



12 December 2006

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Dear Sir/Madam,

**ORIGIN ENERGY SUBMISSION TO RETAIL POLICY WORKING GROUP WORKING PAPER 1**

Origin Energy (Origin) welcomes the opportunity to comment on the Retail Policy Working Group's *National Framework for Distribution and Retail Regulation: Working Paper 1*. Please find attached Origin's submission.

Overall, Origin supports the continued shift toward a more consistent and predictable framework, in particular, one which seeks to reduce the regulatory burden where this is seen to be effective and in the public interest.

We have more concern where the national approach continues to leave key matters to the jurisdictions, as there is a risk that the Jurisdictional Directions will undermine the competitive process and shifts to a national regime. We await with interest the forthcoming consultation paper on this issue.

Origin is also concerned about the approach taken to the obligation to supply, and specifically the reliance on the status quo. We believe that the standing offer contract regulatory approach must sit within, and be consistent with, market objectives and decisions taken elsewhere about shifting price setting and price regulation from governments to the market. The current policy objective for the standing offer contract appears deficient in this sense.

In order to address this issue, Origin has provided a proposal for a revised obligation to offer a standing contract which we believe will ensure that the standing offer contractual framework is able to provide for the removal of price regulation according to the AEMA without jeopardising customers' current access to supply on reasonable terms and conditions.

If you have any queries please feel free to call Fiona Watters on 03 9652 5878.

Yours faithfully

[signed]

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**Retail Policy Working Group:  
Working Paper No. 1**

**Submission of Origin Energy**

**December 2006**

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# 1. Introduction

Origin is one of the leading energy companies in Australia, participating in most segments of the energy supply chain, including gas and oil exploration and production, power generation, energy retailing and network management. Origin also has a 51.4 percent interest in Contact Energy in New Zealand, which is responsible for generating about 27 percent of New Zealand's electricity, and is a major energy retailer.

As a retailer, Origin purchases natural gas from producers to sell to around 900,000 residential, commercial and industrial customers in Queensland, South Australia, Victoria and New South Wales. Origin purchases electricity from the wholesale market to sell to around 900,000 residential and business customers mostly in Victoria, New South Wales and South Australia. Origin has also recently purchased Sun Retail in Queensland, which has 830,000 electricity customers. In addition, Origin supplies LPG to around 290,000 homes and businesses in all Australian states.

Origin has been a keen participant in the consultative processes to date on the various issues raised, and also provided comment on the Gilbert and Tobin/NERA Consultation Paper *Public Consultation on a National Framework for Energy Distribution and Retail Regulation* in January this year. Origin is therefore well placed to provide comment on the Retail Policy Working Group *National Framework for Distribution and Retail Regulation: Working Paper 1*.

Overall, Origin supports the continued shift toward a more consistent and predictable framework, in particular, one which seeks to reduce the regulatory burden where this is seen to be effective and in the public interest.

We have more concern where the national approach continues to leave key matters to the jurisdictions, as there is a risk that the Jurisdictional Directions will undermine the competitive process and shifts to a national regime. We await with interest the forthcoming consultation paper on this issue.

*Working Paper 1* has raised the following issues:

- the retailer obligation to supply small customers;
- retailer-small customer market contracts; and
- retailer-small customer marketing.

We now address each in turn.

## 2. The obligation to supply: the standing offer contract

Origin is pleased to see the issue of the obligation to supply, or to provide a standing offer contract, de-linked from the issue of price controls. There is no reason why these cannot cover different populations, or why the obligation to offer (in addition to the deemed contract regime) should not remain when price regulation is removed. This is the approach used in the UK, where retailers must provide an offer to a domestic customer who requests one, yet the prices of these offers are not regulated by the state.

However, we question:

- (a) the reliance on the status quo for the approach suggested, rather than revisiting the policy objectives and seeking evolution to a more sustainable market model; and
- (b) the *degree* to which price regulation has been de-linked from the obligation to supply.

Overall, Origin suggests that the policy objectives for the obligation to provide a standing offer contract should be revisited. The initial decisions taken by lead jurisdictions in this area were based on a pre-FRC belief that the market would not provide for all customer types; however, the evidence since FRC commenced in various jurisdictions has not supported this. Further, policy innovation in this arena might actually not only support a customer protection stance, but also improve customer choice and retailer willingness to enter retail energy markets.

We believe that at a minimum the following changes should be made to the approach as proposed in *Working Paper 1*:

- It should be clear that the standing offer contract regulatory approach must sit within, and be consistent with, market objectives and decisions taken elsewhere about shifting price setting and price regulation from governments to the market. The current policy objective for the standing offer contract appears deficient in this sense.
- Further, the notion that the standing offer contract is there to capture ‘vulnerable’ customers, defined in *Working Paper 1* as those who ‘may not be able to secure a supply of energy at an affordable price and on reasonable terms and conditions in the competitive market’ needs to be critically evaluated. It not only potentially sets up policymakers for an impossible task in defining the terms involved, but it sets expectations that cannot be met through this policy forum.

For example, the capacity of the standing offer contract to guarantee affordability is extremely slim, given the approach through this forum is to only address access and terms and conditions. While affordability of bills is important, it is not a relevant element of this particular debate, and further, it has not been an element of the price regulation decisions to date.<sup>1</sup> Affordability has been discussed through other fora, and has been the topic of recent jurisdictional moves to better formalise how customers in financial hardship are assisted. This includes the creation and regulation of comprehensive retailer hardship policies.

