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Mr John Pierce AO  
Chair  
Australian Energy Market Commission

## **RULE CHANGE REQUEST UNDER THE NATIONAL ELECTRICITY RULES OR THE NATIONAL ENERGY RETAIL RULES**

### **SUNSHINE ON RETAIL**

Dear Mr Pierce

In the course of the Australian Competition and Consumer Commission (ACCC) Retail Electricity Prices Inquiry (REPI) Energy Consumers Australia commissioned Finncorn Consulting to undertake research to understand the drivers of retailer business models, and the implications for the competitive outcomes in electricity and gas markets. The report *State of Play: Quantifying the competitive outcomes of retailing in the NEM*<sup>1</sup> presented long-term trends in publicly disclosed information from a number of listed and unlisted retailers.

The report highlighted how much information can be gleaned from the information presented by listed energy companies. Clearly this data is mostly not commercially confidential.

In response to a request from the ACCC, Finncorn provided suggestions on what information disclosure could be required of all participants on the basis of the analysis under the heading 'Sunlight: Information disclosure to assist energy market competitive analysis.' A copy of that submission is attached to the rule change request.

The REPI report<sup>2</sup> did not provide detail on what retail data should be reported, but as part of recommendation 40 it said:

*A NEM-wide price reporting and monitoring framework be implemented which includes a combination of price monitoring with full EBITDA data (including standardised costs to serve, attract and retain consumers, and margins), and consumer expenditure surveys. This reporting should be done on a regular basis and include customer expenditure data, based on*

<sup>1</sup> <https://energyconsumersaustralia.com.au/publication/state-play-quantifying-competitive-outcomes-retailing-nem/>

<sup>2</sup> <https://www.accc.gov.au/regulated-infrastructure/energy/electricity-supply-prices-inquiry/final-report>



*representative customer surveys and retailer billing and offer data, and be reflective of demographic information.*

It is our interpretation that the reference to surveys was only to the question of affordability – that is energy costs as compared to other costs and incomes. Aggregate revenue by State and numbers of customers on different plans should be used instead of customer surveys or bill samples as an approach to understanding the actual energy cost.

It is our understanding that in relation to the totality of the recommendation the COAG Energy Council tasked the market bodies and the Energy Security Board (ESB), in consultation with the Australian Competition and Consumer Commission (ACCC), to provide advice to Energy Council in March 2019 on the type and timing of reports to the Energy Council that will usefully inform forward looking policy decisions.

While we support the intent of the ACCC in its recommendation and the approach of the Energy Council to ensure that policy makers are well informed, we do not regard this as sufficient.

The Vertigan review of governance report in October 2015 concluded that:

*the pace of change in the energy sector is arguably unprecedented; and a 'strategic policy deficit' exists.*<sup>3</sup>

The ACCC REPI report concluded:

*Australia is facing its most challenging time in electricity markets. High prices and bills have placed enormous strain on household budgets and business viability. The current situation is unacceptable and unsustainable.*

*The approach to policy, regulatory design and promotion of competition in this sector has not worked well for consumers. Indeed, the National Energy Market (NEM) needs to be reset, and this report sets out a plan for doing this.*

In the light of these comments, consumers cannot rely upon market reporting being available only to the Energy Council rather than directly to the public.

At Energy Consumers Australia's Foresighting Forum 2019 Finncorn's David Heard provided a presentation on his recommendations.<sup>4</sup> In that presentation he proposed:

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<sup>3</sup> <http://www.coagenergycouncil.gov.au/publications/review-governance-arrangements-australian-energy-markets-final-report>

<sup>4</sup> [https://www.youtube.com/watch?time\\_continue=7&v=vhUaBylXT00](https://www.youtube.com/watch?time_continue=7&v=vhUaBylXT00)



*A basic standard of disclosure should extend to all retailers, informed by the listed company benchmarks. Much of this would be publicly available to stakeholders. This would allow reliable and efficient whole-of-industry analysis by a range of stakeholders, to answer some critical questions – ranging from the fundamental...*

***How much do small consumers pay for energy on average, and which retailers are actually the cheapest?***

*...through to the essential...*

***Do industry returns reflect an effectively competitive market, or is there evidence of persistent excess returns being earned?***

The value of this data was demonstrated – from a dataset of one – in Finncorn’s *State of Play* report.

In submitting this rule change request, we have had regard to your speech at Australian Energy Week on 12 June this year.<sup>5</sup> The rule change impacts on three of the priorities:

- **Aligning the financial incentives that operate on market participants and the physical needs of the power system**

In the speech you said “The market was set up to pay generators for making electricity when consumers need it...The incentive for sellers to generate electricity when consumers and the power system need it is when spot prices are high or low – this has been blunted.”

While the speech singled out environmental policies, we believe that the way the retail market operates, the effectiveness of competition and the lack of innovation in pricing plans are all factors that break the necessary connection. For small residential consumers there are very few market offerings that seek to reward customers for using more of their energy when the wholesale price is lowest.

Better information about the operation of the retail market is an important component in designing markets to align incentives.

- **Empowering consumers, particularly through the application of these digital technologies**

This rule change doesn’t directly empower consumers through the application of digital technologies. It does, however, provide an important metric for being able to monitor the effectiveness of the changes that will empower consumers through digitalization.

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<sup>5</sup> <https://www.aemc.gov.au/news-centre/speeches/aemc-priority-areas-reform>



- **Addressing the efficient integration of distributed resources into our networks**

The proposed rule change does not directly support the integration of DER. It does provide the ability to monitor the impact of DER on the market.

The rule change proposal is attached. That the rule is proposed to be made under either the National Electricity Law (NEL) or the National Energy Retail Law (NERL). It is our interpretation of the laws and the intent of the rule that it is more appropriately made under the NEL. However, we are making the submission as being under both frameworks so that the AEMC can make this decision.

We are keen to work with the AEMC and other stakeholders to ensure the required public disclosure can occur to inform all stakeholders. Questions on the proposal or other requests should be directed to our Senior Economist, David Havyatt at [david.havyat@energyconsumersaustralia.com.au](mailto:david.havyat@energyconsumersaustralia.com.au) or on 0414 467 271.

Yours sincerely

Rosemary Sinclair AM  
Chief Executive Officer



## **RULE CHANGE REQUEST UNDER THE NATIONAL ELECTRICITY RULES**

### **SUNSHINE ON RETAIL: PUBLIC DISCLOSURE REQUIREMENT BY RETAILERS**

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ABBREVIATION	FULL TERM
ACCC	Australian Competition and Consumer Commission
AER	Australian Energy Regulator
AEMA	Australian Energy Market Agreement
AEMC	Australian Energy Market Commission
COAG	Council of Australian Government
CoGS	Cost of Goods Sold
EC	Energy Council
ECSS	Energy Consumer Sentiment Survey
ESB	Energy Security Board
NEL	National Electricity Law
NEM	National Electricity Market
NEO	National Electricity Objective



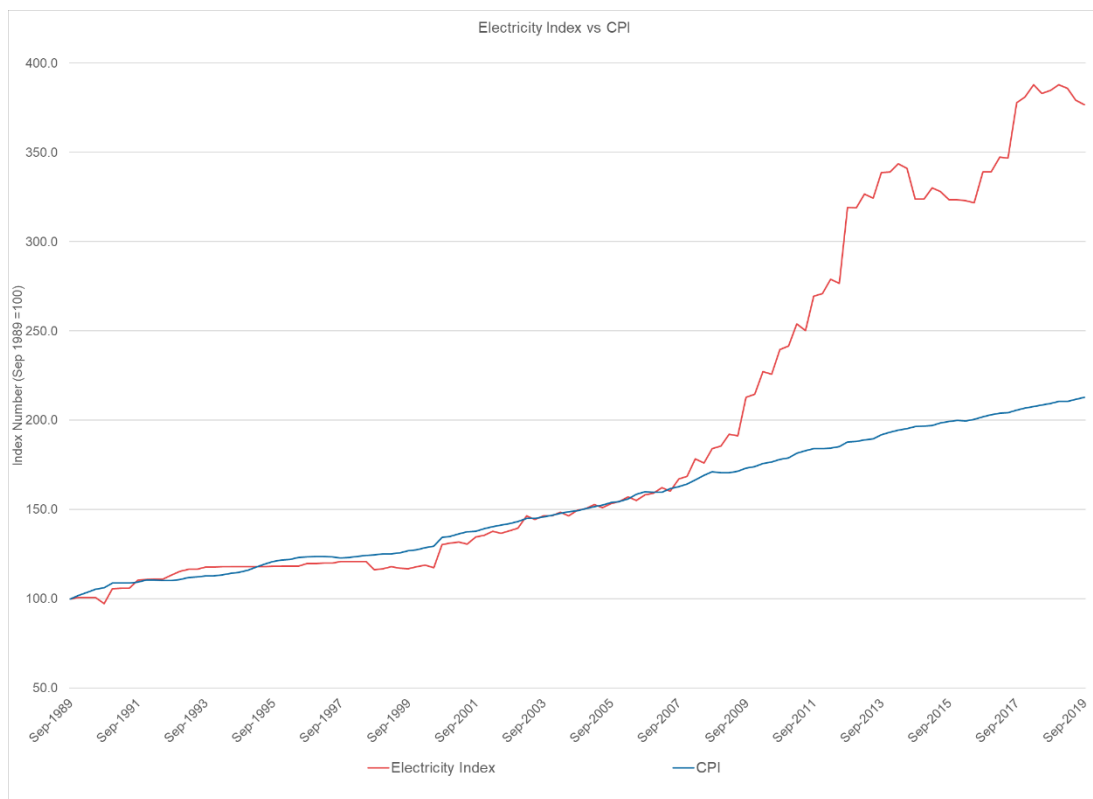
NER	National Electricity Rules
NERL	National Energy Retail Law
NERO	National Energy Retail Objective
NERR	National Energy Retail Rules
REPI	Retail Electricity Prices Inquiry
SCER	Standing Council of Energy and Resources



## 1. INTRODUCTION

Retail electricity (and gas) prices have increased at a rate far in excess of the rate of inflation as shown in Figure 1 below.

**Figure 1: Electricity Price Index and CPI (common base September 1989 = 100)**

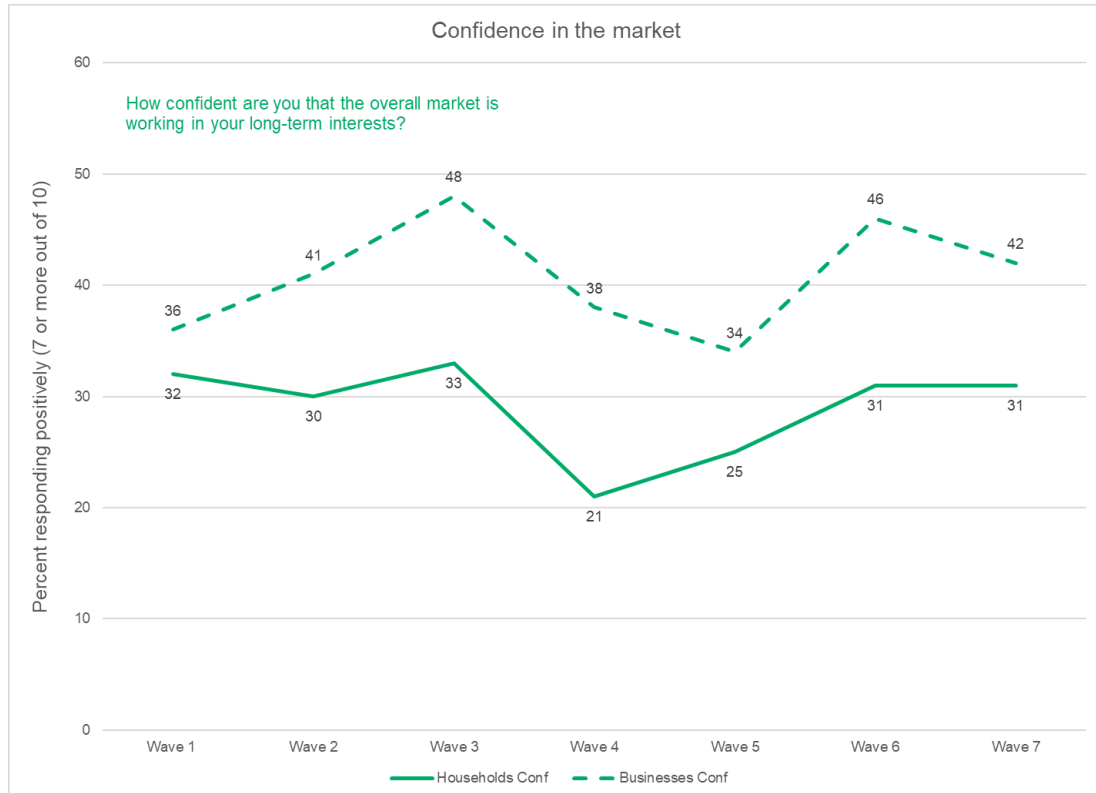


It is therefore unsurprising that in Energy Consumers Australia's six monthly Energy Consumer Sentiment Survey (ECSS) finds consistently low positive responses to the question of whether households and businesses have confidence that the market is working in their interests. Figure 2 below shows that over the seven surveys to date there has not been one where more than a third of householders has provided a positive response to the question of how confident they are that the energy market is working in their interest. Small business is slightly more confident but consistently below half.





**Figure 2: Confidence in the market.**



Policy response to increasing prices and a lack of confidence in the market requires regular transparent reporting of the performance of the retail market. That was the initial basis for the Australian Competition and Consumer Commission's (ACCC) Retail Electricity Price Inquiry (REPI). The report recommended in part 'A NEM-wide price reporting and monitoring framework be implemented which includes a combination of price monitoring with full EBITDA data.'

This rule change proposal addresses this recommendation by proposing a reporting regime to apply to all retailers.

While our consumer sentiment research covers electricity and gas, and the response on confidence in the market covered both, this rule change is focused exclusively on electricity, except in the case where the retailer provides dual fuel plans.

However, the electricity and gas markets are closely linked in terms of:

1. Acquisition & retention (bundled offers, less hassle for consumer with a single supplier);



2. The spreading of common costs to serve (which in practice would be hard for retailers to separate meaningfully); and
3. Potential cross-subsidization to maintain customer numbers in the face of transient CoGS challenges e.g. due to a poor hedge position.

The retailers who do disclose their data do so for gas and electricity, and the system changes would apply to both. Depending on how the electricity rule change progresses we will consider a similar rule change for gas.

The rule is proposed to be made under either the National Electricity Rules or the National Energy Retail Rules. Our primary interest is that, consistent with the ACCC REPI and the Australian Energy Market Commission's (AEMC) Retail Price Review, the rule applies to all retail activity in the NEM jurisdictions.

The proposition is that, by requiring a greater level of financial disclosure by retailers, stakeholders can be better informed about the dynamics of the retail electricity market. This will better inform policy makers and advocates and should, through transparency and the option for targeted reforms, also act to reduce energy prices through both improvements in improvements in competitive dynamics and prospectively improvements in market design.

## **2. STATEMENT OF ISSUE**

### **2.1 Current framework**

The Australian Energy Market Commission is tasked with assessing the development of retail competition across the National Electricity Market.

In December 2012 the Standing Council on Energy and Resources (SCER) and the Council of Australian Governments (COAG) agreed to revise the approach to competition reviews undertaken by the AEMC. To support this approach the Australian Energy Market Agreement (AEMA) was amended to remove prescriptive elements associated with the previous approach which was focused on individual jurisdictional reviews. The intent of the earlier regime was for jurisdictional reviews to assess whether competition had developed sufficiently to warrant the removal of jurisdictional price regulation.

The AEMC was issued with Terms of Reference for reporting on the state of retail energy market competition across the national energy market in January 2014.<sup>6</sup> A lot of the AEMC's report is drawn from other data sources (for example the government run comparison websites, AEMO market data) however not all of it is.

