

10 April 2017

Mr Alex Kroon  
The Economic Regulation Authority  
Level 4, Albert Facey House,  
469 Wellington Street,  
PERTH WA 6000

Dear Mr Kroon

### **Consultation on Origin Energy Retail Ltd's standard form contract**

Thank you for the opportunity to comment on Origin Energy Retail Ltd's (**Origin**) proposed standard form contract (**SFC**) for the supply of gas to small use customers. I make the following comments in relation to the proposed SFC (each of which is discussed in more detail in the **attached** table):

1. There is no adequate description of "Green Gas" in the SFC. There should be. "Green Gas" is goods provided under the SFC (clauses 1 and 24). An "exact description" of Green Gas is therefore required for compliance with regulation 8 of the *Energy Coordination (Customer Contracts) Regulations 2004*.
2. The credit reporting provisions in the SFC (clause 6) appear to be based on out of date (pre March 2014) privacy law. They need to be updated to reflect current *Privacy Act 1988* requirements.
3. The meaning of "your payment schedule" in clause 11 is unclear. Customers may be given the impression they can unilaterally establish their own schedule for paying their gas bills, which is presumably not what Origin intends. If that is the case, then the meaning should be clarified to show that any payment schedule must be agreed with Origin.
4. Clause 11 of the SFC invites customers to notify Origin if they are experiencing "Financial Hardship", but does not mention "Payment Difficulties". Presumably clause 11 should be amended to include an invitation to notify about Payment Difficulties too.
5. The SFC document appears incomplete. It omits the "Details" section that is stated to form part of the "Agreement" (clause 37). The entire document comprising the standard form contract is required to be submitted to the Authority for approval under the *Energy Coordination Act 1994*. Origin must therefore submit the Details section too. Similarly, the SFC document does not include provisions to satisfy the unsolicited consumer agreement provisions of the *Australian Consumer Law* or the door to door contract provisions of the *Energy Coordination (Customer Contracts) Regulations 2004*. That is fine so long as Origin does not propose using the SFC to conduct any such activities. However, if Origin does propose using the SFC to conduct any such activities then it must include the necessary compliance provisions in the SFC so that the Authority can consider the entire SFC package.

Please do not hesitate to contact me if you have any questions in relation to this submission.

Yours sincerely

Stephen Stockwell

# ERA consultation on Origin Energy Retail Ltd's standard form contract

## Table of comments by Stephen Stockwell

(attachment to letter dated 10 April 2017)

	SFC provision	Issue
1.	Clauses 1, 24 and 37	<p><b>Inadequate description of "Green Gas".</b></p> <p>Regulation 8 of the <i>Energy Coordination (Customer Contracts) Regulations 2004</i> requires that a customer contract must give an <b>exact description</b> of the goods and services that the retail supplier will provide under the contract.</p> <p>The SFC purports to cover the "sale" (clause 1) and "take-up" (clause 24) of Green Gas and so is required by regulation 8 to contain an exact description of Green Gas.</p> <p>However, there is no definition of Green Gas in clause 37 of the SFC.</p> <p>Further, while clause 24 of the SFC states "<i>If you take up Green Gas, we'll purchase greenhouse gas offsets equal to the estimated greenhouse gas emissions from your natural gas supply</i>", that description does not appear to provide an "exact description" of Green Gas. For example, it</p> <ul style="list-style-type: none"> <li>• does not clarify exactly what is meant by "<i>greenhouse gas offsets</i>"; and</li> <li>• is not consistent with the description of Green Gas on Origin's website (<a href="https://www.originenergy.com.au/for-home/electricity-and-gas/info/green-energy.htm">https://www.originenergy.com.au/for-home/electricity-and-gas/info/green-energy.htm</a>), which states:</li> </ul> <p style="text-align: center;"><i>"When you choose Green Gas, we'll make sure that an equivalent amount of greenhouse gas emissions from your natural gas use are offset through our independently audited Carbon Reduction Scheme. You'll still receive supply in the same way as before, ...."</i></p> <p>In particular, while clause 24 of the SFC contemplates having offsets that equal an <i>estimate</i> of emissions, the website description apparently contemplates having offsets that equal the <i>actual</i> emissions. On the other hand, the website provides a more detailed description of offsets ("<i>offset through our independently audited Carbon Reduction Scheme</i>") than clause 24 of the SFC.</p> <p><b>Suggestion:</b> Add a definition of "Green Gas" to clause 37 of the SFC that provides an "exact description" of Green Gas (as required by regulation 8 of the <i>Energy Coordination (Customer Contracts) Regulations 2004</i>). That description should of course also be fully consistent with any description used in Origin's website or marketing materials and must not be misleading or deceptive contrary to the <i>Australian Consumer Law</i>. See in particular, the ACCC's guidance on "green marketing": <a href="https://www.accc.gov.au/system/files/Green%20marketing%20and%20the%20ACL.pdf">https://www.accc.gov.au/system/files/Green%20marketing%20and%20the%20ACL.pdf</a></p>
2.	Clause 6	<p><b>Credit reporting apparently based on old (pre March 2014) privacy law</b></p> <p>Clause 6 of the SFC deals with credit reporting and purports to set out the types of customer information Origin may disclose to a credit reporting agency. However, it appears to be out of date as it does not seem to match the types of information that</p>

