



26 March 2008

Energy Regulatory Review  
Essential Services Commission  
2nd Floor, 35 Spring Street  
Melbourne VIC 3000

By email: EnergyRegulatoryReview@esc.vic.gov.au

Dear Sir/Madam

## ORIGIN ENERGY RESPONSE - ESC REVIEW OF ENERGY REGULATORY INSTRUMENTS

Origin Energy Retail Ltd (Origin) welcomes the opportunity to provide comments on the Essential Services Commission's (ESC) Review of Energy Regulatory Instruments - Call for Submissions paper released on 22 February 2008. Origin believes that the Victorian retail energy market and its participants have matured significantly since the introduction of Full Retail Contestability (FRC) in 2002 with many regulatory instruments now being redundant, duplicated or in need of reform. This is evident by the recent regulatory regime established, under full industry consultation, for FRC in Queensland. The Queensland market has taken the learnings from other jurisdictions and has implemented a regulatory regime which is far more balanced in its approach to achieving adequate customer protection together with efficient market outcomes.

Based on the conditions outlined in the paper and recent discussions with the ESC we understand the intent of this process is to adjust or streamline the regulatory process rather than a full and comprehensive review of all regulatory instruments. Origin agrees that major nationally consistent reform is progressing under the working groups established under the Ministerial Council on Energy process and that there is minimal benefit in making wide ranging changes in Victoria in the short term. However, there are still many regulatory and administrative obligations that can be amended in Victoria that will facilitate greater flexibility for small business customers and retailers to negotiate energy supply contracts for mutual benefit.

Origin applauds the ESC for initiating this review and we provide the following comments related to specific regulatory instruments.

### Specific Comments - Regulatory Instruments.

#### 1. Safety Net provisions for Small Business Customers

The recent removal of price oversight by the Victorian government supports a long standing view held by retailers that business customers do not require the full coverage of the safety net provisions as those currently provided under the Energy Retail Code (Code). Moreover, the competitive market can provide



businesses with a variety of negotiated terms that will support their individual needs. Small business customers are adequately protected under state-based Fair Trading legislation and Federal Trades Practices provisions. While businesses will continue to view electricity as essential it is no more essential than the multitude of other products and services that a business needs to procure as part of its normal activities.

Origin acknowledges that s35 of the Electricity Act and s43 of the Gas Industry Act outlines the four fundamental protection provisions of contract terms to relevant customers. These being:

- o The circumstances in which energy supply can be disconnected;
- o The suitable provision of information by retailers;
- o The circumstances in which a retailer requires access to premises; and
- o Confidentiality of customer information.

Whilst Origin would support a review of the associated Orders in Council that define business customers as subject to these provisions it is understood that this may be out of scope for this review. In the meantime Origin believes that a review of the Code should be undertaken to identify any provisions that may be redundant in their application to business customers.

## 2. Code of Conduct for Marketing

The primary customer protection provisions in the Code of Conduct for Marketing (CCM) are essentially duplicated in the Victorian Fair Trading Act and therefore this is an excellent opportunity to review the ongoing need for this instrument. Perhaps in the early period of FRC a CCM had some merit in order to assist retailers with interpretations but as retailers have been operating in the competitive market for some time now it has ceased to have a specific purpose.

Origin believes that the Retail Energy Code should simply refer to the provisions of the Fair Trading Act when stipulating appropriate marketing behaviour for retailers.

## 3. Operating Procedure Compensation for Wrongful Disconnection

The Operating Procedure Compensation for Wrongful Disconnection (Procedure) was introduced to *assist retailers and the Energy and Water Ombudsman (Victoria) (EWOV) to satisfy the wrongful disconnection compensation obligations and to give customers greater assurance about the satisfaction of such obligations.*

This Procedure was intended to provide examples of what would be deemed to be "best endeavours" by retailers in specific activities related to the disconnection of energy supply. Unfortunately the Procedure has been interpreted by various parties including EWOV as mandatory steps that retailers must undertake prior to a customer disconnection regardless of the individual circumstances involved. The Procedure therefore has inadvertently become an extended set of regulatory obligations on retailers which is clearly not its original intent. Origin believes that the Procedure should be revoked as it has not met the intended purpose in the assessment process of the potential wrongful disconnections. Moreover the Procedure, in some cases, has contributed to



customers receiving wrongful disconnection payments far in excess of the inconvenience experienced due to the disconnection.

