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Dear Tom,

#### **ORIGIN SUBMISSION TO AER RETAIL PRICING INFORMATION POSITION PAPER**

Origin welcomes the opportunity to provide a response to the AER's Position Paper: *AER Retail Pricing Information Guideline*.

As a general point, Origin remains unconvinced that a clear case has been made for new regulation in this area at the jurisdictional or national level, and we have specifically not seen evidence of market failure arising from the absence of price fact sheets in the form considered by the AER. While the presence of the Retail Law requirement to have a pricing information guideline may render this point irrelevant at the regulatory principle level, it remains relevant to any practical discussion of what a Guideline might require of retailers. Without some evidence of where current approaches are failing we have no clear direction to take in the creation of new regulatory practice.

Linked to this, while we understand why the AER has developed an example of a Guideline for consultation purposes we believe this approach is inappropriate at this stage of the consultation process. The Guideline very clearly signals regulatory intention, which in this case is regulatory decision-making that has not consulted in any depth on presentation options that are relevant for Australian retail energy markets. Once such a document is public it becomes the new benchmark for views, and the agenda is set. It is then very difficult to introduce new issues (such as basic regulatory policy questions about objectives) and dissenting opinions are required to carry the burden of proof in showing why the AER's assumptions are wrong.

In our view there should be a robust consideration of issues and the costs and benefits of approaches before public statements are made about a preferred approach, and substantive consultation with stakeholders should play a large part. While the public forum held after the Issues Paper was a start, this was not sufficient. Increasing consultation prior to the release of public documents can only help the AER, as the eventual public drafts will be less likely to raise extreme reactions and will also be more in touch with the operational reality of retailers and the range of customer needs and experiences.

In terms of what we support to fulfil the AER's obligations under the Retail Law, our overall view is that the Victorian approach to price disclosure is appropriate, for the reasons discussed below. This means that price sheets on websites should only be in place for one generally available offer, and that unit pricing is preferable to annual costs.



## General points on the principles underpinning the Guideline

### **1. Market failure and evidence-based regulatory policy**

The AER has made a useful start in addressing the various pricing presentation issues with its preliminary consultation and market research. The Wallis Consulting research has provided some interesting findings about the type of information that captures people's attention and which elements they find useful at first sight.

Origin is concerned, however, that Wallis did not test the more fundamental aspects of policy underpinning the Guideline. For example, Origin understands that customers who expressed a preference for simpler data formats such as annualised costs on a price sheet were not aware that the simplified information was potentially less relevant to their circumstances than data presented in alternative formats, such as unit prices. In our view, understanding how people trade simplicity of presentation for accuracy and relevance would have been more useful to learn. This may not have been feasible for Wallis to complete within the research scope but there needs to be recognition that this is an issue and that any policy recommendations from Wallis about whether to use annualised or unit pricing are necessarily limited (and we question the appropriateness of Wallis providing policy recommendations in the first place).

Further, it is more important to know whether customers would use price comparison sheets in a real decision-making situation. Asking people whether price sheet A looks better than price sheet B is valuable, but only within a more structured research piece that also has a developed and evidence-based view of what the bulk of customers actually use in a real energy purchase decision. More pertinent questions would include: How much value do customers place on price sheets in practice, that is, when a decision is made to switch? If the AER's price sheets existed right now would customers seek them out or seek to compare prices? If the price sheets are provided with contract offers as a matter of course do they add value to the retailer's existing contract information or are they just more 'noisy' paperwork?

In fact, the Wallis research found that none of the Victorian customers (all of whom had switched retailer at least once) had seen or used the price disclosure statements currently available on retailer websites (although we might presume they received contract offer summaries as required by regulation). Further, Wallis states that it was "unable to find anyone amongst the 'switchers' who considered or compared the offers of more than two energy companies when making a choice" (p. 1), where this includes the customer's existing retailer.

Yet Victoria continues to have the most competitive retail energy market in the world. There is also no evidence of widespread market malpractice - we cannot say that the bulk of these customers who switched in Victoria did so against their wishes or in a way they would consider uninformed.