Leading from this, the specific policy objective needs to ensure that the standing offer contractual framework *is able to provide for the removal of price regulation according to the AEMA without jeopardising customers’ current access to supply on reasonable terms and conditions.*

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<sup>1</sup> In almost all Australian jurisdictions that have moved to FRC, standard contract/standing offer pricing has been set on the basis of cost recovery principles. Affordability issues have, in these instances, been addressed by direct action of governments, not by price distortion.

Origin believes that the standing offer contract can be maintained in a way that achieves this in a way which is procedurally and administratively simple, as well as being consistent with national objectives generally. We discuss the means of achieving this below.

## 2.1 Defining the policy objective

### 2.1.1 *The difference between the two consultation papers on the issue*

In Origin's submission to Gilbert and Tobin/NERA Consultation Paper *Public Consultation on a National Framework for Energy Distribution and Retail Regulation*, we noted that the Consultation Paper stated that issues related to Full Retail Contestability (FRC) and whether or not small retail customers have the benefit of a default standard supply obligation where they do not enter negotiated retail contracts was beyond the scope of the project. In that paper there was no discussion of a policy objective for the obligation except insofar as there was a need to provide for customers where they did not have choice of retailer (that is, no FRC in place) or had not entered a contract but were consuming energy at a premises (that is, a 'move in' customer).

It was clear from this approach that the issue of how to assist customers who are seen as requiring protection from the market in general, or seen to require special rules to guarantee supply on meaningful terms and conditions (that is, those referred to as 'hardship' or 'vulnerable' customers),<sup>2</sup> was not going to be managed through the national rules process. The Gilbert and Tobin/NERA Consultation Paper had defined the obligation to supply as more around managing the procedural issues of how to deem a contract in place where there is no immediate opportunity for choice given market structural conditions.

However, the current Allens Arthur Robinson (AAR) *Working Paper 1*, which seeks to build on the earlier consultation, actually takes a different approach. Page 19 states that:

*Clearly the objective of the [small customer who receives the benefit of the obligation to supply] definition is to capture those customers considered vulnerable in the sense that they may not be able to secure a supply of energy at an affordable price and on reasonable terms and conditions in the competitive market.*

Statements are then made to the effect that defining this group is problematic and that the benefit of the standing offer contract should be provided to customers consuming below an amount to be determined by jurisdictional ministers (but according to general principles set by MCE).

This takes us from the more procedural approach of the Gilbert and Tobin/NERA Consultation Paper into the far more difficult policy environment of the purpose of, and

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<sup>2</sup> The term 'hardship customer' is used frequently by those in the industry to denote those who are already within retailers' financial hardship processes or schemes (such as those in receipt of a Victorian Utility Relief Grant), or those who are mistakenly disconnected for reasons of non-payment. However, this definition is inadequate if we recognise that some customers may not have been captured by retailers' hardship schemes or have been disconnected for non-payment, but still might require assistance. These people may be currently experiencing financial hardship but are not (yet) recognised by the retailer as requiring assistance or disconnection, or they may have managed the current level of payment but would not be able to afford any price increase.

Thus the argument needs to recognise the *potential* for 'hardship' cases to be increased through either making a previously invisible group visible through changed work practices, or through creating new hardship cases through price increases. It is this group of customers that has been generally understood as those who are 'vulnerable', meaning they are more vulnerable than the norm to having problems with the affordability of their bills. However, defining this group in any operational sense is problematic. See Origin's submission to the Victorian Inquiry into Financial Hardship of Energy Consumers for a further discussion, at [http://www.doi.vic.gov.au/doi/doielect.nsf/2a6bd98dee287482ca256915001cff0c/db551bfa14e31633ca257030000c8860/\\$FILE/Origin%20Energy.pdf](http://www.doi.vic.gov.au/doi/doielect.nsf/2a6bd98dee287482ca256915001cff0c/db551bfa14e31633ca257030000c8860/$FILE/Origin%20Energy.pdf).

mechanisms related to, standard or standing offer contracts as they relate to customer protection from potentially negative market outcomes. This is the one policy matter that despite much interest and stakeholder debate has continued to elude policymakers; or at the very least, a solution that meets customer needs *as well* as being true to the premises of the market and moves toward FRC has been problematic.

The AAR paper raises the issues of the affordability and reasonableness of the contracts available to vulnerable customers and then appears to leave the debate hanging, with the suggestion that consumption levels set by jurisdictional governments will somehow address the issue. We understand that this approach has most likely come about from a jurisdictional need to stay with the status quo regarding policy mechanisms, in order to expedite national law and the national rules; however, we believe this is not appropriate. If the matter of customer protection through the standing offer contract is to be addressed in this forum, we believe it should be given the attention it deserves. Given the resources already committed to achieving a national regulatory framework, Origin believes it is important to get this significant issue *right*.

To avoid doubt, the rest of Section 2 will focus on the revised approach of the AAR paper, specifically commenting on the standing offer contract from a customer protection (that is 'vulnerable' customer) perspective. The more procedural deemed and explicit contracts that need to be in place pre-FRC, for 'move-in' customers and other specific circumstances will not be directly addressed, although we believe these can generally fall into place behind the proposed Origin standing offer framework.<sup>3</sup>

### 2.1.2 *The current policy approach*

The current standing offer regime lacks a clear policy objective, and there still seems to be misunderstanding among stakeholders about whether the point of the standing contract in a general sense (that is, outside of the more procedural needs covered in the Gilbert and Tobin/NERA paper) is:

- (a) to assist customers in the transition from a non-market environment to one with effective FRC, where once effective FRC has been determined, the standing offer contract will fall away; or
- (b) as a customer protection mechanism, because of a belief that the characteristics of some customers will make them unappealing to retailers, or perhaps they are seen as lacking the sophistication or other means to negotiate in the market. This version of the standing offer contract is a permanent feature of the market.

