter	Comment
1003(3)(c)	Subject matters of Rules	The section states that the Rules may confer functions or powers on an energy ombudsman. Most existing energy ombudsmen have their powers and functions conferred by their relevant constitution. Given that the policy intent is not to amend existing functions and powers this reference should be deleted.
1007	Criminal Offences	The AEMC should not only be prohibited from making a Rule that creates an offence for a breach or provides for a criminal penalty or civil penalty for a breach, but the AEMC should also be prohibited from amending a Rule which has those effects.
1008(2)	Documents etc applied. adopted and incorporated by Rules to be publicly available	Both provisions of para (a) and (b) should be applied so that the AEMC should publish any rules and amendments as well as specify where they can be obtained. (i.e. “or” should be replaced with “and”).

National Energy Retail Law		
Part 11 – National Energy Retail Regulations		
Section	Subject Matter	Comment
		No comments.

National Energy Retail Law		
Part 12 – Compliance and performance		
Section	Subject Matter	Comment
1206	Carrying out of compliance audits	<p>It should be specified in this provision the criteria for when an audit can be requested and the objective of an audit. This criteria may include; matters that have systemic implications or a number of significant matters.</p> <p>At the very least, the circumstances in which an audit would be required should be set out in the AER Compliance Procedures and Guidelines.</p>
1209(d)	Contents of compliance reports	<p>Compliant audits are expensive and disruptive. While Origin does not dispute that audits may be necessary and appropriate, Origin is of the view that a compliance report on any additional matters that the AER considers appropriate for inclusion, should be subject to a reasonableness test and should demonstrate that the subject and contents are clearly confined to ones that are relevant to the overall purpose of the audit - an audit should not become a “fishing” process. This provision should be amended accordingly.</p>
1210	AER Compliance Procedures and Guidelines	<p>As per 1206 above the circumstances in which an audit would be required should also be set out in the AER Compliance Procedures and Guidelines, along with the responsibility of those requiring the audit to demonstrate that the subject and content covered are relevant to the purpose (as above).</p>

National Energy Retail Law		
Part 13 – Enforcement		
Section	Subject Matter	Comment
		No comments.

National Energy Retail Law		
Part 14 – Evidentiary matters		
Section	Subject Matter	Comment
		No comments.

National Energy Retail Law		
Part 15 – General		
Section	Subject Matter	Comment
1502	Distributor-retailer mutual indemnity	<p>Origin Energy considers the limited mutual indemnity between distributors and retailers to be acceptable on the basis that the following provisions of the NERR, National Electricity Rules and National Gas Rules become conduct provisions so that retailers have an appropriate recourse for any loss or damage suffered from a failure by distributors to discharge the relevant obligations:</p> <ol style="list-style-type: none"> 1. Distributor's rights and obligations in relation to interruption of supply (Division 6 of Part 4 of the NERR): As a monopoly provider, a Distributor has significant control of the supply of electricity and gas and should be held accountable when this supply is not provided in accordance with the regulatory requirements. 2. De-energisation of supply points (Division 5 of Part 5 of the NERR): Where retailers are obliged to rely on distributors to discharge their obligations in relation to de-energisation in accordance with the regulatory requirements. Failure to discharge these obligations can expose retailers to financial and regulatory risks. 3. Distributor to inform retailer of direct customer billing (cl.104, National Gas Rules; cl. 6B.2.1, National Electricity Rules): Retailers could be exposed to financial risk if distributors fail to discharge their obligations regarding notifying retailers about direct billing arrangements and the ability to recover loss or damage from the distributor in these circumstances is an appropriate remedy. 4. Prohibition on distributors from adjusting distribution charges where retailers cannot recover those charges (cl. 108, National Gas Rules, cl. 6B.2.4, National Electricity Rules): In circumstances where distributors do adjust charges in breach of this provision, seeking recovery of losses by retailers is an efficient and appropriate remedy. 5. Notification of changes to distributor charges (clause 112, National Gas Rules; clause 6B.3.6 National Electricity Rules): Retailers have regulatory obligations in relation to variation of tariffs and charges and a failure by a distributor to notify changes accordingly can limit a retailer's ability to pass through those tariffs exposing the retailer to financial liability.

National Energy Retail Rules		
Part 1 – Preliminary		
Rule	Subject Matter	Comment
105(2)	Business premises- separate application of upper and lower consumption thresholds	Where business sites have been aggregated and where the parties agree additional parts of the rules should also not apply. Parts 2,3,6,7,8 and 10 should not apply to this customer segment. Furthermore there is no general exemption for large customers from the disconnection rules. Large customers should not be entitled to all of the same customer protection rules as small customer with regard to disconnection which is contractual matter.
106(c)(ii)	Classification	It is confusing to categorise customers as “small market offer”, given that some small customers will be small market offer customers, in the sense of being a small customer on a market offer, but below the “small market offer” customer consumption threshold. An alternative description, such as ‘intermediate small customer’ should be adopted for clarity.