	<b>SFC provision</b>	<b>Issue</b>
		<p>are currently permitted to be disclosed under the <i>Privacy Act 1988</i>.</p> <p>For example, clause 6 of the SFC purports to include a right for Origin to disclose a customer's personal information concerning "<i>dishonoured payments — if a cheque from you for more than \$100 has been dishonoured more than twice</i>".</p> <p>That provision seems to be based on the <i>former (pre March 2014)</i> section 18E(1)(b)(vii) of the <i>Privacy Act</i> which permitted the listing on credit information files of information that is a record of a twice presented and dishonoured cheque for an amount of not less than <b>\$100</b>.</p> <p>However that provision no longer exists. There is no longer any provision (or express right) to disclose information about presented or dishonoured cheques and the minimum threshold amount for inclusion of an overdue payment in default information is now set at <b>\$150</b> (or such higher amount as is prescribed by regulations): see sections 6Q(1) and 21D of the <i>Privacy Act</i>.</p> <p><b>Suggestion:</b> Review clause 6 of the SFC in its entirety in light of the current requirements of the <i>Privacy Act</i> and amend the clause as necessary for compliance.</p>
3.	Clause 11	<p><b>Meaning of "your payment schedule" unclear</b></p> <p>Clause 11 of the SFC states: "<i>You must pay each bill in full by the Due Date or make payments in accordance with your payment schedule or instalment plan.</i>" However the term "your payment schedule" is not defined and may give customers the impression they can unilaterally establish their own schedule for paying their gas bills. Presumably any such "your payment schedule" must first be agreed with Origin?</p>
4.	Clause 11	<p><b>Omission of requirement to notify about Payment Difficulties</b></p> <p>Clause 11 of the SFC states "<i>If you can't pay by the Due Date or are experiencing Financial Hardship, let us know as soon as possible.</i>"</p> <p>While this refers to Financial Hardship it makes no mention of notifying Origin if a customer is experiencing "Payment Difficulties". Is that omission intentional?</p>
5.	Clause 37	<p><b>Completeness of SFC document</b></p> <p>The entire document comprising a proposed standard form contract is required to be submitted to the Authority for approval under the <i>Energy Coordination Act 1994</i>. However, it appears that Origin has not provided all of its proposed standard form contract for approval by the Authority.</p> <p>Clause 37 of the SFC defines "Agreement" as "<i>the Details section and the Agreement Terms</i>". However, only the Agreement Terms appear to have been provided for approval by the Authority. The Details section is missing. The Details section should also be submitted for approval by the Authority as it is apparently to form part of the SFC.</p> <p>Further, if Origin uses the SFC in selling practices that would lead to formation of a "door to door contract" (as defined in regulation 27 of the <i>Energy Coordination</i></p>

	<b>SFC provision</b>	<b>Issue</b>
		<p>(<i>Customer Contracts Regulations 2004</i>) or an "unsolicited consumer agreement" (as defined in section 69 of the <i>Australian Consumer Law</i>) then the SFC document that is approved by the Authority would need to include the necessary additional notices and other provisions required for compliance with those regulatory requirements. As the SFC document currently does not include those provisions, presumably Origin will ensure that the SFC is not used in that way.</p>