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### **Harmonisation of the Energy Retail Code and Guidelines with the National Energy Consumer Framework- Draft Decision**

Origin Energy welcomes this opportunity to comment on the Commission's draft decision consultation paper on the harmonisation of Victorian energy retail regulatory instruments with the National Energy Consumer Framework (the NECF). Origin appreciates the engagement opportunities offered through the Commission's consultation process and understands the complexity of the task it has been requested to undertake.

Given this complexity, it is critical that the certainty provided by the Commission's Final Decision be made clear as soon as possible (Origin understands that this is due in early October). Retailers will require some lead time to prepare systems and processes for a January 2014 commencement date and while we are working toward this already, changes between the draft and final decisions will create additional work and expenditure of resources. Should the Final Decision be delayed beyond early October, this will challenge the capacity of industry to meet the proposed application date of the new Energy Retail Code (ERC). We would make clear however that it is Origin's intention to work closely with the Commission to implement and comply with the new ERC.

In terms of requested amendments to the draft ERC (version 11) we note that there has been some commentary and request for change with respect to the use of verbal explicit informed consent (EIC) through the harmonisation consultation process. Restricting verbal EIC in Origin's view limits customer choice and damages competition as it increases transaction costs for both retailers and customers when engaging in agreements to purchase products and services. For these reasons, Origin will oppose changes that limit the use of verbal EIC. We further note that the Commission has retained verbal EIC under the draft ERC version 11 for some provisions and are supportive of this.

Origin is encouraged that the Commission has generally assessed requested amendments against their consistency with the National Energy Retail Rules (NERR) and National Energy Retail Law (NERL). We believe this approach is central to meeting the request by the former Minister for Energy and Resources to align Victorian retail energy regulatory instruments as closely as possible with the NERR and the principles of the NERL to achieve harmonisation. We accept that a number of derogations associated with specific Victorian energy policies are to be incorporated and that the Commission has attempted to do this by minimising deviations from the structure of the NERR itself. Nonetheless, there are some specific provisions that have been amended or changed in a manner that we believe is inconsistent with the overarching principle of harmonisation. These are discussed in detail below.

Finally, the proposed approach to harmonisation (replacing ERC version 10 with version 11) is preferred by Origin to an incremental approach involving the updating of instruments over time. While there are some advantages to the latter approach, it is likely to result in uncertainty and significant costs and on this basis we support a clean transition to the harmonised code.

Origin would welcome further discussion with the Commission on any matters raised in this response. Please David Calder (Regulatory Strategy Manager) in the first instance on (03) 8665 7712.

Regards

A handwritten signature in blue ink that reads "R. Keith Robertson".

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## Response to draft decisions

### Chapter 5 - General Concerns

#### Section 5.1- Timing of the NECF and draft Energy Retail Code (ERC) v11

Origin supports the application of the ERC v11 being delayed until 1 January 2014. As mentioned above, retailers previously invested in preparing for the 2012 application of the NECF and uncertainty has created significant cost and diversion of resources.

#### Section 5.5- Reference in the Electricity Industry Act and Gas Industry Act to the Energy Retail Code

The decision to not amend the draft ERC v11 to apply to both standard and market retail contracts (herein SRCs and MRCs) is appropriate. Origin agrees with the Commission that draft ERC v11 makes clear the provisions that apply to each type of arrangement.

#### Section 5.8- Standing offer provisions

Origin agrees with the Commission that the draft ERC v11 should not require retailers to explain the differences between SRCs and MRCs, or that retailers be obligated to offer both forms of contract to customers. This extends the existing obligations on retailers under ERC v10.

#### Section 5.9- Proactively informing customers about their rights

Origin supports the Commission's decision to not change provisions relating to dispute resolution and believes the approach maintains consistency with the NERR.

### Chapter 6- Introduction and definitions

#### Section 6.1- Definition of *best endeavours*

Origin does not support the inclusion of a definition of best endeavours in the draft ERC v11. The decision to include a definition does not (by the Commission's own admission on page 30 of the Consultation Paper) create any additional benefit and codifying the ERC v10 definition into the draft ERC v11 detracts from alignment with the NECF. The definition in ERC v10 defines normal business practice for energy retailers in a highly competitive market and is superfluous.

