14 March 2014

Ms Erin Dempsey
Legal Policy Officer, National Energy Market Development
Energy Sector Development Division
Department of State Development, Business and Innovation

By e-mail: erin.dempsey@dsdbi.vic.gov.au

Dear Ms Dempsey

Consultation Paper – Changes to retail regulation 2014 and planned outages

Origin Energy (Origin) welcomes this opportunity to respond to the Department of State Development, Business and Innovation's (the Department's) consultation paper on proposed changes to energy market retail regulation in Victoria. As a retailer with more than 1.1 million customers in the Victorian energy market, we have a strong interest in the outcome of the consultation and the nature of any new regulation resulting from the proposed changes.

Origin does not believe the case for regulatory intervention has been made, and furthermore we do not consider that they will achieve the intended policy objectives. The changes may in fact be counterproductive due to their impact on the competitiveness and sustainability of the Victorian energy retail market and generating costs in excess of benefits to customers.

The process being followed by the Department does not constitute a regulatory impact assessment, and the consultation period for the proposed changes is truncated and contrasts with the procedures applied by (for example) the Australian Energy Market Commission (AEMC) when undertaking a rule change. Given the potential cost and disruption to consumers and industry that the changes will create, Origin is concerned that any changes may result in rushed implementation and high compliance costs.

Furthermore, the changes described in the consultation paper impact upon the harmonisation of energy market regulation across jurisdictions and detract from the objectives of the National Energy Consumer Framework (NECF). The proposed changes also do not reflect the broader settlement processes in the National Electricity Market (NEM) enabling revisions for up to 180 days and the ability of distributors to amend their network charges for a period of up to 12 months. Such inconsistencies will result in an increase in retailer costs, as the provisions will apply only in Victoria (including when the NECF is adopted in the future).

Should the Department wish to discuss any of the comments made in this response, please contact me on in the first instance.

Yours sincerely

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Policy Proposals

Increases to the wrongful disconnection payment (WDP)

The view that "…wrongful disconnections appear to be increasing"[1] is not correct. In the 2007/08 financial year, the number of WDP cases exceeded the case numbers cited by the Department on page 3 of the consultation paper (241 compared with 233).[2]

The numbers of WDP cases are neither increasing nor decreasing over time, but rather fluctuating within an absolute range (100-300 cases per year) that reflects a tiny fraction of overall disconnections occurring in the market.

Origin does not agree that increasing the WDP from $250 to $500 per day and increasing the cap on WDPs from $3,500 to $5,000 will encourage greater compliance with regulation associated with disconnection of customers. As a retailer we are doing more than is required by regulation to collect from customers without resorting to disconnecting for non-payment and we have invested in strong controls to avoid wrongful disconnections.

Origin has applied processes that exceed minimum requirements set out in regulation. For example, Origin attempts to make contact with customers via SMS well in advance of requesting a physical de-energisation from the distributor and has a policy of not disconnecting customers over the age of 75. Furthermore, when Origin implemented its new billing system in 2012 it provided an additional disconnection notice for non payment in excess of the regulatory requirements. However, we have since found the additional notice did not result in any demonstrable benefit regarding disconnections. Origin has also conducted field visits and sent notices by registered post in many cases, even where not required by regulation, to contact customers and attempt to avoid disconnection. These are examples of voluntary steps retailers can take to minimise the risk of a wrongful disconnection. Further regulation of WDPs reduces incentives for retailers to explore such innovations and provide additional support to customers.

With respect to the WDP itself, the Consumer Utilities Advocacy Centre (CUAC) supported the rate of compensation (on a daily basis) of $250 in 2009, with adjustments for changes in the consumer price index.[3]

For these reasons, Origin believes that current regulation covering WDP is adequate and it is not clear that the proposed and material changes to the cap or the doubling of the daily payment will encourage further improvement in retailer performance. We believe it is likely higher retail costs will result from the material proposed changes to WDP compensation with limited impact on the number of WDP cases annually. The higher compensation amount may also provide a sufficient inducement to encourage customers to make ombudsman complaints without due cause.