National Energy Retail Rules

Part 2 – Customer retail contracts

Rule	Subject Matter	Comment
205(2)(b)	Pre-contractual duty of retailers	<p>There appears to be no social benefit or policy basis for this requirement nor demonstrated consumer issue to which it is targeted at resolving - and its effect will contradict the policy objective of creating an open competitive energy market, with multiple retailers and multiple offers..</p> <p>A retailer should only be obliged to advise that a standing offer is available if the retailer has refused to make a market offer available to the customer. As currently written this provision could have the affect of moving customers to standing contracts and also causing confusion for many customers. In most cases a market contract will be priced less than a standard contract and to have the obligation to also offer and explain the details of two contracts over an extended phone contact is not appreciated by most customers. If the intent of this provision is to make customers aware of their rights to receive a standing offer then this is an education issue that can be addressed via other means such as government and retailer websites.</p> <p>Customers also have a 10 day cooling off period to consider the contract details, following receipt of their terms, and thereby have ample time to assess the market offer against the standing offer terms that are published by the relevant retailers on web-sites. The customer therefore should not be subjected to multiple contract detail at the initial point of contact.</p> <p>The difficulty this poses can be highlighted by considering the existing pricing structures around time of use/seasonal electricity tariffs and multi-step gas tariffs - a customer cannot be expected to “sit through” a description of this tariff and a “standing contract’ version of the same tariff type. The critical policy factor is that the customer has the opportunity to assess the proposed offer and has sufficient time to consider this against other market offers and the standing offers (where appropriate) - the cooling off period and price publication requirements clearly provide for this already.</p> <p>While we understand that this provision exists in NSW, this jurisdiction has experienced the lowest level of competitive market activity despite being the first jurisdiction to introduce FRC. There have even been periods where standing prices are lower than market prices. This condition should not be seen as justification for this provision to exist nationally. In Victoria, where prices are deregulated, the standing offer prices are mostly higher than market offers, and in any case, raise the issue of which standing offer is the one to be advised to the customer (as each retailer has their own standing offer for each patch) and what this would “tell” the customer.</p> <p>Moreover the way this provision is written it could imply that even if an existing market offer customer contacted their</p>

		<p>retailer to request an alternative market offer that they would have to be informed about the standing offer. This is unsatisfactory and a total waste of time for the customer and their retailer.</p> <p>A regular measure of effective competition is the number of customers on market contracts and there are clear policy commitments in most states (including NSW) to move customers progressively away from standing contracts. However, this clause has been put forward without reference to the stated policy intentions and will most likely have the effect of increasing the number of customers on standing contracts.</p> <p>Clause 4.2.10(a) of the QLD Electricity Code requires the financially responsible retailer to provide a standing offer when the retailer does not offer the customer a market offer. This example provides a practical solution to the requirement to offer and should be reflected in the NERR.</p>
207(3)(a)	Pre-contractual request to designated retailer for sale and supply of energy (SRC) Identification	<p>Consistent with Victoria, South Australia and Queensland retailers should be able to request the customer to provide contact details of the property owner or the agent when the premise is a rental property. A new clause needs to be added to reflect this requirement which assists retailers in managing the account with the appropriate person.</p>
207(6)	Pre-contractual request to designated retailer for sale of energy	<p>This draft rule significantly weakens existing pre-contractual requirements. Both South Australia (4.1.1(h-j)) and Queensland (4.7.1(h-j)) require the customer to pay any required security deposit, and to either repay an existing debt from a previous supply address or enter into a payment plan for that debt.</p> <p>Again the rule appears to have been introduced without clear policy explanation of the issue it is trying to solve - there is, for instance, no objective assessment of the overall quantum of the issue from a customer perspective. Similarly there is no consideration of the efficiency effects of this solution versus other policy approaches.</p> <p>Removing these obligations would lead to higher prices for all customers (including those who meet their obligations) - assuming regulatory pricing decisions acknowledge the impact of this policy on the debt profile of the retailers. A further impact may be to increase the likelihood of subsequent disconnection for those who do not, with a corresponding increase in financial and emotional stress.</p> <p>Origin also notes that under rule 615(re-energise premises), a customer seeking re-energisation must rectify the matter that led to the de-energisation prior to the re-energisation. This would include the payment of debt or the provision of a security deposit. Rule 207 creates an anomaly whereby a customer who moves premises is not required to provide either outstanding payments or a security deposit prior to energisation, but a customer remaining at the</p>

