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Electricity Market Review
Department of Finance – Public Utilities Office

By e-mail: electricitymarketreview@finance.wa.gov.au

Position Paper on Changing the Contractual Relationship between the Electricity Distributor, Customers and Retailers

Origin welcomes this opportunity to respond to the Department of Finance's position paper on the relationship between the electricity distributor, customers and retailers in support of the introduction of full retail contestability (FRC).

In principle, Origin is supportive of the positions adopted by the Department, as it largely reflects arrangements common in other jurisdictions under the National Energy Consumer Framework (NECF) comprising the National Electricity Law, Electricity Rules and Energy Retail Rules (respectively the NEL, NER and NERR). The Department has balanced national consistency and the minimum change principle with its proposed approach of adopting a triangular model defining the relationship between distributors, customers and retailers.

Where changes to elements of the NECF occur that would have a material impact on the nature and operation of the contractual relationship between the electricity distributor, customers and retailers in Western Australia, Origin believes local regulations should reflect these changes to the extent possible and appropriate.

As a retailer active in the east coast energy retail markets, Origin does not have extensive knowledge of specific local issues and legacy approaches in Western Australia. Notwithstanding this, Origin would strongly support the adoption of relevant NECF provisions to their fullest extent in relation to the triangular contracting model and other matters relevant to the deregulation of the retail electricity market.

Origin responds to specific questions set out in the position paper below. Should the AEMC wish to discuss any of the matters raised in this response, please contact me.

Yours sincerely

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Regulatory Strategy Manager

Distributor-Customer relationship

Question 1: Should standard contracts be prescribed pursuant to regulation, or developed by the distributor for approval by the local regulator?

While standard contracts for network services are prescribed by the Australian Energy Regulator (AER) where NECF is in force, Origin agrees that the presence of a single distributor in the South West Interconnected System (SWIS) means there is merit in allowing the development of standard contracts by the distributor. However, the standard contract should be subject to public consultation prior to approval by the local regulator in WA.

Question 2: Should the distributor be limited to large customers in the development of deemed class-specific contracts?

Deemed class-specific contracts should apply only to large customers. There is potential for significant complexity and customer confusion if such contracts applied to small customers. It would also increase the potential cost of entering the market for new retailers should a large number of class-specific contracts apply to the small customer market. It is unlikely there is much scope for such a contractual approach for small customers in any event.

Question 3: Is the negotiation framework under Chapter 5A suitable for negotiating ongoing supply contracts in the South West Interconnected System? If not, what amendments should be made?

Question 4: Is there any reason why the high-level contractual provisions under r.82 of the National Energy Retail Rules should not be adopted in the South West Interconnected System?

Origin is not aware of any reason that the negotiation framework set out under 5A.C.3 of the NER should not apply in the SWIS. Similarly, the high-level contractual provisions could apply in the SWIS in our view, subject any matters we are not aware of that apply only in WA.

Question 5: Should the additional information provisions above be included within local customer protection arrangements?

For the purpose of consistency with NECF, it may be appropriate for the additional information provisions with respect to r.80 and r.17 of the NERR to be included in local regulations.

Question 6: Should Western Power's liability to customers under the ongoing supply contract be limited? If so, why and in what ways?

Question 7: Should negotiated ongoing supply contracts grant full scope for the parties to agree to contract away from the default liability settings established under Section 120(1) of the National Electricity Law? Should the answer be different in the case of small use customers?

There is an argument that Western Power should not be able to further limit its liabilities under deemed ongoing supply contracts with small customers (consistent with s.120(2A) of the NEL). Small customers have little capacity to accurately address the risk of diminished liabilities in relation to their taking of supply from the distribution network.

Connection arrangements should define the scope of liabilities in many respects for negotiated ongoing supply contracts. By agreement, there may be good reasons to support the limitation of both customer and distributor liabilities. Again, for small use customers, the ability to understand and mitigate risk as well as their capacity to negotiate would generally mean that a negotiated framework will be unworkable in the majority of cases.

Question 8: Should customer contractual liabilities to Western Power be limited? If so, why and in what ways?

Question 9: Should limits on customer contractual liabilities be defined differently for small-use and large customers?

Customer contractual liabilities should be limited if the customer undertakes reasonable steps to engage licensed electrical contractors, follow technical connection guidelines and ongoing supply requirements set out by Western Power. There may be a case to limit customer liabilities more generally for small-use customers given their capacity to understand and manage such liabilities. Large customers will have access to technical resources to optimise their connection and associated tariff arrangements supporting a negotiated outcome.

