



7 January 2009

Dr John Tamblyn  
Chairman  
Australian Energy Market Commission  
PO Box A2449  
Sydney South NSW 1235

Dear Dr Tamblyn,

**AEMC DRAFT RULE DETERMINATION, NATIONAL ELECTRICITY (VICTORIAN JURISDICTIONAL DEROGATION, ADVANCED METERING INFRASTRUCTURE ROLL OUT) RULE 2008 - FURTHER ORIGIN SUBMISSION**

Origin Energy Retail Limited (Origin) made a submission to the Commission's Draft Rule Determination of 25 September 2008. In general, Origin acknowledged that the Draft Rule, as made by the Commission, sought to balance the competing needs of meeting the Victorian Government's policy objective of a mass roll out of advanced metering infrastructure (AMI) against the desire to provide a viable basis for competitive meter provision during the roll out period and following the expiry of the derogation. At the same time, Origin sought specific exclusions from the derogation (which we believe are supported by the Draft Determination); such that a retailer could choose to remain Responsible Person for type 4 meter installations in certain circumstances, including:

- New connections of less than 160MWh per annum electricity consumers;
- Small to medium enterprises less than 160MWh per annum in consumption; and
- Circumstances where customers were willing to pay for AMI that exceeded the minimum Victorian functionality and service levels.

We now provide this further submission to the Commission in order to articulate additional matters which we believe are material to the Commission's deliberations:

- The effect of the amending Cost Recovery Order in Council, gazetted by the Victorian Government in November 2008 (after the release of the Draft Determination);
- Advice from the Victorian Government to the Commission that the scope of the Victorian AMI project would be significantly revised only a few weeks before the release of the Draft Rule Determination; and
- Comments on submissions made by various stakeholders on the Draft Rule and the Commission's areas of responsibility in making its final Rule and Determination.

**Amended Order in Council**

Since our submission to the Draft Determination, the Victorian Government gazetted an Order in Council (OIC) on 25 November 2008, amending the original Advanced Metering Infrastructure (Cost Recovery) OIC of 28 August 2007.<sup>1</sup> These changes have significantly

<sup>1</sup> See Victorian Government Gazette, Numbers S200 (Tuesday, 28 August 2007) and S 314 (Tuesday, 25 November 2008) at <http://www.gazette.vic.gov.au>



altered the approach to cost recovery for the mandated AMI roll out from that originally proposed in the 2007 OIC. Furthermore, we believe the changes are not consistent with the Commission's comments on page 18 of the Draft Determination:

...the Commission assumes that the cost recovery approach adopted in Victoria:

- Is consistent with the revenue and pricing principles in the NEL; and
- Provides for distributors promptly to pass on to customers cost efficiencies resulting from the installation of smart meters.

We understand that the Commission did not have access to the amending OIC prior to the release of its Draft Determination. However we note that elements of the amending OIC are in conflict with the further criteria of the cost recovery principles under the Ministerial Council on Energy's (MCE's) Statement of Policy Principles.<sup>2</sup> For example, clause 4.1(a) of the amending OIC states that:

There shall be no incentive based control mechanism applied. Instead, there shall be a pass through of the costs of a distributor for Regulated Services.<sup>3</sup>

Origin believes this is inconsistent with clause 7A(3) of the National Electricity Law (NEL), requiring the provision of "...effective incentives in order to promote economic efficiency..." for regulated network service provider revenue and pricing principles.

It is our understanding that the amending OIC was not consulted upon widely yet it significantly changes the cost recovery approach applied with the Victorian derogation in place. Furthermore, the amending OIC does not:

- Indicate how efficiencies gained under the mandated roll out will be passed on to consumers; or
- Reflects the principles of flexibility sought by the MCE in its Decision Paper of June 13, 2008, where the MCE notes that it:

...remains open to further expansion of contestable metering beyond the roll-out period and as technology and retail competition matures to support this. Regulatory and operational arrangements in the national framework should be designed with future flexibility on this matter in mind.<sup>4</sup>

The measures identified by the Commission on page 33 of the Draft Determination go some way to addressing the flexibility described by the MCE. We discuss the measures (and the response to them by stakeholders) further below, but we believe that elements of these measures are congruent with the MCE's Decision Paper, whereas the amending OIC does not support such flexibility. For example, there is no provision in the amending OIC to allow for accelerated depreciation of AMI assets, which was a suggestion made by the Commission in its Draft Determination.

Given the lack of incentive and transparency implied by the amending OIC in establishing cost recovery, Origin believes it is critical that the final Determination and Rule consider

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<sup>2</sup> See page 18 of the Draft Determination for example.

<sup>3</sup> Victorian Government Gazette (2008) Number S 314, page 6.

