



22 April 2011

Khayen Prentice
Regulatory Analyst
Essential Services Commission
Level 2, 35 Spring Street
MELBOURNE VIC 3000

By email: khayen.prentice@esc.vic.gov.au

Dear Ms Prentice

RE: ENERGY RETAIL CODE AMENDMENTS CONSULTATION PAPER

Origin welcomes the opportunity to provide input to the Commission's *Energy Retail Code Amendments Consultation Paper*. We are pleased that the Commission is addressing these matters, and particularly so soon after the recent changes to the Code in light of smart meters.

In general, we support the Commission's preliminary views as expressed in the consultation paper, as discussed below.

Mutual responsibility between retailers and customers

Origin strongly supports the Commission's preliminary view that the Code could be amended so that if a retailer reasonably communicates – or attempts to communicate – with a customer about further instalment plans in accordance with its regulatory obligations, it will be deemed to have met its obligations if the customer subsequently does not engage. We recognise that this approach does not allow the retailer to set an unreasonable payment plan in the first instance, and will always work to ensure that payment plans take into account a customer's capacity to pay as far as is reasonable.

The Commission has asked what could be reasonably expected of retailers in communicating to customers after a failed instalment plan, and how the regulation should be drafted to provide for minimum, but flexible, communications while allowing for industry best practice. The Commission has also asked how retailers can communicate and encourage further contact from customers who may be embarrassed because of their financial circumstances, and if regulation is appropriate in these circumstances.

Overall, we expect that the communication with a customer who the retailer knows to be experiencing payment difficulties can be expected to take the form of an offer of a further instalment plan, as is the current process. We have attached a copy of the current letter that Origin sends to customers in this situation and seek the Commission's views on our approach. Before going too far down the path of seeking to prescribe the form and content of such a communication it is with asking whether a change needs to be made at all.

We take this view because the Commission is not in effect taking away a valid regulatory provision, certainly not one that needs some form of replacement. While there may be a perception from some quarters that changing the Code to show "reasonable



communication" reduces customer protection, it must be recognised that the reason for the change is to avoid the persistent and unintended consequences of the current Code drafting which has essentially disallowed retailers from disconnecting customers who do not respond to overtures or pay any amount toward their bills. While this may be a preferred outcome for some parties it was never intended through policy or regulation to this point and reflects a cost that is borne by all customers as the cost of bad debt, including those who experience financial hardship and do engage with their retailer. The alternative to this is when the customer does eventually make contact and must face up to a bill that has been allowed to spiral out of control.

Origin does not discount the very real stress that financial hardship may have on a customer, and we have worked hard over the years to understand how we can meet customers' needs and provide appropriate assistance. However, we cannot support a policy view that retailers must be more responsible for customers' energy use and payment for this use than customers themselves, certainly not to the point where we are expected to keep people on supply even when we receive no response to multiple letters and phone calls.

We do not believe that there is a requirement for further regulation of retailer behaviour in this area beyond that which has been proposed by the Commission. The reality is that retailers must still go through a number of processes before disconnecting customers, and retailers also have obligations with regard to customers experiencing financial hardship. Several retailers, including Origin, also choose to provide support that goes well beyond what is required under the Retail Code. It should be remembered that disconnection is the last resort: it is certainly not our preferred means of dealing with our customers.

The Commission has also asked if there should be an obligation placed on customers to respond to the retailers' communications, suggesting that this may be symbolic regulation. We agree that while the principle is valid and that customers have responsibilities, expecting any real customer response to such an obligation is unrealistic. However, there may be a benefit to drafting such an obligation, which is to provide guidance to the Ombudsman and others on regulatory expectations about the appropriate division of responsibility between retailers and customers.

Obligations to apply to small customers: flexible payment plans

We note the Commission's preliminary view that there may be a case to exclude retailers from having to comply with clauses 11.2(3) and 13.1 of the Code for those market contract customers who are on instalment plan arrangements under clause 12.1(a) of the Code (flexible payment plans that pay in advance). The Commission suggests that these customers need not be offered a second flexible payment plan and potentially could be disconnected for failing to make a payment under the first such plan.

