



4 October 2016

Stuart Richardson
COAG Energy Council Secretariat
GPO Box 9839
Canberra ACT 2601

Lodged by email: energycouncil@industry.gov.au

Dear Mr Richardson,

RE: Stand-alone energy systems in the Electricity Market- Consultation Paper

Origin welcomes the opportunity to respond to the COAG Energy Council's (EC) Discussion Paper on Stand-alone energy systems in the Electricity Market.

Origin does not consider it appropriate to regulate stand-alone energy services with the various instruments that apply to conventional market participants in the National Energy Market (NEM) at this time. Stand-alone energy systems do not form part of the NEM and it is unnecessary to extend the relevant energy market rules and regulations to cover them. Grid supplied energy already provides customers with full retail contestability and a comprehensive set of consumer protections on the basis that the supply of energy constitutes an essential service. This is the de-facto form of energy supply for most residential customers.

Consumers that access stand-alone energy systems are making a choice to leave the traditional energy-grid and to opt-out of the full range of customer protections that are associated with it. Seeking to apply the 'energy as an essential service' model of regulation to stand-alone energy systems risks constraining their development and undermining a customer's ability to choose their own preferred energy supply. Accordingly, it is more appropriate that the provisions of the Australian Consumer Law (ACL) apply to these activities. Origin believes that this will enable new technologies and business models to develop in a competitive marketplace.

The exception to regulating stand-alone energy systems under the ACL is where distribution network service providers (DNSPs) are involved in either leading or supplying these services. Where stand-alone energy systems have a value for network purposes, such as avoiding network augmentation, it is appropriate that they are regulated under the National Electricity Law (NEL). It is also the case that these stand-alone systems are more likely to be in remote areas where customers will not otherwise have the ability to choose ordinary energy supply. Origin believes that the current state-based regulation of these systems has proven generally effective.

Whilst we support the COAG EC considering the regulatory challenges of stand-alone energy systems, it is still very early in the uptake of stand-alone energy services among communities and the first movers in this area are likely to be well resourced and informed consumers. Rather than anticipate the issues that may arise with the existing energy regulatory framework, we believe that it will be useful for the COAG EC to monitor new stand-alone systems for a period of time in order to understand what consumer needs arise and whether the ACL is an effective regulatory mechanism. Otherwise, there is no demonstrable need for regulatory intervention at this time.

Origin would be pleased to discuss any matters raised within this response with the Commission.
Please contact Timothy Wilson (Retail Regulatory Analyst) in the first instance on (03) 8665 7155.

Yours sincerely

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

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Objectives

What objectives, beyond the Energy Council's general objective, should be held in mind in addressing regulatory arrangements for stand-alone systems?

Given that these stand-alone systems do not fall within the National Electricity Law (NEL), Origin does not consider that the National Electricity Objective (NEO) is automatically relevant to assessing the regulatory arrangements of stand-alone systems. The NEO is only relevant if these systems are regulated within the NEL. Origin believes that an appropriate demarcation point for determining what arrangements ought to be regulated under the NEL is whether a customer or group of customers is on-grid. The National Energy Market has developed a regulatory framework in the National Electricity Law (NEL) and National Electricity Retail Law (NERL) that is predicated on energy being an essential service. Obligations and consumer protections have been developed and applied to retailers and DNSPs to facilitate access to a reliable and affordable supply of energy. Where customers choose to go off-grid then they are voluntarily opting-out of this regulatory framework.

The relevant objective for determining how these stand-alone systems ought to be regulated is facilitating customer choice. Where customers choose stand-alone energy services, rather than accessing the grid and the NEL, then they ought to be regulated under different frameworks that allow these choices to occur. In Origin's view, the Australian Consumer Law (ACL) is the starting point for regulating these consumer activities, as they allow fit-for-purpose commercial solutions to be developed without being constrained by energy-specific regulation.

What is a stand-alone energy system

What is an appropriate definition for our purposes?

What are the different regulatory issues arise from stand-alone systems that are connected to the grid versus those that are not?

Ownership models

Are there any other potential business models we should consider?

What are the unique regulatory challenges presented by each ownership model?

Are some ownership models more closely aligned with the National Electricity Objective than others?