<sup>4</sup> MCE (2008), *Smart Meter Decision Paper*, page 7

<http://www.mce.gov.au/assets/documents/mceinternet/Smart%5FMeter%5FDecision%5FPaper%5FMCE%5F13%5FJune%5F200820080613153900%2Epdf>



the importance of retaining some level of competitive tension in the provision of meters and meter data services in the Victorian jurisdiction of the NEM in order to:

- Enable the flexibility sought by the MCE; and
- Provide a competitive benchmark to assist the Australian Energy Regulator (AER) to assess cost recovery claims made by distribution businesses when determining tariffs to recover the cost of the roll out.

### Responses to the Draft Rule Determination

Further comment on submissions made by various stakeholders to the Draft Determination is set out below. In summary, we believe that some of the submissions have misinterpreted the role of the Commission and the impact the Draft Rule (as made) will have upon the roll out program.

#### *Submission by the Energy Networks Association (ENA)*

Origin notes on page 2 of the ENA's submission that it:

...strongly supports the AEMC Draft Determination that provides distributor exclusivity for all customers below 160MWhpa [in consumption] that do not have the retailer as the [R]esponsible [P]erson at the start date.

Origin does not believe the Draft Determination made any such suggestion. Instead, we believe the Draft Determination (correctly) provided for exclusivity of meter provision for small customers for *the purposes of the AMI roll out*, with its concomitant relationship with the Victorian Government's Cost Recovery Order in Council.

We are concerned that the derogation may be perceived by some stakeholders as a mechanism to expand the scope of meter responsibility to distribution businesses in contravention of the current provisions of chapter 7 of the National Electricity Rules (NER) beyond any mandated roll out period.

For example, the ENA stated in a media release following the Ministerial Council on Energy's (MCE's) policy commitment to the roll out of AMI that:

To ensure that [these] advantages are realised, it was essential the ministers agreed to provide distributor exclusivity in both the rollout and *the ongoing servicing* of smart meters [emphasis added].<sup>5</sup>

This implies that the distribution businesses' own representative body believes that exclusivity beyond any roll out period is a desirable outcome. Origin would stress however, that the Victorian derogation relating to AMI has a finite term of application and we support the Commission's view that mechanisms should be in place to assist with a transition back to contestable AMI provision.

On page 8 of the ENA's submission on the Draft Determination, the suggestion is made that the Commission should not pre-empt future MCE decisions arising out of the national framework (through the Standing Committee of Officials and the National Stakeholder Steering Committee for AMI).

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<sup>5</sup> Energy Networks Association (2008), Media Release, 15 June 2008, see: [http://www.ena.asn.au/udocs/ena\\_061708\\_163654.pdf](http://www.ena.asn.au/udocs/ena_061708_163654.pdf)



Origin believes that it is the Commission's prerogative to interpret policy decisions when considering changes to the NER (such as the Victorian derogation proposal) based on the best information available to it at the time. Since the National Stakeholder's Steering Committee will not have considered the impact of potential (chapter 7) NER changes until mid-2009, and the Victorian roll-out will commence ahead of any national Rule changes that may arise from this, the Commission must be able to make determinations in the interim that:

- Best reflect the MCE's stated policy intention; and
- Support the NEM Objective.

Therefore, we believe it is within the Commission's scope of responsibilities to suggest mechanisms that encourage the development of competition in AMI services. Indeed, in Origin's view the Commission has a positive obligation to suggest mechanisms that would promote the policy intent of allowing "future flexibility" in competitive metering services. The suggestions put forward by the Commission on page 33 of the Draft Rule Determination are within the scope of its responsibility and provide reasonable options to the jurisdiction in the absence of specific requirements set under the national smart meter program. We strongly encourage the Commission to continue considering these matters in the lead up to the Final Rule Determination.

#### *Submission from the five Victorian Distribution Networks*

As the Commission is aware, Origin's submission of 12 November 2008 to the Draft Determination promoted the retention of contestability of advanced metering services in a range of circumstances. We believe this to be more important now given the nature of the amending OIC and its gazettal and the reduction of available services to retailers notified to the Commission in September 2008.

In their submission of 12 November 2008, the five Victorian distribution businesses set out recommendations in sections 4.1.1 and 4.1.2 dealing with the requirement for exclusivity of meter exchange rights. In this part of our submission, we discuss comments made by the five distribution businesses set out in the above sections of their response.

##### 4.1.1 Detail of requirement

The distribution businesses identified on pages 6 and 7 of their submission a number of risks that may impact upon the roll out of AMI if the nature of the final derogation did not completely exclude retailers from acting as Responsible Person for type 3 and 4 meters for small customers (as currently provided for under the NER).