#### Section 6.5- Definition of *payment plans*

Origin supports the Commission's view that there is no need to amend the definition of *payment plan(s)* in the draft ERC v11. Maintaining the current definition does not in any way limit access to payment plans.

Section 6.5- Need to consider customer's capacity to pay, arrears or a customer's expected energy consumption over a future 12 month period when establishing a payment plan

Origin supports the Commission's interpretation that this obligation continues to apply to retailers when establishing payment plans for customers.

Section 6.5- Informing customers of the availability of payment plans

The Commission's view that it is reasonable for customers to indicate to their retailer that they are experiencing payment difficulties is supported by Origin and that the protections set out in draft ERC v11 are appropriate.

Section 6.6- Definition of *Explicit Informed Consent (EIC)*

While Origin supports the ESC's decision to allow verbal EIC for changes to a customer's billing cycle (and agrees this will assist customers to better manage their energy costs), we do not support the amendments to the definition of EIC set out on page 44 of the Consultation Paper. The change to the definition departs from the NERR and reflects an effort to re litigate issues previously agreed. Origin would request that the amendments described in the first three dot points in the draft decision set out on page 44 of the Consultation Paper not be made.

## **Chapter 7- Customer retail contracts- Part 2**

Section 7.1- Listing of variations permitted under MRCs

As the Commission notes, clause 14 has been drafted consistently with the NERR and Origin agrees that no amendment is necessary requiring an appendix to draft ERC v11.

## **Chapter 8- Energy price and product disclosure- Division 2A**

Section 8- Requirement for additional provisions describing the Commission's authority

Origin supports the Commission decision not to amend Division 2A.

### Chapter 9- Pre-contractual procedures- Division 3

#### Section 9.1- Pre-contractual duty of retailers- Clause 16

Origin agrees with the Commission's decision that clause 16 has been drafted in accordance with the NERR and no amendment to clause 16(2) is required.

#### Section 9.3- Responsibilities of designated retailer in response to request for sale of energy (SRC)- Subclause 19(1)

Again, Origin would support the Commission's decision to not amend clause 19 as it has been drafted consistent with the NERR.

### Chapter 10- Billing- Division 4

#### Section 10.1- Basis of bills (SRC and MRC)- Clause 20

Origin does not agree that clause 20 requires amendment. An 'actual read' is not defined in draft ERC v11 and the definition of *meter data* in the National Electricity Rules (the NER, upon which the draft ERC v11 and NERR depend) includes standard metrology procedures for reading meters, including estimates. Estimated reads for electricity are an unavoidable feature of the market and generally beyond a retailer's control. Since the definition of *metering data* in the NER includes estimated reads (and substituted reads), Origin considers the need to gain EIC for estimated reads redundant in the context of clause 20(1). Retailers continue to have obligations around ensuring meters are read at least once every 12 months, despite the fact they are generally not the *Responsible Person* for small customer metering installations.

The amendments proposed to 20(1)(a)(ii) and 20(1)(b)(iv) departs from the NERR and should not be made.

#### Section 10.3- Estimation as a basis for bills (SRC and MRC)- Clause 21

Origin does not support the amendment to subclause 21(1)(a). In normal electricity and gas market practice, subclauses 21(1)(b) and 21(1)(c) make the need to obtain EIC to clause 21(1)(a) redundant since *meter data* includes estimates. There has been an effort for an extended period of time by some stakeholders to invalidate the routine industry practice of billing customer's on the basis of estimates for a number of years. Origin does not believe the amendment is either effective or consistent with the NECF. Furthermore, with the deployment of advanced metering infrastructure (AMI), the incidence of estimated metering data will decline exponentially and the consumer protections afforded by the amendment to subclause 21(1)(a) are minimal. Origin firmly believes the amendment should not be made.