		<p>same premises must do so.</p> <p>More generally, where jurisdictions believe that some customers should be assisted in paying a security deposit, then they are in a better position to provide direct payments to these customers to assist in the payment of the deposit. This type of approach is far more consistent with the approach and policy intent of putting in place transparent and efficient CSO that are the responsibility of government (and NGO's as relevant) rather than the individual retailers.</p>
208 (1)(c)	Responsibilities of designated retailer in response to request for sale and supply of energy (SRC)	Placing the obligation on retailers to provide information on 'any relevant' government funded energy charge rebate concession is too broad. The obligation should be amended as follows 'information about government funded concessions or rebates'.
209(2)	Basis for Bills	This provision places an obligation onto a retailer to use best endeavours to ensure there is an actual reading every 12 months. Meter reading is undertaken by the distributor and is not in the control of retailers therefore this clause should be deleted or alternatively a similar obligation must be placed on distributors.
210(1) & (c)	Estimation as basis of bills (SRC and MRC)	<p>Origin suggests a new sub clause (d) which clarifies that retailers can issue a bill based on an estimate as provided under the metrology procedures.</p> <p>It should be noted that the criteria for estimation of bills, and how this is presented to the customer, where the meter is a "Smart Meter", is the subject of separate reviews - the discussion should be clearly restricted to Type 5 and 6 metering arrangements.</p> <p>Clause 1(c) - Remove "where" as it is duplicated.</p>
210(4)	Estimation as basis for bills (SRC and MRC)	The reference to 209(2) should be to 210(2).
211(c)	Bill smoothing	<p>A six month review of a bill smoothing arrangement for a standing contract is too soon as it does allow the full seasonal impact on consumption to be considered and covers only 2 billing periods for a normal 3 monthly bill cycle. Origin suggests that a mandatory review be amended to 12 months as currently occurs in most jurisdictions. If the clause is retained, 6 month should be amended to 7 month, to allow 6 months data to be used in reconciliation.</p> <p>The intent of bill smoothing is to give some certainty to customers. As such there needs to be a clear trade-off</p>

		between the period covered by the bill smoothing (which indicates a longer period) and the possibility of a “price-shock” at the end of the period (although the latter can be addressed in the annual reassessment process). Origin is not clear if any objective analysis of consumer preference between these options has been undertaken before proposing such a significant change to existing processes in most jurisdictions.
212	Frequency of billing	Retailers rely on the provision of metering data from the Responsible Person (and its agents) before they bill customers; therefore this provision needs to be amended to reflect this reliance. The significant working capital and other cost impacts of any misalignment of billing periods, for instance, the DB billing period and the retail billing period (where the retail billing period is constrained but not the networks), must be taken into account in retail pricing allowances.
213 (1) (s)	Contents of bill	Placing the obligation on retailers to provide information on ‘any relevant’ government funded energy charge rebate concession is too broad. The obligation should be amended as follows ‘information about government funded concessions or rebates’.
216(1)	Historical billing Information (SRC and MRC)	This obligation states that we must provide information promptly - this will be open to interpretation. The Victorian Energy Retail Code provides for best endeavours to provide information within 10BDs and we suggest this adds clarity/sets customer expectations.
217(5)(c)	Billing disputes	Origin has no problem with reimbursing the customer for the cost of the meter test or the metering data if they were proven to be faulty but we suggest that the same obligation be placed onto the distributor, as the responsible person, to reimburse the retailer. An additional provision is required to clarify the distributor’s obligation to pay a reimbursement promptly to the retailer.
219(6)	Overcharging (SRC and MRC)	To be consistent with clause 6.6.1(a) of the South Australian Code the threshold amount should be \$100, not \$50 as currently drafted. The \$100 threshold has operated effectively in South Australia since market start, and has not been changed or questioned through several code review processes.
222(2)(a)	Shortened collection cycle	The obligation for a retailer to ensure that a customer is “ <i>not experiencing payment difficulties</i> ” before they can be placed on a shortened collection cycle is too onerous. A retailer has no direct access to information on the customer’s overall financial position can only be sure of this if the customer or their authorised financial advisor advises the retailer accordingly. Suggest this sub clause be removed or amended to “ <i>the customer, or their authorised financial advisor, has not advised that they are experiencing payment difficulties</i> ”.

