



29 January 2018

Michelle Byrne  
Draft charter of consultation and regulatory practice  
Essential Services Commission  
Level 37/2 Lonsdale Street  
Melbourne VIC 3000  
Lodged online

Dear Ms Byrne,

### **Submission on draft charter of consultation and regulatory practice**

Origin Energy (Origin) welcomes the opportunity to provide a response to the Essential Services Commission of Victoria's (the Commission) Draft Charter of consultation and regulatory practice (Draft Charter).

Origin agrees with the Australian Energy Council's submission and the issues raised therein. We do not believe that a stakeholder could read this document and obtain an understanding of how the Commission will conduct itself when undertaking consultations. Whilst the current Charter is not perfect, the Commission would be best placed revising its Draft Charter along those lines, particularly given that it provides firm substance on how the Commission will conduct itself in its dealings with stakeholders. We answer the Commission's specific questions below.

#### **1 – Our principles-based approach – is this the right direction for the commission?**

Origin does not oppose the Commission articulating a set of principles to indicate how it will approach its consultations with stakeholders. However, the principles alone do not provide stakeholders with a firm indication of how the Commission will consult. The Commission's new approach means there is no objective benchmark for assessing whether the Commission is meeting its principles and consulting appropriately. In Origin's view, a mixture of principles and detail around process will provide stakeholders with a firmer sense of how the Commission will conduct itself. In the current Charter, the chapter titled "Process for public consultation to precede determinations and inquires" is a good example<sup>1</sup> and should be retained by the Commission in its new Charter.

The Commission may want a degree of flexibility to make consultations more responsive and proportionate to the task at hand. Origin is sympathetic with this objective—it can be useful for regulators to not always follow the same process for certain consultations and Code changes. However, experience suggests that the current Charter permits flexibility where it is required. A recent example is the Commission reflecting the Commonwealth Rule Change to clause 48A of the National Energy Retail Law. Given consultations that had occurred nationally, the Commission issued a draft and final decision efficiently to align with other states; a consultation paper was not required. Nothing in the current Charter seems to have prevented the Commission from being flexible and proportionate in these circumstances.

#### **2 – Our principles – have we got them right?**

The principles outlined are reasonable but they do not give any sense of how the Commission will conduct itself when making decisions. For example, the Commission's current charter includes a commitment to be "Independent, balanced and fair by ensuring our decisions and processes do not

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<sup>1</sup> ESCV, *Charter of consultation and regulatory practice*, August 2012, pp. 31-43.

reflect undue influences and are consistent with our statutory objectives.”<sup>2</sup> Independence is one of the most important principles a regulator can embody. Origin believes that this principle ought to be included in its Charter.

We also note that the principles do not include reference to assessing costs and benefits of regulatory decision-making. The draft Charter states under “Our approach to regulatory practice” that “We understand our work can have an impact on the cost of doing business.” In contrast, the current Charter states under “Our consultation principles” that the Commission will commit to being “Efficient by minimising the costs of our regulatory activities and seeking to ensure that the costs of regulation do not exceed the benefits.”<sup>3</sup> This is under regulatory practice in the Origin believes that this should be included in any statement of principles. Unlike the current Draft, it more fully reflects section 8A(1)(e) of the *Essential Services Commission Act 2001*, which requires the Commission to have regard to:

- (e) the benefits and costs of regulation (including externalities and the gains from competition and efficiency) for—
- (i) consumers and users of products or services (including low income and vulnerable consumers);
- (ii) regulated entities;

**3 – Our approach to regulatory practice – does this line up with what you would expect from the commission?**

The Current Charter states: “In addition we have a commitment to implementing best practice regulatory approaches consistent with the *Victorian Guide to Regulation*.”<sup>4</sup> This is not in the Draft Charter. Given the Commission is the primary regulator in Victoria, Origin believes it is appropriate to retain a commitment to its Government’s own *Guide to Regulation*.

**4 – Any other comments about our approach to engagement and consultation?**

During 2017, the Commission conducted a survey of its stakeholders to obtain feedback on its performance. Origin believes that this is a valuable method of assessing the Commission’s performance against the Charter. The Commission should insert a commit to conducting an annual survey into its Charter.

As noted above, the Australian Energy Council’s submission has raised broader issues with the Draft Charter. Origin shares these concerns and asks that the Commission consider them. Overall, the current Charter seems to be a more appropriate document and the Draft Charter would benefit from reflecting it more.

Should you have any questions or wish to discuss this information further, please contact Timothy Wilson, Manager, Regulatory Policy, on (03) 8665 7155.

Yours sincerely



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<sup>2</sup> Ibid, p. 24.

<sup>3</sup> Ibid, p. 25.

<sup>4</sup> Ibid, p. 49.