



16 January 2020

Mr Conrad Guimaraes
Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

Email: aemc@aemc.gov.au

Dear Mr Guimaraes,

Regulating Conditional Discounting – Draft Rule Change (RRC0028)

Origin Energy (Origin) welcomes the opportunity to respond to the Australian Energy Market Commissions (AEMC) Draft Rule Determination on Regulating Conditional Discounts.

Origin supports the intent of the draft rule change and the AEMC's position that reasonable costs is a widely understood legal concept that does not require further guidance. However, we note that the draft rule has been extended beyond "conditional discount" to also include a definition of a "conditional fee"¹:

conditional fee means a fee or charge payable by a small customer under a customer retail contract due to failure to comply with a **payment condition**.

Note: Examples of fees for the purposes of this definition are late payment fees, direct debit dishonour fees and cheque dishonour fees.

payment condition means a provision of a customer retail contract that imposes a condition in relation to the timing or method of payment of a bill.

Origin believes that the inclusion of this definition is open to interpretation and could be misapplied. The reason we believe this is because the term "imposes a condition" has a specific legal meaning. That is, we believe the natural meaning of "imposes a condition" is that a customer must pay in a certain way and does not have a choice.

For example, if paying by cheque or direct debit is a condition of receiving a particular plan, then the conditions around conditional fees must be met and the draft would therefore apply. However, if direct debit or paying by cheque is merely one of the many payment options that a customer may choose at their own discretion, then the fee would not need to meet the requirements under the draft rule.

An alternative interpretation of the draft rule is that the "conditional fee" definition applies to any failure to comply with a payment condition under a "retail contract". This interpretation is taken on the basis that fees and charges are generally "terms" of a customer retail contract. Therefore, the conditional fees definition under the draft rule would apply regardless of whether the customer had a choice on how they wished to pay.

¹ Definition included in clause 45A of the Draft Rule.

On the basis that the current drafting of “conditional fees” could be interpreted in a number of ways and apply to a number of fees, we believe that the wording ought to be revised. Specifically, revisions are required to clarify the term “impose a condition” and to also define which specific fees the rule is intended to capture.

Closing

If you would like to discuss any aspect of this submission, please contact Caroline Brumby on (07) 3867 0863 / Caroline.Brumby@originenergy.com.au in the first instance.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Sean Greenup', with a large, stylized flourish at the end.

Sean Greenup
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