223	Request for final bill (SRC)	Origin is unsure of the intent of this clause as it appears to give the customer the right to request a final bill limiting the retailer's ability to de- energise the site. Rule 612 adequately covers the de-energisation of a site and final billing. The retailer must retain the right to de- energise as it is responsible for the energy consumed at this site even if there is no customer.
225	Requirement for security deposit (SRC and MRC)	<p>Current jurisdictional arrangements allow retailers to request a security deposit at any time when the security deposit provisions are triggered, and not just when supply is requested, as is currently drafted (whilst it may be claimed there is some ambiguity in Queensland and South Australia, no restriction applies in Victoria, and in New South there is only a one year restriction for standard contract customers).</p> <p>The framework as currently drafted treats those customers who move supply address differently to customers who do not move (and no request for a security deposit could be made from the latter). The words "at the time when the customer requests the sale and supply of energy under a customer retail contract" should be deleted, as should subsection (6).</p>
225(1)(a)	Requirement for security deposit (SRC and MRC)	While this provision allows for a security deposit to be charged if there is outstanding debt from " <i>other premises</i> " it should also allow for a security deposit to be charged for debt at the existing premises for instances where there has been a disconnection at the same premises.
225(2)	Requirement for security deposit (SRC and MRC)	This appears to be complex clause which really only needs to say that a security deposit cannot be charged to a hardship customer as defined by the relevant regulations. For simplicity Origin suggests that the clause be redrafted.
225(3)(b)	Requirement for security deposit (SRC and MRC)	The mandatory requirement for both standing and market contracts that a retailer must allow a customer to pay a security deposit by instalments is contrary to the whole purpose of the security deposit which is to protect retailers' credit exposure from customers with a poor credit history. Why would a customer ever pay the remaining security instalments once they have been energised? Moreover all of these provisions apply to both small residential customers and small business customers. Retailers should not be expected to bear this credit risk which if perpetuated will ultimately result in higher prices for all customers.
225(6)	Requirement for security deposit (SRC and MRC)	This new provision for NECF 2 that does not allow a retailer to impose a security deposit for any current customer is too extensive and removes any ability for a retailer to manage credit risk for small residential and business customers on either a standing or a market contract. An existing customer can still impose significant credit risk and they should also be exposed to security deposits like new customers. It is a double standard. The provision should be deleted.

225(7)	Requirement for security deposit (SRC and MRC)	Under this sub- section (7) a retailer is not obliged to reconnect a customer if the customer has refused to provide a security deposit after connection. However it is unclear whether this provision applies if the security deposit remains unpaid 10 business days after disconnection.
226 (1)	Payment of security deposit (SRC and MRC)	A timeframe (five business days) for when a small customer must pay a security deposit, when it is required, needs to be included into this clause as currently exists in the QLD Electricity Industry Code 9 4.17.1(b).
228(1)	Interest on security	Consistent with current arrangements in most jurisdictions, NECF1 included a deduction of 1% from the bank bill rate to allow retailers to cover the costs of managing security deposits. This approach should be retained and the words “less one full percentage point” reinstated.
229(1)(a)	Use of security deposit	Origin notes that South Australia (8.7.1(a)), Queensland (4.17.10) and New South Wales (22.6) allow security deposits to be used upon disconnection, with no condition requiring “no contractual right of re-energisation.” The NECF should be drafted accordingly with those words deleted from the section.
230 (4)	Obligation to return a security deposit (SRC and MRC)	The circumstances under which a security deposit must be returned should be subject to variation under agreement in a market contract, in accordance with NECF1 and all previous RPWG and SCO papers. NECF 2 should be amended accordingly.
234	Termination of standard contract	An additional sub section (6) is required to allow a Retailer the right to terminate a contract if the customer’s consumption exceeds the small market offer consumption threshold, otherwise the retailer may never be able to transition the customer to a market offer.
235	Termination of a market contract	Market contracts should be able to specify additional circumstances under which a retailer may terminate, providing that there is no inconsistency with section (1)(a-g). This section should make such right explicit. This position is consistent with the SCO response.
236 (2)	Cooling off period and right of withdrawal - market retail contracts When right of withdrawal may be	This rule needs to confirm that that the deemed time to receive the required information from the retailer will be 2 business days. This would also reflect the intent of clause 17(b) (ii) of the model terms and conditions for standard retail contracts.

	exercised	
237(4) (a)	Retail notice of expiry of market retail contract	Not all contracts have an expiry date with some being evergreen so “ <i>a reference to the expiry date of a contract</i> ” should include the words “if applicable”.
247	No contact times	As telephone contact times will be covered by Federal Law they should not be duplicated in Energy law. For clarity the reference to “in person” should be amended to “door-to-door” to ensure that canvassing in shops or public places using kiosks etc is not captured under this provision.

National Energy Retail Rules		
Part 3 – Customer hardship and payment difficulties		
Rule	Subject Matter	Comment
		No comments.

National Energy Retail Rules		
Part 4 – Relationship between distributors and customers		
Rule	Subject Matter	Comment
		No comments.

