



18 October 2018

Ms. Kate Wild
Senior Advisor
Australian Energy Market Commission
PO Box A2449
Sydney South NSW

Lodged electronically: www.aemc.gov.au

Dear Ms. Wild,

RE: National Energy Retail Amendment (Strengthening Protections for customers in hardship) Rule 2018

Origin welcomes the opportunity to provide a response to the Australian Energy Market Commission's (AEMC) draft rule determination on Strengthening protections for customers in hardship (RRC0017).

Origin supports the intent of the AEMC's draft rule to provide more consistent information and assistance to customers experiencing hardship. We agree that standard statements, and re-approval of hardship policies, will ensure that retailers can be made accountable for non-compliance with their stated hardship policy objectives. However, we consider that the policy objectives could be best achieved by the AER relying on its existing powers to request retailer amendments to hardship policies rather than with a change to the rules.

Origin's responses to specific issues identified in the draft rule determination are set out below.

How the hardship provisions currently work

At present, retailers are required under Division 6 of the National Energy Retail Law (the NERL) to have a hardship policy approved by the AER; this is meant to provide both the AER and customers with information on how a retailer identifies residential customers experiencing payment difficulties and how assistance to those customers is provided. The current governance structure is designed to provide retailers with the agency to develop and document their respective assistance mechanisms, which will align with their system capabilities (among other things) and their experience of what is practically useful to their customer base. The AER's role, once satisfied that the intent of the hardship policy provision is met in sections 43(1) and 44 of the NERL, is to approve and monitor compliance to the retailers' hardship policy.

Origin is concerned that the AEMC's draft rule change:

- alters the intended governance structure surrounding hardship policies by giving the AER greater reach than the NERL currently allows; and
- permits the AER to draft standard statements that extend requirements currently outlined in the NERL (and supported in the National Energy Retail Rules (NERR)).

Concerns with drafting

The draft rule will require all retailers to resubmit a customer hardship policy that complies with the Hardship Guidelines to be established by the AER. The draft rule requires that the Hardship Guidelines will include standardised statements to give effect to the minimum requirements under s44 of the NERL and provide guidance to customers on their rights, and retailer obligations, regarding hardship provisions.

We are not opposed to measures which provide transparency to consumers about assistance available to them, as we believe that transparency supports consumer confidence in the energy market. Rather, Origin is concerned with the AEMC's drafting of new rule 75A(2)(b)(i), insofar as the AER's standardised statements 'give effect' to the minimum requirements as set out in the NERL.

Origin does not believe that new rule 75A(2)(b)(i) is reflective of the wording of the governance embedded in the NERL. Currently, retailers have the responsibility to 'give effect' to the consumer protections outlined in section 44 of the NERL through their hardship programs. The role of the AER is to monitor the efficacy of the policies and their associated programs, under sections 43(1) and 44; it is retailers, rather than the AER, that 'give effect' to the minimum requirements via their hardship policies and their implementation.

The AER already has the power to require retailers to change their policies if the AER is no longer satisfied that the policy meets the intended purpose. Origin understands that the AER considers the revision of hardship policies will be more difficult without the rule change. However, we retain the view that the rule change should maintain a clear delineation between the role of the retailer to develop policies that meet their regulatory and legal obligations and for the regulator to approve and assess these policies. We are concerned that this delineation has been blurred.

Mechanism of the Standard Statements

Origin urges the AEMC to ensure the intent of the standard statements is made clear; namely that they are to reflect the customer entitlements under the NERL.

The NERL requires retailers to describe the way they provide these entitlements to customers in their hardship policies. The role of the AER is to ensure that they are satisfied that retailers' processes provide meaningful assistance and meet this obligation. Origin does not believe this can be achieved through inclusion of some of the sample standard statements provided, which go further than a description of the existing customer entitlements under section 44.

To provide an example, the draft standard statements numbered 1 and 2 exceed the existing obligations of retailers – particularly the points that outline the various referral criteria for a customer in hardship. Origin does not consider that this is within the intended operation of the Hardship Guideline and is concerned that including such statements as a minimum compliance standard will result in considerable over-capture of customers who are not actually in hardship. It is important that retailers can build on any standard statement to accurately describe what they offer, both to ensure the assistance is targeted more accurately and ensure the AER are able to appropriately monitor for compliance.

Defining hardship

Origin supports the AEMC draft decision not to specifically define hardship in the AER Hardship Guidelines. Origin maintains that the role of retailers is to give effect to their hardship policies; this is not the intended role of the AER.

Origin is concerned that the mechanism of standard statements will make retailers unclear as to how hardship would be identified, as they no longer define what hardship means. This contradicts the AEMC's draft decision not to allow the AER to define hardship¹. To illustrate this point, a standard statement drafted to require immediate referral to the retailer's hardship program based on a list of singular indicators

¹ AEMC, Strengthening protections for customers in hardship, Draft rule determination, section 3.4.3.

effectively defines hardship for retailers. Origin does not object to the AER providing high-level guidance on what an indicator of hardship may be as part of its approval of a hardship policy, but we do not support the inclusion of such indicators in the form of a binding statement.

Enforceability and civil penalty provisions

Origin is concerned that the timings outlined in the AEMC's draft decision will not deliver the improvements desired by the rule change, as they are too short for both meaningful development by retailers and subsequent thorough review by the AER. As an outcome of Victoria's *Payment Difficulties Framework* implementation, retailers are required to resubmit their hardship policies to confirm compliance with the new regulatory framework. The Essential Services Commission provided a window longer than that described in the AEMC's draft rule, and due to the iterative nature of such a review process, retailers have struggled to meet this timeframe. This recent experience highlights that the two months described under draft rules Part 10 (3)(2)(a) and (b) is insufficient.

In the interests of achieving meaningful change from this consultation, Origin would urge the AEMC to consult with the AER on what a realistic timeframe to complete a holistic review of hardship policies for upward of twenty retailers would be, before coming to a final ruling on the expected timings. Origin is also concerned by the application of a civil penalty for breaches of this provision given that the timings for review of retailers' hardship policies and subsequent implementation are too short to achieve the meaningful change desired by the rule proposal.

Closing

Origin supports the intent of the AEMC draft rule to provide more consistent information and assistance to customers experiencing hardship. We agree that standard statements, and re-approval of hardship policies, will ensure that retailers can be made accountable for non-compliance with their stated hardship policy objectives. However, we ask the AEMC to consider the issues raised in this submission concerning the role of the retailers designing hardship assistance and the content of standard statements to craft a more effective final rule.

Should you have any questions or wish to discuss further, please contact Courtney Markham on 03 9821 8086 in the first instance.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'K. Robertson'.

Keith Robertson
Manager, Wholesale and Retail Regulatory Policy
(02) 9503 5674 keith.robertson@originenergy.com.au