3 June 2016

Hannah Lawrence
Compliance Manager, Energy
Essential Services Commission
Level 37, 2 Lonsdale Street
Melbourne VIC 3000

By electronic lodgement: energy.submissions@esc.vic.gov.au

Dear Ms Lawrence

Response to Consultation Document – Interim Compliance and Performance Reporting Guideline

I refer to the draft Interim Compliance and Performance Reporting Guideline for Energy Retail Licence Holders (**Draft Guideline**) circulated by the Essential Services Commission (**Commission**) on 6 May 2016. Origin appreciates the opportunity to provide a submission and assist with the development of the revised reporting framework.

The Commission has sought feedback from licensees and other stakeholders on whether the new reporting obligations outlined in the Draft Guideline are the most efficient and effective way for the Commission to meet its obligations to monitor and report on the compliance and performance of the industry. The Commission has noted that there will be a comprehensive review of existing compliance and reporting obligations commencing in the second half of 2017.

Given the significant effort required by retailers to partner with the Commission in developing a number of new initiatives over the next 12 months, the pace at which these developments are required and that some of the developed material is interim only, Origin encourages the Commission to adopt a conservative approach that includes only the minimum change necessary to deliver on its objectives. Our more detailed submissions are set-out below.

Compliance Reporting Obligations

1. *Need for general review of the Marketing Code*

   The Draft Guideline re-introduces mandatory reporting of obligations contained in the Code of Conduct for Marketing Retail Energy in Victoria 2009 (**Marketing Code**). There are a number of obligations contained in the Marketing Code which significantly overlap with obligations contained in the Energy Retail Code Version 11 (**Retail Code**). For example, those relating to no contact lists, cooling-off rights and explicit informed consent. There are also a number of out-dated legislative references in the Marketing Code, including the *Trade Practices Act 1974* (Cth) and the *Fair Trading Act* 1999.

   Origin suggests that the Marketing Code needs to be revised before simply being brought back into the regulatory reporting framework, particularly for currency and for consistency with the Retail Code, removing areas of overlap to provide a clearer and more streamlined regulatory framework. On this issue, Origin notes statements made by the Commission in the final decision paper (July 2014) for the 'Harmonisation of the Energy Retail Code and Guidelines with the National Energy Consumer Framework' that the national framework contained significant protections for consumers, which precluded the need for maintaining the Marketing Code.

2. *Reporting of privacy breaches and misleading conduct*

Origin Energy Limited ABN 30 000 051 696 • Level 45, Australia Square, 264-278 George Street Sydney NSW 2000
GPO Box 5376, Sydney NSW 2001 • Telephone (02) 8345 5000 • Facsimile (02) 9252 9244 • www.originenergy.com.au

The Draft Guideline introduces Type 1 reporting of clause 3.2 of the Marketing Code (RB0100), which requires marketers and retailers to ensure that they comply with all applicable Commonwealth and State and Territory laws relating to:

a) misleading, deceptive or unconscionable conduct;

b) undue pressure, harassment or coercion; and

c) the quality, form and content of marketing information.

The Draft Guideline also introduces Type 1 reporting of clause 6 of the Marketing Code (RB0120), which includes a requirement for retailers to comply with the National Privacy Principles (now the Australian Privacy Principles) contained in the *Privacy Act 1988*.

Origin considers the obligation to comply with, and to report on compliance with, these laws is unnecessary duplication given the obligation already exists in other legislation (*i.e.* the *Australian Consumer Law* and *Privacy Act 1988*).

Origin also considers the requirement to report breaches of these obligations to the Commission to be inefficient and unnecessary as retailers are already responsible to, and engage with other regulators (such as the Australian Competition and Consumer Commission, Fair Trading bodies, and the Office of the Australian Information Commissioner) on these issues.

Further, many such breaches (which may also be very complex matters) are not determined until decided by a court. Origin is of the view that a self-reporting regime is more suited to clear cases where conduct is easily identified as breaching a particular obligation. Origin further questions whether these reporting requirements are beyond the remit of the Commission, given the underlying obligations clearly fall within the jurisdiction of other regulators.

In the event that some Marketing Code reporting requirements are retained, Origin submits that the obligation to report these breaches should be removed from the Draft Guideline. Further consideration could be given to these requirements as part of the general review scheduled for next year.

3. New "all other licence conditions" and current "all applicable laws" reportable breaches

The Draft Guideline introduces new Type 3 reporting of "all other conditions of licence" (RB1060). Origin considers that the requirement to report breaches of all retail licence obligations to the Commission to be inefficient and unnecessary, particularly given the quarterly frequency of the reporting schedule.

In addition, the existing reporting guideline currently includes Type 1 reporting of the licence condition that requires retailers to "comply with all applicable laws" (RB0050). Origin questions again whether this reporting requirement is beyond the remit of the Commission, given the underlying obligations likely fall within the jurisdiction of other regulators.