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<sup>6</sup> <https://www.aemc.gov.au/sites/default/files/2019-01/2018-SCER-Terms-of-Reference.pdf>



As there is no requirement placed on retailers in the National Electricity Market to publicly report on revenues, costs, average prices or margins, to prepare the annual Retail Energy Competition Review<sup>7</sup> the Australian Energy Market Commission (AEMC) has to date relied upon voluntary information provision. Listed companies, in particular AGL, have provided more detail to meet the needs of investors.

The impact of not having a complete retail data set is seen in two examples from the AEMC's 2018 *Retail Energy Competition Review*.

*The Big 3 retailers generally appear to be the beneficiaries of customer inertia, as the limited data available from Tier 2 retailers did not show an equivalent link between the discount available to a consumer and their length of tenure with a retailer.*<sup>8</sup>

*Some retailers were concerned that the current interventions would not result in better outcomes for consumers. One retailer believes that the cost to service customers resulting from regulatory intervention is increasing more than the cost to acquire customers (the AEMC does not have access to data to verify the level of this increase).*<sup>9</sup>

Both of these examples reflect on very important aspects of market design, and the AEMC is required to report on them with inadequate data. The AEMC itself, policy makers and other stakeholders then draw conclusions from the review about how market design might need to be adjusted to improve competitiveness.

In the AEMC's 2019 *Retail Energy Competition Review* they were more explicit, noting:

*In previous reviews the Commission has reported, in a limited way, on the gross margins of the Big 3, based on voluntarily provided information. In the absence of information gathering powers, the Commission is not able to provide a complete picture of the margins retailers are realising in the electricity market.*<sup>10</sup>

The AEMC relies on data collected by the AER for determining the market share of retailers for its competition review. In the 2019 report they recommended that the AER gather data by distribution network region. The network region has significance due to the different network costs for determining margins, the history of which retailer initially bought the retail business of the previously integrated distributors and (usually the same) the local retailer for the distribution area. The AEMC recommendation read:

**RECOMMENDATION 4: CUSTOMER NUMBERS BY NETWORK REGION**  
*Currently, despite market structure developments occurring at a network level, market share*

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<sup>7</sup> <https://www.aemc.gov.au/markets-reviews-advice/2018-retail-energy-competition-review>

<sup>8</sup> <https://www.aemc.gov.au/sites/default/files/2018-06/Final%20Report.pdf> P. vii

<sup>9</sup> <https://www.aemc.gov.au/sites/default/files/2018-06/Final%20Report.pdf> P.30

<sup>10</sup> <https://www.aemc.gov.au/sites/default/files/2019-06/2019%20AEMC%20Retail%20energy%20competition%20review%20-%20Final%20report.PDF>



*data is only publicly available at a jurisdictional level. More granular publicly available data is required to allow the Commission and policy-makers to better analyse and report on the emerging market structure. The Commission therefore recommends that the AER require that retailers provide data on customer numbers (including customers on market and standing offers) by network region.*

The AEMC also annually presents a retail price trends report, which infers retailer costs from comparisons between representative prices and other known cost elements. The AEMC then infers the future retail costs from this data.<sup>11</sup>

The lack of information available under this voluntary reporting arrangement and continued increase in prices and hence household and business bills resulted in the Federal Treasurer tasking the Australian Competition and Consumer Commission (ACCC) with the Retail Electricity Price Inquiry (REPI). A benefit of requiring the ACCC to undertake REPI under the price monitoring provisions of the Competition and Consumer Act 2010 was the ability of the ACCC to use its extensive powers to compel the provision of information. The ACCC has been further tasked with this reporting for a further seven years but in doing so will continue to rely upon data acquired through the price monitoring powers.

The extent of analysis that can be provided from the data provided by listed companies was demonstrated by Finncorn's *State of Play* report for Energy Consumers Australia<sup>12</sup>.

The REPI Final Report provided detailed analysis of the 'cost stack' from the use of these ACCC's mandatory information provision powers.<sup>13</sup>

It seems inconsistent that some analysis should be possible merely by the choice of capital structure by a retailer and inadequate to otherwise only obtain data by use of bespoke powers. There is no apparent reason why non-listed retailers should be providing any less information than listed retailers; they have no greater confidentiality claim for example.

The utilization of *ad hoc* information gathering powers is the costliest way to acquire information. The ongoing cost to industry is lowest if a stable reporting environment can be established so that the need can be incorporated within the business's ordinary accounting systems and processes. All the reporting costs imposed on businesses are ultimately born by consumers.

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<sup>11</sup> <https://www.aemc.gov.au/market-reviews-advice/residential-electricity-price-trends-2018> especially the methodology report.

<sup>12</sup> *op. cit.*

<sup>13</sup> <https://www.accc.gov.au/regulated-infrastructure/energy/electricity-supply-prices-inquiry/final-report>



The AER annually reports on the retail markets in its State of the Market Report. In the report released in May 2017 the AER used the AEMC Retail Price Trends data<sup>14</sup>. For the 2018 report they used the ACCC's REPI data.<sup>15</sup>

Finally, the Energy Security Board's annual *Health of the NEM* report draws on these sources. The ESB has identified through its Energy Strategic Plan a number of outcomes and associated metrics. For the outcome "Energy is increasingly affordable for all consumers, supported by adequate consumer protections and access to dispute resolution" the proposed metrics include 'Representative domestic retail tariffs and bills in each NEM-region' but this data is not currently available, especially since the AER compliance data does not include Victoria. For the outcome 'Wholesale and retail markets are competitive and deliver efficient outcomes for consumers' the metrics include 'Extent to which competition in retail and wholesale electricity and gas markets is identified as an issue by market bodies' with a reference to the AEMC Retail Energy Competition Review.

The effectiveness of the planning and reporting framework depends on the retail data being available. Recommendation 40 of REPI reads:

*Retail price monitoring should be streamlined, strengthened and appropriately funded to ensure greater transparency in the market, reduced costs, and allow governments to more effectively respond to emerging market issues. This should be done by:*

- *COAG Energy Council agreeing to streamline price monitoring and reporting to the AER and the AER receiving all the necessary powers to obtain information from retailers*
- *COAG Energy Council agreeing to extend price reporting for retail electricity services to small to medium business customers*
- *state governments agreeing to close their own price reporting and monitoring schemes in favour of an expanded and strengthened NEM-wide regime*

*A NEM-wide price reporting and monitoring framework be implemented which includes a combination of price monitoring with full EBITDA data (including standardised costs to serve, attract and retain consumers, and margins), and consumer expenditure surveys. This reporting should be done on a regular basis and include customer expenditure data, based on representative customer surveys and retailer billing and offer data, and be reflective of demographic information.*

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[https://www.aer.gov.au/system/files/State%20of%20the%20energy%20market%2C%20May%202017%20%28A4%20format%29\\_1.pdf](https://www.aer.gov.au/system/files/State%20of%20the%20energy%20market%2C%20May%202017%20%28A4%20format%29_1.pdf)

15 [https://www.aer.gov.au/system/files/State%20of%20the%20Energy%20Market%202018%20-%20Full%20report%20A4\\_2.pdf](https://www.aer.gov.au/system/files/State%20of%20the%20Energy%20Market%202018%20-%20Full%20report%20A4_2.pdf)



Following the release of REPI the ACCC has been further tasked to report on electricity prices every six months for seven years. It is Energy Consumers Australia's understanding that this is the extent of the 'NEM-wide price reporting and monitoring framework' to be implemented in response to REPI Recommendation 40. In undertaking this task, the ACCC's use of its information gathering powers restricts the public release of the information gathered in the process. The data is used for a single analysis and interpretation of the information, which may not lead to the most effective use of that opportunity. While the ACCC has shown itself to be highly resistant to regulatory capture, the wide availability of data is the strongest insurance against that possibility.

In saying this we note that the ACCC has endeavoured to make the data (really information derived from the data) more accessible by publishing an Excel workbook including the data for all charts in its latest monitoring report. However, it is a very limited dataset released in this way.

The *Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2019* which passed both houses of parliament on 25 November 2019 introduces new information gathering powers for the AER. The Bill otherwise is entirely empowering the ACCC and as the Minister in his second reading speech noted:

*The government has directed the ACCC to monitor retail prices, wholesale bids and contract market liquidity in the National Electricity Market until 2025, and announced that this would be backed up by a series of remedies where the ACCC identifies misconduct by electricity market participants.*

The full extent of reference to the AER's information gathering powers in this speech was:

*Finally, this bill will also provide additional information-gathering powers to the Australian Energy Regulator (AER), bringing the AER's powers in line with comparable regulators, including the ACCC. The AER will be able to share this information with Commonwealth agencies.*

The explanatory memorandum provides the more complete explanation that these powers are to support the AER in its functions under the Default Market Offer arrangements that were introduced by regulation. However, it is Energy Consumers Australia's understanding that the consideration of 'streamlining price reporting' has not resulted in this function moving from the AEMC to the AER. Consequently, the AEMC is still in a position of having a reporting obligation without access to information required to generate the report. While the AER may in conducting its reviews of the Default Market Offer gather some information that would assist the AEMC in fulfilling its reporting obligation, the AER cannot use its information gathering power merely to obtain the information for onforwarding to the AEMC.

## **2.2 Limitation of the current framework**

Energy Consumers Australia is tasked with promoting the long-term interests of consumers through providing and enabling strong, collegiate evidence-based advocacy on matters of significance to residential and small business customers. Our need for an evidence base on industry costs and the



effectiveness of competition was why we strongly supported the Treasurer's referral of REPI to the ACCC.

Energy Consumers Australia, the COAG Energy Council and the market bodies (AEMC, AER, ESB) are not the only parties with an interest in analysis of the market for to inform stakeholders of the state of the market.

In *Australia's retail electricity markets: who is serving whom?* (a 2016 report for GetUp) carbon+energy markets and MarkIntell concluded:

*This report finds that in Australia's deregulated retail markets, the retail charge is at least twice as high as a proportion of the bill and about three times as high as an amount, as the charge in Britain.<sup>16</sup>*

In their 2017 report *Price Shock: Is the retail electricity market failing consumers?* the Grattan Institute concluded:

*Retail electricity prices in Victoria have been deregulated since 2009. Since then the price of electricity has risen dramatically. The only explanation for this price increase is that the amount of money paid to retailers has increased. The result is that some consumers are paying more for their electricity than they need to.<sup>17</sup>*

In late 2017 the Energy Consumers Australia website summarised the Finncorn Consulting report *State of Play* saying:

*The current state of play suggests that the new costs introduced by competition (and price deregulation) to acquire and retain customers have not been offset by greater operating cost efficiencies by retailer businesses. Further, the profitability of the larger retailers has been underpinned by the overall price levels being set in the market by their smaller, higher cost competitors.<sup>18</sup>*

These three reports used disparate approaches to work around the absence of transparent market reporting. As such the conclusions reached were dependent upon the approach rather than the data and it can be argued served to further confuse rather than clarify the true market position.



### 2.3 Summary of the issue

Energy, especially electricity, is identified as an 'essential service.' This term is used primarily to reflect that energy is a prerequisite for functions such as light, heating (for comfort and cooking) and power (for refrigeration and communication). It is more generally an essential service for economic activity.

This central role of energy means that it is an appropriate focus for policy analysis for its impact on citizen well-being and economic growth. As the examples from GetUp! And the Grattan Institute above make clear, without reliable data on prices faced by consumers and businesses and the efficiency of the retail market (i.e. how reflective of cost these prices are), this policy discussion is based on 'best efforts' rather than best evidence.

The default policy position should be to make data publicly and widely available unless there is a reason not to do so. The availability of data to regulatory bodies and government agencies to undertake analysis is insufficient for evidence-based policy discussions and to build consumer confidence. Energy Consumers Australia places particular importance on this characteristic because of our advocacy responsibility. While we undertake our own studies including the Energy Consumer Sentiment Survey, the Small-Business Tariff Tracker and the Consumer Tariff Tracker (the latter through grant funding to St Vincent de Paul), accurate data from retailers is the best evidence possible.

In summary the issue is the need for informed policy discussion and improved consumer confidence through the transparent provision of retail pricing and margin data. The data needs to be provided by retailers to a market body and that market body needs the discretion to make as much of the data publicly available as is consistent with the ongoing effective operation of the market.

The existing information gathering powers of the ACCC and the new powers of the AER are insufficient as they do not allow for sufficient public release of data, and the inherent *ad hoc* nature of the requirement is more costly than establishing a consistent reporting framework.





### 3. DESCRIPTION OF PROPOSED RULE

The proposed rule creates a reporting obligation on retailers to periodically report data on revenues, costs and customers on different pricing plans. While the change request includes specific proposals, it is understood that the AEMC may make a more preferable rule to meet the requirements of the issue as specified in the preceding section.

There are six dimensions to a reporting obligation.

1. Who has an obligation to report?
2. Who gets the report?
3. How is the detail to be included in the report specified, or, what has to be reported?
4. How frequently it has to be reported?
5. Manner of reporting
6. Standards of reporting

*Who has to report?*

Industry reforms that use competition to achieve efficient use of, and investment in, generation resources can be implemented using different models for the 'buyer' side of the market. There are three broad categories of approaches:

- The *single buyer* approach, under which a single entity has responsibility for purchasing wholesale electricity.
- *Wholesale competition*, under which entities (such as distribution businesses) have a local monopoly over customers and negotiate on their behalf to procure electricity.
- *Retail competition*, under which any customer can, in principle, purchase electric power from any supplier.<sup>19</sup>

Because the amount of energy dispatched in each period is based on the AEMO forecast it is tempting to think our design is of the first kind, but it isn't. The second kind is the approach in most US states where integrated local utilities buy power from a wholesale market. The Australian approach is an implementation of the third approach.

Consequently, how effectively retail competition is working is a determinant of how effectively the wholesale market can operate. As the proposed rule thus provides information on the effectiveness of the wholesale electricity market, it needs to apply to registered customers in the National Electricity Market who do not self-consume all the energy that they purchase.

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<sup>19</sup> Biggar, D & Hesamzadeh, M 2014, *The economics of electricity markets*, Wiley. P.79



The rule should include an exemption framework to cover small or new retailers with the clear expectation that as they grow they should plan to include the capability of reporting in their management systems.

#### *Who is the report provided to?*

We propose the reports are provided to the AEMC since the AEMC currently has the price reporting obligation. However, the reports could equally well go to the AER. The proposal is for the bulk of the information to be publicly released, however all the data including confidential data will be available to other market bodies (i.e. ESB, AER, AEMC, AEMO and ECA). In the rest of the proposal we describe the rule on the basis that the AEMC is the recipient of the reports.

#### *What has to be reported?*

A reporting rule can either specify what has to be reported or it can determine that the detail will be included in a subordinate instrument. The most extreme version of the latter is a device like notices issued by the ACCC under s95ZK of the *Competition and Consumer Act*.

We propose that the rule specifies the data that has to be reported, though we believe that it may be desirable to replace all or part of the detail with a subordinate instrument in which the data required is specified (The data that we propose to be reported is included in a table at the end of this section.)

Notwithstanding the proposal for the data required to be specified in the rule, the agency receiving the data should be empowered to issue 'guidance notes' to address any case where application of the rule is found to be unclear or unduly arduous.

#### *Frequency of reporting*

Because of the level of volatility in the market the reports should be provided half-yearly. This accords with the current requirement of ACCC reporting.

#### *Manner of reporting*

Initially the data should be required to be presented in an Excel spreadsheet format. For the longer term process of reporting, as part of the NEM Data Strategy an API should be provided that would allow the retailer to upload the data directly to the database.

All the small customer detail should be included in the public reporting, however, discretion should exist for the AEMC to report less detail for any retailer which is not one of the four largest retailers in a distribution area. That is the AEMC has the authority to publish and at its sole discretion can decide to not publish or publish only summary data for smaller retailers (where a small retailer is defined as one that is not one of the three largest retailers in a jurisdiction). The AEMC should have sole discretion about what detail is reported for large customers. The AEMC should be required to maintain a database that can be queried through simple to use tools to extract data.