One conclusion seems evident: the Victorian consumers have not required price comparison fact sheets to make choices. The material is effectively superfluous to customer needs. Even if we exclude the Wallis findings and if we assume that some people *do* use price fact sheets to compare prices, the fact that Victoria's level of switching is so high (without major incident) would at least support a national price disclosure regime that is no more onerous than the Victorian approach.



We note also that the extensive market research that Colmar Brunton recently carried out for the Essential Services Commission in South Australia (August 2010) showed that vast majority of customers felt confident that they would know how to change retailers, and there was also very little dissatisfaction with the information provided. People did not require more in the way of price comparison tools. Admittedly, this is in an environment where there is regulated price disclosure, but we note that, like Victoria, this current environment is less onerous than what the AER is currently proposing.

We understand that the AER believes that it has dealt with the 'there has been no market failure' argument but we have not seen evidence of this. Stating that a lack of information can mean people make the wrong decisions does not in itself demonstrate that there is a problem of market failure. Even noting that some people find comparison difficult does not provide evidence of the need for regulation in this area. The AER states:

The AER considers that in order to maintain retail market competitiveness and promote economic efficiency, consumers need to understand the types of energy retail products available to them. Where consumers are able to understand the price and non-price elements of the products available in energy retail markets, they can more effectively engage in the markets and select products that are most suitable for them, thereby promoting economic efficiency.

We do not doubt that the above is true, but it does not establish that the current jurisdictional markets for retail energy have failed, nor does it signal where problems might lie that we can effectively target, or whether price fact sheets that might in principle assist customers will actually be valued or used when customers make decisions. We are concerned to note that there has been little to no assessment of actual customer behaviour and needs in Australian retail energy markets (which are among the most competitive in the world), with the AER's Issues Paper only cataloguing how various Australian and international jurisdictions manage price disclosure and the Position Paper addressing focus group views on the look of different price sheets.

Origin would prefer to see future consultation that is more focussed on problems we can effectively target for our markets through regulation. We need to understand the failure that regulation is designed to address, who the failure affects, and the size of the affected customer population. Consultation about how to meet the rather more general policy objective of 'people being informed' will result in the usual statements from all about what needs to be in the Guideline so it can be everything to everyone. This will be self-defeating, as too much information or poorly targeted information is just as bad as insufficient information.

We believe that price sheets will never make the sale of energy transparent enough for all customers, and particularly for the large percentage of the Australian population that struggles with literacy and numeracy. Wallis has already identified that the needs of this group do not lend themselves to a 'one size fits all' approach. Instead, the best we can do is identify where regulation is most likely to materially improve the experience of a significant percentage of consumers, and then use more targeted means of protecting or supporting certain customer groups as necessary. This requires a separate consultation on the practical objectives of price disclosure regulation and how AER can access the preferences of customers *as they engage with the market*. This is distinct from hypothetical questions about how customers might prefer data to appear, when in the real world they may have little interest in the data presented.

Until this is understood we run the risk as a community and industry of chasing outcomes that are illusory, and continuing to make a complex market even more complicated. It



may sound self-evident, but Origin believes that regulatory policy should be evidence based. Then policy can be targeted toward overcoming a practical issue that has been identified as requiring resolution. Not only is non-evidence based regulatory policy-making a bad idea from a market perspective (which we must remember is also a consumer perspective), it does not actually help the people it purports to protect. Getting it wrong with guesses about what consumers actually want (in the absence of evidence of an actual problem) runs the greater risk of confusing customers with too much information and over-burdening the industry's capabilities to communicate effectively with its customers.

Further, with the introduction of more sophisticated metering and associated consumer service capabilities (such as in-home displays and appliance control measures) contractual offers will continue to evolve to meet varied customer needs. Given this, there is very real potential for conflict between the greater flexibility required to meet increasingly specialised service offerings and any increasing prescription in the methods used to communicate to customers. The AER's approach needs to clearly take into account these flexibility requirements of both consumers and policymakers.

