

11 November 2005

Manager - MCE Secretariat
Department of Industry, Tourism and Resources
GPO Box 9839
Canberra ACT 2601

By email to: MCEMarketReform@industry.gov.au

Dear Sir/Madam

NATIONAL FRAMEWORK FOR DISTRIBUTION AND RETAIL REGULATION: SPECIFICATION OF FUNCTIONS

Origin Energy (Origin) welcomes the opportunity to provide comment on the *Proposed Framework Schedule for Transfer of Distribution and Retail Functions*.

Overall, we agree with the allocation of most of the functions.

However, we note that the listing of functions is high-level, and in fact appears to be more a mapping exercise of the full range of obligations than a detailed specification of regulations to be managed by energy regulatory agencies.

As such, it does not clearly differentiate between what will actually be energy regulation (such as metering requirements) and what will be status quo policy or non-energy arrangements (such as CSOs and the usual application of fair trading and trade practices laws) that are outside the policymaking and regulatory ambit of the AEMC and AER (and in some cases, Energy Ministers themselves). This may lead to confusion in some quarters, as some stakeholders might believe the MCE to be claiming a capacity to change all elements of the overall framework. We suggest that this matter is clarified by the SCO.

Further, as the list of functions is high-level, the detail underpinning this document (and the NERA/Gilbert+Tobin consultation paper) would be required before we could make truly informed comment. While we will provide a submission to the NERA/Gilbert+Tobin consultation paper in the New Year, we believe the real consultation and debate will need to be around this detail, that is, the form and content of the rules themselves. We understand this consultation will occur over the first half of next year and seek confirmation of this understanding.

Our comments per function in the schedule are shown below.

National

Function 4 - Service performance targets - *Service reliability, service quality and customer service measures*

We assume that this item relates only to distribution businesses, not to retail. This should be made explicit. In a competitive market (e.g. energy retail), competition will determine appropriate levels of customer service.

Function 15 - Retail price regulation - *relates to the model to be developed by the Commonwealth*

For jurisdictions that have some history of effective, or close to effective, competition (that is, Victoria and South Australia) the priority for policy makers should be on identifying and removing any barriers to effective competition, and withdrawing from jurisdictional price regulation according to an agreed timetable. In these jurisdictions there would be no 'transition' to a national model for price regulation, as there would be no ongoing retail price regulation.

The process for delivering this outcome should be a principle established under the Australian Energy Market Agreement (AEMA), and adhered to in practice, that retail price regulation is to be removed at the end of the current Victorian and South Australian price paths. Only if an independent review of competition (by either jurisdictional regulators or the AER, depending on timing) finds there to be demonstrable market failure should formal price regulation continue in either state.

An interim process will be required for the remaining jurisdictions where full retail competition is not yet established (such as Queensland), or where there are still barriers to effective market forces (such as the ETEF in NSW). It would also be used in the unlikely event that ongoing price controls are required in Victoria or South Australia.

We agree that this process should be managed on a national basis rather than being open to individual jurisdictions' political discretion.

For these jurisdictions where competition is not yet fully effective, the AEMA might include a set of Tariff Principles that allow for efficient retail pricing (that is, a reasonable price that allows reasonable recovery of costs, including costs of investment to the retailer). The AER would be responsible for regulation of this area, in a role similar to its role in access determinations under the National Gas Code.

As noted in our comments under Function 28, any necessary CSO agreements would then be negotiated between jurisdictions and energy businesses on a commercial basis.

This would be a light-handed approach, and one which improves consistency in decision making, thus reducing sovereign risk and increasing investor confidence in these markets. Origin would be keen to discuss this further with the SCO and will be in contact with DITR to see how this approach might be developed.

Function 16 - Retailer obligation to supply to small end-customer - *obligations on designated retailers (local retailers) to supply customers and minimum protections in terms and conditions of default/standing offers*

We question the assumption that the host, incumbent, or 'local' retailers only should bear the ongoing obligation to supply customers through default or standing offers. If the entire regulatory framework is being assessed from a fresh viewpoint, this assumption should not continue.

