



22 January 2020

Mr Robert Telford  
Australian Energy Regulator  
GPO Box 520  
Melbourne Vic 3001

Email: [Ausgrid2019@aer.gov.au](mailto:Ausgrid2019@aer.gov.au)

Dear Mr Telford

**RE: AER ASSESSMENT OF AUSGRID AMENDED TSS PROPOSAL**

Origin Energy (Origin) appreciates the opportunity to provide a submission to the Australian Energy Regulator (AER) in relation to Ausgrid's proposed amendment to the AER-approved Tariff Structure Statement (TSS).

Providing predictability around the regulatory decision-making process is an essential requirement for businesses to be able to confidently plan for the future and be assured that their investments will not be threatened by unexpected changes in the regulatory environment. Unpredictability will stifle investment and innovation and adversely affect the cost structure of market participants. This is not in the long-term interests of customers.

Origin understands that the TSS is designed to provide retailers with certainty over tariff structures over the 5-year regulatory control period. There are limited provisions in the National Electricity Rules (NER) that allow electricity distributors to amend their current TSS. We believe that the regulatory certainty afforded by the 5-year regulatory term to be paramount and therefore any proposal to amend the approved TSS requires thorough assessment.

One of the key criteria for a within period adjustment to the TSS is for a network to demonstrate that an unforeseeable change has occurred beyond the control of the network provider. We consider that the growth in embedded networks could have been reasonably foreseen by Ausgrid and that amending the tariff structures of embedded networks was within the reasonable control of Ausgrid at the time of its 2019 regulatory proposal. For these reasons we firmly believe that this amendment does not meet the requirements of the NER for a within period assessment.

Origin's specific comments in relation to Ausgrid's proposal against the requirements of the NER is set out below.

**NER requirements for an amendment to a Tariff Structure Statement**

Clause 6.18.1B of the NER sets out the process for amending a tariff structure statement. Clause 6.18.1B(d) indicates that the AER must approve the request for an amendment if the distribution network service provider (DNSP) demonstrates to the reasonable satisfaction of the AER that:

1. an event has occurred that:
  - i. was beyond the reasonable control of the DNSP; and

- ii. could not reasonably have been foreseen by the DNSP at the time its current TSS was approved by the AER; and
2. as a result of the event, the proposed amended TSS would, or would be likely to, materially better comply with the pricing principles for direct control services than the DNSP's current TSS.

### **Ausgrid response to the NER requirements**

In seeking an amendment to its TSS, Ausgrid cites the following “events”:

- the Australian Energy Market Commission (AEMC)'s final report *Updating the Regulatory Frameworks for Embedded Networks* (June 2019) and the proposed rule change on the regulatory framework for embedded networks (ENs);
- the acceleration of the pace of creation of new ENs, and conversion of existing connections to form ENs, in our distribution area; and
- the AER's rejection in April 2019 of our placeholder EN tariff proposed in our revised TSS in January 2019.

### **Origin's Position**

Ausgrid argues that these events have impacted the treatment of existing and potential ENs in its network and necessitate an amendment to the TSS to allow for the introduction of a new capacity-based EN tariff prior to the next regulatory reset in 2024.

We do not believe that Ausgrid has satisfied the first test under the NER (i.e. Clause 6.18.1B((d)(1) that an unforeseen “event” occurred that was beyond Ausgrid's reasonable control).

Specifically, the AEMC's final report proposes a new regulatory framework for embedded electricity networks and elevates embedded networks into the national regulatory regime. The key objective of the new framework is to strengthen protections and improve access to competitive retail offers for customers in ENs, including the application of shadow pricing. We note that the AEMC recommendations have yet to be implemented and the process of amending the National Electricity Law and NER can be lengthy.

While Origin acknowledge that the AEMC recommendations have significant implications for EN customers and operators, it is not clear that these recommendations materially impact DNSPs. Further, while we acknowledge that the AEMC report identifies the existence of potential arbitrage opportunities associated with ENs, this is not a new or previously unknown issue that would not have been apparent to Ausgrid at the time of drafting its existing TSS.

In addition, we are not aware of any recommendations in the AEMC report that cannot be implemented under existing tariff structures. That is, there is no imperative to amend Ausgrid's TSS or introduce EN-specific tariffs arising from the recommendations.

Based on the above, it is not apparent to Origin that the finalisation of the AEMC's report constitutes an event under the NER or is of such significance to Ausgrid or its customers that it necessitates an amendment to Ausgrid's TSS at this time.

Furthermore, the growth of ENs in Ausgrid's network area does not appear to be a new or unforeseen issue (see Ausgrid's revised TSS – Figure B2.2). Based on Ausgrid's data, growth in ENs has been apparent since 2013. It is not clear that any new developments have emerged since Ausgrid prepared its existing TSS that have accelerated the growth in ENs. On the contrary, growth in ENs may be adversely impacted by the introduction of the AEMC's recommendations due to the anticipated additional compliance burden and associated costs for existing and potential ENs.

We consider that the growth of ENs should have been incorporated in Ausgrid's original customer forecasts. To the extent that these forecasts underestimate the growth in ENs this represents a forecasting error – an inherent risk associated with any forecasting process. This is not to say that growth in ENs may not continue to accelerate, however, we do not consider that forecasting error represents an “event” beyond Ausgrid's reasonable control.

Notwithstanding the above, we consider that Ausgrid has not provided sufficient information to substantiate forecast growth in ENs, including the underpinning assumptions. For example, we are unable to reconcile the number of ENs and new EN applications in Figure B2.2 to the estimated growth in ENs presented in Figure B6.1. In particular, it appears that the number of ENs presented in Figure B6.1 is substantially higher than those presented in Figure B2.2 for the same years. Without sufficient supporting detail we are unable to assess the extent of forecast growth in ENs.

Finally, a key purpose of fixed regulatory periods is to provide a degree of certainty to both customers and DNSPs over a set period. We consider that the inclusion of placeholders with undefined parameters undermines this regulatory certainty. In our view, the AER rightly rejected Ausgrid's EN tariff placeholder on the basis that customers cannot understand undefined tariff structures and that the AER could not identify whether they contribute to greater cost reflectivity or what impact they will have on customers.

In of itself, the rejection of the placeholder EN tariff does not represent an event that necessitates an amendment to the TSS. Rather, as per the provisions in the NER, Ausgrid is required to apply for an amendment to the TSS as events arise and on the merits of the actual event and its impact on the pricing principles – the rejection of an undefined placeholder is not an event.

Based on our review of the information provided, we argue that Ausgrid's proposed amendment to its TSS does not meet the requirements of the NER and that Ausgrid has not identified a relevant event as per Clause 6.18.1B((d)(1) of the NER that warrants an amendment to its TSS.

If you have any questions regarding this submission, please contact Gary Davies in the first instance at [Gary.Davies@originenergy.com.au](mailto:Gary.Davies@originenergy.com.au).

Yours sincerely



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