



12 August 2011

General Manager  
Markets Branch  
Australian Energy Regulator  
GPO Box 520  
Melbourne VIC 3001

Email: AERInquiry@aer.gov.au

Dear Sir/Madam

### **Australian Energy Regulator Draft Exempt Selling Guideline**

Origin Energy Retail Limited (Origin) welcomes the opportunity to respond to the Australian Energy Regulator's (AER) Draft Exempt Selling Guideline.

Origin appreciates the efforts of the AER to embrace our recent comments with regard to the consultation process whereby industry workshops should occur prior to the closing date for submissions to consultations. This supports more informed and perhaps concise responses to the consultations.

#### **1. Public Register for Exempt Sellers**

In our previous submission we strongly recommended the application of a public register for all exempt sellers, to give consumers and those in industry a transparent view of where exempt selling takes place. The AER has responded in the Notice of Draft Instrument - Exempt Selling Guideline by stating:

*The legislation does not contemplate the registration of deemed exemption holders. We consider that if it was the intention of policy makers to require registration of all exempt sellers, provisions for such would have been in Retail Law.*

Origin does not support this assessment. We do not believe the policy makers intended for the law to cover the detail of a framework for exempt selling, as it is a complicated market that impacts many consumers. Rather, the policy makers chose to assign this responsibility to the AER to manage all types of exempt selling effectively in the form of a guideline. The AER also comments that:

*"We believe that such a requirement (universal registration) would be burdensome for small exempt sellers, who have limited resources to dedicate to regulatory compliance. The value of the information gained from universal registration would outweigh the consequential costs for these types of on sellers.*



Universal registration could be facilitated via a web portal which would not be burdensome or extend beyond the resource capability of most exempt sellers. A web portal of this type would provide:

- Transparency to consumers and the industry of where these arrangements exist;
- Some form of oversight when required;
- An indication of the magnitude of electricity load being supplied by exempt sellers; and
- During a RoLR event, a record of where embedded customers exist.

Origin is of the view that the fundamental problem with exempt selling arrangements in the past across all jurisdictions has been the non uniform approach and lack knowledge of the scope and location of on-selling activities.

Moreover we note the inconsistency on this issue on the part of the AER in its consideration of the cost impacts of consumer protection regulation on exempt sellers. When considering new regulation for authorised retailers it is rare that a cost benefit analysis of the proposed regulation is undertaken by the AER to determine its impact upon authorised participants.

## 2. Dispute Resolution

Various deemed and registrable categories of exempt selling require compliance with the Dispute Resolution Condition. This condition creates the right for an exempt customer to access the energy ombudsman or any other relevant external dispute resolution body in the state or territory in which the exempt customer is located. Not all of the jurisdictional energy ombudsman schemes cover on-selling arrangements and therefore the terminology in this condition could be confusing for consumers and industry.

Origin would prefer the reference to energy ombudsman schemes be omitted until such time as all jurisdictional schemes have suitably considered this possible extension of scope, while understanding the risks and benefits to their respective schemes. This analysis could be undertaken more objectively without the influence of an overlay of existing regulation such as that set out in this Condition.

Origin is also concerned that the proposed Dispute Resolution Condition, as reflected below, does not impose any direct obligation on the exempt seller to provide any form of independent dispute resolution service.

*In the event of a dispute concerning the sale of electricity to any exempt customer, and in the absence of a determination of the relevant tenancy tribunal, the exempt person must:*

- a) make reasonable endeavours to resolve the dispute, and*
- b) advise the exempt customer of any right that the exempt customer has to access the energy Ombudsman scheme or any other relevant external dispute resolution body in the state or territory in which the exempt customer is located, if applicable.*

Under the above Condition, the exempt seller is obliged only to advise the customer if an applicable scheme exists. Origin is of the view that at the very least Registrable and Individual exempt sellers should be required to provide or participate in some form of



independent dispute resolution service. This will provide customers of these exempt selling situations with a customer protection mechanism similar to those deemed mandatory for retailers selling energy to small customers.

Should you require further information on this submission please do not hesitate to contact me on 03 9652 5880.

Yours sincerely

[Signed]

Randall Brown  
Energy Relationships Manager