28 June 2018

Kate Wild
Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235
By electronic lodgement

Dear Ms Wild,

Re: Strengthening protections for customers in hardship—Consultation Paper

Origin Energy (Origin) welcomes this opportunity to respond to the Australian Energy Market Commission's (the Commission) Consultation Paper on the Strengthening protections for customers in hardship Rule Change.

Origin supports the Australian Energy Regulator's (AER) desire to improve the content and enforcement of Hardship policies across the retail industry. The enforceability of Hardship policies is an important issue and Origin agrees that policies can be improved across the industry. However, Origin believes that a preferable approach to that proposed is to focus on ensuring the AER has clarity around its existing flexible powers to revise hardship policies in the National Energy Retail Law (NERL).

The AER has broad powers under the schedule of the NERL to approve and revise hardship policies in sections 43(3) and 45, subject to its enforcement powers under section 204. These enforcement powers are particularly broad, with section 204(2) stating that "The AER has the power to do all things necessary or convenient to be done for or in connection with the performance and exercise of its functions and powers." It appears to Origin that the AER may already have the capacity to issue a Guideline that sets out what is necessary for the approval of Hardship policies; attaching these statements to the Hardship obligations set out in section 44 of the NERL would also appear to be consistent with existing AER powers. We presume that the AER, via its informal Review of Hardship policies in 2017, has the basis for revising various Hardship policies under section 204(1)(a) to (c) and section 43(3).

In lieu of a draft Guideline from the AER it is difficult to assess the reasonableness of their proposed standard statements because we are not sure whether they will impact on operational matters. The AER provides some examples in its draft rule proposal, which reflect section 44 of the NERL. Origin considers that these are reasonable examples of standard statements that reflect the NERL. If the AER were to confine themselves to section 44 in its standard statements then it would be reasonable to incorporate them into a Guideline and make retailers demonstrate that they comply with those statements in their policy.

The concern that Origin has is that these standard statements can easily become policy debates that have an impact on operational issues. Origin acknowledges that the AER has indicated that it does not intend to determine policy or operational matters like the desirable length of payment plans, when a retailer should contact a customer and the number of times, the form and manner of notices sent to customers, etc. However, the Victorian Payment Difficulties Framework highlights the challenges of drawing a neat distinction between high level statements and operational matters. The more high-level the AER statements are then, invariably, the less impact they will have on retailer practices and in addressing the three above problems. The temptation will then be to provide additional information to those obligations already contained in section 44; this will then see the AER veer into both operational and policy issues, which it indicates it does not want to do. It is important that the AEMC frames any

rule change in a manner that supports the AER's ability to enforce policies but does not lead to the AER making policy in a Hardship Guideline.

It is therefore Origin's hope that the AER produces some indicative statements prior to the Commission's next consultation phase. This will inform stakeholder discussion and debate about the necessity and utility of a proposed rule change. It is also likely that this will further clarify the issues at hand in this rule change and the extent to which the AER already has the capacity to implement policies that meet these standards via the NERL.

The Commission's recent 2018 Retail Competition Review recommended that it conduct a review into how retailers support customers in payment difficulty and how these operate within the regulatory framework. This will be an important review because it will benchmark retailer practices and provide some insight into how they differ across the industry. Origin's preference would be for this review to occur prior to any rule change so that any insights would be reflected in the rule change. In particular, any Guideline the AER develops should reflect the findings and recommendations of this review. This is preferable to the Guideline being amended shortly after it is developed.

Our answers to the Commission's questions are below.

Should you have any questions or wish to discuss this information further, please contact Timothy Wilson on (03) 8665 7155.

Yours sincerely

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Question 1: Rationale for rule change - adequacy of the current approach to hardship
(a) To what extent do you consider that the current approach to the application of hardship policies provides adequate protections to consumers in financial difficulty?
(b) Are general obligations that are more difficult to enforce leading to inadequate consumer protections?

According to the rule proposal, the AER has observed a number of factors across the retail energy market, including:

- *increasing levels of energy debt on entry into hardship programs which may indicate that retailers are not proactively identifying customers who may be facing financial difficulties*
- *high levels of debt for customers who are not receiving hardship assistance*
- *low levels of customers receiving hardship assistance*
- *fewer customers completing hardship programs by paying off arrears*
- *increased overall electricity disconnections.*[1]

All of these factors are undesirable social and economic outcomes, particularly at a time when retail prices have risen for many customers. Ineffective Hardship policies will magnify these problems. For instance, inadequate and inefficient identification of customers experiencing payment difficulty will result a higher arrears that is more difficult for customers to repay. Improved enforcement of retailer identification processes[2] can help to address this problem.

