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Merits Review
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REVIEW OF DECISION-MAKING IN THE GAS AND ELECTRICITY REGULATORY FRAMEWORKS' DISCUSSION PAPER

Origin Energy (Origin) appreciates this opportunity to comment on the Ministerial Council of Energy (MCE) *Review of Decision-Making in the Gas and Electricity Regulatory Frameworks* Discussion Paper. As a key player in Australia's gas and electricity markets, Origin is concerned that the governance arrangements under which it operates are as efficient and effective as possible, and we therefore welcome the comprehensive and detailed discussion paper the MCE has released for comment.

The MCE presents two models for reviewing decisions in the National Electricity and Gas markets: a limited merits review model (Model A) and an augmented judicial review model (Model B).

As a general rule, Origin supports merits review for any decision of substance affecting participants in the energy market. By comprehensively examining both the legal and factual basis for regulatory and administrative decisions, it maximises the accountability of decision-makers, and provides the greatest scope for correct decisions to be made. Merits review tests the correctness of decision making and interpretation of legislation which should promote the consistent application of law and the development of better legal rules over time.

Nevertheless, the MCE proposes a sensible balance for which decisions should be made subject to merits and which are more appropriately covered by judicial review. We agree that merits review mostly has value with respect to major regulatory decisions that are subject to substantial regulatory discretion, and thus support its application to gas access arrangements, coverage and revenue cap decisions in electricity (which should also include the regulatory test). Decisions which are more procedural in nature, related to questions of policy or subject to extensive consultation processes are either unsuitable for or do not require merits based review and should therefore remain subject to judicial review only.

Origin is also comforted by the amendments the MCE proposes in its judicial review model. If more clearly defined legislative constraints are provided around the basis and processes of administrative decision-making (for example by making regulatory decisions subject to an overall market objective) judicial review begins to look much more like

merits review in any case, with there unlikely to be much substantive difference between the two in practice.

If you wish to discuss any of these issues further please do not hesitate to contact Angela Etheridge on (02) 8345 5269.

Yours Sincerely,



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