Origin submits that the Commission should remove RB1060 and RB0050 from the Draft Reporting Guideline, and use the general review scheduled for next year as an opportunity to review and restrict the scope of these reporting obligations.

4. Suggestions for further refinements

Origin provides the following comments with regard to proposed amendments contained in the Draft Guideline in relation to compliance reporting obligations:

a) RB0180 – the description should reflect the obligations contained in clause 46(3) and 46(4) of the Retail Code, therefore references to smart meters should be removed; and

b) RB0330 – the amendment specifies the obligation relates only to Standing Retail Contracts. While correct, this is inconsistent with other obligations that also apply only to standing-only obligations, such as RB0360 (Clause 26) and RB0840 (Clause 24(2)).

5. *Report submission timing and sign-off*

Currently, there is a two month submission allowance following the end of the reporting period for both half year compliance reports (Types 1 and 2 breaches), which are signed-off by Origin's CEO, Energy Markets, and for annual compliance reports (Types 1, 2 and 3 breaches), which are additionally endorsed by Origin's Chairman of the Board.

The Draft Guideline does not specify sign-off requirements for quarterly compliance reports. If Origin's CEO and/or Chairman are required to review and endorse the quarterly reports, then a submission allowance of one month after the end of the relevant reporting period ending is insufficient to complete both the data collation and internal approval processes.

Performance Reporting Obligations

6. *New indicators B021 and B061 (residential and business electricity customers with feed-in)*

Indicators B021 and B061 have been added to assist the Commission monitor compliance with new regulation (which Origin understands to be section 23C of the *Electricity Industry Act 2000*) which imposes an electricity licence obligation to not discriminate with electricity offers to renewable energy customers.

Origin submits that as feed-in customer number data of itself is unable to demonstrate compliance with this licence obligation, there is no purpose for the Commission to require this information.

In the alternative, if the Commission requires context in relation to the extent to which retailers supply renewable energy customers, this information is provided quarterly to the Department of State Development, Business and Innovation and it is Origin's view that the information provided is sufficient for the Commission to understand the state of the renewable energy market.

7. *New indicators B150, B160 and B170 (bills, reminder and disconnection notices issued)*

Origin understands that indicators B150, B160 and B170 have been added to assist the Commission to meet its objectives in relation to customers facing payment difficulty. Indicator B150 as drafted does not contain the customer categories referred to, and both indicators B160 and B170 require retailers to report the number of notices issued to small business customers.

As small business customers are not included within the payment difficulties framework, Origin submits that the information to be reported in relation to indicators B150, B160 and B170 should not be required to include small business customer data.

Further, Origin notes it can only report the number of notices issued, and not the number of notices that could have been issued. The distinction is that Origin applies a disconnection for non-payment threshold of $300, which is greater than the Retail Code threshold of $120.

8. *Inconsistency in relation to indicator D020 (instalment payment plans)*

In Table 3.2 of the Draft Decision accompanying the Draft Guideline, the Commission considers that the distinction between plans used for 'convenience' (or bill-smoothing) and those established to assist a customer experiencing payment difficulty to repay an arrears may no longer relevant. The Commission thereby proposes to delete the exclusion of 'convenience' plans from the definition of indicator D020.

The Commission further proposes in the Draft Decision that retailers only include plans with agreed duration and fixed instalments. However, this itself excludes ongoing 'convenience' (or bill-smoothing) arrangements as they have no arrears component, no fixed duration, and the instalment amounts are regularly assessed and adjusted if necessary to reflect any changes in customer usage.

The proposed deletion of the exclusion of 'convenience' (or bill-smoothing) arrangements from the definition of indicator D020 also leaves in place the existing definition of an instalment payment plan, which is to allow a customer to repay an arrears according to an agreed schedule. This too excludes ongoing 'convenience' (or bill-smoothing) arrangements without an arrears component.

Further, if indicator D020 was redefined to include all payment arrangements reflecting an alternative payment schedule to a customer's bills, then the implications for indicators D080 (disconnections previously on an instalment plan) and D110 (reconnections previously on an instalment plan) need to be considered, as these indicators will no longer reflect the disconnection and reconnection of customers who are experiencing payment difficulty (or paying an arrears through an instalment plan).

Origin submits that the distinction between instalment plans for the purposes of repaying an arrears and 'convenience' (or bill-smoothing) arrangements is necessary to retain, and that it will continue also to be a valuable distinction under the proposed payment difficulties framework.

9. *Retailer management and endorsement of performance indicator reports*

Origin notes the Draft Guideline does not include a sign-off requirement for performance indicator reports. Currently Origin's 6 monthly and annual performance indicator reports are signed-off by our General Manager, Retail Customer Operations. It is Origin's expectation that the more frequent quarterly performance indicator reports will be subject to the same sign-off process.

Origin would be happy to discuss any matters raised within this response with the Commission. Please contact Ben Hercus (Manager, Retail Compliance) in the first instance .

Yours sincerely,

Jonathon Briskin
General Manager, Retail