## **2. Relationship with other information and need for clear objectives**

We are concerned about the AER's process of essentially moving straight to a draft Guideline without an assessment of the suite of requirements regarding price and contract information disclosure across different regulatory instruments, and without a sense of how requirements might combine or contrast. Relevant areas of regulation include the:

- Retail Rules regarding marketing, such as Rule 246 (Required information) which requires retail marketers to provide information that covers all applicable prices, charges, early termination payments and penalties, security deposits, service levels, concessions or rebates, billing and payment arrangements and how any of these matters may be changed.
- Australian Consumer Law Division 2, which regulates information for unsolicited consumer agreements;
- potential AER Price Comparator; and
- Ministerial Council on Energy's work on energy bill benchmarking.

It is important for the AER to specify how its potential price disclosure requirements under this Guideline interact with the other information disclosure provisions that will apply to retailers, and specifically disclosure related to various sales channels and purposes (such as informed consent to contracts versus price comparison). If this is not clear there is a real risk of the eventual price sheets providing overlapping or confusing messages to customers. There is also a risk that viewing the Guideline in isolation will result in stakeholders loading up the document with a wide range of expectations - as mentioned before, people will expect the Guideline to be everything to everyone, which will be a costly mistake.

## **3. Overcoming information asymmetry**

The Position Paper notes that that the rationale for regulating price disclosure is to address market failure caused by information asymmetry, and that information asymmetry 'can cause customers to spend significant time trying to understand complex offers...' (p. 5).

Notwithstanding our concern that market failure has not been established, we do not think that using the technical economic term 'information asymmetry' is helpful in this



context. The technically perfect market where every player is omniscient is neither achievable nor desired: it is not as if we want to reach a point of information *symmetry*, where customers and retailers have the same degree of information. Retailers have a responsibility to filter information to customers so that customers have the information they want and need, not everything that exists. No customer would benefit from being involved in the detail of how every level of the market works and retailers certainly do not lay bare their commercial practices in the competitive market.

This much is obvious, and the AER also recognises in the Position Paper that there is such a thing as too much information. The key is to discover what is 'enough' information and of what kind to be of net positive benefit to consumers.

While it may seem pedantic to criticise the term 'information asymmetry', in Origin's view it is important to get the language right in the changing environment of the national customer energy framework (NECF). The implementation of the NECF will be a major task and is currently surrounded by much uncertainty as the jurisdictions consider how best to implement the package and as the AER and stakeholders come to terms with what is involved. In these circumstances it is important to minimise confusion and set clear expectations where possible of what the policy and regulations actually require. It is inconceivable that they might require information symmetry so we should not continue to use this concept. If the issue is recalibrated as a question of 'what information is needed' we are starting to move toward a more meaningful and practical discussion.

#### *Specific points about the form and content of the Guideline*

##### **1. The appropriate pricing method**

Origin strongly supports the AER's view that standardised unit pricing is the approach that is most likely to provide consumers with sufficient information to enable informed customer decision making, without the risk of misleading customers.

We also believe that the disadvantages arising from adopting the annual cost approach outweigh the advantages. The potential to mislead customers with this approach is too great to risk, particularly with time-of-use pricing. As noted by the AER, attempting to address this through more specific estimated load profiles is likely to lessen the simplicity of the approach and potentially cause confusion and significant regulatory burden.

While the Wallis consumer research found that respondents generally preferred the annual cost approach adopted by South Australia to the unit pricing model in place in Victoria, Wallis did not tell the respondents that the annualised cost might not apply to them (as it most certainly would not in a time-of-use pricing approach, for example). One might imagine that the respondents' preference could shift if they were aware that they needed a lot more information about their own usage to evaluate how their annual cost might compare, and, having done that, that they might find that there is no point of comparison anyway.

Given that Wallis also noted that most respondents demonstrated a poor understanding of their energy usage we can expect that an annualised approach creates a higher risk of misunderstanding than a standardised unit pricing approach.