### *Standards of reporting*

There should be a requirement that the statement is submitted using the same standards as are applied to responses to ACCC notices, that is:

by writing signed by the person or his or her agent or, in the case of a Commonwealth authority or a body corporate, by a competent officer of the authority or body, within the specified period and in the specified manner, specified information relating to the affairs of the person;

if the person is a body corporate in a form approved by the Chairperson and signed by:

- (i) the Chief Executive Officer (however described) of the body corporate; or
- (ii) a person nominated by the Chief Executive Officer;

stating that the information or documents are true and correct.

Where the data specified relates to revenue or costs the data must be presented in a manner consistent with the financial accounts of the person. Where the requested revenue or cost data is not recorded at the level of disaggregation specified the person will apportion the revenue or cost on the basis of data in the management accounts. For example, if the person records revenue only as low as the State/jurisdiction but the requirement is to report at distribution network level the revenue will be apportioned between the distribution areas in proportion to the value of new charges issued to customers in the distribution area in the last three or six months.

### *The proposed rule*

A new set of clauses be included in the National Electricity Rules (possibly in Chapter 3) with the following effect.

- Registered customers in the National Electricity Market who do not self-consume all the energy that they purchase must provide the 'Cost Structure and Offers Report' to the AEMC in accordance with this Rule.
- The reporting entity must provide the data included in the schedule for each half year as at 30 June and 31 December, and the report must be received by 30 September and 31 March respectively.
- The AEMC may provide guidelines in conjunction with this Rule to:
  - Refine the definition of the data that is included in this rule,
  - Require the reporting of additional data.
- Where the report requires revenue or cost data at a level of detail that is finer than that revenue or cost data is maintained in a reporting entity's financial accounts, and there is no Guideline covering the approach to use that is applicable by the reporting entity, the AEMC must provide the entity with a Guideline on application on how to apportion charges.
- The AEMC (or AER) may provide a proforma that must be completed to submit the data or it may provide another means of electronic lodgement.
- The report must be accompanied by the appropriate (see above) written attestation as to accuracy.
- The AEMC may exempt an entity with less than one percent market-share from parts of, or all of, the reporting requirements.



- All data provided to the AEMC shall be available on request to the AER , AEMO, ACCC, ESB and ECA.
- The AEMC shall publish all or part of the data submitted except where the AEMC regards that to publish the data would have a deleterious effect on competition. Where the AEMC decides to not publish some or all data it must provide a reason for not publishing the data at the same time as it publishes any data, or, if no data is published, within one month of the date on which data was due to be provided to it.
- The first report shall be provided to the AEMC on (the first reporting date after the rule is made OR the first reporting date after the ACCC advises the AEMC/AER that it has reduced its information request on retailers and will draw the data from this report).

The data to be reported by each retailer is outlined in the following tables. The table refers to both gas and electricity data for retailers who sell both.

There are two tables for small customers; financial information and customer pricing summaries. The AEMC should determine whether the small customer data should be reported as one item or as one set for residential customers and another for small business customers.

**Table 1.1 Small customer financial information (all exclusive of GST)**

DISCLOSURE ITEM	NOTES	Unit of Analysis
<b>Retail Revenue in \$</b>	<p>The objective is to understand the ex-post price paid by small energy consumers for each of electricity and gas, on average.</p> <p>Retailers should therefore split disclosure of revenue between small “mum and dad” customers and larger “commercial &amp; industrial” customers. An agreed delineation between the two should be attempted (perhaps by annual volume of consumption) – to ensure consistent treatment of small commercial (or ‘SME’) customers.</p> <p>Disclosure should consider splitting the basic cost of energy supply under the tariff from other items such as one-off or irregular fees &amp; charges, and offsets such as solar feed-in tariffs.</p> <p>Disclosure should separately consider electricity and gas revenues.</p>	National and by distribution area



DISCLOSURE ITEM	NOTES	Unit of Analysis
<b>Retail Cost of Goods Sold in \$ (CoGS)</b>	<p>This should be disclosed under an agreed standard of the relevant CoGS for supplying small consumers.</p> <p>This would likely include</p> <ul style="list-style-type: none"> <li>(1) the cost of energy and the cost / benefits of hedging the cost of supply,</li> <li>(2) network transmission and distribution charges,</li> <li>(3) energy losses between wholesale procurement and retail supply,</li> <li>(4) the cost of procuring environmental and efficiency scheme certificates and similar, and</li> <li>(5) other direct external costs such as volume-based market levies.</li> </ul> <p>Where a cost item covers more than one distribution area the cost should be apportioned using the most relevant variable. For example, the cost of energy would be apportioned on the basis of energy units consumed by distribution area; while if environmental levies are on billed value then total billed value.</p>	National, State and by distribution area
<b>Cost of Fed in electricity</b>	<p>The cost of paying consumers for energy supplied to the retailer should be included as a separate item, though it is technically a part of the cost of energy under existing settlement arrangements.</p>	



DISCLOSURE ITEM	NOTES	Unit of Analysis
<b>Retail Gross Margin in \$</b>	Retail Revenue minus CoGS Disclosure should separately consider electricity and gas gross margins.	National and by distribution area
<b>Cost to Serve ('CtS') in \$ Disaggregated by ACCC categories of</b> <ul style="list-style-type: none"> <li>• <b>billing</b></li> <li>• <b>customer service and IT</b></li> <li>• <b>debt collection</b></li> <li>• <b>CTS Labour</b></li> <li>• <b>hardship</b></li> <li>• <b>any other Cost(s) to Serve.</b></li> </ul>	<p>This should be defined as all costs incurred between the disclosed Gross Margin and the retailer's Earnings Before Interest &amp; Tax ('EBIT') earned from serving small consumers.</p> <p>Thus it would include both cash operating costs, and any depreciation and amortisation (particularly amortisation of any capitalised costs of customer acquisition).</p> <p>CtS is the key controllable costs of retailing. It is thus an essential metric to understand the efficiency of competition.</p> <p>CtS is generally much higher on a per-unit or per-customer basis for small consumers compared with large consumers, so the split is important to allow sensible comparability.</p> <p>Due to the similarity of the costs and the fact that many customers are dual-fuel, CtS (and the sub-components below) are currently disclosed on an overall basis for small electricity and gas customers in aggregate. It is pragmatic to continue with this approach (and draw conclusions about the impact of dual-fuel strategies by comparative analysis between retailers).</p>	National and by jurisdiction



DISCLOSURE ITEM	NOTES	Unit of Analysis
<b>Cost to Maintain ('CtM') in \$ and Cost to Compete ('CtC') in \$</b>	<p>CtM and CtC are defined as a split of overall CtS which allows the separate identification of</p> <p>(1) operating costs in the absence of competitive costs – the cost to serve the small consumer base if there was no churn; and</p> <p>(2) the costs incurred by retailers in acquiring new small consumers, or 'saving' those who seek to churn away. CtC should separate 'organic' competitive activity from any purchases of customer bases e.g. via acquisition of another retailer.</p> <p>Inorganic customer acquisition costs are themselves an important metric indicating the full value placed on various cohorts of small consumers by retailers.</p>	National and by jurisdiction
<b>Cost to Acquire ('CtA') in \$ and Cost to Retain ('CtR') in \$ Disaggregated into ACC categories of:</b> <ul style="list-style-type: none"> <li>• advertising and marketing</li> <li>• customer loyalty programs</li> <li>• CARC Labour</li> <li>• onboarding</li> <li>• customer research</li> <li>• churn prevention</li> <li>• third party sales</li> <li>• any other Cost(s) to Acquire and Retain.</li> </ul>	<p>CtA and CtR are defined as a split of overall CtC which allows separate identification of the relative costs to 'replace' a small customer which has churned away, versus taking steps to prevent the customer from leaving.</p> <p>This is important, particularly to inform the cost consequences of some apparently pro- competitive calls to ban such retention (or win-back) activity.</p> <p>Note: some retailers maintain that CARC or CtC can't be further disaggregated into CtA and CtM.</p>	National and by jurisdiction



DISCLOSURE ITEM	NOTES	Unit of Analysis
<b>Depreciation, Interest and Tax</b>	Detail sufficient for the purpose of in addition to Gross Margin and EBITDA above, the calculation of EBIT and NPAT. (Note as an alternative or in addition the retailer may be required to report	National
<b>Net assets in \$</b>	By contrast to supermarket retailers with positive working capital, operating a retail energy business requires substantial capital to be employed to support hedging, prudential requirements, and conventional working capital. In our view the industry has suffered from a lack of understanding that the net margin must at least cover the cost of this capital. Disclosure of the assets employed in supporting the small customer retail business would allow a reasonable allowance for the cost of capital to be estimated.	National

Notes:

The definition of 'small customers' as jurisdictionally determined under the retail law should be used for the division between small and large. The division between residential and small business is a current ACCC requirement that businesses are managing to achieve.





**Table 1.2 Small customers customer and pricing information**

DISCLOSURE ITEM	NOTES	Unit of Analysis
<b>Aggregate small customer account numbers in '000 (opening, closing and average)</b>	<p>Disclosure of small customer numbers allows for analysis of per-customer efficiency metrics such as gross margin, CtS and EBIT.</p> <p>Averages are the appropriate denominator for these metrics.</p> <p>Opening and closing customer numbers are used in conjunction with other disclosures (see below) to examine the level of competitive activity (e.g. churn rates), and thus metrics on a per- event basis (such as cost per acquisition or retention).</p> <p>Disclosure should separate electricity and gas customer numbers.</p>	National and by distribution area
<b>Aggregate Dual-fuel customer account numbers in '000 (or more generally, multiple products)</b>	<p>Essentially, this is disclosure of a Venn Diagram noting how many small customers are electricity- only customers, gas-only customers, or customers with both and electricity and a gas account with the retailer.</p> <p>(The equivalent would apply to retailers bundling other supplies such as telco services.)</p> <p>Dual-fuel strategies offer advantages through convenience thus stickiness of consumers, and the ability to spread some fixed operating costs among the gross margin earned on two products. They are an important element of the competitive market structure.</p> <p>Dual-fuel disclosure allows more meaningful analysis at a consumer-centric level: i.e. earnings per household, rather than earnings per account.</p>	National and by distribution area
<b>Plan Details</b>	<p>For each separate plan under which small customers have been supplied in the period (identified using the RPIG PlanID or other identifier):</p> <p>(1) the number of customers on that plan at the end of the period,</p> <p>(2) the total amount billed to for new charges for consumption or daily supply to customers on that plan in the period</p> <p>(3) the total amount of energy supplied as specified in the bills used in (2) to customers on that plan in the period.</p> <p>(4) the total credited to customers for feed in billed in that period</p> <p>(5) the amount of energy for which the credits in (4) relate</p> <p>(6) charges for gas billed in the period</p>	By distribution area



DISCLOSURE ITEM	NOTES	Unit of Analysis
	<p>(7) the amount of gas for which the charges in (6) relate            (8) all other charges included in bills for customers on that plan            (9) all discounts included in bills for that month if they are not included in the calculation of supply charges            (10) Amount of GST charged to customers in bills issued in the period</p> <p>For the purposes of this reporting, where a plan includes a defined benefit period customers within the benefit period and customers outside the benefit period are to be reported as separate plans.</p> <p>All customers who are not on a plan with a plan ID shall be treated as one virtual plan called 'other'</p>	
<p><b>Wins and Retains in '000</b></p>	<p>Wins is the number of new small customers acquired in the period.</p> <p>Retains is the number of small customers which are held through activity such as responding to a threat to churn, or proactive offers at the end of a contract or benefit period. Taken together, these are a measure of the underlying competitive activity faced by the retailer – a broader measure than completed churn given the relatively large quantity of Retains.</p> <p>The definitions of Wins and Retains should be consistent across retailers, and with the costs disclosed as CtA and CtR respectively.</p>	<p>National and by distribution area</p>
<p><b>Customer Churn (by product) in %</b></p>	<p>Overall small customer churn (aggregated across gas and electricity) can be calculated based on the losses of customers in the period, divided by the opening customer numbers. Losses in turn can be derived from the disclosure of Wins and the closing customer numbers.</p> <p>However, churn rates are very different between electricity and gas, and the distinction is important if (for example) analysis is required on the competitive state of the electricity market alone.</p> <p>Therefore retailers should separately disclose churn for small electricity and small gas customers.</p>	<p>National and by distribution area</p>

Notes:

Where a customer changes plans in a period a retailer may include all the billing details for the customer according to the plan the customer was on at the end of the period.



**Table 2.1 Large Customers Financial Information**

For large customers		
DISCLOSURE ITEM	NOTES	Unit of Analysis
<b>Retail Revenue in \$</b>	<p>The objective is to understand the ex-post price paid by large energy consumers for each of electricity and gas, on average.</p> <p>Retailers should therefore split disclosure of revenue between small “mum and dad” customers and larger “commercial &amp; industrial” customers. An agreed delineation between the two should be attempted (perhaps by annual volume of consumption) – to ensure consistent treatment of small commercial (or ‘SME’) customers.</p> <p>Disclosure should consider splitting the basic cost of energy supply under the tariff from other items such as one-off or irregular fees &amp; charges, and offsets such as solar feed-in tariffs.</p> <p>Disclosure should separately consider electricity and gas revenues.</p>	National and by distribution area
<b>Retail Cost of Goods Sold in \$ (CoGS)</b>	<p>This should be disclosed under an agreed standard of the relevant CoGS for supplying large consumers.</p> <p>This would likely include</p> <ol style="list-style-type: none"> <li>(1) the cost of energy and the cost / benefits of hedging the cost of supply,</li> <li>(2) network transmission and distribution charges,</li> <li>(3) energy losses between wholesale procurement and retail supply,</li> <li>(4) the cost of procuring environmental and efficiency scheme certificates and similar, and</li> <li>(5) other direct external costs such as volume-based market levies.</li> </ol> <p>Where a cost item covers more than one distribution area the cost should be apportioned using the most relevant variable. For example, the cost of energy would be apportioned on the basis of energy units consumed by distribution area; while if environmental levies are on billed value then total billed value.</p>	National and by distribution area



<b>For large customers</b>		
<b>DISCLOSURE ITEM</b>	<b>NOTES</b>	<b>Unit of Analysis</b>
<b>Retail Gross Margin in \$</b>	Retail Revenue minus CoGS Disclosure should separately consider electricity and gas gross margins.	National and by distribution area
<b>Cost to Serve ('CtS') in \$</b>	This should be defined as all costs incurred between the disclosed Gross Margin and the retailer's Earnings Before Interest & Tax ('EBIT') earned from serving large consumers. Thus it would include both cash operating costs, and any depreciation and amortisation (particularly amortisation of any capitalised costs of customer acquisition). CtS is the key controllable costs of retailing. It is thus an essential metric to understand the efficiency of competition. CtS is generally much higher on a per-unit or per-customer basis for small consumers compared with large consumers, so the split is important to allow sensible comparability. Due to the similarity of the costs and the fact that many customers are dual-fuel, CtS (and the sub-components below) are currently disclosed on an overall basis for small electricity and gas customers in aggregate. It is pragmatic to continue with this approach (and draw conclusions about the impact of dual-fuel strategies by comparative analysis between retailers).	National



For large customers		
DISCLOSURE ITEM	NOTES	Unit of Analysis
<b>Cost to Maintain ('CtM') in \$ and Cost to Compete ('CtC') in \$</b>	<p>CtM and CtC are defined as a split of overall CtS which allows the separate identification of</p> <p>(1) operating costs in the absence of competitive costs – the cost to serve the large consumer base if there was no churn; and</p> <p>(2) the costs incurred by retailers in acquiring new large consumers, or 'saving' those who seek to churn away.</p> <p>CtC should separate 'organic' competitive activity from any purchases of customer bases e.g. via acquisition of another retailer.</p> <p>Inorganic customer acquisition costs are themselves an important metric indicating the full value placed on various cohorts of small consumers by retailers.</p>	National
<b>Net assets in \$</b>	<p>By contrast to supermarket retailers with positive working capital, operating a retail energy business requires substantial capital to be employed to support hedging, prudential requirements, and conventional working capital.</p> <p>In our view the industry has suffered from a lack of understanding that the net margin must at least cover the cost of this capital.</p> <p>Disclosure of the assets employed in supporting the large customer retail business would allow a reasonable allowance for the cost of capital to be estimated.</p>	National
<b>Plan Details</b>	<p>For each separate plan under which large customers have been supplied in the period, or other segmentation approach agreed with the AEMC:</p> <p>(1) the number of customers on that plan at the end of the period,</p> <p>(2) the total revenue earned from customers on that plan in the period</p> <p>(3) the total amount of energy supplied to customers on that plan in the period.</p>	By distribution area

Note: The table for large customers may need to be adjusted to reflect the data collected for small customers.