Origin agrees that flexible payment plans required to be offered under clause 12.1(a) of the Code should not be viewed as instalment plans for the purposes of other regulation, and, as such, the requirement to offer a second plan should not apply specifically as a result of the instalment plan under 12.1(a).

The risks of the Commission's proposed change would appear to be minimal. As the Commission points out, these customers will be covered by other regulation which applies if they cannot pay their bills, including the requirement for retailers to take some action if payment difficulties are detected [clauses 11.2(a) and (b), 12.2 and 13.2)]. In these



circumstances, the instalment plan arrangement under clause 12.1(a) would no longer apply: the customer would be offered a plan under clause 12.1(b).

Obligation to reconnect customers within a certain timeframe

The Commission acknowledges that the retailer is not in a position to directly connect, disconnect or reconnect a customer: this is the distributor's role and function. Therefore, reference in the Code to the retailer performing these functions is to be read as the right of the retailer to procure the distributor to carry out the necessary functions (clause 35.1). However, the Code under clause 15.2(b) places the absolute obligation on the retailer to reconnect a customer within certain timeframes, and does not accept a retailer's best endeavours.

As Origin has stated previously to the Commission, this is an inconsistent approach and does not appear to be based on any policy or regulatory need. The provision seems to be a remnant of the original drafting of the Code prior to market start (2000-2001) where there were perhaps assumptions made about the need to ensure industry attentiveness to customer needs (and retailers' power under the Use of System Agreement). The Commission itself has also admitted that the purpose of this clause is not apparent.

Given this, it would seem that the appropriate action is for clause 15.2 (b) to be deleted from the Code. We strongly support the Commission's proposal to take this action.

If this does not occur, the recent Code amendment to clause 15.2(a) that requires remote re-energisation within two hours of the customer's request is particularly problematic. As Origin has submitted previously, it was never envisaged by the Commission or stakeholders that the two hour requirement to re-energise would apply to retailers: the discussions were only ever related to distributors. Origin did not provide a response on this issue in consultation last year because it was clearly stated to only apply to distributors. It was therefore a surprise to see the provision also in the Retail Code. While it states that a retailer must 'use best endeavours' (which was perhaps seen as reasonably benign by the Commission at the time), we note that the presence of the current clause 15.2(b) completely undermines this intent and creates a burden on retailers that: (a) retailers were not consulted on, and (b) reflects significant risk to retailers given we have no control on the outcome, which will be driven by distributors. To avoid all doubt, while the assumption that retailers can manage the risk through commercial arrangements may seem reasonable, it is not supported by fact.

I would be happy to discuss any aspect of this submission further with the Commission, and at your convenience. If you have any queries about this submission please contact me on the number below.

Yours sincerely

[signed]

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Attachment: Re-establishment letter, Victoria

Dear Customer,

I refer to our recent discussion and the subsequent letter and payment plan schedule regarding our Power On programme. At that time a payment plan was agreed to in relation to your account.

Our records show that the agreed payments have not been maintained.

We understand that there are times when unexpected events or expenses occur, so we encourage you to contact us within seven days of this letter to discuss how we can assist you further. In the meantime, I have re-established your agreed payment plan under the Power On programme in line with our previous discussion.

You may also be eligible for a Utility Relief Grant. These grants are provided by the Department of Human Services (DHS) and provide financial assistance when you are unable to pay your utility bills due to a temporary financial crisis. Please contact either the DHS on 1800 658 521 or our team if you are interested in applying for a grant. Additionally, you may be eligible for the DHS Annual Energy Concession, which provides a discount of 17.5% off your energy bills. Again please contact either the DHS on 1800 658 521 or our team for further information.

If you require assistance with your household finances, a financial counselling service can provide this support. For further information please contact the Consumer Affairs Victoria helpline on 1300 55 81 81 or contact our team on the number below.

The Community Liaison Team can be contacted on 13 24 61 Extension 8320.

Yours Sincerely,

Community Liaison Team
Origin Energy - 132 461 ext 8320