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Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

By electronic lodgement

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Review of regulatory arrangements for embedded networks—Consultation Paper

Origin Energy (Origin) welcomes this opportunity to respond to the Australian Energy Market Commission's (the Commission) Consultation Paper on the Review of regulatory arrangement for embedded networks.

In recent years, Origin has become more involved in servicing embedded network customers on-behalf of private network owners. This has particularly been the case in relation to Owners Corporations and large strata developments where Origin has been engaged to act as the FRMP to the parent meter and to be the embedded network operator (ENO) in the supply of retail electricity to child meter customers. In doing so, we have also worked with developers to provide a range of energy management solutions for embedded network developments. This includes offering renewable energy and distributed generation, on-site storage, and electric vehicle charging to parent and child customers. The attractiveness of this suite of products is transforming the embedded network market into a more sophisticated product and service offering than has traditionally been the case.

When acting as an ENO for strata developments, Origin is subject to the regulatory requirements of its retail licence rather than the exempt seller regime. The National Energy Retail Law (NERL) and the AER's Exempt Seller Framework require organisations that sell energy as a core part of their business, and make a profit from the services they offer, to operate under an energy retail licence. This clearly applies to Origin when acting as an ENO and we believe that it equally applies to a number of other organisations that seek to make a profit from acting as an ENO. Origin believes that this regulatory requirement should be more tightly enforced and that doing so would lead to more equitable consumer protection within embedded networks.

This does not mean that every business in strata developments, or residential embedded networks, should be subject to a licensing requirement. Where an ENO is not primarily in the business of selling energy, or deriving a profit from that activity, then lower regulatory standards may be preferable where customers are genuinely benefiting from the bulk purchase of energy. Similarly, in the case of the exemption framework for network service providers, Origin believes that a class exemption ought to exist for these activities in strata developments. Other than the installation of a parent meter there are no apparent technical differences from a network perspective between a private and public network for strata buildings. Accordingly, no additional regulatory requirements should apply.

Otherwise, Origin remains supportive of the regulatory regime that is in place for embedded networks, including the binary system of sellers obtaining either an authorisation or exemption. The exemption framework remains a flexible manner of regulating a range of embedded networks that differ in their purpose and technical requirements.

We set out our response to your questions below.

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Should you wish to discuss the contents of this response, please contact Timothy Wilson, Regulatory Analyst, on (03) 8665-7155 in the first instance.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'K. Robertson'.

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Question 1: Does the two tiered framework of requiring either registration/authorisation or exemption remain fit for purpose?

In the context of the growing number, scale and diversity of exemptions:

(a) What issues does the two tiered regulatory framework of requiring either registration as an NSP/authorisation as a retailer, or exemption give rise to?

(b) Are there alternative regulatory arrangements, not based on a binary system of registration/authorisation or exemption, that would be more appropriate?

The regulatory framework for embedded networks should strike a balance between regulating the same products and services consistently without intervening unnecessarily in the market to constrain choice and innovation. Origin supports the current two-tiered regulatory framework because it generally achieves this balance.

The alternative to a two tiered regulatory framework is either no tiers—i.e. regulating each activity in the same manner—or adding new tiers to differentiate between different embedded networks. Origin does not support either of these approaches. Regulating all activities as if they were the same would mean that each embedded network would be regulated on the basis that selling energy is their primary business. Given the high level of regulation associated with energy sellers, this would create an excessive regulatory burden on embedded networks whose sale of energy is genuinely incidental to their primary business. Creating multiple tiers is unnecessary because different exemption categories already exist which allows specific regulatory obligations to apply to depending on the nature of the embedded network (e.g. a retirement community or a caravan park). Additionally, residential customers can access the competitive market if they want additional protections.

Question 2: Does the exemption framework remain fit for purpose?

(a) Does the exemption framework promote efficient investment and allocation of risks and costs. Specifically, does the exemption framework:

(i) incentivise efficient investment in infrastructure and energy services within embedded networks?