#### **4. HOW THE PROPOSED RULE CHANGE WILL ADDRESS THE ISSUE**

A simple consistent framework for reporting revenue and costs will enable market bodies to provide accurate reports. It will reduce the cost of retailers in responding to requests for information by the AEMC, ACCC and other bodies seeking to prepare reports.

A common open reporting framework will ensure that participants in policy processes are drawing on a consistent and accurate evidence base. The Finncorn *State of Play* report, drawn from similar data provided by listed businesses, demonstrates the value of policy analysis informed by real data.

#### **5. CONTRIBUTION OF PROPOSED RULE CHANGE TO THE NATIONAL ENERGY OBJECTIVES**

The fundamental test for the AEMC in the making of Rules is covered in s88 of the National Electricity Law and s236 of the National Energy Retail Law. Those sections provide that “The AEMC may only make a Rule if it is satisfied that the Rule will or is likely to contribute to the achievement of the national (electricity/energy retail) objective.”

In practice for this rule there are three tests to apply. The first is whether the rule contributes to the achievement of the relevant objective. The second is whether the AEMC has the power to make the Rule under the National Electricity Law or National Energy Retail Law..

##### *Contribute to the achievement of the NEO and/or NERO*

The National Energy Objectives as specified in each of the Energy Laws is of the form that the objective of the law is the promotion of efficient investment in, and operation and use of, energy assets for the long-term interests of consumers with respect to price, quality, reliability, safety and security of supply. As outlined in Energy Consumer’s Australia’s paper *Operationalising the LTIC* this is underpinned with a structural decision to separate potentially competitive markets from natural monopoly services. The long-term interests of consumers is promoted when potentially competitive markets are effectively competitive.

The key determinant of whether markets are effectively competitive is the price outcome – do prices reflect costs – and the level of rivalrous activity in the market. For all other decision making under the Law the market bodies need to know the extent to which the retail market is meeting the requirement of being effectively competitive. In addition, the proposed disclosure requirements makes it possible to more accurately measure how effectively competitive the retail market is, and to undertake diagnostic analysis of the operation of the market.

The requirement of the objectives to promote the long-term interests of consumers with respect to price, quality, reliability, safety and security of supply necessitates a focus on price. This is particularly the case when around two-thirds of customers report satisfaction with the reliability of electricity services while only a third are satisfied with value for money. The concern with price saw the reference to the ACCC of Retail Electricity Price Inquiry and now the ongoing monitoring by the



ACCC. This monitoring is focusing on the various contributions to the cost-stack in the retail bill so that focus can be properly placed on elements that will make the biggest impacts on price.

Given that there is already reporting of this data, the cost of the proposal is minimal, or possibly negative if stability in the data requests can be achieved.

So the proposed rule certainly contributes to the achievement of the objectives at small (or even negative) marginal cost.

*Able to be made under the National Electricity Law*

As identified in the introduction to this rule change proposal, retail competition is a key feature of the design of the NEM; it constitutes the demand side of that market. In the National Electricity Law the provisions in relation to the AEMC's rule making powers explicitly include aspects of the retail market.

For example s34(1)(aa) reads "Subject to this Division, the AEMC, in accordance with this Law and the Regulations, may make Rules, to be known, collectively, as the "National Electricity Rules", for or with respect to ...facilitating and supporting the provision of services to retail customers" while s34(1)(b) provides the general requirement that the Rules may cover any matter expedient for the purposes of the law. s34(3)(fa) reads "Rules made by the AEMC in accordance with this Law and the Regulations may...provide for procedures governing the operation of the national electricity market and the sale and supply of electricity to retail customers,"

Together s34(3)(c),(d) and (e) provide that the National Electricity Rules may confer a function or power on the AER or AEMC, may impose obligations on persons or class of persons (e.g. retailers to report) and may confer a function on the AER or AEMC to prepare instruments or documents (such as the clarification notes described above). Nothing in the Law restricts the generality of these provisions. Specifically, the provision of a requirement under the Law for a report to be provided to a market body in one set of circumstances does not limit the ability of the Rules to create an additional requirement about the same, similar or different subject matter.

*Able to be made under the National Energy Retail Law*

The National Energy Retail Law has an explicit definition of retailer, the definition is for the purposes of defining persons who are covered by the various consumer protection provisions of that Law. The role of a retailer for the purposes of the proposed Rule is that of a wholesaler market participant. The purpose of the Retail Law is to establish the terms of the relationship between a retailer and its customers.

As the proposed rule is about the operation of the market not the consumer protections it is our belief that the Rule is more appropriately made under the National Electricity Law. Notwithstanding this preference we note that s237(3)(c), (e) and (f) that the National Energy Retail Rules may confer a function or power on the AER or AEMC, may impose obligations on persons or class of persons (e.g. retailers to report) and may confer a function on the AER or AEMC to prepare instruments or documents (such as the clarification notes described above). Nothing in the Law restricts the generality of these provisions. Specifically, the provision of a requirement under the Law for a report to



be provided to a market body in one set of circumstances does not limit the ability of the Rules to create an additional requirement about the same, similar or different subject matter.

## **6. EXPECTED BENEFITS, POTENTIAL IMPACTS AND POSSIBLE COSTS**

This section of the rule change request summarises the expected key benefits, potential impacts and possible costs associated with the proposed rule change.

### **6.1 Key benefits**

The key benefits of the proposed rule are covered in the preceding two sections.

### **6.2 Potential impacts and possible costs**

Any proposal to increase the reporting requirements on businesses is usually met with any of three fundamental objections:

- The release of the data will disadvantage the firms as the disclosure of their data (especially cost data) will limit their strategic opportunities in sourcing business inputs.
- The release of data will have a 'chilling effect' on competition as participants will be able to 'second guess' competitor strategies.
- The additional compliance cost inherent in reporting.

Energy Consumers Australia simply notes that the largest individual retailer already provides this level of data as part of its reporting to investors. Clearly this has neither of the first two consequences listed above.

None of the data that it is proposed should be released would not already be captured by the businesses as part of their own management processes. Once the Rule is finalized the businesses would need to make at most one adjustment to standard reporting processes to meet the requirements of the Rule. This is a cheaper outcome for these businesses than responding voluntarily to ad hoc requests from the AEMC or responding to mandatory information requests from the ACCC.

## **7. STAKEHOLDER ENGAGEMENT**

Energy Consumers Australia has discussed the proposed Rule change with AEMC staff and with ACCC staff. The Rule change request reflects some of these discussions, though not all.

Our CEO, Rosemary Sinclair AM, wrote to the CEO of every retailer advising them of the rule change and inviting them to contact us if they wanted further information. Eleven retailers made contact with the ECA contact officer and were provided with copies of the draft rule change. Detailed conversations were arranged by two retailers.

Retailer feedback focused on three particular questions:





1. The challenge caused by asking for revenue and cost data at levels of disaggregation below that which is maintained in financial accounts.
2. The question of confidentiality of the information.
3. The duplication with other data gathering exercises already being conducted by the ACCC and some jurisdictional regulators.

In relation to the level of disaggregation, we acknowledge that financial accounts may not allocate revenue by distribution area or there may not be a disaggregation of costs in the way assumed. The rule change is explicit that where the level is below GL categories then data from management accounts should be used for the more detailed analysis.

In respect of the second we have left the publication decision as being at the absolute discretion of the AEMC. We note the very general ACCC powers specifically cover a confidentiality regime that is based on the reporting business claiming confidentiality and the ACCC determining whether to accept the claim. We do not think the AEMC needs the same level of prescriptive guidance.

In relation to duplication the intent of the rule change is to replace the ACCC reporting requirements and to ensure that ongoing competitiveness monitoring can be performed once the ACCC stops monitoring.

11 Dec 2019

Mr John Pierce AO  
Chair  
Australian Energy Market Commission

## **RULE CHANGE REQUEST UNDER THE NATIONAL ELECTRICITY RULES OR THE NATIONAL ENERGY RETAIL RULES**

### **SUNSHINE ON RETAIL**

Dear Mr Pierce

In the course of the Australian Competition and Consumer Commission (ACCC) Retail Electricity Prices Inquiry (REPI) Energy Consumers Australia commissioned Finncorn Consulting to undertake research to understand the drivers of retailer business models, and the implications for the competitive outcomes in electricity and gas markets. The report *State of Play: Quantifying the competitive outcomes of retailing in the NEM*<sup>1</sup> presented long-term trends in publicly disclosed information from a number of listed and unlisted retailers.

The report highlighted how much information can be gleaned from the information presented by listed energy companies. Clearly this data is mostly not commercially confidential.

In response to a request from the ACCC, Finncorn provided suggestions on what information disclosure could be required of all participants on the basis of the analysis under the heading 'Sunlight: Information disclosure to assist energy market competitive analysis.' A copy of that submission is attached to the rule change request.

The REPI report<sup>2</sup> did not provide detail on what retail data should be reported, but as part of recommendation 40 it said:

*A NEM-wide price reporting and monitoring framework be implemented which includes a combination of price monitoring with full EBITDA data (including standardised costs to serve, attract and retain consumers, and margins), and consumer expenditure surveys. This reporting should be done on a regular basis and include customer expenditure data, based on representative customer surveys and retailer billing and offer data, and be reflective of demographic information.*

It is our interpretation that the reference to surveys was only to the question of affordability – that is energy costs as compared to other costs and incomes. Aggregate revenue by State and numbers of

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<sup>1</sup> <https://energyconsumersaustralia.com.au/publication/state-play-quantifying-competitive-outcomes-retailing-nem/>

<sup>2</sup> <https://www.accc.gov.au/regulated-infrastructure/energy/electricity-supply-prices-inquiry/final-report>



customers on different plans should be used instead of customer surveys or bill samples as an approach to understanding the actual energy cost.

It is our understanding that in relation to the totality of the recommendation the COAG Energy Council tasked the market bodies and the Energy Security Board (ESB), in consultation with the Australian Competition and Consumer Commission (ACCC), to provide advice to Energy Council in March 2019 on the type and timing of reports to the Energy Council that will usefully inform forward looking policy decisions.

While we support the intent of the ACCC in its recommendation and the approach of the Energy Council to ensure that policy makers are well informed, we do not regard this as sufficient.

The Vertigan review of governance report in October 2015 concluded that:

*the pace of change in the energy sector is arguably unprecedented; and a 'strategic policy deficit' exists.*<sup>3</sup>

The ACCC REPI report concluded:

*Australia is facing its most challenging time in electricity markets. High prices and bills have placed enormous strain on household budgets and business viability. The current situation is unacceptable and unsustainable.*

*The approach to policy, regulatory design and promotion of competition in this sector has not worked well for consumers. Indeed, the National Energy Market (NEM) needs to be reset, and this report sets out a plan for doing this.*

In the light of these comments, consumers cannot rely upon market reporting being available only to the Energy Council rather than directly to the public.

At Energy Consumers Australia's Foresighting Forum 2019 Finncorn's David Heard provided a presentation on his recommendations.<sup>4</sup> In that presentation he proposed:

*A basic standard of disclosure should extend to all retailers, informed by the listed company benchmarks. Much of this would be publicly available to stakeholders. This would allow reliable and efficient whole-of-industry analysis by a range of stakeholders, to answer some critical questions – ranging from the fundamental...*

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<sup>3</sup> <http://www.coagenergycouncil.gov.au/publications/review-governance-arrangements-australian-energy-markets-final-report>

<sup>4</sup> [https://www.youtube.com/watch?time\\_continue=7&v=vhUaBylXTo0](https://www.youtube.com/watch?time_continue=7&v=vhUaBylXTo0)



***How much do small consumers pay for energy on average, and which retailers are actually the cheapest?***

*...through to the essential...*

***Do industry returns reflect an effectively competitive market, or is there evidence of persistent excess returns being earned?***

The value of this data was demonstrated – from a dataset of one – in Finncorn’s *State of Play* report.

In submitting this rule change request, we have had regard to your speech at Australian Energy Week on 12 June this year.<sup>5</sup> The rule change impacts on three of the priorities:

- **Aligning the financial incentives that operate on market participants and the physical needs of the power system**

In the speech you said “The market was set up to pay generators for making electricity when consumers need it...The incentive for sellers to generate electricity when consumers and the power system need it is when spot prices are high or low – this has been blunted.”

While the speech singled out environmental policies, we believe that the way the retail market operates, the effectiveness of competition and the lack of innovation in pricing plans are all factors that break the necessary connection. For small residential consumers there are very few market offerings that seek to reward customers for using more of their energy when the wholesale price is lowest.

Better information about the operation of the retail market is an important component in designing markets to align incentives.

- **Empowering consumers, particularly through the application of these digital technologies**

This rule change doesn’t directly empower consumers through the application of digital technologies. It does, however, provide an important metric for being able to monitor the effectiveness of the changes that will empower consumers through digitalization.

- **Addressing the efficient integration of distributed resources into our networks**

The proposed rule change does not directly support the integration of DER. It does provide the ability to monitor the impact of DER on the market.

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<sup>5</sup> <https://www.aemc.gov.au/news-centre/speeches/aemc-priority-areas-reform>



The rule change proposal is attached. That the rule is proposed to be made under either the National Electricity Law (NEL) or the National Energy Retail Law (NERL). It is our interpretation of the laws and the intent of the rule that it is more appropriately made under the NEL. However, we are making the submission as being under both frameworks so that the AEMC can make this decision.

We are keen to work with the AEMC and other stakeholders to ensure the required public disclosure can occur to inform all stakeholders. Questions on the proposal or other requests should be directed to our Senior Economist, David Havyatt at [david.havyat@energyconsumersaustralia.com.au](mailto:david.havyat@energyconsumersaustralia.com.au) or on 0414 467 271.