However, Origin is concerned that using these socioeconomic factors to support the rule change may lead to the AER prescribing obligations in its proposed Hardship Guideline to directly address these matters. As the experience of the Victorian Hardship Review and subsequent Payment Difficulties Framework demonstrated, it is difficult to design effective Hardship problems to significantly resolve the above issues. Hardship policies can provide customers with sufficient space and attention to move through payment difficulties—but it cannot address the underlying social and economic causes that precede a customer entering payment difficulty.

It is therefore important that the rationale for this rule change be confined to where retailer performance can be improved. The AER has identified three areas:

> *1. Inconsistent application of the minimum requirements in a retailer's hardship policy.*
> *2. Customers unclear about their rights and entitlements when experiencing payment difficulties.*
> *3. Difficulties in assessing a retailer's compliance with the hardship obligations.*[3]

These are appropriate issues that the AER and retailers should be concerned with addressing vis a rule change. To the extent that the current process of the AER approving policies does not enable these issues to be addressed then a rule change is necessary and supported by Origin. As we note in our letter above, Origin is of the view that the AER already has the powers to require revisions to Hardship policies that will address these issues via sections 43 to 45, and 204, of the NERL. However, if the Commission disagrees with our view, then Origin believes that any rule change should be directed to ensuring that the process of amending and enforcing retailer policies is sufficiently flexible once a Hardship policy has been approved. This flexibility is desirable because it enables the AER to amend policies without investigating retailers or undergoing enforcement action.[4] A rule change could assist

[1] AEMC, *Consultation Paper: Strengthening protections in the National Energy Retail Rules for customers in financial hardship*, 24 May 2018, p. 5.
[2] See section 44(a) of the NERL.
[3] AER, *Request for Rule Change: Strengthening protections in the National Energy Retail Rules for customers in financial hardship,,*21 March 2018, p. 10.
[4] Ibid, p. 17.

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the AER with how it may choose to exercise its existing powers to approve, and seek amendments to, retailer Hardship policies.

Question 2: Hardship indicators
(a) Do the current indicators appropriately reflect the success or failure of hardship policies in protecting consumers who are facing financial difficulty? Please explain your perspective.
(b) Should the hardship program indicators reside in the binding Hardship Guidelines as proposed or remain as separate to the Guidelines as a stand-alone requirement in the NERR? Please explain your perspective.

The current indicators that retailers are reporting on are sufficient for determining whether customers are accessing hardship. For instance, the AER are capturing debt upon entry and the reason for customers exiting a hardship program. This provides the AER with a picture of customer circumstances as they enter and exit retailer programs.

Origin believes that the AER should maintain the hardship indicators in the current Compliance Procedures and Guidelines. There does not appear to be any compelling reason to extract Hardship indicators from the general process of determining reporting obligations. It is much cleaner to maintain the current position of including all the relevant reporting indicators in the Compliance Procedures and Guidelines. If the AER wishes to update an aspect of this Guideline then it can do so in line with its usual consultation process. As we discuss further in response to question seven, it is unnecessary for this proposed rule to amend rule 75 of the NERR.

We note that the AER has indicated in its rule proposal that it will undertake a research project to determine relevant indicators. It may be more appropriate to undertake this research prior to determining whether new indicators are necessary rather than altering the rules.

Question 3: Proposed approach
(a) Are you of the view that Hardship Guidelines that include standard statements adequately protect the long-term interest of consumers in financial difficulty, while providing retailers with flexibility in how they apply hardship provisions?
(b) Is there another approach that would better meet the requirements under the NERL in relation to customers in hardship, and allow retailers to meet their obligations more efficiently?

Question 4: Enforceability of Hardship Guidelines
The AER proposed that all the Hardship Guidelines be enforceable. Do you agree that all aspects of the guidelines should be enforceable? If not, what aspects of the guidelines should or should not be enforceable and why?

The AER provides some examples of standard statements in its rule proposal. These statements reflect existing obligations in section 44 of the NERL. If the AER were to confine themselves to effectively producing standard statements that reflect section 44 of the NERL then Origin believes it would be reasonable to incorporate them into a Guideline, and to make retailers demonstrate that they comply with those statements in their policy. As we note above, we believe that the AER may already have this power through both sections 43 to 45 and 204 of the NERL.