(ii) appropriately allocate risks between exempt sellers and exempt network service providers and embedded network customers.

(b) Does an exemption framework continue to be necessary for some categories of embedded networks? If so:

(i) what should the objectives of a network and retail exemption framework be?

(ii) what types of embedded networks and on-selling arrangements should be eligible for exemption?

(iii) Do the three categories of deemed, registrable and individual exemptions remain appropriate? If not, what changes should be made to the exemption framework?

(c) Has the AER been provided the appropriate powers and functions in relation to exemptions under the NEL and the NERL?

(d) Are the current reporting, compliance and enforcement arrangements under the exemption framework appropriate? If not, what changes should be made to the current compliance framework for exemption.

Traditionally, the benefit of investing in an embedded network is that its owner can offer customers a cheaper supply. For Origin, a more cost effective energy price, or the option of purchasing renewable energy that has been generated on-site, are often part of an embedded network owner's broader

product offering; this includes offering clean energy, on-site storage, electric vehicle charging, and the integration of energy management into the metering infrastructure of the embedded network. An embedded network therefore represents one of a range of products or services that we offer to our customers based on their particular needs; their decision to invest in such a network is a private one and subject to competition. Origin therefore believes that regulatory frameworks should be broadly neutral about the decision to invest in an embedded network. This is the case with the current framework, which is neutral towards investment decisions and allows markets to determine whether an embedded network is an efficient solution.

The allocation of risks between customers and exempt sellers and network service providers is a matter of balancing a potentially high regulatory burden along with the equitable treatment of customers. As we note above, energy is a highly regulated industry, with businesses that primarily sell energy facing numerous obligations that may not be appropriate for certain embedded networks or their customers. The NERL’s requirement that the AER consider a range of factors, including whether selling energy is their primary business or an ENO is seeking to make a profit, is an acknowledgment that the same level of regulation is not required for many of these businesses.¹ The AER has also been pragmatic about balancing the risk between ENOs and their customers by establishing class exemptions for certain embedded networks that have less than ten customers. Origin supports the AER’s approach and we believe that the current exemption regime, as guided by the factors set out in section 115 of the NERL, should continue.

There is room for the Commission to consider whether regulatory oversight is relevant in some instances. For instance, Origin does not believe that the network service provider exemption is applicable to embedded networks that service strata developments. Where an embedded network has elaborate electrical equipment that differentiates itself from other premises, then we can understand the need for particular network standards to apply. However, in terms of network infrastructure, strata developments are essentially the same regardless of whether or not they are on an embedded network. The infrastructure requirements of all strata title developments are the wiring within the building. Distribution network service providers are not involved in providing this wiring infrastructure, and we are not aware of any policy issues that are appropriately dealt with through distribution licences. We agree that metering and life support obligations are relevant to the administration of a private network but this may be most efficiently dealt with by applying conditions to relevant exemptions (particularly from 1 December when the ENM rules come into effect). Accordingly, if an exemption framework is deemed to apply to strata developments, then Origin believes that a class exemption should be created and that only relevant obligations apply to them (for example, on metering).

We note that Origin chooses to operate under its retail licence for the purpose of selling energy to embedded network customers. We take the view that selling energy to these customers on behalf of a number of owners’ corporations is core, rather than incidental, to our business. Our understanding of the retail exempt seller’s guideline is that businesses that systemically offer this service to owners’ corporations should obtain a retail licence rather than operating under an exemption. In terms of compliance and enforcement, this ought to be enforced more strictly, such that businesses that are profiting from this arrangement for a number of clients should not be doing so under an exemption.

Question 3: How do jurisdictional legal instruments affect the regulatory framework for embedded networks?

(a) Are there any relevant jurisdictional legal instruments or policy positions that affect the regulatory framework for embedded networks that were not identified in the Embedded networks final rule determination?

¹ Section 115 NERL.