National Energy Retail Rules

Part 5 – Relationship between distributors and retailers - retail support obligations

Rule	Subject Matter	Comment
N/A	Confidentiality	The proposed contract between distributors and retailers which formed part of NECF 1 addressed obligations between the parties in relation to confidentiality where all information disclosed between the parties was treated as confidential information. This is not clearly addressed in the NERR (except under clause 6B.3.5 of the National Electricity Rules) and should be included. The information communicated between retailers and distributors should be subject to confidentiality obligations. Section 425 of the NERL in NECF 1 contemplated the making of rules relating to the obligations of distributors and retailers to preserve privacy and confidentiality.
513 (2)	Notification of de-energisation	<p>The follow through on both de-energisation and re-energisation is an essential element in the management of the process particularly given the regulatory obligations, reporting requirements and potential penalties. Delays in the information flows between retailers and distributors, or incomplete data, have the potential to impact on customers as well.</p> <p>Retailers should be advised that the distributor has completed the de-energisation even if the de-energisation was requested by the retailer. The provision should be redrafted so that where a retailer requests a de-energisation, the distributor is:</p> <ul style="list-style-type: none"> • not required to advise the retailer of <i>the reason</i> for de-energisation (but must still advise the retailer of when the de-energisation has been completed, including the date of that re-energisation); and • Where the distributor does not complete the requested de-energisation within the specified time, the reasons for that failure to complete should be stated, along with the expected time of completion.
514 (1)(b)	Liability of retailer for ongoing charges	This section requires distributors to “pay charges for energy consumed.” The Victorian Use of System Agreement (6.3(c)) and the South Australian Co-ordination Agreement (13.2(a)) require the distributor to pay to the retailer “ <i>the costs incurred by the Retailer payable to AEMO in connection with the consumption of energy by the Customer</i> ”. This implies that the half hourly spot price for electricity should be used. The new Short Term Trading Market and the Vic spot market should be the relevant sources for determining gas prices in their relevant jurisdictions. Qld could also use the Vic spot price for gas as an interim measure until a transparent and relevant price reference point becomes available.

National Energy Retail Rules

Part 6 – De-energisation (or disconnection) of premises

Rule	Subject Matter	Comment
602	De-energisation limited by this Part	This section does not align with the SCO response (2.26) which included the following grounds for disconnection: (in the case of a market retail contract) the contract has been terminated in accordance with the terms of the contract, and the customer has not entered into another retail contract. The rules should be amended to reflect this decision.
603(2)	Particulars to be included in reminder notices	<p>This new provision, which does not exist outside of NSW, requires details of the Ombudsman scheme to be included in reminder notices, in addition to disconnection warnings and contact details if customer is experiencing payment difficulties. Retailers must be given first opportunity to resolve any issues directly with their customers, and this is consistent with the practice of advising customers of the retailer’s internal complaint arrangements in the first instance on reminder notices, and of the ombudsman scheme in the subsequent final disconnection warning.</p> <p>It is inappropriate and misleading to suggest that receipt of a reminder notice is related to a potential unresolved dispute that should be subject to an ombudsman decision. A significantly high proportion of customers - greater than 30% regularly wait until they receive a reminder notice to pay their energy bill.</p> <p>The inclusion of details of the ombudsman scheme on the reminder notice could have cost implications given that retailers are charged for each related call to the ombudsman. In addition, the principle of the ombudsman scheme is to revert to the retailer in the first place.</p>
604(2)(d)	Particulars to be included in disconnection warning	<p>Origin is of the view that it is not feasible to inform customers in a disconnection warning of the “<i>associated costs</i>” of a re-energisation, given that those costs vary by distributor, site conditions, and disconnection type performed. In addition, the customer may also be required to perform any safety or metering works identified as necessary by attendance at the site. Prices for these services also change. Overall, there is a significant risk that retailers’ advice to customers of the “<i>associated costs</i>” will inevitably not reflect the actual costs in each circumstance and will be misleading to customers.</p> <p>This is not a current requirement in any jurisdiction. It should be sufficient to inform the customer that reconnection costs will apply.</p>
605(1)(d)	De-energisation for not paying bill	The obligation for an additional customer contact prior to disconnection currently only applies in specified circumstances in Victoria (13.2) and South Australia (9.2.1) if the customer has a lack of sufficient income and in Queensland (4.18.3) if the customer is experiencing financial difficulty. Similar conditions should apply in the NERL