Question 10: Are there other liabilities created by statute that should be considered for amendment as part of these reforms?

Origin is not aware of other liabilities that are created by statute that should be amended as part of reforming the relationship between distributors, retailers and customers.

Retailer-Customer relationship

Question 11: Are there any circumstances under which specific intervention is needed to ensure contracts are updated to reflect the change in contracting arrangements?

Question 12: Are there any other reasons why intervention in contracts is necessary?

To the extent that changes of law clauses have not been included in legacy contracts, there may be a case for intervention by the Government. Origin would expect that existing contracts can be updated to reflect the changes triggered by implementing the triangular model.

Distributor-Retailer relationship

Origin would preface its comments in relation to questions on the distributor-retailer relationship by noting that we are not familiar with specific conditions and legacy arrangements that may currently apply in the WA electricity market. As such, our comments on the questions in this section is based on our experience of the operation of the triangular contracting model in the NECF jurisdictions.

Question 13: Is there any reason why local regulations regarding assistance and cooperation between retailers and distributors should be substantively different to the National Energy Customer Framework model set out in r.94 of the National Energy Retail Rules?

The NECF model supporting assistance and cooperation between retailers and distributors functions well in the jurisdictions in which it applies. Origin is not aware of any reasons that would prevent the application of r.94 to support FRC in the WA electricity market.

Question 14: Is there any reason why local regulations regarding provision of information between retailers and distributors should be substantively different to the National Energy Customer Framework model set out in rr.95-100 of the National Energy Retail Rules?

Refer to our response to question 13 above.

Question 15: Is there any reason why local regulations regarding classification and reclassification of customers should be substantively different to the National Energy Customer Framework model set out in rr.7-10 of the National Energy Retail Rules? Is the administrative burden associated with the classification and reclassification of customers reasonable?

Origin does not consider the classification and reclassification requirements set out in rr.7-10 of the NERR burdensome. We cannot see any reason why the NECF model should not apply in the WA electricity market.

Question 16: Is there any reason why local regulations regarding referral of enquiries and complaints should be substantively different to the National Energy Customer Framework model set out in rr.101-102 of the National Energy Retail Rules? Is the overlap between the Customer Code and the proposed provisions adequately resolved?

Please see our response to question 15 above. With respect to overlap between the Customer Code and the proposed provisions, Origin believes that the practical effect of these differences will be limited and the intent of both the Code and the NERR provisions are aligned.

Question 17: Is there any reason why local regulations regarding coordination of service standard payments should be substantively different to the National Energy Customer Framework model set out in r.84 of the National Energy Retail Rules?

Again, Origin cannot see why local regulations should vary materially from provisions set out in the NERR.

Question 18: Is there any reason why local regulations regarding coordination of de-energisations and re-energisations should be substantively different to the National Energy Customer Framework model set out in rr.103-106 of the National Energy Retail Rules?

Please refer to our response to question 17 above. Origin agrees that further consideration and updating of local regulation may be required should metering competition be introduced at a future date.

Question 19: Is there any reason why local regulations regarding mutual indemnification should be substantively different to the National Energy Customer Framework model set out in s.317 of the National Energy Retail Law?

Consistent with our responses elsewhere, Origin cannot identify any reason why regulations governing mutual indemnification.

Question 20: Is there any reason why local regulations regarding billing arrangements should be substantively different to the National Energy Customer Framework model set out in Part A of Chapter 6B of the National Electricity Rules?

There does not appear to be any reason why local regulation should vary from the provisions contained in Part A of chapter 6B of the NER.

Question 21: Is there any reason why local regulations regarding the administrative framework for credit support should be substantively different to the National Energy Customer Framework model set out in Rule 6B.B2.1, Divisions 1, 4 and 5 of Part B of Chapter 6B and Schedule 6B.2 of the National Electricity Rules?

Notwithstanding the outcome of the Distributor-retailer credit support requirements rule change process, Origin does not see any reason why local regulations for credit support should differ from the model set out in the NER.

Question 22: Do you consider that the Commercial Arbitration Act is a suitable framework for managing disputes regarding billing and credit support?

Origin is not familiar with the costs associated with administering arbitrated disputes under the Commercial Arbitration Act, and this, along with other potential concerns may or may not make this framework appropriate as a means of dispute management and resolution for retailers and Western Power. However, in absence of the application of chapter 8 of the NER in WA and alternatives, we recognise that some form of dispute resolution scheme between retailers and the distributor will be required. As such, the suitability of the Act for this purpose may be in part defined by a lack of feasible alternatives.