Origin would make the following comments on these identified risks; noting in advance that the derogation is in relation to the modified roll-out proposal which is based on type 5 meters, and therefore does not in itself require monopoly of type 3 and 4 metering services to achieve the immediate objectives of the derogation application.

#### *Coordination of meter roll out*

Without 100 per cent exclusivity of all metering from type 3 to type 6 for small customers, the distribution businesses claim that there will be impacts on meter purchasing, installation practices and communications design. However, there has been no evidence presented to date to indicate that if a number of type 4 meters were installed in Victoria ahead of the mass roll out by distributors, the benefits of exclusivity



will be materially impacted. The costs incurred by the distribution businesses will be recovered via cost pass through, allowing them to recoup up to 120 per cent of approved budget costs in the determining revised charges for in scope AMI expenditure.<sup>6</sup> Therefore it is not clear how the retention of some exclusions from the derogation would impact upon roll out planning, nor has this been demonstrated.

Furthermore, the benefits of retaining elements of contestable metering provision are not considered as an offset against any of the risks identified by the distribution businesses. In addition, it is unclear how newly connected sites fitted with a non-roll out AMI installation on the periphery of local distribution network area would impact upon AMI roll out plans, since the number and location of such sites would be unknown, and as a consultant who prepared a report on behalf of the five Victorian distribution businesses themselves stated:

...where an AMI meter is installed at a new connection or subdivision (ie, on a new or replacement basis), the facilitating communications infrastructure footprint may not have been rolled out to that area, thereby requiring the distributor to continue to read the meter on a manual basis until such a time as the requisite communications arrangements are in place.<sup>7</sup>

If a retailer chose to remain Responsible Person for such new connections, the appointed service provider would be reading advanced metering installations from the point of connection, without any delay associated with “yet to be constructed” communications infrastructure. Examples such as this call into question the need for exclusivity of AMI provision for all electricity consumers using less than 160 MWh per annum not already served by a type 4 or above meter (where a retailer is the Responsible Person)

#### *Reading costs and route management*

It is further claimed that if significant route changes are required due to the installation of AMI by retailers before the deployment by a distribution businesses, then there will be an increase in reading costs. Origin would note in response to this that:

- Precisely what would constitute a significant route change and under what circumstances has not been established (one particular area, how many areas, how many meters?);
- This risk is temporary in nature since once the derogation expires, it may be repeated many times over;
- It would not affect greenfield developments and connections since they do not currently exist; and
- If such activity preserves flexibility (as indicated by the MCE in its Decision Paper) and consumer choice, then it is likely to enhance rather than detract from the NEM Objective.

#### 4.1.2 Draft rules analysis and suggested drafting approach

Section 4.1.2 of the distribution businesses’ submission states that the current wording of the Draft Rule Determination provides the flexibility for a retailer to continue to install a type 4 (or 3) meter following the commencement of the start date. Origin agrees, but

<sup>6</sup> Victorian Government Gazette (2008) Number S 314, page 17.

<sup>7</sup> NERA Economic Consulting (2007), AMI Incentive Arrangements- Victorian Electricity Distributors, page 3, <http://www.esc.vic.gov.au/NR/rdonlyres/C489EB3F-A928-4DD0-A10E-805DC611E0C5/0/NERAReportAMIIncentiveArrangements.pdf>



does not believe that this presents any material risks for the distribution businesses during the application of the proposed derogation to the NER. The scenario described in paragraph 3 of page 8 of the distribution businesses' submission occurs at present (and with increasing frequency for customers with solar PV installations).

Granting a derogation that excluded the retailer acting as Responsible Person for any customer metering installation below 160MWh per annum in consumption would eliminate the current option that customers have in selecting remotely read (type 4) metering and associated functionalities for the period of the roll out.<sup>8</sup> Origin would contend that if a customer chooses (and contributes to the cost of) of metering with greater functionality than the proposed type 5 (remotely read) roll out, then this currently available choice should be preserved. Asserting that such an outcome disrupts the economics of the roll out without supporting evidence is not in our view a sufficient basis for total exclusivity.

Finally, Origin would contest the statement on page 7 of the distribution businesses' submission that customers may never receive a meter that reaches AMI functionality and service standards. In Origin's experience, and given that retailers can only elect to be Responsible Person for type 4 and above meters, this is most unlikely to be the case with the derogation in place. The functionality enabled by type 4 remotely read meters meets (and in most cases exceeds) the minimum functional specification and service levels established in Victoria under the initial type 5 meter roll-out. Furthermore, retailers have no incentive to reduce functionality, as these devices offer the potential to furnish the customer with improved services and new products not available through type 5 metering.