The COAG EC has identified a reasonable range of potential systems and ownership models. Within these there is a demarcation between customers that have chosen to go off-grid or where other circumstances (such as geography) have dictated it. For instance, in the example of a distributor led transition from interconnected network (and a DNSP model) to a stand-alone energy system, the decision to move customer's off-grid is being driven by a DNSP rather than customers themselves (even if they ultimately provide their consent to this occurring). These forms of stand-alone energy systems are most closely aligned with the NEO because they involve a market participant meeting its regulatory obligations under the NEL. Accordingly, we believe that energy specific regulations might be appropriate in circumstances where DNSPs are involved in leading or providing stand-alone energy systems.

In contrast, non-DNSP Greenfield and Brownfield developments involve customers opting to leave the grid in favour of stand-alone energy infrastructure. This represents an active choice by customers to leave the NEL and the NERL in order to obtain their energy supply. As the COAG EC sets out in its consultation paper, there is a range of ownership models from which they can choose to achieve this. With the exception of the DNSP model discussed above, it is appropriate that these systems be regulated under existing consumer laws (such as the ACL). There are distinct risks and benefits in each of these systems and it is up to parties to reach a commercial agreement, consistent with these consumer laws, that manages these risks and benefits. The NEL has not been designed to meet these particular challenges and applying it or the NERL may constrain the ability of parties to determine how

they wish to commercially deal with risks and to obtain the most benefits possible. If customers cannot reach an agreement then they do not have to leave the de-facto system of grid-connected energy.

Consumer protections

How would the discipline of price and service competition be maintained on stand-alone power infrastructure providers, given customers would not be able to switch retailers in the event they became dissatisfied with energy prices and/or customer service?

What contractual relationships should exist, and to what extent should they be regulated, between parties involved in the supply of the services of stand-alone systems?

How can the incentives of the procurers of stand-alone systems be aligned with the end use customers they will serve?

How would we ensure that the public is protected against unreasonable rates, bad service, and negligence that results in safety or human health risks? For instance, would the ACL protections be sufficient for customers on stand-alone systems?

What would become the equivalent of a “retailer of last resort” in the event that an energy services company, delivering stand-alone power solutions, became insolvent? For example, should an insurance scheme or similar be considered for stand-alone system providers/operators in the event of insolvency?

What dispute resolution arrangements should be put in place for customers and should they be energy only dispute resolution or connected to broader tenancy/ownership arrangements?

What hardship and financial support provisions should apply to stand-alone energy customers?

Price discipline exists among competitors for the provision of stand-alone energy services. Consumers can assess these providers and then choose what they are willing to pay for them. Contract terms can set out how prices may vary over the contract term; if customers wish to retain the benefits of full retailer contestability then they may choose to remain on the grid.

Contractual relationships will exist between the community and the party they use to provide this service. The incentives of service providers and their customers will be aligned through agreed terms and conditions in the contract (which are subject to the ACL). The most important consumer protection is ensuring that accurate information is provided to customers prior to entering into a contract. To some extent, misleading and deceptive conduct provisions of the ACL cover this, but it may be appropriate to extend information provisions so that customers are aware of the services they are voluntarily contracting out of. A good example of this is Condition 20 of the Australian Energy Regulator’s (Retail) Exempt Selling Guideline which applies to alternative energy services:

An exempt person must provide the customer in writing a plain English notice explaining that the contract is covered by Australian consumer protection laws and is separate to the customer’s contract with their retailer and distributor which are covered under the National Energy Retail Law.¹

In the early stages of stand-alone energy systems being developed, we would expect the ACL to provide appropriate protections, and consumers must be made aware that these are where their legal rights may arise in the event of a dispute. Origin expects most of the early movers on to stand-alone energy systems will be well informed and resourced customers that are driven by sustainability objectives—we would not expect there to be vulnerable customers among this number. During these early stages, it is appropriate for governments and regulators to remain engaged in developments in these markets. Any genuine gaps within the regulatory system may be identified over time, and the proper regulatory solution developed, but this has to be subject to a demonstrable problem for consumers.

¹ Australian Energy Regulator, Retail Exempt Selling Guideline—version 4, March 2016, p. 40.