(b) Have any of the jurisdictional legal instruments or policy positions been reviewed or amended since the Embedded networks rule was made in December 2015.

Queensland and the ACT

Presently, the ACT and Queensland are yet to opt-in to competition for residential customers on an embedded network. Origin believes that the ACT and Queensland jurisdictions should review this decision and consider the merits of opting-in to competition. The Queensland Government's policy position is that once a national solution to the allocation to a responsible person to child meters was in place then it would take steps to introduce full retail contestability on embedded networks. The aforementioned Embedded Networks rule change has resolved this issue through the creation of the Embedded Network manager (ENM) role. We are not aware of the ACT's objections but do note that full retail competition is in place there, with Origin entering the market as a retailer and as an ENO. Origin therefore believes that now is the appropriate time for the remaining jurisdictions to allow customers to access the benefits of full retail competition on embedded networks.

Victoria

As the Commission is aware, the Victorian Government is presently reviewing its General Exemption Order (GEO). The draft GEO diverged significantly from the AER's Exempt Selling Guidelines by recommending that strata title embedded networks be excluded from the GEO and regulated under a retail and distribution licence. We appreciate that the Victorian Government may have concerns about whether residential customers have access to adequate retail protections, particularly given that many of these customers are in the same living circumstances as on-market customers. Origin believes that regulations ought to be directed at ensuring that these customers can access the competitive market, and the full suite of protections therein, rather than seeking to apply the licensing regime directly to all strata title embedded networks. Additionally, we cannot see the benefit of a business applying for a distribution licence for strata developments given the absence of distribution activity in this area (i.e. because the buildings are wired the same regardless of whether they are an embedded network). We outline our arguments in favour of a class exemption for distribution activities in strata developments above.

Question 4: Can access to retail competition be improved?

(a) What barriers exist for small and large customers in embedded networks going on market?

(b) Are retailers currently providing or planning to provide competitive market offers to embedded network customers? What barriers will remain to providing these offers after 1 December 2017 with the commencement of the Embedded networks rule?

(c) Are there examples or cases of small and large embedded network customers going on-market? What were the circumstances that made going on-market desirable and possible for these customers?

(d) What is the level of competition to provide electricity to embedded network operators at the parent meter?

(e) Is there an imbalance in negotiating power between embedded network customers and embedded network operators in negotiating terms and conditions, including price, due to barriers to accessing retail market offers?

The biggest barriers for customers accessing markets has been ensuring that appropriate metering infrastructure is installed and that customers have been discoverable in MSATS. The recent ENM rule change has gone a long way to removing barriers to going on-market for small and large embedded network customers. As discussed above, the remaining jurisdictions should review their decision to allow customers to take advantage of this. Additionally, the requirement for parent and child meters to comply with NEM standards, and to reconfigure existing metering accordingly, will remove significant barriers to customers being able to access the competitive market. It is important that these changes be given time before assessing whether other barriers might exist for customers to enter the market.

Given the ENM rule change, Origin will build the system capability to enable us to make offers to embedded network customers that wish to access the competitive market. One issue we anticipate may be of concern is these customers could end up receiving two bills—one for the network charges and one for the energy. Origin believes that there could be more guidance on the interaction between exempt sellers and child retailers to settle network charges so the end user does not receive two bills. In the first instance, Origin is hoping to develop B2B processes to enable single bills, and we hope that other retailers and ENOs express interest in applying this across embedded networks.

Prior to the ENM rule change, Origin has experienced some large embedded network customers moving on-market to take advantage of competition. Our experience of this has generally been commercial customers with large loads that operate, for example, in shopping centres..

Finally, we expect that any negotiating imbalance between ENOs and customers will be addressed favourably for customers through the ENM rule change. Customers will have greater access to choice, and consumer protections from licensed retailers, in those jurisdictions where they are permitted to go on-market.

Question 5: Issues for embedded network customers that are on-market or wishing to go on-market

(a) Are there any other issues in addition to those set out in Appendix B that we need to consider?