Across the jurisdictions, the current standing offer contract has covered both policy objectives without managing either one particularly successfully. It also does not lend itself to evolution toward true FRC, that is, with no specific energy price regulation (versus general consumer protection legislation). In neither case has FRC been built into the model, either to demonstrate when the transition to no standing offer contract was necessary for (a), or to sit alongside the standing offer contract in (b) but also allow for a shift to no price regulation.

Origin has been a keen participant in the many discussions over the years on the matter of what services should be regulated as minimum standards to customers in the financial hardship or 'vulnerable' customer group. We strongly agree that defining this customer group is deeply problematic, but we think that this means we need to be more creative in consideration of this issue, not just embed the existing approximations of 'vulnerable' customers into the national regulatory framework.

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<sup>3</sup> The one exception is for the provider of deemed contracts, where we suggest this should be the retailer financially responsible for the site.

### 2.1.3 A revised policy objective

If the issue of how to best serve 'vulnerable' customers is to be addressed at all in this policy forum, we argue that it must be addressed fully, and perhaps redefined, with due recognition of the work carried out to date as well as the range of elements of the standing offer contract that may be modified to result in a more effective policy instrument. A policy model that merely replicates the current approach for the sake of expediency will not assist the further development of the market.

Further, the appropriateness of ensuring 'affordability' as an element of the policy objective for standing offer contracts through this process needs to be evaluated. Given that only the content of the contract, who offers the contract and who receives it are being addressed through this process, the affordability of the resulting contract can hardly be ensured.

We would also argue that the point of the standing offer contract is *not* to guarantee supply at affordable prices in any event. Affordability will depend on any individual's current financial position, consumption levels and budgeting approach. All that can be guaranteed by retailers is that prices should be at the most efficient levels given competitive forces are in effect. We also assist customers who require payment support through our range of hardship programmes. Any further means of assuring affordability of energy bills needs to be managed through government policy and community funding; this is where government and community support are important as a supplementary measure to the market. Government social programmes, community and industry initiatives have evolved considerably in recent years, and can be depended upon to provide the necessary support to those in hardship.

Origin believes that the policy objective for the standing offer contract needs to be broadened beyond coverage of 'vulnerable' customers, but limited to issues of access and conditions of supply. The need to be broader than just trying to define the 'vulnerable' customer base is due to the definitional issues addressed in Section 2.3.1 of this submission.

Origin supports a broader policy approach that sees the standing offer contract as providing a 'back up' contract market for FRC, both for the customer protection purpose and for the more administrative circumstances such as a shift from a deemed to standing contract for 'move-in' customers. The principle of such a contract obviously also has a role for pre-FRC environments, whether this is a deemed or explicitly agreed with the customer.

(While as a matter of principle, Origin does not actually believe that a standing offer contract as a customer protection mechanism is warranted where there is effective competition,<sup>4</sup> we provide this proposal in the recognition that the market is not able to embrace that possibility at this stage.)

Protecting 'vulnerable' customers might be within this objective, but only in the sense that these customers, as well as the larger residential customer group, will have guaranteed access to supply on what are seen as reasonable terms.

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<sup>4</sup> There has been no evidence to date to support an argument that any customer group will be left out of the market based on socio-economic characteristics. As found by ESC in Victoria and ESCOSA in South Australia, customers of all types are being offered and are taking up market contracts. There are also no apparent data to support the argument that customers are being disadvantaged through inappropriate contractual terms and conditions. Further, this group is essentially unable to be defined and targeted effectively in an objective, or systems focussed, way. This means retailers could not leave 'vulnerable' customers out of the market or seek to disadvantage them even if they wanted to.

There has also been no evidence to date that retail competition exacerbates customers' experiences of hardship. In fact, in Victoria the disconnection rates and assistance for customers in hardship have improved significantly since competitive reforms (and privatisation) were carried out.

Further, the specific policy objective needs to ensure that the standing offer contractual framework *is able to provide for the removal of price regulation according to the AEMA* without jeopardising customers' current access to supply on reasonable terms and conditions. This is where the current approach is deficient, as will be any decision that is taken to merely embed the current approach into the national rules.

## 2.2 Separating price controls from the obligation to supply

While Origin supports a policy approach which recognises that the provision of a standing offer contract is separate from the regulation of the price of that contract, we are concerned with any approach that de-links these two issues to the point where they are discussed and administered through completely separate processes.

This is currently the case, where the contractual rights and obligations of the obligations associated with the standing offer contract are being addressed through the Retail Policy Working Group, and the nature of price regulation is being managed separately through the AEMA and AEMC FRC processes. Table 1 below shows the elements of the standing offer contract and the responsible decision-makers.