Yours sincerely

Rosemary Sinclair AM  
Chief Executive Officer



## **RULE CHANGE REQUEST UNDER THE NATIONAL ELECTRICITY RULES**

### **SUNSHINE ON RETAIL: PUBLIC DISCLOSURE REQUIREMENT BY RETAILERS**

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## TABLE OF ABBREVIATIONS

ABBREVIATION	FULL TERM
ACCC	Australian Competition and Consumer Commission
AER	Australian Energy Regulator
AEMA	Australian Energy Market Agreement
AEMC	Australian Energy Market Commission
COAG	Council of Australian Government
CoGS	Cost of Goods Sold
EC	Energy Council
ECSS	Energy Consumer Sentiment Survey
ESB	Energy Security Board
NEL	National Electricity Law
NEM	National Electricity Market
NEO	National Electricity Objective



NER	National Electricity Rules
NERL	National Energy Retail Law
NERO	National Energy Retail Objective
NERR	National Energy Retail Rules
REPI	Retail Electricity Prices Inquiry
SCER	Standing Council of Energy and Resources

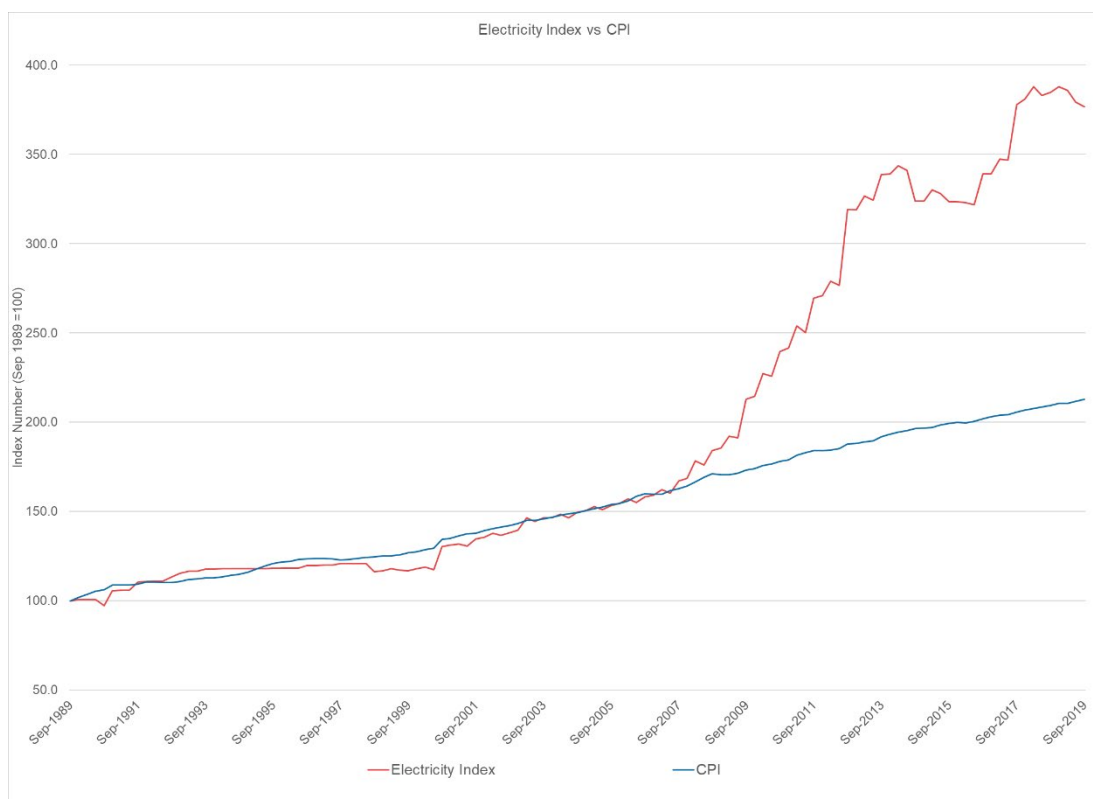




## 1. INTRODUCTION

Retail electricity (and gas) prices have increased at a rate far in excess of the rate of inflation as shown in Figure 1 below.

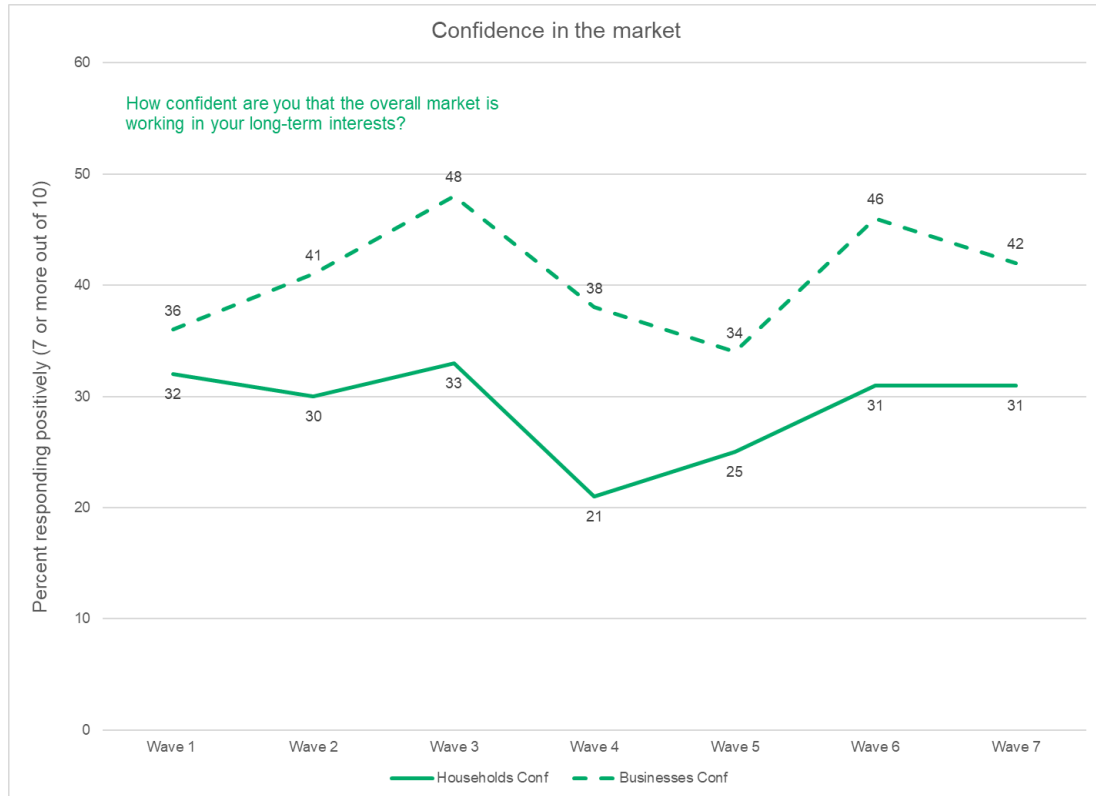
**Figure 1: Electricity Price Index and CPI (common base September 1989 = 100)**



It is therefore unsurprising that in Energy Consumers Australia's six monthly Energy Consumer Sentiment Survey (ECSS) finds consistently low positive responses to the question of whether households and businesses have confidence that the market is working in their interests. Figure 2 below shows that over the seven surveys to date there has not been one where more than a third of householders has provided a positive response to the question of how confident they are that the energy market is working in their interest. Small business is slightly more confident but consistently below half.



**Figure 2: Confidence in the market.**



Policy response to increasing prices and a lack of confidence in the market requires regular transparent reporting of the performance of the retail market. That was the initial basis for the Australian Competition and Consumer Commission's (ACCC) Retail Electricity Price Inquiry (REPI). The report recommended in part 'A NEM-wide price reporting and monitoring framework be implemented which includes a combination of price monitoring with full EBITDA data.'

This rule change proposal addresses this recommendation by proposing a reporting regime to apply to all retailers.

While our consumer sentiment research covers electricity and gas, and the response on confidence in the market covered both, this rule change is focused exclusively on electricity, except in the case where the retailer provides dual fuel plans.

However, the electricity and gas markets are closely linked in terms of:

1. Acquisition & retention (bundled offers, less hassle for consumer with a single supplier);



2. The spreading of common costs to serve (which in practice would be hard for retailers to separate meaningfully); and
3. Potential cross-subsidization to maintain customer numbers in the face of transient CoGS challenges e.g. due to a poor hedge position.

The retailers who do disclose their data do so for gas and electricity, and the system changes would apply to both. Depending on how the electricity rule change progresses we will consider a similar rule change for gas.

The rule is proposed to be made under either the National Electricity Rules or the National Energy Retail Rules. Our primary interest is that, consistent with the ACCC REPI and the Australian Energy Market Commission's (AEMC) Retail Price Review, the rule applies to all retail activity in the NEM jurisdictions.

The proposition is that, by requiring a greater level of financial disclosure by retailers, stakeholders can be better informed about the dynamics of the retail electricity market. This will better inform policy makers and advocates and should, through transparency and the option for targeted reforms, also act to reduce energy prices through both improvements in improvements in competitive dynamics and prospectively improvements in market design.

## **2. STATEMENT OF ISSUE**

### **2.1 Current framework**

The Australian Energy Market Commission is tasked with assessing the development of retail competition across the National Electricity Market.

In December 2012 the Standing Council on Energy and Resources (SCER) and the Council of Australian Governments (COAG) agreed to revise the approach to competition reviews undertaken by the AEMC. To support this approach the Australian Energy Market Agreement (AEMA) was amended to remove prescriptive elements associated with the previous approach which was focused on individual jurisdictional reviews. The intent of the earlier regime was for jurisdictional reviews to assess whether competition had developed sufficiently to warrant the removal of jurisdictional price regulation.

The AEMC was issued with Terms of Reference for reporting on the state of retail energy market competition across the national energy market in January 2014.<sup>6</sup> A lot of the AEMC's report is drawn from other data sources (for example the government run comparison websites, AEMO market data) however not all of it is.

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<sup>6</sup> <https://www.aemc.gov.au/sites/default/files/2019-01/2018-SCER-Terms-of-Reference.pdf>



As there is no requirement placed on retailers in the National Electricity Market to publicly report on revenues, costs, average prices or margins, to prepare the annual Retail Energy Competition Review<sup>7</sup> the Australian Energy Market Commission (AEMC) has to date relied upon voluntary information provision. Listed companies, in particular AGL, have provided more detail to meet the needs of investors.

The impact of not having a complete retail data set is seen in two examples from the AEMC's 2018 *Retail Energy Competition Review*.

*The Big 3 retailers generally appear to be the beneficiaries of customer inertia, as the limited data available from Tier 2 retailers did not show an equivalent link between the discount available to a consumer and their length of tenure with a retailer.*<sup>8</sup>

*Some retailers were concerned that the current interventions would not result in better outcomes for consumers. One retailer believes that the cost to service customers resulting from regulatory intervention is increasing more than the cost to acquire customers (the AEMC does not have access to data to verify the level of this increase).*<sup>9</sup>

Both of these examples reflect on very important aspects of market design, and the AEMC is required to report on them with inadequate data. The AEMC itself, policy makers and other stakeholders then draw conclusions from the review about how market design might need to be adjusted to improve competitiveness.

In the AEMC's 2019 *Retail Energy Competition Review* they were more explicit, noting:

*In previous reviews the Commission has reported, in a limited way, on the gross margins of the Big 3, based on voluntarily provided information. In the absence of information gathering powers, the Commission is not able to provide a complete picture of the margins retailers are realising in the electricity market.*<sup>10</sup>

The AEMC relies on data collected by the AER for determining the market share of retailers for its competition review. In the 2019 report they recommended that the AER gather data by distribution network region. The network region has significance due to the different network costs for determining margins, the history of which retailer initially bought the retail business of the previously integrated distributors and (usually the same) the local retailer for the distribution area. The AEMC recommendation read:

**RECOMMENDATION 4: CUSTOMER NUMBERS BY NETWORK REGION**  
*Currently, despite market structure developments occurring at a network level, market share*

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<sup>7</sup> <https://www.aemc.gov.au/markets-reviews-advice/2018-retail-energy-competition-review>

<sup>8</sup> <https://www.aemc.gov.au/sites/default/files/2018-06/Final%20Report.pdf> P. vii

<sup>9</sup> <https://www.aemc.gov.au/sites/default/files/2018-06/Final%20Report.pdf> P.30

<sup>10</sup> <https://www.aemc.gov.au/sites/default/files/2019-06/2019%20AEMC%20Retail%20energy%20competition%20review%20-%20Final%20report.PDF>



*data is only publicly available at a jurisdictional level. More granular publicly available data is required to allow the Commission and policy-makers to better analyse and report on the emerging market structure. The Commission therefore recommends that the AER require that retailers provide data on customer numbers (including customers on market and standing offers) by network region.*

The AEMC also annually presents a retail price trends report, which infers retailer costs from comparisons between representative prices and other known cost elements. The AEMC then infers the future retail costs from this data.<sup>11</sup>

The lack of information available under this voluntary reporting arrangement and continued increase in prices and hence household and business bills resulted in the Federal Treasurer tasking the Australian Competition and Consumer Commission (ACCC) with the Retail Electricity Price Inquiry (REPI). A benefit of requiring the ACCC to undertake REPI under the price monitoring provisions of the Competition and Consumer Act 2010 was the ability of the ACCC to use its extensive powers to compel the provision of information. The ACCC has been further tasked with this reporting for a further seven years but in doing so will continue to rely upon data acquired through the price monitoring powers.

The extent of analysis that can be provided from the data provided by listed companies was demonstrated by Finncorn's *State of Play* report for Energy Consumers Australia<sup>12</sup>.

The REPI Final Report provided detailed analysis of the 'cost stack' from the use of these ACCC's mandatory information provision powers.<sup>13</sup>

It seems inconsistent that some analysis should be possible merely by the choice of capital structure by a retailer and inadequate to otherwise only obtain data by use of bespoke powers. There is no apparent reason why non-listed retailers should be providing any less information than listed retailers; they have no greater confidentiality claim for example.

The utilization of *ad hoc* information gathering powers is the costliest way to acquire information. The ongoing cost to industry is lowest if a stable reporting environment can be established so that the need can be incorporated within the business's ordinary accounting systems and processes. All the reporting costs imposed on businesses are ultimately born by consumers.

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<sup>11</sup> <https://www.aemc.gov.au/market-reviews-advice/residential-electricity-price-trends-2018> especially the methodology report.

<sup>12</sup> *op. cit.*

<sup>13</sup> <https://www.accc.gov.au/regulated-infrastructure/energy/electricity-supply-prices-inquiry/final-report>



The AER annually reports on the retail markets in its State of the Market Report. In the report released in May 2017 the AER used the AEMC Retail Price Trends data<sup>14</sup>. For the 2018 report they used the ACCC's REPI data.<sup>15</sup>

Finally, the Energy Security Board's annual *Health of the NEM* report draws on these sources. The ESB has identified through its Energy Strategic Plan a number of outcomes and associated metrics. For the outcome "Energy is increasingly affordable for all consumers, supported by adequate consumer protections and access to dispute resolution" the proposed metrics include 'Representative domestic retail tariffs and bills in each NEM-region' but this data is not currently available, especially since the AER compliance data does not include Victoria. For the outcome 'Wholesale and retail markets are competitive and deliver efficient outcomes for consumers' the metrics include 'Extent to which competition in retail and wholesale electricity and gas markets is identified as an issue by market bodies' with a reference to the AEMC Retail Energy Competition Review.

The effectiveness of the planning and reporting framework depends on the retail data being available. Recommendation 40 of REPI reads:

*Retail price monitoring should be streamlined, strengthened and appropriately funded to ensure greater transparency in the market, reduced costs, and allow governments to more effectively respond to emerging market issues. This should be done by:*

- *COAG Energy Council agreeing to streamline price monitoring and reporting to the AER and the AER receiving all the necessary powers to obtain information from retailers*
- *COAG Energy Council agreeing to extend price reporting for retail electricity services to small to medium business customers*
- *state governments agreeing to close their own price reporting and monitoring schemes in favour of an expanded and strengthened NEM-wide regime*

*A NEM-wide price reporting and monitoring framework be implemented which includes a combination of price monitoring with full EBITDA data (including standardised costs to serve, attract and retain consumers, and margins), and consumer expenditure surveys. This reporting should be done on a regular basis and include customer expenditure data, based on representative customer surveys and retailer billing and offer data, and be reflective of demographic information.*

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<sup>14</sup>

[https://www.aer.gov.au/system/files/State%20of%20the%20energy%20market%2C%20May%202017%20%28A4%20format%29\\_1.pdf](https://www.aer.gov.au/system/files/State%20of%20the%20energy%20market%2C%20May%202017%20%28A4%20format%29_1.pdf)

<sup>15</sup> [https://www.aer.gov.au/system/files/State%20of%20the%20Energy%20Market%202018%20-%20Full%20report%20A4\\_2.pdf](https://www.aer.gov.au/system/files/State%20of%20the%20Energy%20Market%202018%20-%20Full%20report%20A4_2.pdf)



Following the release of REPI the ACCC has been further tasked to report on electricity prices every six months for seven years. It is Energy Consumers Australia's understanding that this is the extent of the 'NEM-wide price reporting and monitoring framework' to be implemented in response to REPI Recommendation 40. In undertaking this task, the ACCC's use of its information gathering powers restricts the public release of the information gathered in the process. The data is used for a single analysis and interpretation of the information, which may not lead to the most effective use of that opportunity. While the ACCC has shown itself to be highly resistant to regulatory capture, the wide availability of data is the strongest insurance against that possibility.

