



16 December 2022

Mr. Mark Feather
General Manager, Strategic Policy and Energy Systems Innovation
Australian Energy Regulator

[REDACTED]
[REDACTED]
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Email: [REDACTED]

Dear Mr. Feather,

RE: Review of consumer protections for future energy services: Options for reform of the National Energy Customer Framework.

Origin Energy appreciates the opportunity to provide a submission in response to the Australian Energy Regulator's *Review of consumer protections for future energy services: Options for reform of the National Energy Customer Framework*.

To support emerging products and services it is essential that effective consumer protections exist. When making regulatory change we also believe it is essential that the AER preserve the core regulatory principles of consistency, flexibility, and predictability.

These principles need to be considered as a 'package', as there must be a degree of balancing some of the principles against others. For example, the principle of flexibility (adapting regulatory approaches and tools over time and to suit circumstances) could be seen as contrary to the principles of consistency and predictability.

This balancing is even more challenging for products and services that are not yet known or are still evolving. Conventional thinking suggests that a principles-based approach to regulation is likely to be more effective where there are new products and services, constant innovation, and different market participants. A prescriptive form of regulation on the other hand is considered to be highly detailed, rigid and is unlikely to be able to easily keep up with a market that is constantly evolving and may stifle innovation and market development.

With that in mind, predictable and consistent rules that do not adversely affect a specific participant and do not compromise consumer protections are vital. This will provide businesses with certainty regarding how their services will be regulated now and over time thereby enabling them to enter the market with confidence. Failure to achieve these risks inefficient regulation.

In the current environment, we consider that Model 1 with NECF based consumer protections represents the most pragmatic starting point. However, we also recognise some adaptability will be appropriate for a limited number of services and providers. At this point in time, we do not believe adopting a prescriptive approach over a principles-based approach will hinder innovation. Rather it will be the degree of prescriptiveness in the NECF that will be the challenge. In this regard the AER's ultimate approach will only be truly effective if it is complemented with a review of the NECF. Otherwise, it risks being another piecemeal addition to the regulatory framework

Our views on matters included in the AER's paper are set out below.

The NECF

The NECF commenced in 2012. Since then, there have been multiple changes and additions. Some of these changes are prescriptive while others are more principles based. As a result, the NECF is somewhat un-coordinated and overly prescriptive. The fact that the AER is undertaking this review is evidence that large parts of the NECF are not fit for purpose. We believe that any review of the regulatory framework for future services needs to consider how it will interact with the NECF because the choice of regulatory model could be encumbered by current NECF rules.

We encourage the AER to be mindful of this need and to construct a framework that could operate effectively with any future review of the NECF.

Regulating new energy products and services

We support Model 1 with some modifications as a reasonable initial approach. We believe the AER will develop a better understanding of what regulations are optimal as new services emerge and integrate with existing forms of supply. For these reasons we suggest that the AER's initial model be developed with an eye to potentially transitioning towards a more flexible model over time.

We agree there is a case for extending energy specific consumer protections to new products and services. Creating consistency in obligations across all energy products and services is vitally important for both service providers and consumers. We also recognise the challenge in deciding which new products and services ought to be captured.

Energy services can be broadly categorised as two distinct services: 1) the supply of traditional grid connected energy which ought to also extend to embedded networks; and 2) the sale of other energy services as distinct from assets.

A clear and enduring definition of what is being regulated is critical i.e. what are these 'other energy services'. We believe a set of clearly defined and agreed principles that can be objectively applied will provide certainty and consistency. The examples provided by the AER provide a good initial basis (i.e. access and interoperability). Notwithstanding, there needs to be greater analysis of what is an appropriate suite of principles and a clearly defined and objective process of when and how these will be applied.

Once this assessment has been made, the next key action is deciding the extent of regulation to be applied.

We consider that addressing customer protections is paramount. If a service has met the principles for regulation, then the same NECF obligations that apply to traditional energy supply ought to be the default starting point for all services. We consider that any entrant that provides energy services should have a level of sophistication that providing NECF customer protections is not so onerous that it would deter it from market entry. Customers need to have confidence that providers of these new services are likely to have sufficient scale and resilience that they will still be operational for many years.

We accept that in some circumstances it may be appropriate to not extend all NECF conditions. However, lessening of consumer protections should be the exception. We agree that the AER/ESB risk matrix could be used to evaluate the risks of different services, but there needs to be agreement on the risk themes, how they will be objectively assessed and what regulatory obligations will apply and under what circumstances/assessments. We believe this classification is critical to the effectiveness of Model 1.

Any assessment tool must be objective and accessible and enable stakeholders to easily arrive at the same conclusion as the AER with limited contention. We believe this aspect of the Model 1 framework requires further consideration.

While we agree the onus of compliance should be on the service provider, the AER nevertheless needs to provide a transparent and unambiguous list of regulatory obligations where the full suite of NECF provisions is lessened. This needs to be part of the regulatory model.

In terms of whether this approach will stifle innovation, there is a trade-off. On one hand setting the regulatory bar too high is costly and ought to be avoided and on the other hand sufficient consumer protections to ensure consumers have trust in the sector are needed. In terms of the latter, failure to have sufficiently high (and effective – hence the need for a review of the NECF) standards will of itself harm innovation because if customers lose trust, they will not adopt new services which will result in a diminished and disjointed uptake of services. Arguably this will do more harm to the innovation of new services.

We are conscious that changing the regulatory framework creates risks for services that are already classified. However, the exemptions framework was largely designed for on-sellers. Given the AEMC review into embedded networks, changes to a new framework that extends the full suite of NECF obligations to embedded networks should already be anticipated.

Embedded Networks

In 2019, the AEMC published a final report with a package of recommended law and rule changes to apply to the regulatory framework for embedded networks. The AEMC concluded that the current framework did not achieve an appropriate balance between innovation, consumer protection and facilitating consumer access to retail market competition. The AEMC proposed a new regime that elevated embedded networks in the national framework to provide consistent treatment for most small customers, including greater access to retail competition and the extension of consumer protections.

Notably the framework proposed to abolish the respective network and retail exemption guidelines. These would be replaced by a new framework that would require embedded networks to be registered with AEMO and for any person that on-sells electricity within an embedded network to obtain a retail authorisation. As a result, embedded networks would be required to operate under the same rules as authorised retailers.

This framework is still awaiting Energy Ministers' endorsement. Regardless, we strongly support the position that all embedded network providers (subject to limited derogations as set out by the AEMC) ought to provide the same consumer protection obligations as traditional energy providers. We urge the AER to adopt consistency with the positions of the AEMC when assessing embedded networks.

If you have any questions regarding this submission, please contact Courtney Markham in the first instance on [REDACTED] and or [REDACTED].

Yours sincerely

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Sean Greenup
Group Manager Regulatory Policy
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