However, the AER's rule proposal muddies this issue. Firstly, as we note above, the AER has brought a range of socioeconomic issues into the debate. Origin does not believe that these can be entirely addressed or resolved via Hardship policies, let alone the rule proposal the AER has submitted to the AER. Secondly, the concern that Origin has is that both the combination of the socioeconomic issues raised by the AER and the development of standard statements could easily become policy debates that reach into retailer operational decisions. The desirable length of payment plans, when a retailer should contact a customer and the number of times, the form and manner of notices sent to customers

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are all examples of standards the AER could set under the proposed Guideline given the breadth of the proposed rule. These are policy issues rather than standard statements that assist with the enforcement of retailer Hardship Policies.

Despite the AER's explicit intention to reflect section 44 of the law, it is Origin's experience that standard statements could potentially have unintended consequences for retailer practices. This is primarily because Hardship practices operate around differing collection processes within each retailer. An example in Victoria during the payment difficulties framework was the decision by the Essential Services Commission of Victoria (ESCV) to create a new definition of 'arrears' which would have led to customers accumulating debt for an extended period of time prior to obtaining assistance or being disconnected.[5] It would also have led to a significant change in retailer collection practices and an accumulation of bad debt. Following feedback from stakeholders, it was amended by the ESCV, and arrears was left undefined. As this example illustrates, even determining a common minimum standard of when a customer is in arrears can significantly disrupt existing retailer practices, undermine the ability to respond flexibly, and lead to poor customer outcomes. Origin would be concerned if the AER was attempted to define concepts such as 'arrears' or 'hardship' as a consequence of this rule change.

Accordingly, Origin believes the AER should be restricted to reflecting existing standards in the law and then requiring retailers to set out in their policies how those statements will be met in practice. This will avoid a situation where, for example, the AER establishes a standard statement that requires assistance to all customers that miss two bills (as occurred in the above example of 'arrears').

The AER's rule proposal cites its enforcement action against Origin to illustrate the importance of enforceable commitments in Hardship policies. As the AER has noted in its rule proposal, "Origin's hardship policy did contain a specific commitment to customers experiencing payment difficulties; however, we have observed that other policies are more subjective and principles-based."[6] The approach of the Commission, and the AER, should be focused on ensuring the AER has flexible powers to revise hardship policies to ensure their content is consistent with the NERL and meeting their stated obligations.

Under this form of regulation, it would not be necessary for the standards within the Guidelines to be enforceable *per se*; rather, given that the content of Hardship policies is already enforceable under section 43(3)(b)(iv), the Guidelines should indicate to what kind of statements are required in their Hardship policies in order for retailers to obtain AER approval. Similarly, the Guideline could provide information about the processes the AER will establish for reviewing and (if necessary) revising these policies. Origin believes that this approach would permit the AER to require some retailers to be more specific about how they will meet the requirements of the Law rather than the AER developing those standards.

Question 5: Implementation
(a) What transitional arrangements should be put in place to require that retailers amend their current policies to comply with the Hardship Guidelines, if this rule were made?
(b) What aspects of the rule, if made, should be a civil penalty provision?

The rule should be focused on enabling the AER to request for the amendment or revision of policies flexibly, and to require retailers to demonstrate they are meeting their standards.

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[5] See definition of arrears in Clause 3, *Payment Difficulty Framework: draft Energy Retail Code version 12*, p. 11, August 2017. https://www.esc.vic.gov.au/sites/default/files/documents/payment-difficulty-framework-new-draft-decision-draft-energy-retail-code-version-12-20170515.pdf
For further discussion of this issue see Origin Energy, Submission to *New Draft Decision—Safety Net for Victorian Consumers Facing Payment Difficulties*, 16 June 2017, pp. 4-6. https://www.esc.vic.gov.au/sites/default/files/submissions/payment-difficulties-framework-new-draft-decision-submission-origin-energy-20170616.pdf

[6] AER, *Request for rule change*, p. 9.

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Origin does not believe that a civil penalty is proportionate for breaches of this provision. We note that Infringement Notices can already be issued for individual breaches, as happened to Origin recently. A breach of Hardship policy could involve not offering a payment plan at an early stage when a customer needed support. As important as this is, these problems can sometimes be rectified by retailers during their dealing with customers without disconnection occurring. Infringement Notices are therefore more proportionate in these circumstances.

Question 6: Costs and benefits
(a) Please comment on the benefits and costs that have been identified, in terms of their adequacy in assessing the rule change proposal and any quantification of those factors.
(b) Will improving hardship policies through the Hardship Guidelines result in a cost saving to consumers as a result in a reduction in bad debt? Please explain your perspective.