Even if people could place themselves within set profiles, the possibility of creating meaningful, simple and also largely representative profiles would seem extremely



remote. The AER has already raised some reasons why this is the case, and we can add other sources of complexity such as whether a customer has controlled load or solar PV.

## **2. Scope of the Guideline**

We note that the AER considers that the Guideline should capture information on retail offers that is provided to customers during in-person marketing activities (such as door to door sales), telemarketing activity and the internet.

The AER has also stated that the relevant disclosure statement should be available to customers on the internet, with sales agents required to advise customers that further information is available on the retailer's website. The AER considers that retailers should provide a link from their website homepage to offer information, without the need for consumers to submit detailed personal or technical information.

As discussed at the last public forum, this is a problem for some retailers, if not all. Some retailers provide extremely specialised market offers, where offers may vary over time and by geographic region on elements such as price, rebates, discounts, penalties, green energy mix and associated offers. This would then require many price fact sheets at any one time for the range of offers, where each offer is only available to specific customers according to a specific campaign. It is worth noting that there are thousands of potential combinations for some products. Multiple and targeted campaigns are the natural outcome of a mature competitive market where retailers are able to respond to customer preferences, targeting specific campaigns where they will have the most effect.

What this means is that not all contracts on a retailer's website under the AER's proposed approach will be available to everyone, and, in fact, very few of the many contracts on the website would be accessible to any one customer. Rather than helping a (potential) customer understand their options, having all of the currently sold offers on the retailer's website will confuse, as it will not be easy for any one person to navigate through the many contracts to find the one that applies to them. While the list may be narrowed down if the customer puts their information into a web-based tool, this will only go a short way to resolving the problem. Further, the AER has said that it does not want customers to have to interact with websites in this way.

Overall, it is not practical to have all contracts covered by this Guideline and also have them available on a retailer's website. The Wallis Consulting research also indicates that it is not necessary for price sheets to be on the internet, as it was found that people do not look for price information on retailers' websites. A means of managing this issue might be to delete the website requirement, or we might take the direction used in Victoria, where each retailer is required to make public one generally available market offer of their choice. There is then a strong incentive on the retailer to choose a competitive offer, since the retailer will be readily compared with other retailers on this basis.

On a related matter, we believe that providing our entire set of current offers on websites is not appropriate in any event. The NECF does not require publication of market offers; however, a requirement by the AER via this Guideline to have market offer details publicly available equates to a publication obligation, which will affect the nature of competition, and not necessarily in a positive way. While there might be an argument that transparency of contractual offerings may enable stronger competition, it is far more likely that this situation will stifle innovation and retailers' willingness to differentiate products. A regulatory requirement to publicly advise the market of new offerings will be



seen as a major compliance burden and an obstacle to the development of creative new product offers designed to meet the needs of specific segments of the market.

As a final matter, we understand that the Guideline will not extend to contracts that customers are already on, and we seek to have this confirmed more formally. We do not support retrospective price sheets in any way - the Guideline should only apply to contracts that are currently being marketed. We note that the AER's suggestion that the Guideline could require that a disclosure statement be included with a bill following a variation does not align with a view to not have retrospective price sheets - obviously even with price changes many of the offers in this category will no longer be actively marketed.

We also do not support the Guideline being applied to small business customers. Once again there is no evidence of this being required. Business customers have different information requirements from residential customers, and as energy costs are input costs for businesses like any other input, the 'essential' nature of the service is quite different from the essential nature of energy for residential customers.

### **3. Changes in tariffs**

The AER has said that the Retail Law and Rules will likely include requirements that retailers inform customers of any variation to standing and market offers. The AER is considering whether these requirements should be supplemented by a requirement to present a disclosure statement in accordance with the Guideline when presenting the revised prices to customers.

