



11 February 2011

Mr Tom Leuner  
General Manager  
Markets Branch  
Australian Energy Regulator  
GPO Box 520  
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By email: [AERInquiry@aer.gov.au](mailto:AERInquiry@aer.gov.au)

Dear Tom,

#### **ORIGIN SUBMISSION TO AER COMPLIANCE CONSULTATION**

Origin welcomes the opportunity to provide a response to the AER's documents *Statement of approach: compliance with the National Energy Retail Law, Rules and Regulations*; *Draft Decision: Approach to compliance with the National Energy Retail Law, Rules and Regulations*; and *Draft AER Compliance Procedures and Guidelines National Energy Retail Law, Retail Rules and Retail Regulations*.

Overall, Origin supports the direction taken by the AER and the proposals made. We will comment only on the aspects of the compliance approach that we would like to see modified, as below.

#### **Draft AER Compliance Procedures and Guidelines: 'possible' breaches**

We note the frequent use of the term 'possible' breaches throughout the documents for this current consultation, where most, if not all, of the provisions relating to the reporting, managing and enforcement of breaches capture 'possible' breaches as well.

While we recognise that this is the language used in the National Energy Retail Law, and so expect it to be used by the AER, the interpretation of 'possible' breach (which we note is not explained in the Law) requires further examination. 'Possible' should be clearly and narrowly defined if it is to be of practical use for the industry and the AER.

Section 3.1.5 of the *Draft AER Compliance Procedures and Guidelines* refers to a possible breach as 'identified but yet to be confirmed by the relevant regulated entity'. Such a definition could thus cover any business issue that a retailer decides to look at more closely as part of its regular business scanning for compliance concerns.

A well-managed and resourced compliance function will monitor compliance information from a range of sources, including those that are not well substantiated (e.g. hearsay) or theoretical (e.g. risk-based analysis). Examining the issue and ascertaining the compliance status is the role of the retailer's internal compliance management, which leads to an assessment of whether a breach has occurred or not. A highly sensitive process is likely to have far more 'possible' breaches than actual breaches.

Advising 'possible' breaches as well as actual breaches would involve the AER in issues that on further examination are not problematic, and retailers would be using the time best spent internally examining the issue instead managing external relations. Compelling retailers to advise any potential for breach will thus only hamper a well-functioning and responsive internal compliance process. Moreover, reporting all these cases as 'possible'



breaches will overinflate the statistics, and will thus negatively influence stakeholders' views of retailer compliance. This reflects an unreasonable risk for retailer reputation.

Therefore, we do not support a requirement for retailers to report 'possible' breaches as the term is currently used. If 'possible' breach instead meant that it has been found that systems and staff support do not provide for future compliance (so that there is some means for capturing known *ex ante* breaches), we would support this intent but only if it was stated precisely. 'Possible' breach should thus be defined as a future breach that the retailer believes is highly likely to occur.

#### **Draft AER Compliance Procedures and Guidelines: 3.2.2 and 3.3.3**

The requirement for Type 1 breaches to be reported in writing within 5 business days and signed off by the CEO is not workable, as it can take longer than this to gather the details necessary and prepare the report, let alone also obtain sign off from senior staff. Origin will always use best endeavours to swiftly report important issues (including informal notification to the AER), but we cannot always guarantee this will occur within 5 business days in a formal sense.

Regarding the signoff from our CEO: Origin is Australasia's leading integrated energy company focused on gas and oil exploration and production, power generation and energy retailing. It is listed in the ASX top 20 with a market capitalisation of over \$14 billion and over 4,300 employees. Having the Origin CEO obliged to sign retail compliance reports within 5 business days of a breach is not feasible and is likely to be disproportionate to the issues identified. It would be more appropriate for the General Manager of Retail sign off on reports, as the General Manager is effectively the CEO of the retail business and is at least the equivalent to the CEO in other businesses.

We would support a requirement that the head of the retail business must provide a signed-off report within 5 business days of the breach or otherwise as soon as reasonably practicable thereafter.

The internal process required for signoff of any issues by either the CEO or Retail General Manager will also not lend itself to reporting 'possible' breaches. Robust internal corporate governance procedures would require any issue being taken to senior management to have been assessed already; that is, the compliance function of the business will have already done its job to determine that a breach has occurred (or will occur because systems and/or staff do not provide for compliance). It is not efficient or even reasonable for senior management signoff to be sought without any confirmation by the business that there is actual non-compliance and/or a very high risk of future non-compliance.

#### **Draft AER Compliance Procedures and Guidelines: 3.6.2 and 3.6.5**

Origin notes that these clauses provide for the AER to increase the frequency of reporting for Types 2 and 3 breaches if regulated entities have shown breaches over two and four (respective) consecutive periods. However, there are no provisions for reporting periods to return back to the initial longer period. We would expect that such a return to the default periods should occur once the AER is of the view that the relevant retailer's compliance is satisfactory, and we would like to see the circumstances for this to occur clearly stated within section 3.6.



I would be happy to discuss any aspect of this submission further with the AER, 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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Policy Development Manager, Retail

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