With respect to the additional question on page three of the consultation paper ("What is the cause of the increase in disconnections and wrongful disconnections?"), Origin believes that wrongful disconnections are not necessarily increasing, but are in line with

[1] Department of State Development, Business and Innovation (2014), *Consultation Paper – Reforms to retail regulation 2014 and planned outages*, page 3.
[2] Consumer Utilities Advocacy Centre (2009), *Submission to the Review of Victoria's Wrongful Disconnection Payment*, page 2. See: http://www.cuac.org.au/index.php?Itemid=26&option=com_docman&limitstart=110
[3] CUAC, *op. cit.*, page 5.

absolute historical trends, while decreasing as overall disconnections have increased (indicating that more often than not, retailers are not de-energising customers on a wrongful basis).

In terms of disconnections, the fluctuation is likely to be a function of both retailers following through on more recovery action as large billing system implementation projects are now complete and the resources and processes to recover outstanding amounts that have become available as a result. We believe the rate of disconnections will stabilise as the backlog of outstanding debt decreases over time. We note also however quarterly billing allows substantial amounts of debt to build up quite quickly and this is a contributor to the recent fluctuation in disconnection rates. Fundamentally, customers must engage with their retailer when it becomes clear that they are likely to have difficulty paying their bills. Retailers can only do so much to assist customers facing payment difficulties and the Government has an important role to play via education and communication to the broader community of the remedies and avenues available to customers. If customers do not engage with their retailer it is impossible for the retailer to provide support.

Fixed term contracts

Origin notes that this element of the proposed changes seeks to address customer confusion in relation to market offers that are fixed term. The confusion apparently arises because customers interpret fixed term to mean the prices are also fixed. Most of Origin's market offers are evergreen; they do not have a fixed term of supply. Where the energy rates are fixed (such as our Rate Freeze product), the terms around future changes to prices are made clear to customers during the consent process. The Energy Retail Code [ERC, clause 20(b)] already requires explicit informed consent to terms and conditions enabling the price to be varied during the contract term. We believe this already achieves the goal of ensuring customers are informed of any price changes and so it is unclear what more the proposed change seeks to achieve.

The Australian Consumer Law (ACL) provides protections for customers in relation to marketing products, their features and so on. In particular, it prohibits retailers from making misleading or deceptive statements about their products and the features of those products. Origin is not aware of any particular feature of retail energy products or any identified market failure that mean that the ACL protections are not sufficient in relation to these products.

We note that a rule change proposal has been submitted jointly by CUAC and the Consumer Action Law Centre (CALC) to the AEMC addressing this issue in the context of the National Energy Retail Rules (the NERR). While we believe that proposal goes further than the changes described in the consultation paper, we consider that any changes in Victoria should be delayed until the outcome of the CUAC/CALC rule change is known as this will have ramifications across a number of jurisdictions that retailers operate across.

Back billing

Of all the changes described in the consultation paper, changes to back billing are likely to have the most impact on consumers and industry from a cost, consumer education and implementation perspective. In this section, we address different elements of the proposal and the underlying issues.

Incentives for retailers

It is in all retailers' best interests to send invoices for energy consumed as soon as possible. Origin has made significant investment in recent times to implement system and process changes to improve accuracy and timeliness of billing. This has resulted in the reduction of backlogs to minimal levels. As such, the proposed change is unlikely to drive significant change, given that retailers work very hard now to quickly resolve issues that impact their customers and business outcomes. Delays in resolution often result from the need to do detailed root cause analysis and to make resultant changes to systems. The changes typically take time to build and implement in a robust manner following appropriate system change process that include testing and validation to ensure the integrity of the system, the changes made and requirements being satisfied.

Origin is concerned that the proposal to reduce the period retailers can recover under charged or under billed amounts will not induce retailers to issue bills in a timely manner. The proposal is likely to increase the potential for further errors and expose retailers to unrecoverable costs that may manifest in higher energy prices for all Victorians, without a commensurate improvement in outcomes for customers. Furthermore, there is likely to be an impact on the sustainability and competitiveness of the Victorian market as retailers invest more resources in meeting the significantly reduced period available to back bill.

Causes for late bills and scope of proposed change

The cause of late or undercharged bills and amounts can be due to a range of factors, some of which are beyond the control of retailers. We note that clause 6.2(a) of the Victorian Energy Retail Code (version 10) allows retailers 12 months to recover undercharges where the cause of that undercharge <u>was not</u> the result of a failure of a retailer's billing system. Based on this definition, Origin understands that the proposed change only applies where the cause of the undercharge was the result of a failure of a retailer's billing system and does not apply in any other circumstances including where:

- The distributor has failed to provide billing data for particular customers;
- A billing delay is caused by a local government authority not assigning billing addresses (to support standing data in MSATS for example);
- Market data revisions that occur beyond the three month window for recovery (either by the Australian Energy Market Operator [AEMO] or a change initiated by a market participant other than the retailer).