		under this provision and therefore this section needs to be amended accordingly.
605(2)	De-energisation for not paying bill	In sub-rules 605(2)(b) and 605(2)(c) reference is made to “non-payment:” under a payment plan. To avoid any doubt that a part payment should not be regarded as payment, the clause should be redrafted to refer to the customer’s “failure to comply” with a payment plan. This would be consistent with the drafting of clause 11.2(3) of the Victorian Retail Code.
606(1)	De-energisation for not paying security deposit	This provision covers the right of for a retailer to de-energise a customer who “refuses” to pay a security deposit. The word “refuses” should be replaced with “fails” to provide clarity in the instance where a customer fails to pay but does not advise they refuse to pay.
606 - 609	De - energisation / disconnection	<p>These rules are inconsistent with general obligations in all jurisdictions other than New South Wales. Requiring a retailer to send two disconnection warnings of their intention to disconnect in the cases of not providing security, denying access to the meter, and not providing acceptable identification is excessive particularly given that the customer has chosen to deny access etc. The policy benefit of a second notice is in these circumstances highly doubtful.</p> <p>As retailers would have attempted or made contact with these customers previously to attain security, access or identification, the obligation for an additional contact in addition to the disconnection warning is unnecessary and costly to implement. These rules should be amended accordingly.</p>
610(1)	When retailer must not arrange de-energisation	The restrictions on de-energisation listed in this rule should not apply where the customer has denied access to the meter. Otherwise these restrictions could be used to deliberately to restrict access to the meter and to avoid the consequential impacts of this activity. Sub sections (c) (d) and (e) should not apply to meter access.

National Energy Retail Rules		
Part 7 – Life support equipment		
Rule	Subject Matter	Comment
		No comments.

National Energy Retail Rules		
Part 8 – Prepayment meter systems		
Rule	Subject Matter	Comment
		No comments.

National Energy Retail Rules		
Part 9 – Exempt selling regime		
Rule	Subject Matter	Comment
		No comments.

National Energy Retail Rules

Part 10 – Retail market performance reports

Rule	Subject Matter	Comment
1003(1)(b) &(d)	Contents of retail market performance report - retail market activities review.	The content of a retail market review report under this section should only be required to break down data on de-energisation between the categories of non-profit, hardship and other residential customers. We should not be expected to determine if “other customers” are experiencing payment difficulties as this may or not be known by the retailer. The text in the brackets of this rule should be amended accordingly.
1003 (1)(f)	Contents of retail market performance report - retail market activities review.	Origin does not report our total number of concession customers as part of our statistical reports for any jurisdiction except SA. This data is reported to the relevant government authority and Origin sees no reason for it to be reported more widely under the NECF. What purpose does it serve for the AER?
1003 (3)	Contents of retail market performance report - retail market activities review.	This rule should not apply to large customers as this data is not currently collated for retail market performance reports and would not serve any valid purpose.

National Energy Retail Rules

Part 11 – Retailer of last resort scheme

Rule	Subject Matter	Comment
1115	Approvals to which this Division applies	<p>The prospect of having deemed large customer terms and conditions and prices regulated by the AER under a RoLR event is unnecessary. Large customers would be supplied on fair and reasonable terms with a market contract suitable for their operation. As mentioned above under our comments to 622(3) of the NEL large customers should have the ability to seek alternative offers at any time after a RoLR event.</p> <p>Pricing and terms and conditions for large customers are not currently regulated in any jurisdiction, in any circumstances (including ROLR), and should not be regulated here.</p>
1122(2)(a)	Decision	<p>This rule limits establishes the principles to which the AER must consider when assessing a registered RoLR's costs. A RoLR should be able to recover reasonable costs rather than "efficient" costs considering the circumstances that any RoLR event will have on a RoLR.</p> <p>The concept of "efficient costs" indicates there is some way a regulator will know what is efficient in a particular circumstance. Origin considers that the costs from one event to another are so variable to the particular circumstances, that "reasonable" is a far better reference point. (This is similar to the approach advocated elsewhere for recovery of costs that are not readily foreseeable in advance, or able to be benchmarked).</p>
1124 (3)	Information to be included in customer retail contacts	<p>Given the low likelihood of a RoLR event applying to a customer, and the absence of any benefit to the customer of knowing this information in advance, it is unreasonable for the retailer to be required to place a RoLR notice in a "prominent position in the contract" or to require it to be in a standard form published by the AER. This is not a feature of current jurisdictional arrangements.</p>

National Energy Retail Rules

Part 12– Consultation for National Energy Retail Framework

Rule	Subject Matter	Comment
		No comments.

National Energy Retail Regulations		
Regulation	Subject Matter	Comment
	Civil penalties	See comments in the National Energy Retail Law section regarding civil penalties for breaches of National Energy Retail Rules.
5	Energy ombudsman	Similar provisions exist in Victoria, South Australia, and New South Wales for retailers to participate in an approved ombudsman scheme under their licences, whereby the schemes in those jurisdictions are established by industry, not legislation. A consistent approach should be adopted in the national framework whereby a retailer should be required to participate in a scheme approved by the AER.
10 (1)	Review of consumption thresholds	The review of consumption thresholds should be undertaken more regularly than every 5 years particularly as the AEMC is required to review retail competition every 2 years. These business consumption thresholds have been set arbitrarily and therefore a more frequent review is appropriate.