Origin believes it is premature to develop these solutions prior to the problems arising and by using the NEO or the NEL to frame a proper solution. Contracts for stand-alone systems are not likely to be as homogenous as standard energy supply; we would not expect them to neatly fit within the requirements of the NEL and the NERL. The terms of the contract, and what customers are paying for, will depend on the ownership model they choose. As an example, a community may establish a collective entity (such as an Association) that enters into a lease with a stand-alone system provider. A customer that falls into hardship in these circumstances may in fact be placing an additional financial cost on other members of the Association because the system costs need to be met regardless of individual circumstances. This contractual agreement is different to a typical retail energy contract; the hardship provisions that apply to retail energy contracts won't neatly align with this form of agreement. Accordingly, it is best that the COAG EC assess these arrangements as the market develops to gain a better understanding of what—if any—regulatory challenges arise.

Reliability and service standards

How should the service standards that apply to each stand-alone energy system be decided?

How will we ensure that customers are making fully informed decisions about the reliability standards and service quality of the energy services provided through a stand-alone energy system?

Under what governance framework will decisions about reliability versus cost trade-offs be made?

How and by whom should standards be enforced?

Should some obligation to supply apply in an area where a stand-alone system is in place?

Who should be the responsible party if an obligation to supply is put in place in a stand-alone system area?

Origin does not believe that reliability standards ought to be set for ordinary, non-life support customers that choose to access stand-alone energy systems. It is more important that reliability standards are clearly explained to customers who access these services; they may choose to forego a degree of reliability when they go off-grid but this may be a rational and informed decision that is not dissimilar to the different premiums customers pay for insurance and other services. Life-support customers are in a different category and proper regulations ought to surround their supply of energy where they exit the grid. We believe that, where an off-grid service is sold on the basis that it contains some form of emergency, safety or life-support benefit then it ought to meet a higher standard than ACL protection.

There may be a role for product standards to be developed so that customers know that their system meets certain specifications. This ought to occur pursuant to normal process for developing product standards in Australia.

Reliability standards in the NEM influence the build of the grid and this is in turn paid for by consumers through the network component of their energy tariffs. All of this is a highly regulated process involving DNSPs and the AER; customers that choose stand-alone energy systems are opting to forego this degree of reliability on the basis that they prefer to pay for a different service. An obligation to supply therefore should not apply at all for these customers as it is unreasonable for one group customers on the grid to pay for the costs to meet necessary network infrastructure for this to occur, particularly where the customers leaving the grid are unwilling to pay these costs themselves.

Regulatory challenges—Networks

What regulatory barriers exist to third parties supplying stand-alone energy solutions?

How should the regulatory framework ensure that a stand-alone power system is considered as an option where this is the most efficient way to provide energy services?

What elements of the national framework are potentially applicable to stand-alone energy systems?

Are the existing connection frameworks adequate for stand-alone energy systems?

Stand-alone energy solutions have multiple values that include regulated and contestable services. DNSPs have an incentive to install stand-alone energy systems both as an alternative to traditional network investment within its distribution system and as a demand side management tool behind the customer's meter. In contrast, third party providers have an incentive to install such systems as part of a package of services that allow customers to optimise their usage profile and better respond to network pricing signals.

For this reason there is a legitimate argument that stand-alone energy solutions could meet the definition of both a Direct Control Service and an Unclassified Service. However, where a DNSP is able to leverage an advantage from having stand-alone energy systems it has installed behind the meter classified as a regulated service, this has the potential to crowd out investment for other uses and harm the efficient operation of the contestable market for stand-alone energy systems.

This was highlighted by the AEMC in its *Integration of Energy Storage* report. In particular, the AEMC concluded:

Network businesses should use energy storage where it substitutes for traditional network (not behind the meter), where it is efficient to do so, so long as it does not significantly displace competitive energy services.²

And in addition:

It is not appropriate for network businesses to own or directly control storage behind the meter except through a ring-fenced entity. If storage behind the meter is of value to network businesses, then they should contract with consumers, retailers or third parties to gain services, or create price signals or offer rebates that would reward consumers for operating storage in the desired way.³

We consider that the principal regulatory constraint to support a market for emerging storage technologies is an appropriate classification framework. This should provide that a DNSP cannot directly participate in the installation of storage assets beyond the customer's meter as this has a high risk of distorting market outcomes. However, we do recognise that stand-alone energy systems may have a value for network purposes, especially where it is more efficient than network augmentation. In this event, the DNSPs activities should be regulated under the NEL as a regulated entity.