**Table 1: Elements of the standing offer contract and the responsible decision-makers**

| Element of the standing offer contract   | Issue  | Responsibility             |
|--|--|----------------------------|
| Provider of the offer: which retailer(s) | Deciding one retailer or many                                      | RPWG/MCE                   |
|  | Allocating the responsibility to provide a standing offer contract | Jurisdictional Governments |
| Recipient of the offer: which customers  | Deciding which customers or customer group                         | RPWG/MCE                   |
|  | Allocating the right to an offer                                   | Jurisdictional Governments |
| Terms and conditions of the offer        | Deciding minimum standards   | RPWG/MCE                   |
| Pricing of the offer                     | Removal of government price regulation as FRC becomes effective    | MCE/AEMC                   |

We are concerned that under this approach the capacity for any one standing offer contract model to meet a specific policy objective is limited.

Origin believes that discussions about standing offer contract terms and conditions cannot proceed without some understanding of the costs and benefits involved, or some recognition of the different variables within the standing offer contract that may be modified to create the most responsive policy instrument. It is important to unpick these issues but to always be aware they are related, and in fact, where one element changes (such as removal of price controls), another element can also be modified to manage any residual stakeholder concerns.

## 2.3 The means of achieving the policy objective: the proposed AAR model

### 2.3.1 Customer coverage of the retailers' obligations to make a standing offer

Based on the AAR *Working Paper 1*, Origin assumes that the primary policy objective for the Retail Policy Working Group's, and MCE's, considerations of the standing offer contract is the customer protection objective addressed in (b) above, in addition to the rules required for the more procedural 'move-in' circumstances. This is because the Paper raises the issue of 'vulnerable' customers, as also mentioned above. The current recommendation of the *Working Paper 1* is then for the responsible retailer to provide a standing offer contract to those customers who consume below a certain threshold, with the consumption threshold to be set by jurisdictional ministers.

While the approach in *Working Paper 1* neatly fits within existing policy, it also dismisses the real problems experienced to date with actually identifying customers who require support, or those who are 'vulnerable'. It will therefore most probably perpetuate the existing concerns stakeholders have with over- and under-coverage of the standing offer.

Currently the thresholds across the jurisdictions are set high, that is, to include most, if not all, residential customers. However many stakeholders would argue that only a small proportion of the residential customer base could be considered 'vulnerable', and thus that the policy mechanism need to be better targeted. The problem then is that no party has been able to develop a better targeted approach.

#### The problem with defining 'vulnerable' customers

There has been much work to date on trying to find a means of objectively identifying customers who are in financial hardship, or are vulnerable to falling into hardship or being disadvantaged by the market.<sup>5</sup> Most of the work to date has had as its purpose (whether explicit or implicit) a need to 'define' vulnerability and hardship, or at least find common indicators.

The one thing that most, if not all, investigations into the causes and characteristics of financial hardship have had in common is a finding that defining hardship or vulnerability in the retail energy context in a way that is operationally meaningful is deeply problematic, if not impossible. Targeting approaches or locating indicators involves unpicking a range of complicated issues that affect people's lives, such as:

- differentiating long-term problems with bill affordability (e.g. high medical appliance bills and sole reliance on a disability pension for income) from short- to medium-term hardship (e.g. sudden loss of unemployment when there are multiple bills due); and
- differentiating those who are having difficulty paying for preventable reasons (e.g. poor prioritising in budgeting, or use of energy inefficient appliances) and assisting them through financial counselling or energy efficiency advice, from customers whose difficulty paying is more chronic and pervasive, and whose issues are less able to be resolved.

These combined issues mean that the only reliable method of detecting and assisting customers who are having difficulty paying their energy bills is to provide the environment where customers feel confident and comfortable enough to *self-identify* through communicating their current inability to pay. This obviously has serious implications for any policy mechanism that seeks to target a contractual approach to customers who are 'vulnerable' or in hardship.

#### The costs and benefits of targeting an approach

The benefits of a targeted regulatory approach - assumed to be more efficient from a market perspective - may be outweighed if the transaction or co-ordination costs of identifying and managing a customer sub-population are significant. For example, according to one perspective, possibly it is only a core group of customers who have a Health Care card who may 'need' protection in the longer term. However, while this identifies the people who really 'need' protection on an objective level, it does not account for the range of political and administrative problems that this approach could entail.

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<sup>5</sup> In Victoria alone, this work has included (but is not limited to): the work of the Essential Services Commission (ESC, and the Office of the Regulator-General before 2002) in the development of the Retail Code (1999-2004), subsequently mirrored in South Australia Victorian Department of Human Services (DHS) Roy Morgan Research report (2002) *Victorian Utility Consumption Survey 2001*; The Consumer Law Centre Victoria and Consumer Utilities Advocacy Centre (2004) report *Access to Energy and Water in Victoria*, the Committee for Melbourne's (2004) Utility Debt Spiral Project; Victorian Committee of Inquiry into Hardship (2005).

Even once the decision has been made about default coverage and initial implementation issues have been addressed, there will be ongoing issues of implementing the targeted standing offer contract. These include the management of transition for some customers - those who are not included in the core default ('passive') group, but who need to be effectively captured (swiftly and sensitively) and also need to be able to be shifted out when appropriate. This adds costs to the system, and if the number of these potential customers is high, and/or if the costs to the retailer of processing them (and reviewing their status after a period on the regulated contract) are high, greater 'passive' contract coverage may be warranted.