Origin does not support a requirement to notify customers of all price changes separate from what is on the bill. This is a highly onerous direction for regulation to take and is one that is, again, not supported by evidence of a need for change. While Queensland has introduced a requirement to give ten business days' notice of any price changes (in a letter or via the news media and a bill), this was not motivated by a specific need for advance notification, but by the decision of one retailer to apply price changes retrospectively. The policy response went much further the original problem would require.

In contrast, the NSW Government is currently proposing to remove the current NSW requirement for energy retailers to notify customers supplied under a market retail contract in advance of any price variation coming into effect. In its Policy Paper *NSW Implementation of the National Energy Customer Framework*, the Government has noted that any benefits to customers associated with the retention of this provision are outweighed by the likely increase in costs to retailers - costs which are ultimately passed through to customers.

Origin agrees with the AER that it is important that customers be notified of any changes in a clear manner. Perhaps this might require a separation between mandatory re-assignments of tariffs and changes in prices. For example, where a customer might be shifted from a flat tariff to a time-of-use (ToU) tariff it would seem reasonable to provide notice to the customer of this change. However, price changes that are provided for in a contract's terms and conditions - such as the general annual price changes - can occur at the time of a customer being billed on the new charge.



#### 4. Presentation of information

The AER has said that standardisation is an important goal in developing a price disclosure regime, and that this goal would be best achieved by creating a template in which retailers provide pricing and other information relating to an energy retail offer.

While we reiterate our concern that there is no evidence that this measure is required, we can accept that some sort of common approach is a reasonable way to meet the requirement of the Retail Law to have easily comparable prices. This does lead to a question about the apparent overlap between the price comparison objective of the Guideline and the purpose of the AER's potential price comparator service, but we do not address this question here. It also raises the question of what the sheets need to be compared *with*, as perhaps customers are only comparing offers with their bills, not other offers (and the market research would seem to support this). As a general principle it would seem sensible for any information presented in the price sheet to be consistent with how the information is provided on bills, such as showing unit costs (as discussed above) and application of GST.

We are wary of agreeing to a template as such, as this implies a more detailed set format than what we believe is the principle behind the price sheets. However, the Guideline does not use the term 'template'; it approaches the issue more appropriately (in our view) by allowing the retailer to amend the layout of a price fact sheet as long as it uses certain terms and is easy to read in a range of ways.

Origin agrees that a table for the presentation of both pricing and other information is a clear, structured way to present information. AER has suggested that tables with tariff/price information commence within the top half of the page, so that information is clearly and obviously presented to customers. We support this approach as long as there is flexibility for retailers to brand their offers as they like and that the space above the table is free for a statement about the features of the offer in the retailer's own words. There was in-principle support for this approach from the AER in the public forum on 6 October 2010.

We are also concerned that the presentation should allow for a more flexible approach where necessary. For example, it will just not be appropriate for there to be a separate price sheet for every combination of terms. Products like green energy are often an overlay across a given contract and the range of green options lends itself more to a tick-a-box presentation that has multiple options provided. We are happy to develop some relevant examples for the AER.

While we support the AER's proposal that the length of an Energy Price Fact Sheet should not be longer than two standard A4 pages (where possible), this requirement becomes problematic if retailers are also expected to have examples of appliance usage, as raised by the AER and also discussed at the public forum. We support the AER's current decision to not mandate such examples, as the longer the 'wish list' becomes for contents of the price sheet, the less practical and useful the sheet will be and the more remote it will become from its original purpose. If, after all the mandatory elements have been accounted for, there is useful space left that might help customers' understanding of energy, then perhaps it can be used in this way, at the discretion of the retailer. However, it would be extremely risky to mandate such additional information without further in-depth research on what customers actually use and what they need. We also note that there is nothing stopping retailers (or the AER) from developing indicative consumption information for appliances as a separate discretionary measure.





On the matter of presenting gas prices, we believe that these should match how gas prices are provided on customer bills, and therefore we agree with the AER that the megajoule measure should be retained.

We would be happy to discuss any aspect of this submission further with the AER, and at your convenience. Please feel free to contact me on the number below.

Yours sincerely

[signed]

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