



17 July 2018

Ms Sarah Proudfoot
General Manager, Retail Markets
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001
By electronic lodgement: retailcompliance@aer.gov.au

Dear Ms Proudfoot

Re: Draft amendments to AER Compliance Procedures and Guidelines

Origin Energy (**Origin**) welcomes this opportunity to respond to the Australian Energy Regulator's (**AER**) draft amendments to the AER Compliance Procedures and Guidelines (**Guidelines**).

Please see below our responses to specific questions set out in the AER's Notice of draft instrument – Amendments to AER Compliance Procedures and Guidelines 18 June 2018 (**Notice**).

Section 4.1: Life support – new requirements

- **Question 2. What, if any, issues arise from the proposed amendment to immediate retailer reporting obligations around life support?**

Through use of the word 'may', which provides retailer discretion in relation to the substantive activity, it is unclear how sub-rules 125(8), (11) and (13) of the National Energy Retail Rules (**NERR**) can be breached. Origin therefore queries whether these sub-rules should be included as retailer immediate reporting requirements.

Section 4.2: Fixed benefit – new requirements

- **Question 5. What issues, if any, arise from the AER amending the reporting framework under the Guidelines to include the new rules introduced in the fixed benefit rule change?**

As rule 48B of the NERR sets out the obligation on the AER to create benefit change notice guidelines and the matters that must be included, Origin is not of the view that rule 48B should be included in retailer reporting requirements.

Section 4.4: Customer hardship

- **Question 9. What, if any, issues arise with the proposed inclusion of NERL, Part 2, Division 6, section 44 on half yearly reporting obligations on retailers?**

Section 44 of the National Energy Retail Law (**NERL**) lists the minimum requirements that must be included in a customer hardship policy, and is one of the criteria by which the AER will approve a policy (section 45(1)(a), NERL). Should the AER have concerns that an approved hardship policy does not meet section 44 requirements, the NERL provides an avenue for the AER to request a retailer to review its hardship policy and submit another policy (or variation).

The Notice sets out that inclusion of section 44 is to encourage greater self-reporting in light of identified issues with the application of the minimum requirements. However, Origin considers that the requirement to maintain and implement a hardship policy under section 43(2)(c) captures conduct contrary to the minimum requirements. Given that section 43(2)(c) is already

a reportable obligation, Origin is not of the view that section 44 should be included in retailer reporting requirements.

Section 5: Compliance audits

- **Question 13. What, if any, concerns arise with requiring the company CEO or Managing Director (or acting CEO or Managing Director) to sign the final audit report before submission to the AER?**

Origin understands that the AER's proposed requirement for Chief Executive Officer (**CEO**) or Managing Director (**MD**) signature on the final report is to demonstrate that audit findings are circulated and considered by the highest level of management. While Origin has no objection to this, it will be difficult for Origin to obtain CEO/MD sign off within the 5 business days proposed in the draft guidelines as appropriate management comments are required to accompany the audit report for sign off. Origin proposes that the timeframe be extended to 20 business days.

Origin also notes there is no proposed process for retailers to provide formal commentary around audit findings. Management comments can assist the AER with business context and to identify any actions already taken or alternative controls that mitigate any risks identified.

The AER may wish to consider the Victorian Essential Service Commission's approach, whereby retailers are given 30 business days to provide a written statement from management in relation to whether the audit accurately reflects the retailer's performance and comments on corrective actions the retailer will take in response to any issues identified.

- **Question 14. What, if any, issues arise from the proposed changes to clauses 4.22 to 4.34 of section 4 of the Guidelines?**

Origin considers there is inconsistency between the audit section of the Guidelines (including the proposed changes) and the AER Practice Guide, which states that retailers can work with the AER to determine the Terms of Reference (**ToR**) including the scope and approach of the audit. The draft Guidelines, however, do not appear to contemplate consultation on the ToR.

While it is open for the AER to determine the final ToR, Origin believes that consultation is appropriate and necessary to ensure that compliance audits are "in connection with specified aspects of the activities of the entity in relation to the entity's compliance with" energy regulations (section 276(1), NERL).

For the most part, the energy regulations do not specify controls to be used and therefore the controls will vary between businesses. Origin considers that the NERL requires an audit to test the actual controls used by a business to meet its obligations, and that a business is best placed to advise what the relevant controls are. Such consultation can avoid an audit testing activity which is neither required under the regulations nor relevant to the business.

Should you wish to discuss the contents of this response, please contact me on [REDACTED] or by email at [REDACTED]

Yours sincerely



Ben Hercus
Manager, Retail Compliance