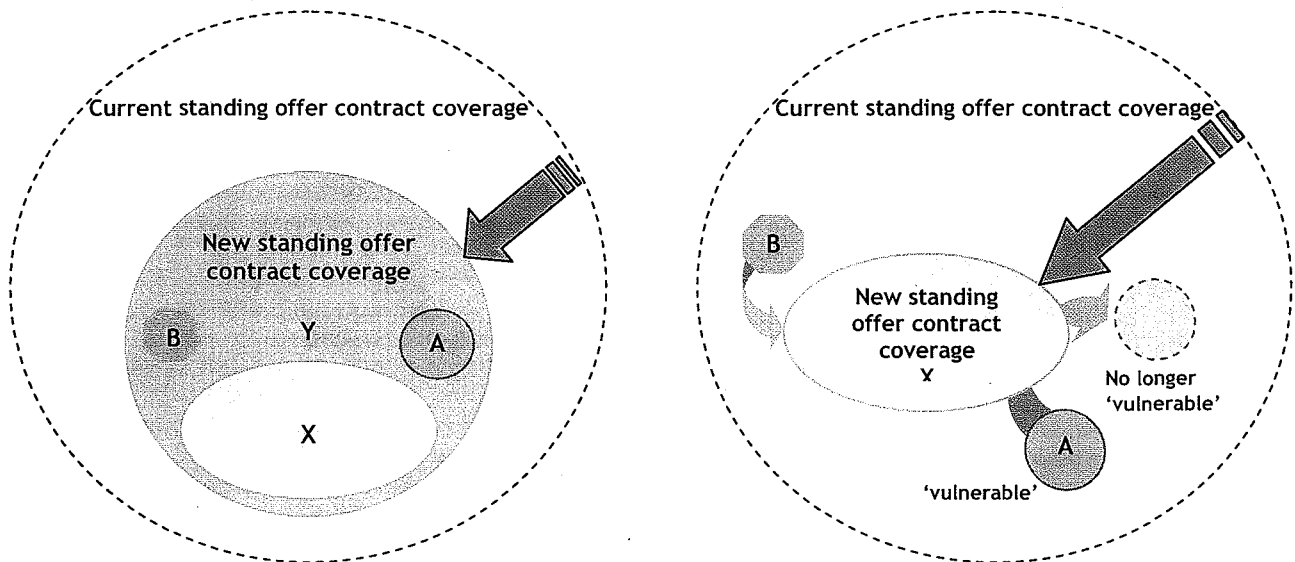
This issue of needing to trade off various costs and benefits is represented in Figure 1 below. This shows two 'pure' models of regulated offer coverage. In each model, Type X customers are those covered by default; customer Type A represents customers who need to be captured by the regulated offer in a temporary capacity (they should be shifted out when appropriate); and customer Type B represents the (inevitable) group of customers who are not captured within the default group (they may possess exceptional characteristics that warrant protection) but should be covered in an ongoing sense.

The key message is that if the costs of identifying and managing customer Types A and B in Model II outweigh the benefits of the reduced safety net coverage, it may be more effective to opt for the broader coverage approach of Model I.

**Figure 1: Two 'pure' models of standing offer**

BROAD COVERAGE ←

→ LIMITED COVERAGE



**Model I - greater default or 'passive' coverage to minimise political and administrative costs**

**Model II - targeted 'passive' coverage to minimise over-capture, with additional manual 'active' processing expected**

Table 2 on the following page sets out a range of customer types generally considered to require 'protection' (that is, potentially members of the 'vulnerable' customer group) and seeks to tie these to objective criteria to establish means of targeting standing offer contracts.

Table 2: Options for the optimal coverage of regulated contracts

|                       | Options  | Coverage and Issues  |
|-----------------------|--|--|
| Consumption           | Medium consumption (eg 8MWh/yr, 70GJ/yr)       | eg 50% customer base <ul style="list-style-type: none"> <li>Useful as an interim measure but unlikely to suit a longer term approach given its lack of targeted coverage.</li> <li>While significant proportion of customer base covered, still leaves out those high usage consumers who might require support.</li> </ul>  |
|                       | Only 'low' consumption (eg 3MWh/yr, 25GJ/yr)   | eg 5% customer base <ul style="list-style-type: none"> <li>Does not adequately cover 'hardship' cases or credit risk customers - these may be high consumers.</li> <li>Problem of arbitrary number of 'low' consumption - retailer approaches to this may not be the same.</li> </ul>  |
| Concessions customers | All concessions                                | ~40% customer base <ul style="list-style-type: none"> <li>Comes closest to capturing socio-economic status (if this is seen as primary issue), and also covers low use customers.</li> <li>However still not targeted: covers large amount of customer base but covers customers who are not in hardship, and in fact may have less difficulty paying than the average (eg OAPs).</li> <li>There are still customers who are 'vulnerable' but who are not on concessions.</li> </ul> |
|                       | Health Care Card holders                       | ~20% customer base <ul style="list-style-type: none"> <li>Better proxy for hardship, given card covers unemployment, financial hardship.</li> <li>However there are still customers who are 'vulnerable' but who are not on concessions.</li> <li>These cards can be issued on a 3 monthly basis: how to remain updated?</li> </ul>  |
| Credit risk           | Credit risk customers                          | ~6% customer base <ul style="list-style-type: none"> <li>Covers customers who may not be able to obtain a market offer at all.</li> <li>However, also covers people who are not in hardship, and who may be fraudulent or criminal.</li> <li>Does not address 'vulnerable' issue satisfactorily and retailers will have different views on what is a risk.</li> </ul>  |
| Other                 | Income or proportion of income spent on energy | <ul style="list-style-type: none"> <li>Covers those who have low income or likely to have payment difficulties</li> <li>Not feasible, as would not want to asset test people, and not really possible.</li> </ul>  |
|                       | Annual spend                                   | <ul style="list-style-type: none"> <li>Sub-optimal compared to consumption as tariffs mean not apples with apples across customer base.</li> </ul>   |

This table demonstrates that there is no meaningful proxy for 'vulnerable' customers. Middle to higher consumption levels are the only way to capture all the customers who might require the standing offer contract, but also capture far more than the required customer base.