In fact, we suggest that the policy behind the 'obligation to offer' through default/standing contracts *should* be revisited, as the initial decisions taken by lead jurisdictions in this area were based on a specific policy and pre-market context, which has since changed. Policy innovation in this arena might actually not only support a

customer protection stance, but also improve customer choice and retailer willingness to enter retail energy markets.

Function 18 - Retailer: Small end-customer market contracts -retailers must obtain informed customer consent to enter Market Contracts

Function 19 - Retailer: Small end customer marketing - regulation of marketing conduct of energy retailers

The inclusion of these functions presupposes that regulation in these areas is warranted. Origin's view is that it is not. The Trade Practices Act and jurisdictional fair trading laws provide sufficient customer protection without the need for energy specific regulation.

See also our comments on Function 31.

Function 20 - TPA and Privacy Act provisions relevant to market contracts and marketing

We question why these items are included, as they are already law and are not energy specific.

Function 21 - Other retail related market rules not covered elsewhere

Function 22 - Balancing regime and settlements, effecting customer transfer in balancing and settlements system - regulation to ensure settlements and accurate financial reconciliation of supply/consumption transactions and regulate churn of contestable customers

Origin seeks clarification that Functions 21 and 22 relate only to electricity in the Eastern States. If this is so, we support the proposed allocation of these functions as managed on a national basis.

However, if the intent is for these functions to cover gas also, it should be noted that these conflict with Function 30, which shows the states and territories to continue to be responsible for local gas market arrangements.

Origin believes that the states and territories should continue to manage these functions for gas, as already described under Function 30. The specific physical and contractual arrangements that exist in each gas market decree that they should be managed separately.

However, Origin does support a national approach for regulatory approval of gas market rule changes. While the existing gas market operators should continue to manage their own rule change processes, changes should be submitted to the national regulator for approval (rather than jurisdictional regulators, as per the current arrangement).

Function 23 - Merits and judicial review

Origin supports a national approach with consistency between review mechanisms available in the gas and electricity markets. Origin notes that the MCE is currently consulting separately on this issue and we refer the MCE to our response to this consultation.

States/Territories

Function 25 - Distributor - Small end-consumers dispute resolution - *distributors' requirement to have internal dispute resolution schemes for the small end-customers and participate in independent alternative dispute resolution schemes.*

Function 26 - Retailer - Small end-customer dispute resolution - *obligation of retailers to have internal dispute resolution/record keeping procedures and participate in independent alternative dispute resolution schemes.*

The presence of Functions 25 and 26 as state/territory based appear to preclude a nationally based ombudsman. While keeping ombudsman schemes jurisdictionally based may be practical in the short term, once the national framework is in place it would be logical to move to a national ombudsman scheme for energy.

Given these functions do not specify an ombudsman scheme in any event, it would seem odd to keep this basic requirement for dispute resolution schemes jurisdictionally based.

Function 28 - Community Service Obligations - *jurisdictionally based service obligations applied on distributors and retailers*

While we agree that CSOs remain with jurisdictions - and see this as the only way - agreements should be negotiated between jurisdictions and energy businesses on a commercial basis, e.g. the Network Tariff Rebate in Victoria.

Function 31: Fair trading legislation provisions relevant to market contracts and marketing

As with Function 20, we question why these items are included, as they are already law and are not energy specific.

Perhaps there may be some note to acknowledge that retailers already have obligations with respect to marketing behaviour through FTA legislation, whereby there is no need for additional regulation under a national energy regime (that is, Functions 18 and 19 are not warranted).

Please contact either Fiona Watters (03 9652 5878) or Graeme Hamilton (03 9652 5701) if you would like to discuss any element of this submission.

Yours faithfully

[signed]

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