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Manager - Energy Market Reform Team
National Energy Market Branch
GPO Box 9839
CANBERRA ACT 2601

Exposure Draft National Electricity Law

Origin thanks the Standing Committee of Officials (SCO) for providing the opportunity to submit comments on the Exposure Draft National Electricity Law (NEL).

The comments in this initial submission are provided in advance of the final submission due on 7th January. With two opportunities to present Origin's views on the subject matter, this submission contains preliminary, high-level comments. This submission aims to assist the SCO in guiding the drafting of the NEL through to early January, after which Origin's detailed submission will be provided. Origin's final submission on the draft NEL may substantially add to the comments provided in this initial submission. We note that this submission is based on an incomplete set of information since the new regulations, which are referenced in the NEL, have not been released. Origin wishes to present at both the Pre-finalisation hearings on the NEL and Rules.

It is an opportune time to revisit the objectives of the energy reform programme to evaluate the extent to which the draft NEL meets the relevant objectives. The MCE's December 2003 report to COAG, "Reform of Energy Markets", detailed objectives that the energy reforms were expected to deliver in relation to governance and economic regulation, namely to:

- strengthen the quality, timeliness and national character of governance of the energy markets, to improve the climate for investment; and
- streamline and improve the quality of economic regulation across energy markets, to lower the cost and complexity of regulation facing investors, enhance regulatory certainty and lower barriers to competition.

Origin welcomes the release of the draft NEL, which is a necessary step in the process of implementing energy reform. However, Origin considers that the NEL as currently drafted is compromised in its ability to materially advance the objectives listed above, in particular by the following shortcomings:

- distribution and retail regulation are not included as functions of the AER despite jurisdictional commitment for this to happen, at the latest by 31st December 2006 as agreed in the AEMA;
- the potential for expansion of jurisdictional derogations remains unchecked, which is contrary to the objective of strengthening the quality and national character of governance in energy markets; and

- it represents an increase in regulatory powers and a decrease in industry rights in several areas such as obtaining and sharing of information, enforcement and penalties and review of regulatory decisions.

AER Responsibility for Distribution and Retail Regulation

The functions of the AER do not include responsibility for distribution and non-price retail regulation despite the fact that jurisdictions have already agreed that this will occur by 31st December 2006 at the latest in the AEMA, albeit with detail to be developed through a separate process. We are not aware of any legal impediment to adding distribution and non-price retail regulation to the AER economic regulatory responsibilities in the draft NEL. Origin considers that including the responsibilities at this early stage would be preferable to amending the NEL later, as it would provide the legislative framework for the AER to be fully functional in the manner agreed by Ministers.

Similarly the draft NEL does not provide the capability for the AER to assume retail price regulation responsibilities should any jurisdiction opt to transfer responsibility for retail pricing to the AER as foreshadowed in the MCE's December 2003 report to CoAG. Again, including the function now will avoid the need for later amendment.

Origin is concerned that the omission of these functions in the draft NEL may signal a lack of commitment from jurisdictions. Origin considers that a reform process that fails to co-locate transmission, distribution and retail regulatory responsibilities within a single national regulator would fail to meet the objectives of strengthening the national character of regulation and streamlining economic regulation. Instead the AER will simply represent an additional layer of regulation and the attainment of potential efficiencies in the cost of regulation will be foregone.

Expansion in Jurisdictional Derogations remains Unchecked

The arrangements for derogations provide no assurance that there will be checks against jurisdictional variations over time in their regulatory arrangements, after they are consolidated under a consistent approach. We expect that when the AEMC applies the rule change process to jurisdictional proposals for derogations, the AEMC approach will be to prioritise national consistency over jurisdictional variation, however, this cannot be guaranteed by the application of the Rule-making test. The Issues Paper emphasises that the draft NEL will uplift existing jurisdictional derogations and continue the rights of jurisdictions to initiate new derogations and to alter sunsets on existing derogations. To counterbalance this, Origin expects that existing derogations will be subject to the Rule-making test where the long-term interest of consumers in a reduction of barriers to competition will be duly valued.

Increased Rights for Regulators and Diminished Rights for Industry

Origin's preliminary consideration of the draft NEL raises a concern that it changes the overall balance of rights between regulators and courts vis-à-vis industry. The key areas where enforcement rights are increased are in terms of obtaining and sharing information for different purposes, court ordering disconnections and suspension from trading, and the potential for increases in penalties and fees. Meanwhile the right for industry to challenge decisions through merits review is removed and monetary liability of regulatory bodies is limited. Origin intends to consider these issues in further detail in our next submission.

Origin would be happy to expand on these issues. Please contact Patricia Cameron on (03) 9652 5878 in the first instance. Origin intends to cover more detailed issues raised by the draft NEL in the next submission due on 7th January.

Yours sincerely

Julian Turecek
National Manager
Regulation and Government Affairs
julian.turecek@originenergy.com.au