(b) Where an on-market embedded network customer (being supplied by an authorised retailer under a market offer) has limited access to other retail market offers are there any additional consumer protections than those provided in the NERR that should apply?

Question 6: What consumer protections, in relation to the sale of energy, are appropriate for off-market embedded network customers?

(a) Is the objective of providing comparable consumer protections to exempt customers and customers of authorised retailers being achieved in practice?

(i) What gaps or issues exist?

(ii) Do stakeholders consider the ACL and tenancy legislation to provide suitable complementary protection for embedded network customers alongside the energy specific consumer protections included the exemption conditions?

(b) Are there changes required to the consumer protection framework for off-market embedded network customers?

(i) What should the guiding principles for consumer protections for embedded customers be?

(ii) What risks should be addressed by consumer protections for embedded network customers?

(iii) Should consumer protections continue to be contained in the retail exemption conditions or should they be elevated into another legal instrument, e.g. the NERR?

(c) What energy-specific consumer protections should apply to off-market embedded network customers in the context of market and technological changes and changing risks?

(d) How do the current arrangements for consumer protection impact on vulnerable embedded network customers? How can access to concessions and rebates be improved?

(e) An exempt seller may be providing a broader service than just electricity to embedded network customers. For example, the exempt seller may also be the embedded network customer's landlord, provider of strata services or water supplier. Does the different relationship between embedded network customers and the exempt seller as compared to the relationship between a retail customer and an authorised retailer have implications for consumer protections?

(f) What examples or case studies can stakeholders provide which demonstrate differences in the consumer protections provided to exempt customers and to customers of authorised retailers? Do the experiences of embedded network customers indicate poorer outcomes due to differences in consumer protections?

As an ENO, Origin presently operates under our retail licence because we take the view that our activity is primarily the sale of energy to customers. That means that for our strata title customers they receive the full range of protections afforded by energy retailers to their customers. In principle, we support closing the gap in protections between customers on strata title developments and licensed customers, as many of these customers will require equivalent protections for some issues that arise. The NERL and the AER has dealt with this issue by making it clear that embedded network operators whose primary business is the retailing of electricity should be required to hold (and operate under) an electricity retail licence. This practice will result in most embedded network customers within strata title buildings being offered the full suite of customer protections—if the AER enforces the requirement for a license among well established ENOs.

However, where a strata title embedded network operator's business is not primarily as on-selling electricity, we do not believe that a licence should be necessary. This means that small scale operations in particular should not be burdened by the requirement to meet onerous licensing conditions and many of the requirements of the NERL. For example, we do not see the benefit of a small scale ENO having a retailer hardship policy; these generally involve payment plans and energy management assistance that these small operators lack the expertise or resourcing to deliver. Rather than imposing these obligations on small-scale operators, the regulatory framework should ensure that customers can choose to go on market by applying minimum metering standards and billing standards.

Consequential or corresponding changes to the NERR

Origin notes the consequential changes to the NERR described Table B.1 of appendix B. We discuss some of these matters below.

Standing offers

As the Commission notes, there is no obligation to make standing offers to customers in an embedded network. This reflects the fact that these customers belong to a private network where the ENO (or their agent) supplies electricity for customers. In Origin's view it is unnecessary to oblige retailers to extend standing offers to embedded network customers. The relationship between an ENO and embedded network customer is the equivalent of a standing offer to supply a customer's premise; ENOs have an obligation to supply under the terms of their retail exemption. A customer has the

choice to enter into a market retail contract with an alternative provider, rather than remain with their ENO's supply arrangement.

Pre-contractual duty of retailers

As the Commission points out, this does not presently apply to retailers, because there is not an existing connection to the distribution system due to the gate meter. As with standing offers, the ENO is in effect the designated retailer for these customers; any obligation to supply ought to be placed on them rather than a designated retailer in the local distribution network zone.