Schedule 1 Model terms and conditions for standard retail contracts

Clause	Subject Matter	Comment
3.2	Application of these terms and conditions	These terms also apply under a deemed contractual arrangement, and this should be made explicit. A new sub section (d) is required - <i>“when you use energy at a residential premise under a deemed arrangement”</i> .
4.1	When does this contract start	Under a deemed arrangement this contract would commence when a customer used energy at the premise. This also needs to be reflected in this provision.
6	Your general obligations	Origin suggests that customers should have an obligation to inform their retailer if they are suffering hardship or having payment difficulties that will affect their ability to pay their energy bills. Insert a new sub clause under 6.1 to cover this obligation.
6.4	Life support equipment	In some jurisdictions customers may not qualify for the Life Support Rebate but they may qualify for ‘do not disconnect’. This needs to be made clear under this obligation to avoid confusion. Customers should have an obligation to advise the retailer if there is a change in status of this arrangement.
8.1	Pass through of taxes and other charges	Retailers should have the right to pass through any new tax or charge that is introduced by either changing the tariff or as a separate item on the bill. This provision exists under clause 9.7 of the South Australian Standard Customer Contract.
10.6	New clause required: Fees	A new clause needs to be inserted that will allow the retailer to charge various other fees including; merchant service fees (credit card fees). These fees exist in various jurisdictions now and should continue to exist as they appropriately allocate the addition cost to serve to the causing party.
11 (b)	Meters	This clause states that a meter reading takes place at least once in each 12 months. Retailers have no control over meter reading and Origin believes that most distributors only have a best endeavours obligation to read a meter every quarter. This clause needs to be deleted or amended so that it is not misleading to customers and ensures they are aware of whom the obligation resides with. . A parallel obligation should sit with the distributor.
14.1(a)	When can we arrange for de-energisation	The words ‘or payment option offered by us’ should be deleted from this clause as a payment plan is all that is required to be offered.

23	New clause Contract assignment	Origin suggests that a right to assign the SRC, similar to the right in the QLD Electricity Standard Contract is necessary. This is necessary for trade sales and other merger activity. For the reasons outlined in response to 514 of the NERL, this is also beneficial for both the market and consumers.
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Schedule 2 Model terms and conditions for deemed standard connection contracts

Clause	Subject Matter	Comment
		No comments.

National Electricity (Retail Support) amendment rule 2010

Clause	Subject Matter	Comment
6B.2.2 (a) 2.2(b)	Direct customer billing	This rule does not allow for a retailer to initiate an energy-only contract with its customers which can occur. In section 2 (b) notice to the retailer should be at the time the arrangement is entered into, not at the commencement of the arrangement.
6B 2.4(b)	Statement of charges	In the absence of agreement, the statement of charges is as “reasonably determined by the distributor”. Current jurisdictional arrangements require the statement to be in a format consistent with good industry practice.
6B.2.5 (b)	Time and manner of payment	10 business days to pay an invoice is based upon a quarterly billing cycle, with a third of customer sites billed in each invoice. In an interval meter environment, with the potential for monthly invoices for all customer sites, the reconciliation of the invoice would become unmanageable and require increased resources. The time for disputing the monthly network invoice should be increased to 20 business days to accommodate this extra work load of assessing all customer bills (versus one third of the bill), the added complexity of the bills and generally, to avoid increased costs and subsequent disputes post payment of the bill.
6B.3.2	Tariff reassignment	The rule should also require distributors to provide advance notice to retailers of any tariff reassignment that they initiate and in line with requirements on retailers to provide notice to customers of reassignment of retail tariffs.
6B.3.3(e)	Disputed statements of charges	This clause should be aligned with the QLD Co-ordination Agreement clause (8.5(d)) whereby the amount determined to be due should be paid by both parties in 5 business days rather than 3 business days as proposed. It is likely that these payments will involve large amounts which require appropriate senior management or board approvals within businesses before such payments can be made.
6B.8.3	Application of credit support	To be consistent the proposed changes to clause 6B.3.3(e), the notice period for the application of credit support should also be five business days.

National gas (Retail Support) amendment rule 2010		
Clause	Subject Matter	Comment
N/A	GST	The former retail support contract in NECF 1 included a clause covering “GST Charge for Taxable Supplies”. There is no similar clause in these amendment rules. A GST clause is required.
104	Distributor to inform retailer of direct customer billing	This rule does not allow for a retailer to initiate an energy-only contract with its customers when can occur. In section 2 (b) notice to the retailer should be at the time the arrangement is entered into, not commencement of the arrangement.
106(2)	Statement of charges	In the absence of agreement, the statement of charges is as “reasonably determined by the distributor”. Current jurisdictional arrangements require the statement to be in a format consistent with good industry practice.
109	Tariff reassignment	The rule should also require distributors to provide advance notice to retailers of any tariff reassignment that they initiate and in line with requirements on retailers to provide notice to customers of reassignment of retail tariffs.
110(e)	Disputed statements of charges	This clause should be aligned with the QLD Co-ordination Agreement clause (8.5(d)) whereby the amount determined to be due should be paid by both parties in 5 business days rather than 3 business days as proposed. It is likely that these payments will involve large amounts which require appropriate senior management or board approvals within businesses before such payments can be made.
129	Application of credit support	To be consistent the proposed changes to clause 110(e), the notice period for the application of credit support should also be five business days.