Section 10.4- Frequency of bills (SRC)- Clause 24

Origin supports the Commission's decision not to amend clause 24 as the current drafting is consistent with the NERR.

Section 10.5- Contents of bills- Clause 25

Origin supports the amendments to clause 25.

Section 10.6- Greenhouse gas disclosure on customers' bills- Clause 25A

Origin supports the amendments to clause 25A and the clarification of the flexibility for retailers to include greenhouse gas information or bill benchmarking on customer bills.

Section 10.7- Pay by date (SRC)- Clause 26

Origin agrees with the Commission's decision not to amend clause 26 and that the NERR drafting is the appropriate basis for this clause in draft ERC v11.

Section 10.8- Apportionment (SRC)- Clause 27

Clause 27 of the draft ERC v11 is consistent with NECF provisions and Origin agrees that it should not be amended.

Section 10.9- Historical billing information (SRC and MRC)- Clause 28

Origin supports the Commission's view that the current drafting of clause 28 is consistent with the NERR. The minor amendment to clause 28(2A) is supported.

Section 10.11- Undercharging (SRC and MRC)- Clause 30

The decision not to amend clause 30 given its consistency with the NERR is supported by Origin.

Section 10.12- Overcharging (SRC and MRC)- Clause 31

Origin agrees with the Commission's decision not to amend clause 31.

Section 10.13- Payment methods (SRC and MRC)- Clause 32

As for clause 31, Origin supports the Commission decision not to amend clause 32.

Section 10.15- Shortened collection (SRC and MRC)- Clause 34

The Commission's consistency on adopting the NERR drafting is supported by Origin and agrees that no changes to clause 34 are necessary.

**Chapter 11- Tariff changes- Division 5**

Section 11.1- Obligations on retailers (SRC)- Clause 36

Origin agrees that no amendment is required to clause 36, which is drafted according to NERR provisions.

**Chapter 12- Security deposits- Division 6**

Sections 12.1-12.6- Clauses 39, 41-42, 44-45

Origin agrees with the Commission's decision not to amend these clauses as they are consistent with the NERR and there is no basis to change the current drafting.

**Chapter 13- Particular requirements of MRCs- Division 7**

Section 13.1- Tariffs and charges- Clause 46

Origin agrees with Energy Australia's view that the advanced notification of tariff changes was motivated by the potential that mandatory *network* tariff reassignment was likely to take place when customers were upgraded to AMI at their premise. The 20 day advanced notice would then allow customers to investigate offers from other retailers, despite the fact that the retail tariff structure would most likely match the underlying, recently changed, network tariff. Origin would be pleased to discuss this matter in more detail with the Commission. We would agree with Energy Australia that subclause 46(4) of draft ERC v11 departs from the NERR and is unnecessary given the requirement for customers to opt in via EIC to any change in retail tariff structure.

Section 13.2- Termination of MRC- Clause 49

Origin agrees that no Victorian derogation has been specified for this provision and that clause 49 as currently drafted is appropriate. As such, Origin supports the Commission's decision not to amend it.

Section 13.4- Small customer complaints and dispute resolution information- Clause 50

Origin supports the Commission's decision to not amend clause 50.

**Chapter 14- Other retailer obligations- Division 9**

Sections 14.1-14.3- Clauses 55-57

Origin agrees with the Commission that there is no basis to amend these clauses and that they are consistent with the NERR.

**Chapter 15- Energy Marketing- Division 10**

Sections 15.1-15.6- Clauses 61-65, 68

These clauses are consistent with the NERR and Origin supports the Commission's decision not to amend them.

**Chapter 16- Termination- Division 11**

Section 16.1- Termination of a deemed contract- Clause 70A

Origin supports the proposed clarification made in regard to clause 70A.

**Chapter 17- Customer hardship- Part 3**

Section 17.2- Obligation of retailer to communicate customer hardship policy- Clause 71

Origin notes the Commission's decision not to amend clause 71.

Section 17.5- Payment plans- Clause 72

Origin supports the amendment to clause 72 altering the definition of a business customer to clarify that the clause applies to small business customers.