Content of bills and Tariffs and Charges

Given that there is no obligation for an ENO to provide a retailer with charges that are passed through to the customer on a single bill, then aspects of rules 25 and 46 will be difficult to comply with given the definition of 'tariffs and charges' (which would ordinarily include network costs). As we state above, it is our preference that a single bill be sent to customers, but there is no guarantee in the absence of an agreement between the retailer and relevant ENO. Accordingly, an exception to this may be required in the rules for embedded networks.

Move-in customer or carry-over customer

Where a child customer has moved from the embedded network to the competitive retail market, and the customer then moves out, the new customer should revert to the embedded network. The decision to leave the embedded network was made by the previous customer and the new customers should have the option of receiving preferential pricing under the embedded network. As with all customers, they retain the right to churn to an external retailer if they choose.

De-energisation and re-energisation

The NERR will need to be amended to oblige ENOs to de-energise and re-energise a premise in accordance with the Rules. The obligations ought to carry over directly onto the ENO. In their absence, there is no requirement for an ENO to de-energise or re-energise a premise at the request of the retailer; this is not appropriate given these customers are otherwise going through the normal disconnection process for customers of licensed retailers.

Life support

The AER's exemption guideline has been amended to require the ENO, rather than the ENM, to inform child connection point retailers of any life support requirements from 1 December 2017.² This reflects the existing requirements under the AER's exemption guidelines for ENOs to inform the parent connection point DNSP of any life support customers on their embedded network.

However, Origin notes that within the distribution network, the obligation is on customers to advise their retailer of their life support requirements and for the retailer to inform the DNSP. Where a life support customer churns on the distribution network, there is no obligation on a DNSP to advise the new retailer; the customer must advise the retailer themselves. Whilst the customer may advise the DNSP directly, and formal processes are in place for retailers and DNSPs to exchange life support information through the B2B and MSATS Working Groups, the regulatory responsibility is primarily on the retailer as the entity most likely to interact with the customer.

² See paragraph 10 of 4.1 General Requirements, in the AER, *Guideline - Exemption from registration as a network service provider*, p. 36.

In an embedded network, a similar principle should apply so that the retailer for the child meter is responsible for life support registration and notification to other parties. For example, if a customer in an embedded network chooses to have a NMI allocated to their meter and that customer subsequently leaves the embedded network, the ENO may be unaware if the incoming customer has life support requirements, as the customer will have no direct contact with the ENO. In practice, the customer will notify their retailer, and hence it is only sensible the retailer be responsible for registering and notifying the ENO of customer life support requirements.

Retailer of last resort (ROLR)

In the event that a retailer was operating under its licence as an ENO, and that retailer triggered a ROLR event, we would expect the Owners Corporation to engage another supplier for those services. In the first instance it would be the new retailer that takes these customers and the Owners Corporation would need to reach an agreement with them or another supplier. The same process occurs if there is a ROLR event at the parent meter.

Presentation of market offer prices

In the absence of an obligation to jointly bill with ENOs, Origin believes that market offers should be presented on the basis of an 'energy-only' offer. An obligation should not apply to retailers to publish these on their general website as they are specific offers to a class of customers and are not 'generally available' (unlike offers in each DNSP). We believe that the AER, which already provides guidance on energy price fact sheets and other requirements, are best place to design a Guideline on this issue if required. However, it may be unnecessary given these offers apply to a limited audience.

Explicit Informed Consent

Origin currently obtains explicit formed consent from customers where we are an embedded network operator. We believe that explicit informed consent should also be obtained prior to a customer entering into an on-market contract.

Question 7: Are current regulatory arrangements for gas embedded networks appropriate?

(a) What are the jurisdictional arrangements that apply to gas embedded network service providers?

(b) How do gas embedded networks currently operate? What metering and charging arrangements exist?

(c) What would be the advantages and disadvantages of moving to a national regulatory framework for gas embedded networks? If desirable, what form of national framework would be appropriate?

Origin does not operate embedded gas networks and is not in a position to comment on these issues.