At this stage it is difficult to reasonably assess the costs or benefits of this rule change because most of the proposed changes will occur via the Guideline. To be meaningful any quantification should be based on specific standards that the AER imposes on retailers. Depending on how they are drafted, the standard statements could impose a high amount of cost if they require fundamental changes to retailer systems and processes, or significantly impact on collection practices. Further, if the AER's standard statements contradicted retailer practices in Victoria then the divergence between two regulatory regimes could result in new costs and inefficiencies.

It is difficult to quantify whether any changes to Hardship will reduce bad debt. Generally, Origin would not expect regulatory changes that provide requirements on retailers to take certain steps at prescribed times, or that limit retailer discretion, to improve bad debt. As the Victorian Payment Difficulties processes demonstrated, increased regulatory requirements will generally lift debt levels by requiring retailers to hold bad and doubtful debt for longer. At best we would expect there to be a neutral impact on debt, if the AER limited its scope to enforcing current Hardship requirements instead of creating new obligations based on their interpretation of those requirements.

Question 7: Form of rule
Are there amendments that could be made to the proposed rule to better achieve the intent of the rule change request?

Given our comments in relation to question two, Origin believes that there is no need to include the Hardship indicators in a new rule. These can be left as they are in rule 75, with a new rule (75A) created.

Origin is concerned by the inclusion of parts of subsections 4 and 5 of the proposed rule. Specifically, we are concerned with the following sections:

> *(4) The customer hardship policy guideline may specify:*
> *…*
> > *(b) any matter that the AER considers necessary for inclusion in the customer hardship policy guidelines, having regard to the purpose of the customer hardship policies under section 43(1) of the Law, including:*
> > *…*
> > > *(iii) the matters that the AER considers must be contained in customer hardship policies submitted under section 43(2) of the Law*
>
> *(5) A retailer's customer hardship policy submitted to the AER under section 43(2) must contain any matter specified in the customer hardship policy guidelines as a matter that must be contained in a customer hardship policy.*

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Both subsections 4(b) and (5) provide the AER with very broad discretion through the use of the phrase 'any matter'; this is particularly concerning for Origin given the potential for the AER to prescribe certain conduct under the law (notwithstanding their stated intention not to do so). For instance, a standard in the Guideline could be introduced in response to section 44(c) requiring retailers to offer a payment plan that extends out to five years.[7] Whilst the AER has not canvassed this particular example, it would not be inconsistent with both the NERL and NERR.

Similarly, subsection 4(b)(iii) of the proposed rule provides the AER with very broad powers to directly include matters that it considers should be in a Hardship policy. In Origin's view, this section enables the AER to require specific matters be included in Hardship policies—again, it could potentially dictate specific requirements around the length of a payment plan when it is assessing a retailer policy under section 43(2) of the Law. For the reasons we have outlined above, we believe the onus should be on retailers to demonstrate they are complying with the law in their policies, including by being more specific about their activities. We do not feel the AER should be involved in determining policy questions by establishing standards that must be implemented.

We acknowledge that the AER has indicated that it merely wants to make standard statements based around section 44 of the Law.[8] It is therefore not necessary for the AER to have the broad discretions contained in these sections of the proposed rule.

Question 8: Other issues
Please identify broader issues with regards to hardship and affordability that may not be addressed by this rule change, if made.

Despite the recent debates concerning energy affordability, state and federal governments have not taken necessary steps to review concessions and consider whether they are adequate or fit-for purpose. The last time a review was conducted nationally was via COAG in 2007.

Origin supports the development of a national concessions framework to help determine a consistent and transparent approach to customer assistance and ensure that customers most in need of assistance are able to receive it. Origin suggests the ACCC could recommend that the Commonwealth Government take the lead in advocating for a review of energy concessions and whether they are meeting the needs of vulnerable customers.

Such a framework could investigate:

- The optimal structure of rebates – examine the appropriateness of various design options including a flat rebate (Queensland model); or a percentage based approach (similar to that in Victoria).
- Jurisdictions moving towards consistent, percentage-based concessions.
- How best to educate and engage the community to increase awareness of electricity rebate schemes and assistances measures. The Government could take a greater role in developing communication material and making these more accessible to financial counsellors and relevant consumer groups to assist consumers complete the required application process.

There is also a broader and more contentious issue of the role in private retailers being social policy providers. Origin does not question the essential nature of energy supply and we accept that this leads to certain community social obligations being placed on retailers. However, this is often used to reflexively justify any manner of additional obligation on behalf of retailers, rather than locating a specific reason for why retailers are best placed to carry out those obligations.

[7] This example does not refer Origin's maximum payment plan length is currently two years for residential customers. The Victorian Payment Difficulty Framework has introduced this length in Victoria –hence the use of more than two years.
[8] AER, *Rule Proposal*, p. 14.

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