



17 November 2008

Australian Energy Market Commission
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Dear Sirs

ELECTRICITY AND GAS COMPETITION REVIEW IN SOUTH AUSTRALIA: SECOND DRAFT REPORT

Origin Energy (Origin) welcomes the opportunity to comment on the Australian Energy Market Commission's (AEMC's) *Review of the effectiveness of competition in electricity and gas retail markets: Second Draft Report* (Second Draft Report) released on 14 October 2008.

Origin has been an active participant in the review conducted by the AEMC and agrees with the findings made by the AEMC in the First Draft Report that retail competition in South Australia was effective. The AEMC also found competition has kept prices in line with costs and margins at or below competitive levels. The AEMC further recognises the energy sector has important hurdles to confront with the introduction of carbon pollution reduction scheme and possible tightening of the supply/demand balance in South Australia.

Origin continues to support the transparent process, encapsulated in the Australian Energy Market Agreement (AEMA), for the removal of price regulation. Origin relies upon the South Australian Government to recognise that rising energy input costs and the introduction of a Carbon Pollution Reduction Scheme may jeopardise competition if price regulation is retained. Origin looks forward to following the price regulation phase out process to completion.

Origin considers that the draft recommendations made in the Second Draft Report will generally support the phase out of price regulation. With significant changes in costs and market conditions expected in the energy market, it is appropriate to utilise a price monitoring framework to support the new operating environment. Having said this, Origin supports the implementation of a price monitoring framework that seeks to impose an efficient level of disclosure commensurate with the way in which consumers' gather information on energy products and one which has a low compliance cost outcome.

Origin generally supports the Commission's draft recommendations for price monitoring as the recommendations should allow an effective transition to competitive pricing for small customers. Notwithstanding this, Origin opposes the introduction of the:

- newspaper publication requirements and guidelines for changes to standing contract prices and default contract prices; and



- additional oversight imposed upon Origin with regard to the gas market, in particular, the disclosure of capacity access negotiations for the SESA pipeline.

To assist the AEMC in finalising the Second Draft Report, Origin has prepared comments in relation to some of key features of the proposed price monitoring framework which are discussed under the headings below.

Extension of the Energy Price Disclosure Code to standing contracts and default contracts

With the removal of price regulation, retailers will not be required to obtain approval from ESCOSA to set or amend standing contract prices and/or default prices. However, to ensure energy customers are aware of price changes the AEMC has proposed the publication of price change notices and an extension of the Energy Price Disclosure Code to include both standing contracts and default contracts.

Origin believes there is a need to ensure the market is informed of price changes and as such publishes price changes on its website combined with direct customer notifications through bill information, inserts and other routine communications. Origin does not support the development of guidelines for newspaper publications as the present processes in place will sufficiently inform the market of price changes.

The imposition of a further requirement for newspaper publications will be costly and may fail to inform customers. A newspaper publication occurs at a single point in time and may not reach the intended audience given the limitations of its distribution compared to other media available. More generally, consumers are unlikely to take notice of newspaper price publications at that single point in time, as their interest in prices is contingent upon a consumer considering a change of retailer at that particular time. The alternative of ensuring that retailers' websites provide full disclosure and are readily accessible (and similarly the regulator websites), is far more in accord with the requirements for transparency and disclosure.

As noted in the Victorian review a newspaper publication may reinforce the notion that the published price is a legitimate price which in turn may deter a customer from engaging in the market. However, should South Australia embrace the FRMP¹ obligation to supply model as currently exists in Queensland and is to be implemented in Victoria from 1 January 2009, all retailers will be required to have standing offers. The publication in a newspaper of every retailer's standing offer will create confusion, in particular because a customer may only access its FRMP's standing offer.

Extension of Energy Price Disclosure Code (Code)

By covering standing contracts, the information disclosure may assist customers to participate in the competitive market although the majority of customers (now on market contracts) will be comparing the difference between market offers across different retailers. The extension of the price disclosure requirements may assist some customers (still on standing offers) but under the FRMP model a comparison between standing contracts of different retailers becomes irrelevant.

Market contracts should continue to be subject to the Code, at least for the initial three years of the price monitoring framework. Price disclosure is part of the consumer

¹ FRMP - Financially Responsible Market Participant



protection framework to assist customers to understand market offers. Origin wishes to operate in a transparent and predictable regulatory environment, retail processes are in place for price disclosure and premature removal may be administratively burdensome for retailers. Accordingly, the appropriate timing to consider removing market contracts from price disclosure is at the three year review of the price monitoring framework.

Price oversight of default contracts

The AEMC requested comments on the appropriateness of monitoring default contract prices, in particular, where a retailer may set the default contract price as the standing contract price. Origin has no concerns with the monitoring of default contract prices whilst standing contract prices are the subject of a price monitoring framework.

