



6 January 2011

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**By e-mail**

## **DRAFT RETAILER AUTHORISATION GUIDELINE**

Origin Energy Retail Limited (Origin) welcomes this opportunity to respond to the Australian Energy Regulator's (the AER's) draft Retailer Authorisation Guideline consultation paper issued in November 2010.

Origin has previously responded to the March 2010 draft Retailer Authorisation Guideline.

Specific comment on the consultation paper is set out below.

### **Part 1 - Application process**

#### Information requirement

Origin notes that if an applicant can demonstrate that specific information requirements are not relevant to its proposed energy retail business, the AER may waive the requirement for such information. Origin supports flexibility in the application process, but any waiver of information granted for an application should be conditional on the AER being satisfied that it has sufficient information to protect the integrity of the retail market. Any exemption from information requirements should only be granted in clearly defined circumstances to avoid routine reliance by applicants on information exemptions.

#### Applicant briefings

Origin continues to support the provision of applicant briefings by the AER for those seeking authorisation.

#### Notification of applications

Origin supports the use of the stakeholder notification update process as a means of informing interested parties that an application has been made. Origin would further recommend that notification be published in a national newspaper (similar to current practice at the jurisdictional level for authorisations). This would ensure that a wider field of potentially interested stakeholders will be informed of the application (outside of the e-mail notification provided by the AER and on its website).



## Part 2 - Entry criteria

### *Organisational and technical capacity criterion*

#### Compliance obligations

In our submission of April 2010 Origin indicated that while a compliance strategy and plan provided at a high level of detail may be appropriate for a start-up energy retail business, the fundamental obligation to comply with market regulation remained paramount.

The changes made by the AER to the guideline published in November, namely - making an authorisation conditional on compliance systems described in the compliance strategy and plan being in place and having the risk management and compliance strategies audited externally - largely address the concerns Origin raised earlier.

Origin agrees with the AER that it is not reasonable for an applicant to have implemented and have operating all elements of compliance systems prior to an application being made.

#### Evidence of arrangements with market participants

We support amendments to the guideline requiring applicants to provide evidence of arrangements with market participants to the AER, including making an authorisation conditional on the conclusion of outstanding agreements in subject to continued negotiation at the time an application is made.

Origin notes that arrangements need only be demonstrated for those jurisdictions in which the applicant intends to be an active retailer. An applicant not intending to retail energy in Queensland for example, would not require arrangements with distribution service providers in that state.

#### Retailer-customer arrangements

The AER makes reference to section 44(a) of the Retail Law, which requires retailers to put in place a process to identify customers in hardship. Origin does not dispute the existence of this requirement, but we would repeat the view put in our submission of April 2010 that self-identification is the only practical method of determining a customer facing hardship.

While the AER has made it clear it will maintain this information requirement, it is not apparent what a satisfactory plan to identify hardship customers submitted by an applicant would look like. Origin would welcome further discussion with the AER on this point.

Given that there are requirements in place for an applicant to provide a compliance strategy and plan, it is not clear to Origin why the inclusion of an explicit request for information on how it intends to manage the retailer-customer relationship will improve the authorisation process. We believe that this requirement could significantly add to the cost of the authorisation process, without demonstrable benefits accompanying it.



### Jurisdictional or technical regulation

Origin understands that the AER is restricted in its assessment of authorisation applications to legislation that it administers. We support the AER's proposal to consult with jurisdictional and technical regulators in relation to an assessment of an application. This should perhaps be made more explicit in the November 2010 draft guideline, for example:

“We may ask questions and seek documents from third parties (such as jurisdictional and technical regulators as required) relating to the application.”<sup>1</sup>

### ***Financial resources criterion***

#### Assessment of financial capacity

Origin supports amendments to the draft guideline emphasising the relationship between the applicant's business plan and its financial capacity to match this plan.

We also agree with the granting of an authorisation being made conditional on having credit support arrangements in place where required.

#### Ongoing financial review

Origin agrees with the AER that section 150 of the Retail Law provides the AER with sufficient oversight to engage in the ongoing assessment of a retailer's financial position.

### ***Suitability criterion***

#### Review of compliance history

Origin believes that the current approach (set out on page 17 of the draft guideline) provides sufficient scope for the AER to undertake a review of an applicant's compliance history.

#### Criminal history cheques

In our submission of April 2010, Origin expressed a number of concerns with the approach to disclosure of information related to criminal convictions. We support the AER's changes to the draft guideline to target the type of information it requires in assessing an applicant's suitability with respect to criminal history. We also support restricting this requirement to persons responsible for significant operating decisions of the applicant's business.

We remain concerned however that the approach the AER would take with respect to confidentiality and disclosure of criminal history is not specified in the draft guideline. Origin would refer the AER to the comments made on page 4 of its April submission in relation to safeguarding information provided as part of an application.

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<sup>1</sup> AER (2010), *Draft Retailer Authorisation Guideline*, page 5



### Part 3 - Revocation, transfer and surrender

#### *RoLR event or revocation*

Origin agrees with the AER's approach in the draft guideline in relation to the revocation of an authorisation, noting that this raises very different issues in relation to the management of customers compared with a transfer, trade sale or surrender.

#### *Transfer, surrender or trade sale*

Origin agrees with the AER's view that "...it is not appropriate for customer protections under the transfer process to go significantly beyond those available under a trade sale."<sup>2</sup>

We also support the removal (in the case of a transfer or surrender) that customers transfer on terms and conditions that are the same or better. Origin would again point out that in many jurisdictions customers are free to choose another retailer in any event if they are not satisfied with their new retailer.

Furthermore, we support the obligation on a retailer (the transferor) maintaining membership of energy ombudsmen schemes as required for a period of 12 months following the surrender or transfer of their authorisation. It is not clear if it is the role of the guideline to specify a non-authorised retailer's status as a member of an ombudsman scheme, for example, whether or not a retailer (who has surrendered or transferred its authorisation) would pay fees to the ombudsman or if they would be a voting member of the scheme. These matters will presumably be dealt with by individual ombudsmen themselves.

The surrender of an authorisation raises additional questions with respect to the AER's approach to the assessment, approval or rejection of such an application. For example, if the surrendering retailer has not demonstrated how customers will be served by other retailers, would the AER automatically reject the application?

Origin would suggest that as part of an application for authorisation, a new retailer demonstrate an understanding of the retailer of last resort, transfer and surrender arrangements and the ongoing membership requirements of (potentially multiple) ombudsmen schemes.

Origin would welcome further discussion with the AER on the development of the guideline. Should you wish to discuss any of the matters raised in this response further, please contact me on (03) 8665 7712.

Yours sincerely

[SIGNED]

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<sup>2</sup> AER (2010), *Retailer authorisation guideline - Consultation paper*, page 14