Bill cycles

One major contributor to the accumulation of debt is the quarterly billing cycle common in Victoria and other NEM for electricity. The current nine month provision represents three billing cycles for a consumer. In the event that the proposed rule is implemented it should be accompanied by a reduction in the length of a billing cycle to enable retailers and customers to ensure debt is maintained at manageable levels. While monthly billing is technically possible due to the deployment of advanced meters at the bulk of small customer sites across Victoria, there are substantial regulatory barriers inhibiting the take up of monthly billing, including:

- The need to gain explicit informed consent before a customer can be moved to a monthly billing cycle; and

- The difficulty of offering customers monthly billing options where they choose to remain on a standing offer (these are often the customers who would benefit most from smaller, monthly bills); as consent processes are not required for such offers, nor are a number of customers on standing offers likely to be sufficiently engaged to consent to such features.

Furthermore, the back billing approach applied under the ERC links the most common billing cycle (three months for electricity) with the length of the billing period, rather than the absolute number of months. The change proposed moves significantly away from this principle without addressing the cost and complexity associated with customers opting in to monthly billing (or the additional billing system requirements needed to support this).

The complexity involved with retail billing systems also needs to be considered as it is largely the replacement of outdated billing systems that have caused an increase in the volume of late bills over recent years. The Department should also have regard to the dependency retailers have upon third parties (particularly distribution businesses) for the provision of timely and accurate meter data and the continued lack of national harmonisation of regulation. The proposed change of itself is unlikely to materially impact outcomes given that retailers already have the strongest incentives to issue accurate bills to their customers in a timely manner.

Origin also encourages the Department to consider expanding options available to customers and remove legislative constraints that prevent customers being able to voluntarily opt into a prepayment product.

National harmonisation

Finally, the proposal is inconsistent with NECF (all other states allow nine months to recover undercharged or unbilled amounts). Should Victoria intend to adopt NECF in the future (and it is Origin's hope that this occur), this departure from NECF would represent a significant inconsistency of processes applied in other NECF jurisdictions and therefore undermine the key benefit of a national framework..

<u>Energy audits</u>

Origin understands the proposed change to energy audit requirements for customers participating in a retailer's hardship program may require the retailer to make an offer to each participant for an energy audit. It is unclear if this proposal will require over the phone advice or a field audit.

We would encourage the Department to consider that this requirement be met via telephone advice. Requiring in-home or field audits in every instance may be of limited value but will add significant cost. This view is based on Origin's own research, which has found:

- For customers who are referred our field audit service provider, there is a 40% cancellation rate.
- Reasons for the cancellation offered by our customers included:
    - Not feeling comfortable with strangers in the home;
    - The customer not being contactable to confirm the appointment time; and
    - The customer not being at home.

- The cost of field audits are very high- Origin is prepared share its data with the Department in relation to its own costs on a confidential basis.

Origin suggests that this proposal be carefully considered in terms of the cost of undertaking audits and the subsequent usefulness or applicability of advice provided (e.g. split incentives may mean a tenant is unwilling to spend limited funds on energy-saving capital improvements or simply cannot afford more efficient appliances or make necessary changes to the home). Furthermore, many public housing tenants are only able to make limited energy savings from advice provided and the challenges are more fundamental (insulation, heating technology etc).

We believe field audits need to be carefully targeted to those customers who will benefit most, including offering field audits where the customer:

- Has significant literacy challenges;
- Is clearly unable to manage current energy costs and consumption;
- May require assistance in completing Utility Relief Grant scheme applications; or
- Requires a holistic management approach.

Applying resources to focus on cases such as these would be a efficient approach to field audits.

For all other cases, Origin suggests that retailers provide energy efficiency advice over the telephone.

Mandating energy audits implies that all customers accessing hardship programs do so because they are using energy inefficiently. This often not the case as we have customers on Origin's Power on Program that are using less than 5kWh a day. The causes of hardship are many and extremely complex.

The cost of obligating retailers to conduct field audits for all hardship program customers will be substantial. Origin would therefore urge the Department to consider a more targeted and effective approach.