Proposal for ESCOSA to monitor and report trends in regional variations of market contract prices for gas customers in South Australia

Origin endorses the proposition that all South Australian small customers, including those in regional areas, have access to retail competition. In support of this, Origin maintains its market offers are, in general, nationally based offers and are open to all small customers regardless of physical location².

Origin will report trends in regional variations, if appropriate. However, Origin does not consider the additional oversight as recommended by the AEMC will achieve more than the disclosure requirements already in place in the Energy Price Disclosure Code (or as extended). That is, the regional variations will be calculable through the current disclosures of market contract information provided to ESCOSA.

Proposal for ESCOSA to establish and maintain a register of Origin's negotiations for access to the SESA Pipeline

Origin acknowledges the structural features of the gas retail market have presented limited opportunities for some regional customers to obtain the full benefits of competition. However, Origin is committed to working to ensure regional customers obtain the benefits of competitive pricing.

The proposed reporting register is similar to that of a service provider within Rule 37 of the National Gas Rules. A service provider operating in a light regulation services model is obliged to report annually to the Australian Energy Regulator (AER) on access negotiations with access seekers. This regulatory obligation is considered a light regulation mechanism compared to regulation of covered pipelines yet disclosure of this type of information has been criticised.³

However, these Rules apply to a retailer obtaining access from a pipeliner. Origin does not own the pipeline so the question relates rather to gaining access to Origin's booked firm capacity on the pipeline. In a retail context such as this, the negotiation for access to a retailer's capacity rights is commercially sensitive information and disclosure of access requests and outcomes may undermine commercial strategies of potential users. Origin is concerned the imposition of disclosure requirements of this nature, could create

² On occasions, a promotion may be jurisdiction specific.

³ ERAA, Annual Compliance Process - Gas, 3 September 2008, Draft Annual compliance guideline Submissions: www.aer.gov.au



a regulatory precedent of intervention upon the contractual rights of users and also puts confidential negotiations of prospective users at risk.

The proposal is likely to intrude upon the commercial operations of Origin's business without cause. Origin's contractual rights for capacity on the SESA Pipeline are commercial rights and any third party approach for spare capacity that is currently unused by Origin is priced according to the associated costs and consequently, the pricing of available capacity is linked to actual cost. Therefore, any assessment of the costs of access against supply costs to small customers is arbitrary.

Origin is also concerned with the suggestion by the AEMC that "*any trend for ongoing failures in access negotiations to the SEPA pipeline*" would be attributed to Origin's behaviour and potentially labelled as anti-competitive.

Furthermore, Origin supports transparency and accountability in negotiations but is cognisant of the sensitive nature of commercial negotiations; hence these negotiations should remain in the domain of the commercial parties or dealt with through facilities such as the gas bulletin board. In such facilities, spare capacity is traded through a transparent competitive market.

Origin believes there is no basis for having additional oversight placed upon its retail business. An "aggrieved retailer" has the benefit of the competition laws and is in a position to notify any concerns directly to the regulator, whether ESCOSA or AER. In this way, there is no risk of disclosure of confidential information or encroachment upon Origin's contractual rights.

Furthermore, and more generally, pipeline expansion by third parties is usually underpinned by foundation contracts with retailers. These foundation contracts are critical elements of the gas market in that they guarantee the pipeline owner a stream of revenue and, in return provide a guarantee of capacity to the retailer. If such contracts can be unwound and/or exposed to regulatory pressure, then retailers will be increasingly reluctant to support such expansions.

Consumer Awareness and Education Program

A consumer awareness and education program was recommended by the AEMC to encourage consumers to participate in the competitive market. Origin supports a properly targeted consumer awareness program to provide direction to consumers regarding their rights and responsibilities when it comes to the retail energy market.

Gas ROLR scheme

Origin does not support the introduction of a gas ROLR scheme as a matter of priority. Given the complexities involved with gas ROLR, the development of a future scheme is best placed with the national regulator. The MCE is in the process of consulting on a national framework for ROLR schemes so any consideration at a State level could prove to be onerous for retailers in the short term and ultimately superfluous.

If it were deemed necessary to have an interim arrangement, a scheme with minimal effort is recommended. For example, the gas ROLR model could reflect the structure of the electricity ROLR in South Australia where the distributor takes on the role.



If you wish to discuss any of the issues raised in this response please contact Madonna Mead on (07) 3867 0617 or myself on (03) 9652 5702.

Yours sincerely

A handwritten signature in black ink, appearing to read "Bev Hughson". The signature is written in a cursive, flowing style.

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