In saying this we note that the ACCC has endeavoured to make the data (really information derived from the data) more accessible by publishing an Excel workbook including the data for all charts in its latest monitoring report. However, it is a very limited dataset released in this way.

The *Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2019* which passed both houses of parliament on 25 November 2019 introduces new information gathering powers for the AER. The Bill otherwise is entirely empowering the ACCC and as the Minister in his second reading speech noted:

*The government has directed the ACCC to monitor retail prices, wholesale bids and contract market liquidity in the National Electricity Market until 2025, and announced that this would be backed up by a series of remedies where the ACCC identifies misconduct by electricity market participants.*

The full extent of reference to the AER's information gathering powers in this speech was:

*Finally, this bill will also provide additional information-gathering powers to the Australian Energy Regulator (AER), bringing the AER's powers in line with comparable regulators, including the ACCC. The AER will be able to share this information with Commonwealth agencies.*

The explanatory memorandum provides the more complete explanation that these powers are to support the AER in its functions under the Default Market Offer arrangements that were introduced by regulation. However, it is Energy Consumers Australia's understanding that the consideration of 'streamlining price reporting' has not resulted in this function moving from the AEMC to the AER. Consequently, the AEMC is still in a position of having a reporting obligation without access to information required to generate the report. While the AER may in conducting its reviews of the Default Market Offer gather some information that would assist the AEMC in fulfilling its reporting obligation, the AER cannot use its information gathering power merely to obtain the information for onforwarding to the AEMC.

## **2.2 Limitation of the current framework**

Energy Consumers Australia is tasked with promoting the long-term interests of consumers through providing and enabling strong, collegiate evidence-based advocacy on matters of significance to residential and small business customers. Our need for an evidence base on industry costs and the



effectiveness of competition was why we strongly supported the Treasurer's referral of REPI to the ACCC.

Energy Consumers Australia, the COAG Energy Council and the market bodies (AEMC, AER, ESB) are not the only parties with an interest in analysis of the market for to inform stakeholders of the state of the market.

In *Australia's retail electricity markets: who is serving whom?* (a 2016 report for GetUp) carbon+energy markets and MarkIntell concluded:

*This report finds that in Australia's deregulated retail markets, the retail charge is at least twice as high as a proportion of the bill and about three times as high as an amount, as the charge in Britain.<sup>16</sup>*

In their 2017 report *Price Shock: Is the retail electricity market failing consumers?* the Grattan Institute concluded:

*Retail electricity prices in Victoria have been deregulated since 2009. Since then the price of electricity has risen dramatically. The only explanation for this price increase is that the amount of money paid to retailers has increased. The result is that some consumers are paying more for their electricity than they need to.<sup>17</sup>*

In late 2017 the Energy Consumers Australia website summarised the Finncorn Consulting report *State of Play* saying:

*The current state of play suggests that the new costs introduced by competition (and price deregulation) to acquire and retain customers have not been offset by greater operating cost efficiencies by retailer businesses. Further, the profitability of the larger retailers has been underpinned by the overall price levels being set in the market by their smaller, higher cost competitors.<sup>18</sup>*

These three reports used disparate approaches to work around the absence of transparent market reporting. As such the conclusions reached were dependent upon the approach rather than the data and it can be argued served to further confuse rather than clarify the true market position.





### 2.3 Summary of the issue

Energy, especially electricity, is identified as an 'essential service.' This term is used primarily to reflect that energy is a prerequisite for functions such as light, heating (for comfort and cooking) and power (for refrigeration and communication). It is more generally an essential service for economic activity.

This central role of energy means that it is an appropriate focus for policy analysis for its impact on citizen well-being and economic growth. As the examples from GetUp! And the Grattan Institute above make clear, without reliable data on prices faced by consumers and businesses and the efficiency of the retail market (i.e. how reflective of cost these prices are), this policy discussion is based on 'best efforts' rather than best evidence.

The default policy position should be to make data publicly and widely available unless there is a reason not to do so. The availability of data to regulatory bodies and government agencies to undertake analysis is insufficient for evidence-based policy discussions and to build consumer confidence. Energy Consumers Australia places particular importance on this characteristic because of our advocacy responsibility. While we undertake our own studies including the Energy Consumer Sentiment Survey, the Small-Business Tariff Tracker and the Consumer Tariff Tracker (the latter through grant funding to St Vincent de Paul), accurate data from retailers is the best evidence possible.

In summary the issue is the need for informed policy discussion and improved consumer confidence through the transparent provision of retail pricing and margin data. The data needs to be provided by retailers to a market body and that market body needs the discretion to make as much of the data publicly available as is consistent with the ongoing effective operation of the market.

The existing information gathering powers of the ACCC and the new powers of the AER are insufficient as they do not allow for sufficient public release of data, and the inherent *ad hoc* nature of the requirement is more costly than establishing a consistent reporting framework.



### 3. DESCRIPTION OF PROPOSED RULE

The proposed rule creates a reporting obligation on retailers to periodically report data on revenues, costs and customers on different pricing plans. While the change request includes specific proposals, it is understood that the AEMC may make a more preferable rule to meet the requirements of the issue as specified in the preceding section.

There are six dimensions to a reporting obligation.

1. Who has an obligation to report?
2. Who gets the report?
3. How is the detail to be included in the report specified, or, what has to be reported?
4. How frequently it has to be reported?
5. Manner of reporting
6. Standards of reporting

#### *Who has to report?*

Industry reforms that use competition to achieve efficient use of, and investment in, generation resources can be implemented using different models for the 'buyer' side of the market. There are three broad categories of approaches:

- The *single buyer* approach, under which a single entity has responsibility for purchasing wholesale electricity.
- *Wholesale competition*, under which entities (such as distribution businesses) have a local monopoly over customers and negotiate on their behalf to procure electricity.
- *Retail competition*, under which any customer can, in principle, purchase electric power from any supplier.<sup>19</sup>

Because the amount of energy dispatched in each period is based on the AEMO forecast it is tempting to think our design is of the first kind, but it isn't. The second kind is the approach in most US states where integrated local utilities buy power from a wholesale market. The Australian approach is an implementation of the third approach.

Consequently, how effectively retail competition is working is a determinant of how effectively the wholesale market can operate. As the proposed rule thus provides information on the effectiveness of the wholesale electricity market, it needs to apply to registered customers in the National Electricity Market who do not self-consume all the energy that they purchase.

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<sup>19</sup> Biggar, D & Hesamzadeh, M 2014, *The economics of electricity markets*, Wiley. P.79



The rule should include an exemption framework to cover small or new retailers with the clear expectation that as they grow they should plan to include the capability of reporting in their management systems.

#### *Who is the report provided to?*

We propose the reports are provided to the AEMC since the AEMC currently has the price reporting obligation. However, the reports could equally well go to the AER. The proposal is for the bulk of the information to be publicly released, however all the data including confidential data will be available to other market bodies (i.e. ESB, AER, AEMC, AEMO and ECA). In the rest of the proposal we describe the rule on the basis that the AEMC is the recipient of the reports.

#### *What has to be reported?*

A reporting rule can either specify what has to be reported or it can determine that the detail will be included in a subordinate instrument. The most extreme version of the latter is a device like notices issued by the ACCC under s95ZK of the *Competition and Consumer Act*.

We propose that the rule specifies the data that has to be reported, though we believe that it may be desirable to replace all or part of the detail with a subordinate instrument in which the data required is specified (The data that we propose to be reported is included in a table at the end of this section.)

Notwithstanding the proposal for the data required to be specified in the rule, the agency receiving the data should be empowered to issue 'guidance notes' to address any case where application of the rule is found to be unclear or unduly arduous.

#### *Frequency of reporting*

Because of the level of volatility in the market the reports should be provided half-yearly. This accords with the current requirement of ACCC reporting.

#### *Manner of reporting*

Initially the data should be required to be presented in an Excel spreadsheet format. For the longer term process of reporting, as part of the NEM Data Strategy an API should be provided that would allow the retailer to upload the data directly to the database.

All the small customer detail should be included in the public reporting, however, discretion should exist for the AEMC to report less detail for any retailer which is not one of the four largest retailers in a distribution area. That is the AEMC has the authority to publish and at its sole discretion can decide to not publish or publish only summary data for smaller retailers (where a small retailer is defined as one that is not one of the three largest retailers in a jurisdiction). The AEMC should have sole discretion about what detail is reported for large customers. The AEMC should be required to maintain a database that can be queried through simple to use tools to extract data.



### *Standards of reporting*

There should be a requirement that the statement is submitted using the same standards as are applied to responses to ACCC notices, that is:

by writing signed by the person or his or her agent or, in the case of a Commonwealth authority or a body corporate, by a competent officer of the authority or body, within the specified period and in the specified manner, specified information relating to the affairs of the person;

if the person is a body corporate in a form approved by the Chairperson and signed by:

- (i) the Chief Executive Officer (however described) of the body corporate; or
- (ii) a person nominated by the Chief Executive Officer;

stating that the information or documents are true and correct.

Where the data specified relates to revenue or costs the data must be presented in a manner consistent with the financial accounts of the person. Where the requested revenue or cost data is not recorded at the level of disaggregation specified the person will apportion the revenue or cost on the basis of data in the management accounts. For example, if the person records revenue only as low as the State/jurisdiction but the requirement is to report at distribution network level the revenue will be apportioned between the distribution areas in proportion to the value of new charges issued to customers in the distribution area in the last three or six months.

### *The proposed rule*

A new set of clauses be included in the National Electricity Rules (possibly in Chapter 3) with the following effect.

- Registered customers in the National Electricity Market who do not self-consume all the energy that they purchase must provide the 'Cost Structure and Offers Report' to the AEMC in accordance with this Rule.
- The reporting entity must provide the data included in the schedule for each half year as at 30 June and 31 December, and the report must be received by 30 September and 31 March respectively.
- The AEMC may provide guidelines in conjunction with this Rule to:
  - Refine the definition of the data that is included in this rule,
  - Require the reporting of additional data.
- Where the report requires revenue or cost data at a level of detail that is finer than that revenue or cost data is maintained in a reporting entity's financial accounts, and there is no Guideline covering the approach to use that is applicable by the reporting entity, the AEMC must provide the entity with a Guideline on application on how to apportion charges.
- The AEMC (or AER) may provide a proforma that must be completed to submit the data or it may provide another means of electronic lodgement.
- The report must be accompanied by the appropriate (see above) written attestation as to accuracy.
- The AEMC may exempt an entity with less than one percent market-share from parts of, or all of, the reporting requirements.



- All data provided to the AEMC shall be available on request to the AER , AEMO, ACCC, ESB and ECA.
- The AEMC shall publish all or part of the data submitted except where the AEMC regards that to publish the data would have a deleterious effect on competition. Where the AEMC decides to not publish some or all data it must provide a reason for not publishing the data at the same time as it publishes any data, or, if no data is published, within one month of the date on which data was due to be provided to it.
- The first report shall be provided to the AEMC on (the first reporting date after the rule is made OR the first reporting date after the ACCC advises the AEMC/AER that it has reduced its information request on retailers and will draw the data from this report).

The data to be reported by each retailer is outlined in the following tables. The table refers to both gas and electricity data for retailers who sell both.

There are two tables for small customers; financial information and customer pricing summaries. The AEMC should determine whether the small customer data should be reported as one item or as one set for residential customers and another for small business customers.

**Table 1.1 Small customer financial information (all exclusive of GST)**

DISCLOSURE ITEM	NOTES	Unit of Analysis
<b>Retail Revenue in \$</b>	<p>The objective is to understand the ex-post price paid by small energy consumers for each of electricity and gas, on average.</p> <p>Retailers should therefore split disclosure of revenue between small “mum and dad” customers and larger “commercial &amp; industrial” customers. An agreed delineation between the two should be attempted (perhaps by annual volume of consumption) – to ensure consistent treatment of small commercial (or ‘SME’) customers.</p> <p>Disclosure should consider splitting the basic cost of energy supply under the tariff from other items such as one-off or irregular fees &amp; charges, and offsets such as solar feed-in tariffs.</p> <p>Disclosure should separately consider electricity and gas revenues.</p>	National and by distribution area



DISCLOSURE ITEM	NOTES	Unit of Analysis
<b>Retail Cost of Goods Sold in \$ (CoGS)</b>	<p>This should be disclosed under an agreed standard of the relevant CoGS for supplying small consumers.</p> <p>This would likely include</p> <ul style="list-style-type: none"> <li>(1) the cost of energy and the cost / benefits of hedging the cost of supply,</li> <li>(2) network transmission and distribution charges,</li> <li>(3) energy losses between wholesale procurement and retail supply,</li> <li>(4) the cost of procuring environmental and efficiency scheme certificates and similar, and</li> <li>(5) other direct external costs such as volume-based market levies.</li> </ul> <p>Where a cost item covers more than one distribution area the cost should be apportioned using the most relevant variable. For example, the cost of energy would be apportioned on the basis of energy units consumed by distribution area; while if environmental levies are on billed value then total billed value.</p>	National, State and by distribution area
<b>Cost of Fed in electricity</b>	<p>The cost of paying consumers for energy supplied to the retailer should be included as a separate item, though it is technically a part of the cost of energy under existing settlement arrangements.</p>	



DISCLOSURE ITEM	NOTES	Unit of Analysis
<b>Retail Gross Margin in \$</b>	Retail Revenue minus CoGS Disclosure should separately consider electricity and gas gross margins.	National and by distribution area
<b>Cost to Serve ('CtS') in \$ Disaggregated by ACCC categories of</b> <ul style="list-style-type: none"> <li>• <b>billing</b></li> <li>• <b>customer service and IT</b></li> <li>• <b>debt collection</b></li> <li>• <b>CTS Labour</b></li> <li>• <b>hardship</b></li> <li>• <b>any other Cost(s) to Serve.</b></li> </ul>	<p>This should be defined as all costs incurred between the disclosed Gross Margin and the retailer's Earnings Before Interest &amp; Tax ('EBIT') earned from serving small consumers.</p> <p>Thus it would include both cash operating costs, and any depreciation and amortisation (particularly amortisation of any capitalised costs of customer acquisition).</p> <p>CtS is the key controllable costs of retailing. It is thus an essential metric to understand the efficiency of competition.</p> <p>CtS is generally much higher on a per-unit or per-customer basis for small consumers compared with large consumers, so the split is important to allow sensible comparability.</p> <p>Due to the similarity of the costs and the fact that many customers are dual-fuel, CtS (and the sub-components below) are currently disclosed on an overall basis for small electricity and gas customers in aggregate. It is pragmatic to continue with this approach (and draw conclusions about the impact of dual-fuel strategies by comparative analysis between retailers).</p>	National and by jurisdiction



DISCLOSURE ITEM	NOTES	Unit of Analysis
<b>Cost to Maintain ('CtM') in \$ and Cost to Compete ('CtC') in \$</b>	<p>CtM and CtC are defined as a split of overall CtS which allows the separate identification of</p> <p>(1) operating costs in the absence of competitive costs – the cost to serve the small consumer base if there was no churn; and</p> <p>(2) the costs incurred by retailers in acquiring new small consumers, or 'saving' those who seek to churn away. CtC should separate 'organic' competitive activity from any purchases of customer bases e.g. via acquisition of another retailer.</p> <p>Inorganic customer acquisition costs are themselves an important metric indicating the full value placed on various cohorts of small consumers by retailers.</p>	National and by jurisdiction
<b>Cost to Acquire ('CtA') in \$ and Cost to Retain ('CtR') in \$ Disaggregated into ACC categories of:</b> <ul style="list-style-type: none"> <li>• advertising and marketing</li> <li>• customer loyalty programs</li> <li>• CARC Labour</li> <li>• onboarding</li> <li>• customer research</li> <li>• churn prevention</li> <li>• third party sales</li> <li>• any other Cost(s) to Acquire and Retain.</li> </ul>	<p>CtA and CtR are defined as a split of overall CtC which allows separate identification of the relative costs to 'replace' a small customer which has churned away, versus taking steps to prevent the customer from leaving.</p> <p>This is important, particularly to inform the cost consequences of some apparently pro- competitive calls to ban such retention (or win-back) activity.</p> <p>Note: some retailers maintain that CARC or CtC can't be further disaggregated into CtA and CtM.</p>	National and by jurisdiction





DISCLOSURE ITEM	NOTES	Unit of Analysis
<b>Depreciation, Interest and Tax</b>	Detail sufficient for the purpose of in addition to Gross Margin and EBITDA above, the calculation of EBIT and NPAT. (Note as an alternative or in addition the retailer may be required to report	National
<b>Net assets in \$</b>	By contrast to supermarket retailers with positive working capital, operating a retail energy business requires substantial capital to be employed to support hedging, prudential requirements, and conventional working capital. In our view the industry has suffered from a lack of understanding that the net margin must at least cover the cost of this capital. Disclosure of the assets employed in supporting the small customer retail business would allow a reasonable allowance for the cost of capital to be estimated.	National

Notes:

The definition of 'small customers' as jurisdictionally determined under the retail law should be used for the division between small and large. The division between residential and small business is a current ACCC requirement that businesses are managing to achieve.