Origin's preferred approach

As discussed above, Origin believes that the policy objective needs to be clarified, and within that, that coverage of the standing offer contract needs to be beyond 'vulnerable' customers. Among other reasons, this is because if the policy objective is to address 'vulnerable' customers through a targeted standing offer contract, the impossibility of defining this customer group effectively will render the whole approach meaningless. The jurisdictional governments responsible for setting consumption thresholds are not really being provided with an opportunity to make a meaningful decision given the decision making framework is not aligned to the policy objective (protecting vulnerable customers and promoting FRC).

Origin supports a broader policy approach that sees the standing offer contract as providing a 'back up' contract market for FRC, where the essential nature of energy might warrant

this.<sup>6</sup> Protecting 'vulnerable' customers might be within this objective, but only in the sense that these customers, as well as the larger residential customer group, will have guaranteed access to supply on reasonable terms.

With such a policy objective, it makes sense to keep identification of customers to be covered by the standing offer contract to a consumption level. Origin would be comfortable to keep the standing offer contract to *all* residential customers. We will make an offer to anyone who asks for it. This approach will eliminate the risk of over or under-coverage of what is seen as a key customer protection, and it is what Origin practices in any event.

However, general coverage of the standing offer contract will only make policy sense if, in addition to the policy objective being redefined, the following is in place:

- There is a genuine commitment by jurisdictions to fulfil the requirements of the AEMA regarding removal of price regulation; that is, where there is effective FRC there is no need for government regulation of retail energy prices.
- The standing offer contract should be more concise than current practice.
- *All* retailers are subject to this requirement.

These issues are discussed further below.

### 2.3.2 *Provider of the standing offer contract*

Across the jurisdictions there is currently only one retailer per geographic region (largely based on the distribution networks) that has the obligation to make an offer to the regulated customer base. This is generally the 'host' retailer, or the former incumbent retailer for that region.

*Working Paper 1* has not sought to address the specific mechanism for allocating responsibility for providing the offer, but has stated that 'does not at present appear to be any credible basis for applying the obligation to all retailers'. The proposal is thus for there to be only one retailer per small customer who is required to provide a standing offer contract, with the means of allocating that responsibility left with jurisdictions.

Origin does not agree that there is no credible basis for applying an obligation to provide a standing offer contract to all retailers. While we agree that merely extending the current regime to all retailers might be problematic, that is because of how the contract is comprised, and the regulatory regime supporting it. The current standing offer has onerous regulatory obligations attached to it in several jurisdictions (such as the Victorian ESC's requirement to review each proposed contract to make sure it is 'not inconsistent with' a lengthy Retail Code), and the ultimate price is still regulated. However, with a review of the other elements of the standing offer contract, it would seem reasonable to also assess the option of all retailers providing a standing offer to the defined customer base, under a regulatory regime that is more jurisdictionally consistent, less onerous and perhaps more transparent.

Overall, Origin considers that there are four possible approaches:

- 1) One retailer (allocation of which of the below left to jurisdictions):
  - The current approach, where the only obligation is on the host retailer to supply a basic contract on request to customers in its region - this potentially involves a transfer back to the host from a second-tier retailer.

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<sup>6</sup> As noted above, as a matter of principle, Origin does not actually believe that a standing offer contract as a customer protection mechanism is warranted, however we provide this proposal in the recognition that the market is not able to embrace that possibility at this stage.

- The financially responsible retailer for the site must make a basic contractual offer to the customer occupying the premises. This will mean that where the site has transferred retailer, a second-tier retailer will have the obligation for the premises.
  - Government contracts out the 'right' to be the standing offer contract provider.
- 2) All retailers are to have a basic contract for any regulated customer who requests it. This will mean that customers will have a choice of standing offers.

The pros and cons of each of these approaches are discussed in Table 3 below.

**Table 3: Options for the provider of the basic retail contract**

| Provider of an offer to a customer    | Pros   | Cons   |
|---------------------------------------|--|--|
| Host retailer only                    | <ul style="list-style-type: none"> <li>• Administratively easy.</li> </ul>   | <ul style="list-style-type: none"> <li>• Concept of 'host retailer' will become meaningless over time.</li> <li>• Administration may mean transfers for people least able to understand/cope.</li> <li>• Keeps risk with hosts.</li> <li>• Customer only has one offer (relevant if competition between basic offers is valued).</li> </ul>  |
| Financially Responsible retailer only | <ul style="list-style-type: none"> <li>• Avoids concept of 'host' retailers, which will become meaningless over time.</li> <li>• Avoids need to transfer.</li> <li>• Spreads risks more efficiently.</li> </ul>                              | <ul style="list-style-type: none"> <li>• Second-tier retailers will have to be regulated where they have not before - may be some consultation/ learning issues.</li> <li>• Customer only has one offer (relevant if competition between basic offers is valued).</li> </ul>   |
| Contracted out                        | <ul style="list-style-type: none"> <li>• Retailers who bid will be those who can manage the risks.</li> <li>• Avoids concept of 'host' retailers, which will become meaningless over time.</li> </ul>  | <ul style="list-style-type: none"> <li>• May avoid 'host' retailer but replaces with something reasonably similar.</li> <li>• Will retailers want to bid where the means to remove price regulation are still unclear? Would this even allow for the removal of price regulation?</li> <li>• Administration may mean transfers for people least able to understand/cope.</li> <li>• Customer only has one offer (relevant if competition between basic offers is valued).</li> </ul> |
| All retailers                         | <ul style="list-style-type: none"> <li>• Avoids concept of 'host' retailers, which will become meaningless over time.</li> <li>• Spreads risks more efficiently.</li> <li>• Customer has standing offer contracts to choose from.</li> </ul> | <ul style="list-style-type: none"> <li>• Second-tier retailers will have to be regulated where they have not before - may be some consultation/ learning issues.</li> <li>• Potentially higher administration costs for regulator, but less relevant if contracts are concise.</li> </ul>  |