#### Other matters

##### *Revised scope*

Origin notes that the Commission had limited time to review the impact of the revised scope of the AMI roll out advised by the Victorian Government on 6 September 2008 (given that the Draft Determination was released on 25 September). As indicated, this revised scope features a lower standard of prescribed AMI services that the distributors will be obliged to provide than originally expected by retailers. Currently deployed type 4 advanced meters have a higher level of performance and functionality than will be provided under the revised scope. Origin believes that this reduction in the available benefits reinforces the need to maintain the option for a retailer to choose to remain Responsible Person and provide AMI services that exceed the revised scope in various circumstances.

##### *Benefits of a universal platform*

It is questionable if a universal platform for AMI is likely to become available, particularly for retailers seeking to access the additional functionalities (out of the minimum service level scope under the current roll out approach), since retailers will have to negotiate separately with each of the distributors to access and enable these functionalities. This would include accessing such functionality across various communications technologies used by a single distribution business with varying levels of performance and bandwidth.

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<sup>8</sup> Such functionalities may include internet access to real time or near time consumption data for example.



### *Cost recovery*

The quantum of costs recovered under the amending OIC are uncertain, given that the principles set out in the amending OIC allow significant flexibility in the setting of metering charges and exit fees. Origin is still unaware of what the likely total cost of the Victorian AMI program will be, but has received some benchmark costs of meter provision through the installation of type 4 meters at small customer sites. The availability of relevant benchmarks derived externally from the distribution businesses will be an important source of information and guidance to the AER in assessing the reasonableness of the costs claimed by the distribution businesses, noting that the AER's assessment will be limited by the provisions of the amending OIC.<sup>9</sup>

### *Simplicity of regulatory framework*

In Origin's view, the regulatory framework that will be applied in Victoria could not be described as simple (as suggested by the distribution business on page 6 of their submission).

- Firstly, the current NER chapter 7 provisions around meter responsibility are being altered to provide distribution businesses with certainty. Under the changes to the Draft Rule Determination requested by the Victorian distribution businesses, retailers could no longer elect to install a type 4 remotely read meter at a small customer premise, rather the roll out will result in a type 5 remotely read meter being installed. Additional changes to enforceable instruments have been required to support the roll out of (remotely read) type 5 meters.
- Changes to tariff reassignment, consumer protection and the distribution and retail codes are all being considered separately from any national processes, and these changes will be specific to Victoria for the purposes of the AMI rollout.
- Separate provisions now exist around cost recovery (outside of the current Electricity Distribution Price Review decision) that have been established to cater for the roll out and are based on different principles from conventional meter and network asset cost recovery processes.

### **Conclusions**

Origin agrees with the distribution businesses that the Draft Rule Determination does not guarantee total exclusivity of AMI provision to small customers. Instead it presents the potential for some continued competitive provision and operation of advanced meters with retailer involvement. This we believe is advantageous as it maintains the flexibility sought by the MCE, encourages the continued development of the contestable metering market, and in light of the amending cost recovery OIC, provides some competitive benchmarks to assist the AER in establishing AMI costs for consumers. Furthermore, we

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<sup>9</sup> Origin notes in particular that under the OIC, where the DB does not undertake a competitive tender process for the metering services (such as may occur when the service is provided by a related party) then the regulatory assessment appears to be limited to establishing whether the claimed expenditure represents a "substantial departure from the commercial standard a reasonable business would exercise" (Essential Services Commission; *Advanced Metering Infrastructure Review Consultation Paper*, December 2008, page 12).



believe it is within the Commission's jurisdiction to consider mechanisms to support the future development of contestable meter provision in the medium term.

As retailers will be the industry participants most affected by the costs of the roll out, the technologies chosen and the service levels applied, as well as being ultimately responsible for recovering all roll out costs from the market, the preservation of flexibility is desirable.

The reasons given for limiting all contestability in AMI services are not supported by evidence. Origin believes retaining competition in various circumstances (including where a customer wishes to pay for additional or improved functionality, new connections and certain business customer installations) will result in benefits outweighing any risks that may emerge if distributors are not exclusively responsible for providing and operating AMI.

Such benefits include:

- The potential for some customers to have lower metering costs than the costs prescribed by the regulator;
- A benchmark against which the distribution businesses, customers, vendors, retailers and the regulator can assess prescribed metering costs;
- The opportunity for distribution businesses and retailers to further test technologies and services for customers incremental to the mandated program;
- The potential to deploy multi-utility metering; and
- The accelerated adoption of some of the functionalities required under the mass roll out program (such as remote daily reading, the provision of home area networks and so on).

Origin would welcome further discussion in relation to the matters raised in this correspondence with Commission. Please contact David Calder (03) 9652 5701 in the first instance.

Regards

A handwritten signature in cursive script that reads "B J Hughson".

Beverley Hughson  
National Regulatory Manager  
Retail  
+61 3 9652 5702 - Bev.Hughson@Originenergy.com.au