**Table 1.2 Small customers customer and pricing information**

DISCLOSURE ITEM	NOTES	Unit of Analysis
<b>Aggregate small customer account numbers in '000 (opening, closing and average)</b>	<p>Disclosure of small customer numbers allows for analysis of per-customer efficiency metrics such as gross margin, CtS and EBIT.</p> <p>Averages are the appropriate denominator for these metrics.</p> <p>Opening and closing customer numbers are used in conjunction with other disclosures (see below) to examine the level of competitive activity (e.g. churn rates), and thus metrics on a per- event basis (such as cost per acquisition or retention).</p> <p>Disclosure should separate electricity and gas customer numbers.</p>	National and by distribution area
<b>Aggregate Dual-fuel customer account numbers in '000 (or more generally, multiple products)</b>	<p>Essentially, this is disclosure of a Venn Diagram noting how many small customers are electricity- only customers, gas-only customers, or customers with both and electricity and a gas account with the retailer.</p> <p>(The equivalent would apply to retailers bundling other supplies such as telco services.)</p> <p>Dual-fuel strategies offer advantages through convenience thus stickiness of consumers, and the ability to spread some fixed operating costs among the gross margin earned on two products. They are an important element of the competitive market structure.</p> <p>Dual-fuel disclosure allows more meaningful analysis at a consumer-centric level: i.e. earnings per household, rather than earnings per account.</p>	National and by distribution area
<b>Plan Details</b>	<p>For each separate plan under which small customers have been supplied in the period (identified using the RPIG PlanID or other identifier):</p> <p>(1) the number of customers on that plan at the end of the period,</p> <p>(2) the total amount billed to for new charges for consumption or daily supply to customers on that plan in the period</p> <p>(3) the total amount of energy supplied as specified in the bills used in (2) to customers on that plan in the period.</p> <p>(4) the total credited to customers for feed in billed in that period</p> <p>(5) the amount of energy for which the credits in (4) relate</p> <p>(6) charges for gas billed in the period</p>	By distribution area



DISCLOSURE ITEM	NOTES	Unit of Analysis
	<p>(7) the amount of gas for which the charges in (6) relate</p> <p>(8) all other charges included in bills for customers on that plan</p> <p>(9) all discounts included in bills for that month if they are not included in the calculation of supply charges</p> <p>(10) Amount of GST charged to customers in bills issued in the period</p> <p>For the purposes of this reporting, where a plan includes a defined benefit period customers within the benefit period and customers outside the benefit period are to be reported as separate plans.</p> <p>All customers who are not on a plan with a plan ID shall be treated as one virtual plan called 'other'</p>	
<p><b>Wins and Retains in '000</b></p>	<p>Wins is the number of new small customers acquired in the period.</p> <p>Retains is the number of small customers which are held through activity such as responding to a threat to churn, or proactive offers at the end of a contract or benefit period. Taken together, these are a measure of the underlying competitive activity faced by the retailer – a broader measure than completed churn given the relatively large quantity of Retains.</p> <p>The definitions of Wins and Retains should be consistent across retailers, and with the costs disclosed as CtA and CtR respectively.</p>	<p>National and by distribution area</p>
<p><b>Customer Churn (by product) in %</b></p>	<p>Overall small customer churn (aggregated across gas and electricity) can be calculated based on the losses of customers in the period, divided by the opening customer numbers. Losses in turn can be derived from the disclosure of Wins and the closing customer numbers.</p> <p>However, churn rates are very different between electricity and gas, and the distinction is important if (for example) analysis is required on the competitive state of the electricity market alone.</p> <p>Therefore retailers should separately disclose churn for small electricity and small gas customers.</p>	<p>National and by distribution area</p>

Notes:

Where a customer changes plans in a period a retailer may include all the billing details for the customer according to the plan the customer was on at the end of the period.



**Table 2.1 Large Customers Financial Information**

For large customers		
DISCLOSURE ITEM	NOTES	Unit of Analysis
<b>Retail Revenue in \$</b>	<p>The objective is to understand the ex-post price paid by large energy consumers for each of electricity and gas, on average.</p> <p>Retailers should therefore split disclosure of revenue between small “mum and dad” customers and larger “commercial &amp; industrial” customers. An agreed delineation between the two should be attempted (perhaps by annual volume of consumption) – to ensure consistent treatment of small commercial (or ‘SME’) customers.</p> <p>Disclosure should consider splitting the basic cost of energy supply under the tariff from other items such as one-off or irregular fees &amp; charges, and offsets such as solar feed-in tariffs.</p> <p>Disclosure should separately consider electricity and gas revenues.</p>	National and by distribution area
<b>Retail Cost of Goods Sold in \$ (CoGS)</b>	<p>This should be disclosed under an agreed standard of the relevant CoGS for supplying large consumers.</p> <p>This would likely include</p> <ol style="list-style-type: none"> <li>(1) the cost of energy and the cost / benefits of hedging the cost of supply,</li> <li>(2) network transmission and distribution charges,</li> <li>(3) energy losses between wholesale procurement and retail supply,</li> <li>(4) the cost of procuring environmental and efficiency scheme certificates and similar, and</li> <li>(5) other direct external costs such as volume-based market levies.</li> </ol> <p>Where a cost item covers more than one distribution area the cost should be apportioned using the most relevant variable. For example, the cost of energy would be apportioned on the basis of energy units consumed by distribution area; while if environmental levies are on billed value then total billed value.</p>	National and by distribution area



<b>For large customers</b>		
<b>DISCLOSURE ITEM</b>	<b>NOTES</b>	<b>Unit of Analysis</b>
<b>Retail Gross Margin in \$</b>	Retail Revenue minus CoGS Disclosure should separately consider electricity and gas gross margins.	National and by distribution area
<b>Cost to Serve ('CtS') in \$</b>	<p>This should be defined as all costs incurred between the disclosed Gross Margin and the retailer's Earnings Before Interest &amp; Tax ('EBIT') earned from serving large consumers. Thus it would include both cash operating costs, and any depreciation and amortisation (particularly amortisation of any capitalised costs of customer acquisition).</p> <p>CtS is the key controllable costs of retailing. It is thus an essential metric to understand the efficiency of competition.</p> <p>CtS is generally much higher on a per-unit or per-customer basis for small consumers compared with large consumers, so the split is important to allow sensible comparability.</p> <p>Due to the similarity of the costs and the fact that many customers are dual-fuel, CtS (and the sub-components below) are currently disclosed on an overall basis for small electricity and gas customers in aggregate. It is pragmatic to continue with this approach (and draw conclusions about the impact of dual-fuel strategies by comparative analysis between retailers).</p>	National



For large customers		
DISCLOSURE ITEM	NOTES	Unit of Analysis
<b>Cost to Maintain ('CtM') in \$ and Cost to Compete ('CtC') in \$</b>	<p>CtM and CtC are defined as a split of overall CtS which allows the separate identification of</p> <p>(1) operating costs in the absence of competitive costs – the cost to serve the large consumer base if there was no churn; and</p> <p>(2) the costs incurred by retailers in acquiring new large consumers, or 'saving' those who seek to churn away.</p> <p>CtC should separate 'organic' competitive activity from any purchases of customer bases e.g. via acquisition of another retailer.</p> <p>Inorganic customer acquisition costs are themselves an important metric indicating the full value placed on various cohorts of small consumers by retailers.</p>	National
<b>Net assets in \$</b>	<p>By contrast to supermarket retailers with positive working capital, operating a retail energy business requires substantial capital to be employed to support hedging, prudential requirements, and conventional working capital.</p> <p>In our view the industry has suffered from a lack of understanding that the net margin must at least cover the cost of this capital.</p> <p>Disclosure of the assets employed in supporting the large customer retail business would allow a reasonable allowance for the cost of capital to be estimated.</p>	National
<b>Plan Details</b>	<p>For each separate plan under which large customers have been supplied in the period, or other segmentation approach agreed with the AEMC:</p> <p>(1) the number of customers on that plan at the end of the period,</p> <p>(2) the total revenue earned from customers on that plan in the period</p> <p>(3) the total amount of energy supplied to customers on that plan in the period.</p>	By distribution area

Note: The table for large customers may need to be adjusted to reflect the data collected for small customers.



#### **4. HOW THE PROPOSED RULE CHANGE WILL ADDRESS THE ISSUE**

A simple consistent framework for reporting revenue and costs will enable market bodies to provide accurate reports. It will reduce the cost of retailers in responding to requests for information by the AEMC, ACCC and other bodies seeking to prepare reports.

A common open reporting framework will ensure that participants in policy processes are drawing on a consistent and accurate evidence base. The Finncorn *State of Play* report, drawn from similar data provided by listed businesses, demonstrates the value of policy analysis informed by real data.

#### **5. CONTRIBUTION OF PROPOSED RULE CHANGE TO THE NATIONAL ENERGY OBJECTIVES**

The fundamental test for the AEMC in the making of Rules is covered in s88 of the National Electricity Law and s236 of the National Energy Retail Law. Those sections provide that “The AEMC may only make a Rule if it is satisfied that the Rule will or is likely to contribute to the achievement of the national (electricity/energy retail) objective.”

In practice for this rule there are three tests to apply. The first is whether the rule contributes to the achievement of the relevant objective. The second is whether the AEMC has the power to make the Rule under the National Electricity Law or National Energy Retail Law..

##### *Contribute to the achievement of the NEO and/or NERO*

The National Energy Objectives as specified in each of the Energy Laws is of the form that the objective of the law is the promotion of efficient investment in, and operation and use of, energy assets for the long-term interests of consumers with respect to price, quality, reliability, safety and security of supply. As outlined in Energy Consumer’s Australia’s paper *Operationalising the LTIC* this is underpinned with a structural decision to separate potentially competitive markets from natural monopoly services. The long-term interests of consumers is promoted when potentially competitive markets are effectively competitive.

The key determinant of whether markets are effectively competitive is the price outcome – do prices reflect costs – and the level of rivalrous activity in the market. For all other decision making under the Law the market bodies need to know the extent to which the retail market is meeting the requirement of being effectively competitive. In addition, the proposed disclosure requirements makes it possible to more accurately measure how effectively competitive the retail market is, and to undertake diagnostic analysis of the operation of the market.

The requirement of the objectives to promote the long-term interests of consumers with respect to price, quality, reliability, safety and security of supply necessitates a focus on price. This is particularly the case when around two-thirds of customers report satisfaction with the reliability of electricity services while only a third are satisfied with value for money. The concern with price saw the reference to the ACCC of Retail Electricity Price Inquiry and now the ongoing monitoring by the



ACCC. This monitoring is focusing on the various contributions to the cost-stack in the retail bill so that focus can be properly placed on elements that will make the biggest impacts on price.

Given that there is already reporting of this data, the cost of the proposal is minimal, or possibly negative if stability in the data requests can be achieved.

So the proposed rule certainly contributes to the achievement of the objectives at small (or even negative) marginal cost.

#### *Able to be made under the National Electricity Law*

As identified in the introduction to this rule change proposal, retail competition is a key feature of the design of the NEM; it constitutes the demand side of that market. In the National Electricity Law the provisions in relation to the AEMC's rule making powers explicitly include aspects of the retail market.

For example s34(1)(aa) reads "Subject to this Division, the AEMC, in accordance with this Law and the Regulations, may make Rules, to be known, collectively, as the "National Electricity Rules", for or with respect to ...facilitating and supporting the provision of services to retail customers" while s34(1)(b) provides the general requirement that the Rules may cover any matter expedient for the purposes of the law. s34(3)(fa) reads "Rules made by the AEMC in accordance with this Law and the Regulations may...provide for procedures governing the operation of the national electricity market and the sale and supply of electricity to retail customers,"

Together s34(3)(c),(d) and (e) provide that the National Electricity Rules may confer a function or power on the AER or AEMC, may impose obligations on persons or class of persons (e.g. retailers to report) and may confer a function on the AER or AEMC to prepare instruments or documents (such as the clarification notes described above). Nothing in the Law restricts the generality of these provisions. Specifically, the provision of a requirement under the Law for a report to be provided to a market body in one set of circumstances does not limit the ability of the Rules to create an additional requirement about the same, similar or different subject matter.

#### *Able to be made under the National Energy Retail Law*

The National Energy Retail Law has an explicit definition of retailer, the definition is for the purposes of defining persons who are covered by the various consumer protection provisions of that Law. The role of a retailer for the purposes of the proposed Rule is that of a wholesaler market participant. The purpose of the Retail Law is to establish the terms of the relationship between a retailer and its customers.

As the proposed rule is about the operation of the market not the consumer protections it is our belief that the Rule is more appropriately made under the National Electricity Law. Notwithstanding this preference we note that s237(3)(c), (e) and (f) that the National Energy Retail Rules may confer a function or power on the AER or AEMC, may impose obligations on persons or class of persons (e.g. retailers to report) and may confer a function on the AER or AEMC to prepare instruments or documents (such as the clarification notes described above). Nothing in the Law restricts the generality of these provisions. Specifically, the provision of a requirement under the Law for a report to





be provided to a market body in one set of circumstances does not limit the ability of the Rules to create an additional requirement about the same, similar or different subject matter.

## **6. EXPECTED BENEFITS, POTENTIAL IMPACTS AND POSSIBLE COSTS**

This section of the rule change request summarises the expected key benefits, potential impacts and possible costs associated with the proposed rule change.

### **6.1 Key benefits**

The key benefits of the proposed rule are covered in the preceding two sections.

### **6.2 Potential impacts and possible costs**

Any proposal to increase the reporting requirements on businesses is usually met with any of three fundamental objections:

- The release of the data will disadvantage the firms as the disclosure of their data (especially cost data) will limit their strategic opportunities in sourcing business inputs.
- The release of data will have a 'chilling effect' on competition as participants will be able to 'second guess' competitor strategies.
- The additional compliance cost inherent in reporting.

Energy Consumers Australia simply notes that the largest individual retailer already provides this level of data as part of its reporting to investors. Clearly this has neither of the first two consequences listed above.

None of the data that it is proposed should be released would not already be captured by the businesses as part of their own management processes. Once the Rule is finalized the businesses would need to make at most one adjustment to standard reporting processes to meet the requirements of the Rule. This is a cheaper outcome for these businesses than responding voluntarily to ad hoc requests from the AEMC or responding to mandatory information requests from the ACCC.

## **7. STAKEHOLDER ENGAGEMENT**

Energy Consumers Australia has discussed the proposed Rule change with AEMC staff and with ACCC staff. The Rule change request reflects some of these discussions, though not all.

Our CEO, Rosemary Sinclair AM, wrote to the CEO of every retailer advising them of the rule change and inviting them to contact us if they wanted further information. Eleven retailers made contact with the ECA contact officer and were provided with copies of the draft rule change. Detailed conversations were arranged by two retailers.

Retailer feedback focused on three particular questions:



1. The challenge caused by asking for revenue and cost data at levels of disaggregation below that which is maintained in financial accounts.
2. The question of confidentiality of the information.
3. The duplication with other data gathering exercises already being conducted by the ACCC and some jurisdictional regulators.