Once again, it should be noted that some of the pros and cons above will vary in significance according to the substance of the offer itself, as well as the effectiveness of the regulator. This is not to say that contracts would be limited or expose customers unnecessarily, but that a targeted regulatory approach will be efficient for all concerned, and should be considered, rather than transplanting any one jurisdiction's approach, complete with all its flaws.

Further, with a move to a national regime there will naturally be fewer offers for a national regulator to assess. Most retailers operate across jurisdictions, and basic contract conditions would be unlikely to vary significantly across markets.

### Origin's preferred approach

Origin would support a shift from the notion of 'host' retailers being obliged to provide standing offer contracts, to all retailers within a region having this obligation.<sup>7</sup> This may be modified slightly if governments have concerns about smaller retailers' capacity to carry out this requirement.<sup>8</sup> Each retailer could choose the extent to which they disaggregated this offer (for example having different basic offers for different distribution regions, or only one for a state).

Currently Origin will provide an offer to anyone who requests it, regardless of whether Origin is the designated provider of the standing offer contract. We would be comfortable to continue doing this, and to even guarantee this, if we had more comfort about the nature of the offer itself, and the means by which prices would be set, as above.

As noted in Table 3 above, this approach avoids the concept of 'host' retailers, which will become meaningless over time, and it spreads risks more efficiently. We suggest that this is, in fact, the only model that is meaningful in the FRC environment, and provides for real competition and 'apples with apples' comparisons. It also ensures customers have a choice of contract; there is a market contract level of involvement but also a 'mirror' standing offer contract level that provides *all* customers with guaranteed supply from a range of providers on the basic terms and conditions that they expect.

However, as noted above, this approach will only be meaningful in a policy sense, and also be consistent with the national market and regulatory objectives, if prices are not regulated by the state, in line with the AEMA. In fact, this approach is the only way Origin can see price regulation being *able* to be removed in the current environment: where there is a clearly demonstrated range of retailer options for *every* domestic customer.

The alternative of increasing the regulatory obligations of retailers within a price regulated environment would be a retrograde and deeply concerning move. The focus must be on reducing energy specific regulation and increasing reliance on general consumer legislation, with any additional regulation designed only to increase the transparency and accessibility of information on the basic offers.

In terms of the substance of the standing offer contract under the Origin model, while we would not support a contract which is as complex as the current Victorian or South Australian standing offer, we would offer to residential customers a simple contract with some basic options, such as a range of payment methods. Market contract terms and conditions would therefore be a subset of these (discussed further in Section 3.1 below). We would also publish prices for this offer, and would commit to publishing by set periods, so that prices across all retailers for the standing offer contract can be accessed easily and transparently via an external reporting mechanism.

As per the approach used in the UK, this type of published basic offer will ensure customer access to supply, at terms and conditions which are unlikely to be able to lead to any disadvantage. If it is also offered by all retailers, each residential customer will then have a 'right' to a range of published basic offers, which is an enhancement to the current regime.

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<sup>7</sup> Note that we are not suggesting this in the separate context of deemed contracts. We support deemed contracts as reverting to the retailer financially responsible for the site.

<sup>8</sup> Although most retailers across the jurisdictions *do* have this capacity A potential model for this is the existing obligation on all gas and electricity retailers in SA to publish a set of default terms and conditions and prices (available to all move-in customers and the like). Both large and small retailers incur this obligation and although SA is a simpler market than some other states with multiple distributors, nevertheless it demonstrates the capability of all retailers to support this type of approach and its relatively low cost.

### 3. Retailer-small customer market contracts

In this section of our response, we assess the options put forward in sections 3.4(i) and (ii) of *Working Paper 1*, which each address the proposed scope of a national framework governing provisions for small customer market contracts.

Origin's comments in this part of our submission are made in the context of our preferred approach to the obligation to supply small customers; that is, for practical reasons we acknowledge that some form of standing contract is required to serve customers, and as such, market contract terms are a subset of these basic conditions.

#### 3.1 Minimum market contract terms

Origin recognises that there are specific issues that arise within competitive energy markets that may be outside the scope or coverage of national and jurisdictional consumer protection laws. *Working Paper 1* (page 33) raises the example of energy services being an essential service as a feature of the retail energy market that may require the existence of additional terms to protect customers in addition to general Fair Trading provisions.