4. Guideline 1 - Credit Assessment Gas  
Guideline 4 - Credit Assessment Electricity  
Guideline 10 - Confidentiality and Informed Consent  
Guideline 19 - Energy Product Disclosure

These guidelines were introduced during the early periods of FRC and were designed to provide retailers and customers with more clarity with regard to interpretations of legislation and Code provisions. The Victorian competitive market is now much more mature with over 60%<sup>1</sup> of customers moving to market contracts and retailers far more aware of their compliance obligations.

The Victorian Fair Trading Act, Federal Trades Practices Act and Privacy legislation are more than adequate to provide suitable controls over retailers for these issues. Furthermore with the recent removal of price regulation for small business customers and the imminent removal of price regulation for residential customers<sup>2</sup> the content of these guidelines needs to be reviewed to assess their relevance, in the market going forward. Origin would support a fulsome review of these guidelines.

5. Advanced Metering Infrastructure (AMI)

The installation of AMI meters from 2009 will deliver many challenges to the electricity market both for participants and consumers. It is important to understand that these meters introduce a whole new measuring regime based on consumption over half hourly periods rather than total consumption over ninety odd days. The ability to source detailed metering information over various mediums will be enormous. Therefore Origin urges the ESC to consider the full context of the regime before it simply places new regulated obligations onto retailers to ensure that customers continue to get similar information that they have always received. A major facet of this metering roll out will be initial and ongoing customer education.

Origin suggests that the early introduction of defined or narrow regulation may inhibit the very benefits that this metering is purported to provide. Furthermore, as the impact of new regulation will likely impact a retailer's billing systems it is paramount that nationally consistent provisions are implemented. Origin therefore suggests that the AER may be better placed to address this issue.

6. Reporting Requirements

Origin supports a compliance reporting framework that aims to achieve consistency with the national energy reporting requirements and the move towards a 'self assessment' approach. Any regulatory reporting should be based on transparency and full understanding of the purpose for collecting such data. Whilst Origin acknowledges the ESC's objectives are to achieve such framework, Origin believes that the ESC's fulfilment of these objectives may not be consistent with this approach when introduced in practice.

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<sup>1</sup> AEMC (2008), *Review of the Effectiveness of Competition in Electricity and Gas Retail Markets in Victoria, Second Final Report*, page 8.

<sup>2</sup> Based on the findings of the AEMC Second Final Report.



An example of this is the introduction of the compliance exception reporting from 1 July 2007. Origin was disappointed that the ESC did not take due consideration for the host retailers to be limited to Type 1 (Immediate) and then have Type 2/3 to be reported on an annual basis only. Furthermore, Origin would suggest the Reporting Manuals and Templates should be reviewed again to ensure they are user friendly and accurate in their content.

7. Methodology for Assessment of Fair and Reasonable Feed-In-Tariffs and Terms and Conditions.

The introduction of a guideline to assess whether feed-in tariff terms and conditions offered by retailers are fair and reasonable was an unnecessary addition to the regulatory framework. Offers to customers must comply with the provisions of the Fair-Trading Act and the Energy Retail code.

The ESC has chosen to apply assessment criteria and information requirements in addition to the criteria established by the Department of Primary Industries (as the policy maker). The additional criteria are inconsistent with the operation of the competitive market: if costs associated with a retailer's feed-in offer are not acceptable to the customer, they are free to seek a feed-in offer from any licensed Victorian electricity retailer.

The philosophy adopted by the ESC incorporates an approach to the assessment and allocation of costs that is more commonly seen in the regulation of monopoly network asset businesses (such as distributors), through the application of Guideline 14 - Provision of Services by Electricity Distributors. Furthermore, the ESC decided to implement a guideline prior to the Department of Primary Industry's rejection of any retailer feed-in offers and subsequent referral to the ESC. It would have been prudent to identify a demonstrated need in the marketplace for the regulation prior to it being implemented.

In this submission Origin has attempted to address the issues raised in the very brief ESC paper. However, a review of energy regulatory instruments in Victoria is an exceptionally broad and complex concept and it has been difficult to understand the full scope of what the ESC intends for this review. For instance will every guideline or code be reviewed or only those which are reflected in participant responses? Therefore, Origin suggests that retailers would benefit from a workshop where the full scope of this review can be better understood in order to achieve the best possible outcome for the market.

If you require further information regarding this submission please do not hesitate to contact me on 03 9652 5880.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Randall Brown".

Randall Brown  
Regulatory Development Manager