Section 17.6- Debt recovery- Clause 72A

The decision to not amend clause 72A (other than to make the minor drafting correction suggested) is supported by Origin as it maintains consistency with NECF provisions.

Sections 17.7-17.8- Clauses 74 and 76A

Origin supports the Commission's draft decisions on these two clauses and notes that the decision not to amend clause 74 is consistent with NERR drafting.

**Chapter 18- De-energisation of premises, small customers- Part 6**

Section 18.1- Definitions- Clause 108

Origin supports the amendment to clause 108 removing the definition of extreme weather events and its subsequent reference in subclause 116(1)(h).

Section 18.2- De-energisation for not paying a bill- Clause 111

The amendments proposed by the Commission to clause 111 are appropriate.

Section 18.3- Not paying a security deposit or refusal to provide acceptable identification- Clause 112

Origin supports the Commission's decision to amend subclause 112(1)(b).

Sections 18.4-18.6- Clauses 113-115

Origin agrees with the Commission's decision to not amend these clauses as there is no Victorian derogation that would support a deviation from the NERR.

Section 18.7- When a retailer must not arrange de-energisation- Clause 116

The removal of references to extreme weather events in clause 116 is supported by Origin.

Section 18.8- Timing of de-energisation where dual fuel contract- Clause 117

Origin supports the proposed amendment to subclause 117(4).

Section 18.9- Time for re-energisation- Clause 122A

The amendment to clause 122A is supported as this more closely reflects business-to-business processes and roles and responsibilities that currently apply.

#### **Chapter 19- Life support equipment**

Section 19.1- Retailer obligations- Clause 124

Origin supports the Commission's decision not to amend clause 124.

#### **Chapter 20- Schedule 1 Model terms and conditions for SRCs**

Section 20.1- General comments on the model terms

Origin agrees with the Commission's interpretation of the intent of the model terms under the NERR.

Sections 20.2-20.5- Model terms and conditions clauses 4.2-4.3, 6.1, 7

Origin agrees with the Commission's view that these clauses do not require amendment and are drafted in accordance with the NERR.

Section 20.6- Variation of tariff due to change in use- Model terms and conditions clause 8.3

Origin notes the apparent inconsistency between sub clause 38(2) of the draft ERC v11 and clause 8.3 of the model terms and conditions and the Commission's proposed amendment. It should be noted however that there may be technical issues affecting tariff application (for example, the distributor may reassign a customer to a demand tariff if the customer becomes very large) and the capacity of the retailer to generate a bill (since it is likely to know about the change after it takes place) may be impacted. Origin would welcome the opportunity to discuss the practical impact of this amendment further with the Commission.

Section 20.7- GST- Model terms and conditions clause 8.3

Origin supports the Commission's decision not to amend this clause.

Section 20.8- Estimating the energy usage- Model terms and conditions clause 8.6

We do not support the proposed amendment to clause 8.6 of the model terms and conditions. Please refer to our comments on sections 10.1 and 10.3 of the Consultation Paper above for our reasons.

Sections 20.9-20.15- Model terms and conditions clauses 9.4-9.5, treatment of Late Payment Fees, clauses 12.1-12.2 and 13

Origin agrees with the Commission's decision to not amend draft ERC v11 in relation to clauses 9.4-9.5, 12.1-12.2, 13 of the model terms and conditions and with respect to late payment fees. We support the proposed amendment to clause 12.3 of the model terms and conditions.

Section 20.16- Disconnection of supply- Model terms and conditions clause 14

Origin agrees with the Commission's decision on amendments to clause 14 of the model terms and conditions.

Sections 20.17-20.22- Model terms and conditions clauses 17-20,22

We support the amendment to clause 17 and the decision not to amend clause 18-20 and 22 of the model terms and conditions.

**Chapter 21- Schedule 3- Transitional provisions**

Origin is generally supportive of the Commission's proposed approach to transition existing standing offer and market contracts to comply with the ERC v11 when it applies.