However, we note that jurisdictional regulators have developed a number of guidelines under energy market specific retail Codes that have significantly extended the protection framework and the regulatory burden on retailers (particularly in Victoria) within the context of a rapidly maturing and highly competitive market. At present for example, additional guidelines are under consideration in Victoria around the application of early termination fees, specific to the retail gas and electricity market. Origin notes that the current energy-specific regulatory regime has supported a proliferation of regulation, which has been introduced without regard to its net benefits or assessed in a rigorous manner.

For this reason, Origin supports the Option 1 outlined on page 33 of *Working Paper 1*.

##### 3.1.1 Option 1: Reliance on national and jurisdictional consumer protection laws

*Working Paper 1* identifies a number of advantages and disadvantages associated with the use of existing consumer protection mechanisms in contrast to energy specific instruments.

Origin would agree that there are different jurisdictional arrangements for consumer protection in place that may result in inconsistencies at a national level. A number of such inconsistencies are minor in nature (for example information requirements), but the intent and purpose of general jurisdictional consumer protection frameworks is the same. Where inconsistencies exist (such as cooling off periods), energy retailers will accommodate them within their own processes and the jurisdictions in which they are active.

While recognising that energy is an essential service, the risk associated with either Option 2 or 3 is the temptation of regulators to continually re-interpret and extend the coverage of consumer protection to market contracts. Fundamentally, consumers active in the competitive market have elected to participate and have consented to arrangements that would be consistent with any other good or service they purchase in the economy, noting that additional provisions may be required for energy specific matters such as disconnection and reconnection processes.

##### 3.1.2 Option 3: Develop comprehensive energy specific consumer protection

Origin notes that Option 3 is a national version of the present approach adopted in each jurisdiction in which it retails energy to small consumers via market contracts. The difficulty in adopting this option nationally will be the challenge associated with implementing a regime that avoids the burden of implementing the lowest common denominator form of regulation (that is, the most restrictive framework) in order to satisfy preferences that may exist currently within certain jurisdictions.

The test for the need for regulatory intervention promulgated by Option 3 is to demonstrate where the current consumer protection regime fails to protect customers actively engaging in the competitive energy market (for example, disconnection and reconnection), and to the extent failure is clear, evaluating the net benefit of introducing additional protections to the existing framework (as described by Option 1).

The tendency for additional and ad hoc guidelines to be developed under the auspices of energy specific consumer protection Codes is unlikely to be constrained under the scenarios that may occur if Option 3 were pursued. Further, Option 3 would be likely to diminish the effective and efficient operation of the competitive retail energy market relative to the outcomes that would result under Option 1 given it is the approach most likely to generate the greatest restriction on the negotiable content and innovation associated with market contracts.

Origin's chief concern with the Option 3 lies with not only the potential duplication of existing protections, but the lack of checks and balances this approach may result in going forward, based on outcomes that have occurred to date.

### **3.2 Beneficiaries of market contract obligations**

Since all small customers will be covered by some form of standing offer (to be provided by all retailers), it would be expected that most residential customers entering into a market contract would expect to be covered by market contract terms that are a subset of regulation provided by the standing offer terms.

Origin would agree that Option 3, or the range of outcomes that might occur under this approach would be the best approach as it allows for:

- recognition of the negotiating position of different classes of small customers (business and residential for example);
- the flexibility to consider thresholds in any regime governing market contract conditions and the intent of such protections; and
- avoids extending burdensome protections to customers who do not require such protection.

However, Origin's support of Option 3 is qualified by the views put forward in 3.1 above, which argue that energy industry specific market contract regulation is not required or conducive to the development of a robust national market. The bulk of small energy consumers currently have access to consumer protection legislation and regulation within their jurisdiction, so these same consumers are likely to have the benefit of the protections offered under Option 1 discussed above.

## 4. Retailer-small customer marketing

Unlike the supply of energy as an essential service, Origin notes that the sale process for market contracts is identical to any other good or service marketed to consumers in the economy. Therefore, there would appear no objective need for an additional layer of regulation covering such marketing activity. For this reason, Origin would support the range of outcomes that may emerge under Option 1 as described in section 4.4(a)(i) of *Working Paper 1* (page 40).

Origin is also concerned that it (and market participants also) have not had the opportunity to review the position paper put to the SCO by the Utility Regulator's Forum. While Origin supports the objective of harmonisation, the remit of the present review is to not merely replicate existing regulation in a national context, particularly when an assessment is required to determine the need for ongoing regulation of certain competitive energy market activity (particularly in relation to direct marketing activities).

Based on the preferred option of relying on existing instruments governing marketing behaviour, the liability and responsibility to comply with obligations will apply either directly or indirectly to agents acting on a retailer's behalf via commercial arrangements. Origin would not support mandating the responsibility to comply as described by Option 1 in section 4.4(a)(ii) of the *Working Paper 1*.

## 5. Objects clause

Origin understands that a reference to avoiding duplication of the customer protection framework within an objects clause could be dealt with in a statement of policy principles rather than within the Law itself. However, there is some concern that its removal from any objects clause will dilute its application subsequent to the introduction of a national regime.

There has been significant duplication of obligations to date placed upon energy retailers, which has increased complexity and allowed reinterpretation of original regulation and Code provisions via the introduction of energy specific guidelines. With regard to the obligation to supply, market contracts and marketing practices, this objective provides guidance to regulators and policy makers to limit complexity in order for the market to provide benefits to consumers via competition. Since different approaches have proliferated in the retail regulatory environment, the retention of this element of the objects clause would be desirable in reminding participants and stakeholders that the regime should not seek to duplicate existing protections.