National Electricity (Retail Connection) amendment rule 2010

Clause	Subject Matter	Comment
N/A	GST	The former retail support contract in NECF 1 included a clause covering “GST Charge for Taxable Supplies”. There is no similar clause in these amendment rules. A GST clause is required.
5A.C.4	Fee to cover cost of negotiation	While establishing a fee for service regime may appear to be appropriate it must be considered that customers are dealing with a monopoly distributor supplier in these situations and have no alternative or benchmark to manage what these fees may be. If fees are to exist then the distributor should be mandated to provide an indicative or budget cost (plus or minus 25%) in the first instance at no charge.
5A.F3	Negotiated connection offer	A negotiated connection offer should remain open for more than 20 business days. In most cases these offers will be for significant amounts and the customer will require senior management or board approval and they will need to consider alternatives. It is Origin’s experience when working with customers that these quotes need to remain open for 40 business days. This is not likely to impact a distributor considering that they have up to 65 business days to prepare the offer.
Part E	Connection charges	Consistent with section 1190 of the draft National Gas (Retail Connection) Amendment Rules a section is required to clarify the circumstances in which the distributor is not permitted to charge the customer via the retailer.

National gas (Retail Connection) amendment rule 2010		
Clause	Subject Matter	Comment
119L	Fee to cover cost of negotiation	While establishing a fee for service regime may appear to be appropriate it must be considered that customers are dealing with a monopoly distributor supplier in these situations and have no alternative or benchmark to manage what these fees may be. If fees are to exist then the distributor should be mandated to provide an indicative or budget cost (plus or minus 25%) in the first instance at no charge.
119U(4)	Negotiated connection offer	A negotiated connection offer should remain open for more than 20 business days. In most cases these offers will be for significant amounts and the customer will require senior management or board approval and they will need to consider alternatives. It is Origin's experience when working with customers that these quotes need to remain open for 40 business days. This is not likely to impact a distributor considering that they have up to 65 business days to prepare the offer.

Attachment B – Customer Registration & Transfer		
Clause	Subject Matter	Comment
Box 5	Cooling-off period	Origin supports the right for retailers to initiate a transfer request prior to expiry of the cooling-off period to facilitate a smooth customer transfer process.
Box 6	Transfer on estimate	The provision suggests that the customer’s explicit informed consent is required to allow a transfer on a special meter read. It is reasonable that EIC is required when the customer is paying for the cost of the special meter read. However, it should be clear that if the retailer is paying for the read, then EIC is only required for the transfer and not the special meter read.
Box 7	Objections	<p>Origin supports the right of retailers to object on the grounds of debt and the network should have the ability to object in the absence of a haulage contract.</p> <p>Debt objections are currently allowed in Victoria and Queensland, with minimal customer protection concerns raised. This provides a valuable debt management tool to retailers to the benefit of all participants in the market as it restricts debt laden customers from jumping between retailers rather than gaining assistance from their current retailer to manage this debt, for example under a hardship program.</p> <p>Distributors should maintain the ability to object for haulage contract reasons as they are the only party aware of the existence of specific haulage contracts.</p>

Attachment D – Future Smart Meter Customer Protection		
Clause	Subject Matter	Comment
D2	Historical Billing	Any obligation to provide historical billing information to customers free of charge must also consider frequency of request, method of delivery, and costs involved. This is recognised in current jurisdictional arrangements.
D3	Re-remote disconnection	Origin recognises the concern that a disconnection notice should inform the customer that the disconnection may be performed remotely. However, we do not support any requirement to impose an additional contact requirement on remotely disconnected customers, given the additional costs that would be incurred and the extensive number of previous contact attempts required under the required disconnection procedure. Furthermore the remote disconnection process is subject to a risk analysis in Victoria and the findings in this study will assist to address all issues related to remote disconnection and the NECF 2 should not be finalised until this is determined.
D4	Undercharging Provisions	Undercharging relates to complex issues including crossed meters, changed addresses etc. A considerable period of time is frequently necessary to identify the cause of undercharging and to remedy this. The length of time required is unrelated to the billing cycle; in many cases seasonal consumption variations trigger billing issues which are also unrelated to billing cycles.