Appropriate classification of services must also be supplemented with robust nationally consistent ring-fencing arrangements. The AER is currently in the process of developing such guidelines. These guidelines must ensure that a DNSP provides substantially the same terms and conditions between its related businesses and competitors of those related businesses, including substantially the same quality, reliability and timeliness of services on equal terms.

Furthermore, we recognise that the AER has in place regulatory investment tests (e.g. the RiT-D) with which to assess the prudence and efficiency of network capital investment. However, in light of the emergence of stand-alone energy systems, their ability to fulfill multiple purposes and the introduction of more prescriptive ring-fencing obligations we consider that these investment tests should be reviewed to ensure they remain fit for purpose. In doing so we believe the investment test threshold should be lowered to provide a transparent demonstration of how a DNSP has considered non-network alternatives in its investment program and how it intends to source such services. We consider that the current threshold of \$5M acts as a constraint in this regard and this threshold could be removed completely.

Regulatory challenges—Retailers

² AEMC, *Integration of Energy Storage, Regulatory Implications*, December 2015, p. 6.

³ *Ibid*, p. 6.

*In what circumstances should or could a stand-alone system become subject to economic regulation?
How should a regime for economic regulation – if any – be structured to address stand-alone systems?
Should price regulation extend to the entire cost of energy services for customers of stand-alone systems?
Should stand-alone systems that have a grid connection be treated as embedded networks for metering and settlement purposes?
In what circumstances should a decision to establish a stand-alone system be regulated? Who by?
And what justification should be provided to the regulator?*

Origin does not consider that there is a need for any form of price regulation. Stand-alone energy systems do not form part of the NEM and it is unnecessary to apply the NEL and NERL to them. Energy as an essential service already has a comprehensive set of consumer protections and full retail contestability; this is the de-facto form of energy supply for most customers. Seeking to apply the 'energy as an essential service' model of regulation to stand-alone energy systems risks constraining their development and undermining a customer's ability choose their own preferred energy supply.

A potential exception is where a DNSP is leading the development of an off-grid system for customers in remote areas. Remote area off-grid solutions are a product of geography rather than consumer choice and these customers ought to be able to access something that more closely resembles a typical energy supply if they choose to do so. South Australia provides a useful example of the regulation of these remote, off-grid communities through a licensing arrangement. Certain regulatory standards are imposed by the Essential Services Commission of South Australia through license conditions that are tailored to meet the particular circumstances of the community.

A stand-alone service with grid connection is always likely to be an embedded network. We do not believe they are relevant to this discussion insofar as they are automatically regulated under the NEL.

Origin believes that light-handed regulation may be appropriate in relation to a customer's decision to establish a stand-alone system. We support customers receiving standard information about the nature of the decision they make before deciding to leave the grid. It may be appropriate to advise them that they will no longer be subject to certain consumer protections, that the ACL is the relevant legal framework and that they will be responsible for determining the relevant price for the services they obtain. This supports customer choice by enabling them to make further inquiries as they see fit.

Consistency versus tailoring

What principles should be adopted in determining the need for and nature of any new regulatory arrangements that will apply to stand-alone energy systems?

What would be the appropriate balance between a strong reporting and compliance regime and a flexible regulatory framework?

Conclusion

Of the various issues raised in this paper, which areas and potential market failures have the highest risks and should be prioritized in terms of regulatory interventions and reforms?

As we have stated above, Origin does not support existing energy frameworks and arrangements being used as a basis for regulating stand-alone energy systems, and we are not aware of any market failures have been demonstrated that would warrant intervention or reform to take place. We believe that the ACL ought to be the starting point for regulating these activities and that an empirical approach ought to be taken to determining the next steps. We believe that it will be useful for the COAG EC to monitor new stand-alone systems for a period of time in order to understand what consumer needs arise and whether the ACL is an effective regulatory mechanism.