In relation to the level of disaggregation, we acknowledge that financial accounts may not allocate revenue by distribution area or there may not be a disaggregation of costs in the way assumed. The rule change is explicit that where the level is below GL categories then data from management accounts should be used for the more detailed analysis.

In respect of the second we have left the publication decision as being at the absolute discretion of the AEMC. We note the very general ACCC powers specifically cover a confidentiality regime that is based on the reporting business claiming confidentiality and the ACCC determining whether to accept the claim. We do not think the AEMC needs the same level of prescriptive guidance.

In relation to duplication the intent of the rule change is to replace the ACCC reporting requirements and to ensure that ongoing competitiveness monitoring can be performed once the ACCC stops monitoring.

15<sup>th</sup> June 2018

Baethan Mullen  
General Manager, Retail Electricity Pricing Inquiry  
Australian Competition & Consumer Commission

Via email: [Baethan.mullen@accc.gov.au](mailto:Baethan.mullen@accc.gov.au)

Cc: Energy Consumers Australia



Dear Baethan

### **Sunlight: Information disclosure to assist energy market competitive analysis**

You requested some thoughts from Finncorn regarding ongoing information disclosure by retailer and generator participants, to support more efficient competitive analysis of the sector.

Our advice flows from the public analysis we undertook in support of our “State of Play” report for Energy Consumers Australia, provided to the ACCC as a submission. We also draw upon (1) our understanding of disclosure in the equivalent New Zealand public markets, and (2) our review of the numerous efforts by consultants to assess important metrics (such as retail pricing and gross margins) for purposes including the current ACCC Inquiry and the recent Victorian bipartisan review.

The suggestions we offer are based on principles we believe should apply to the market for an essential service, where consumers have little if any opportunity to withdraw. There is an ongoing public interest in more fully understanding the evolution of the competitive market and whether it is moving towards efficient competition and thus, the long-term interests of consumers as supposed. Our premises are:

1. **Cost to consumers should not be a mystery:** The ex-post price paid in aggregate for energy by small consumers should be readily available. This will remove a key area of uncertainty in any analysis which follows, and which has been a weakness undermining attempts to understand the market to date.
2. **Make use of the experiments underway:** The various state retail markets represent economic experiments at various stages, in relation to the period of deregulation, the competitive market structure, and the nature of upstream market power. Useful information should be segmented by state so that the situation and trends can be observed and compared routinely – answering the implicit question from the Victorian review of ‘why are things like this in our highly-deregulated market?’
3. **Move to acceptable best-practice disclosure:** There is an important balance between over-reach, compliance costs and the commercial confidentiality of retailer information on one hand, and the interests of consumers and regulators to understand the state of competition in the market on the other. However, the long-standing detailed public disclosures by listed retailers provide a useful guide to best-practice which is clearly judged by those retailers to be acceptable. There would be much to be gained through extending this benchmark to all licenced retailers to allow useful market-wide analysis as well as retailer comparison.
4. **Careful judgement on public vs. confidential disclosure:** Wider public data would assist in broader analysis of this market, but in our view, there is also an argument for more sensitive commercial data to be collected privately by ACCC, and released as anonymised aggregates. This might include finer (state-level) gross margins, operating costs and resultant earnings. This would balance the public interest against retailers’ concerns on competitive disclosure.

In this letter, we have set out our view of a useful disclosure standard consistent with these principles, referring particularly to existing levels of disclosure by major retailers AGL and Origin Energy.

Yours sincerely,

**David Heard**

Finncorn Consulting

## Classes of information disclosure

In this section we outline the relatively few key items of disclosure (both financial and operational) needed to develop a well-founded understanding of the competitive retail energy markets.

The table below describes each disclosure metric, notes some of the complexities to be considered, and reviews the current state of disclosure by large listed retailers.

From this base, many derivative metrics can be prepared to examine trends, as we demonstrated in the State of Play submission.

**Note that we focus on small customers.** As a result, a basic requirement of disclosure is that the retailer's overall metrics described below are split between clearly-defined small customers, and any larger customers (who represent much higher volume, lower cost to serve per customer, and lower margins).

DISCLOSURE ITEM	NOTES	CURRENT STATUS
Retail Revenue in \$	<p>The objective is to understand the ex-post price paid by small energy consumers for each of electricity and gas, on average.</p> <p>Retailers should therefore split disclosure of revenue between small "mum and dad" customers and larger "commercial &amp; industrial" customers. An agreed delineation between the two should be attempted (perhaps by annual volume of consumption) – to ensure consistent treatment of small commercial (or 'SME') customers.</p> <p>Disclosure should consider splitting the basic cost of energy supply under the tariff from other items such as one-off or irregular fees &amp; charges, and offsets such as solar feed-in tariffs.</p> <p>Disclosure should separately consider electricity and gas revenues.</p>	<p>AGL and ORG both report small customer revenues for each of electricity and gas, in aggregate for their Australian operations.</p> <p>(ORG separately report "Solar and Energy Services" revenue.)</p>
Retail Gross Margin in \$ (equivalent to Retail Revenue less Retail Cost of Goods Sold, 'CoGS')	<p>This should be disclosed under an agreed standard of the relevant CoGS for supplying small consumers.</p> <p>This would likely include (1) the cost / benefits of hedging the cost of supply, (2) network transmission and distribution charges, (3) energy losses</p>	<p>AGL report small customer gross margin in electricity and gas, based on undisclosed policies for transfer pricing on self-supply from its generation division.</p> <p>ORG report an aggregated gross margin for all electricity and gas customers, including generation segment earnings, requiring</p>

## Sunlight: Information disclosure to assist energy market competitive analysis

	<p>between wholesale procurement and retail supply, (4) the cost of procuring environmental and efficiency scheme certificates and similar, and (5) other direct external costs such as volume-based market levies.</p> <p>Disclosure should separately consider electricity and gas gross margins.</p>	<p>some significant assumptions on allocation of Cost of Goods Sold between large and small customers, and assumptions on transfer pricing between generation and retail for self-supply.</p>
<p>Cost to Serve ('CtS') in \$</p>	<p>This should be defined as all costs incurred between the disclosed Gross Margin and the retailer's Earnings Before Interest &amp; Tax ('EBIT') earned from serving small consumers.</p> <p>Thus it would include both cash operating costs, and any depreciation and amortisation (particularly amortisation of any capitalised costs of customer acquisition).</p> <p>CtS is the key controllable costs of retailing. It is thus an essential metric to understand the efficiency of competition.</p> <p>CtS is generally much higher on a per-unit or per-customer basis for small consumers compared with large consumers, so the split is important to allow sensible comparability.</p> <p>Due to the similarity of the costs and the fact that many customers are dual-fuel, CtS (and the sub-components below) are currently disclosed on an overall basis for small electricity and gas customers in aggregate. It is pragmatic to continue with this approach (and draw conclusions about the impact of dual-fuel strategies by comparative analysis between retailers).</p>	<p>Both AGL and ORG report small consumer CtS, further broken down to CtM and CtC (although their terminology differs).</p> <p>Treatment of amortisation of capitalised customer acquisition costs and any other non-case expenses is unclear for ORG, and the choice made regarding the allocation of fixed corporate overheads to these costs appear likely to be quite different between AGL and ORG.</p> <p>As a result direct comparisons of the absolute CtS may be difficult without further explanation, although trends over time are useful regardless.</p>
<p>Cost to Maintain ('CtM') in \$ and Cost to Compete ('CtC') in \$</p>	<p>CtM and CtC are defined as a split of overall CtS which allows the separate identification of (1) operating costs in the absence of competitive costs – the cost</p>	<p>(see comment above)</p>



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	<p>to serve the small consumer base if there was no churn; and (2) the costs incurred by retailers in acquiring new small consumers, or ‘saving’ those who seek to churn away.</p> <p>CtC should separate ‘organic’ competitive activity from any purchases of customer bases e.g. via acquisition of another retailer.</p> <p>Inorganic customer acquisition costs are themselves an important metric indicating the full value placed on various cohorts of small consumers by retailers.</p>	
<p>Cost to Acquire (‘CtA’) in \$ and Cost to Retain (‘CtR’) in \$</p>	<p>CtA and CtR are defined as a split of overall CtC which allows separate identification of the relative costs to ‘replace’ a small customer which has churned away, versus taking steps to prevent the customer from leaving.</p> <p>This is important, particularly to inform the cost consequences of some apparently pro-competitive calls to ban such retention (or win-back) activity.</p>	<p>AGL separated out their CtC into CtA and CtR for the period FY13-15, but neither AGL nor ORG currently report this level of detail.</p>
<p>Net assets in \$</p>	<p>By contrast to supermarket retailers with positive working capital, operating a retail energy business requires substantial capital to be employed to support hedging, prudential requirements, and conventional working capital.</p> <p>In our view the industry has suffered from a lack of understanding that the net margin must at least cover the cost of this capital.</p> <p>Disclosure of the assets employed in supporting the small customer retail business would allow a reasonable allowance for the cost of capital to be estimated.</p>	<p>AGL’s segment reporting splits between generation’s large asset base and the retail business, allowing some analysis of this for all retail customers, and thus some assumptions can be made about small customer capital intensity.</p> <p>ORG’s reporting does not separate generation and retail assets.</p>

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<p><b>Small customer account numbers in '000</b> (opening, closing and average)</p>	<p>Disclosure of small customer numbers allows for analysis of per-customer efficiency metrics such as gross margin, CtS and EBIT.</p> <p>Averages are the appropriate denominator for these metrics.</p> <p>Opening and closing customer numbers are used in conjunction with other disclosures (see below) to examine the level of competitive activity (e.g. churn rates), and thus metrics on a per-event basis (such as cost per acquisition or retention).</p> <p>Disclosure should separate electricity and gas customer numbers.</p>	<p>Both AGL and ORG report customer number by state markets, as well as overall average accounts, for each of gas and electricity.</p> <p>AGL separate out large customer from small customer numbers, ORG do not, but since the large customer account numbers are relatively tiny (e.g. 3.6 million small vs. 14,000 large for AGL in FY17) this makes little difference when analysis ORG.</p>
<p><b>Dual-fuel customer account numbers in '000</b> (or more generally, multiple products)</p>	<p>Essentially, this is disclosure of a Venn Diagram noting how many small customers are electricity-only customers, gas-only customers, or customers with both and electricity and a gas account with the retailer.</p> <p>(The equivalent would apply to retailers bundling other supplies such as telco services.)</p> <p>Dual-fuel strategies offer advantages through convenience thus stickiness of consumers, and the ability to spread some fixed operating costs among the gross margin earned on two products. They are an important element of the competitive market structure.</p> <p>Dual-fuel disclosure allows more meaningful analysis at a consumer-centric level: i.e. earnings per household, rather than earnings per account.</p>	<p>AGL and ORG each disclose their dual-fuel accounts in slightly different ways.</p>
<p><b>Wins and Retains in '000</b></p>	<p>Wins is the number of new small customers acquired in the period.</p> <p>Retains is the number of small customers which are held through activity such as responding to a threat to churn,</p>	<p>ORG report both wins and retains, whereas AGL only report their churn (from which wins can be derived).</p>

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	<p>or proactive offers at the end of a contract or benefit period.</p> <p>Taken together, these are a measure of the underlying competitive activity faced by the retailer – a broader measure than completed churn given the relatively large quantity of Retains.</p> <p>The definitions of Wins and Retains should be consistent across retailers, and with the costs disclosed as CtA and CtR respectively.</p>	<p>Neither distinguish between electricity and gas in this disclosure.</p>
<p>Customer Churn (by product) in %</p>	<p>Overall small customer churn (aggregated across gas and electricity) can be calculated based on the losses of customers in the period, divided by the opening customer numbers. Losses in turn can be derived from the disclosure of Wins and the closing customer numbers.</p> <p>However, churn rates are very different between electricity and gas, and the distinction is important if (for example) analysis is required on the competitive state of the electricity market alone.</p> <p>Therefore retailers should separately disclose churn for small electricity and small gas customers.</p>	<p>As noted above, neither AGL nor ORG deal separately with electricity and gas churn (or more generally, the competitive activity underlying changes in customer numbers)</p>
<p>Volumes sold in MWh, PJ</p>	<p>Electricity in MWh and gas in PJ sold to small customers.</p> <p>In conjunction with the financial and customer number disclosures, this leads to analysis of per-unit revenue and margins, as well as per-customer usage.</p>	<p>Both AGL and ORG report these volumes, broken down by state.</p>



## Breakdown of disclosure by state

To allow for meaningful comparisons of the state of competition in each major state market, the disclosures listed should be broken down by those state markets.

AGL and Origin already do so for the operational metrics of customer number and volumes sold.

In our view, this should be publicly extended to retail revenue and gross margin, wins & retains and churn by state.

At the operating cost level, the current AGL and Origin disclosure is aggregated across both electricity and gas, and nationally. That may be a reasonable balance of commercial disclosure to investors without compromising sensitive information, and may equally represent the pragmatic difficulty in breaking down operating costs more finely.

## Segment and portfolio reporting by vertically-integrated retailers

Despite a recent change in segmentation, AGL indirectly maintains separate segment reporting between “generation” and “retail” as it has done for many years. It segments into:

1. **Consumer Markets** (retail, based on a transfer price with Wholesale Markets for electricity, gas and green certificates as its wholesale Cost of Goods Sold)
2. **Wholesale markets** (being (1) the gross margin earned from the sales of generated electricity to Consumer Markets at the transfer price and into spot sales, net of spot purchases; (2) wholesale gas gross margins earned from supply to Consumer Markets and Group Operations as well as large external parties such as other retailer and generators; (3) the procurement, trading and sale of green products; and (4) the impact of price risk management – hedging and derivatives – on both sales and purchases of electricity, gas, green certificates and generation fuels undertaken for the overall integrated business); and
3. **Group Operations** (being the costs associated with the generation assets – fuel, cash operating expenses and depreciation – offset by some small coal sales)

The latter two segments represent a generation segment with a transfer price to retail consistent with an unspecified, but market-related, hedging policy applied.

In addition, it has followed the lead of the New Zealand listed gentailers in bringing elements of these together and reporting their integrated “gentailer” gross margin in a more useful format, which they term “Portfolio” reporting, for each of electricity and gas to Gross Margin level.

Collectively, we think this reporting structure is best-practice from the point of view of understanding AGL’s business within each of the generation and retail markets.

## Understanding the Black Box

In particular, AGL’s Portfolio breakdown is useful in that it reports a cost or benefit for “Net Portfolio Management”, which includes the so-called ‘black box’ of wholesale spot market procurement, hedging and price risk management undertaken by all retailers.

On a Portfolio basis, the integrated electricity gross margin is simplified to:

1. External final-customer revenues (excluding spot electricity sales to the pool)
2. Less Cost of Goods Sold (excluding the electricity purchases) – predominantly network costs.
3. Less costs of own generation – including fuel purchases, operating costs and depreciation of generation assets. This represents the marginal cost of supply for the own-generation, excluding any return on the capital invested in generation.
4. Plus or minus ‘Net Portfolio Management’ – being the impact of balancing the retail supply against the generation production (discussed below).

The result is an integrated gross margin which includes both retail and generation.



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The final item is made up firstly of 'physical' revenue from the spot sales of generation to the pool, and the cost of spot purchases from the pool necessary to meet the retail load. Despite the appearance of a neatly integrated business, these will be materially mismatched in terms of overall volume, timing of generation dispatch versus load requirements, regional balance, and the impact of losses.

In addition, it includes the overlying financial derivatives used by the gentailer to manage those mismatches, to ensure they do not lead to excessive swings in exposure as the wholesale spot market price changes.

AGL's reporting separates out these three elements of Net Portfolio Management, allowing the real impact of the vertical integration to be observed between spot sales, spot purchases and risk management.

In general, we think AGL's form of reporting is a good benchmark.

Origin's reporting for their integrated Energy Markets segment is broadly similar, but does not separately break out spot sales, spot purchases and risk management.