



4 February 2011

General Manager  
Markets Branch  
Australian Energy Regulator  
GPO Box 520  
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Email: [AERInquiry@aer.gov.au](mailto:AERInquiry@aer.gov.au)

Dear Sir,

**RE: RETAIL EXEMPTIONS AND DRAFT EXEMPT SELLING GUIDELINES - PRELIMINARY CONSULTATION**

Origin appreciates the opportunity to comment on the Australian Energy Regulator's (AER's) Retail Exemptions consultation paper and the Draft Exempt Selling Guideline and we recognise that this is a preliminary consultation, to be followed by a formal consultation in 2011. In this submission Origin will not be responding to all of the individual issues raised in the consultation document, rather we will focus our response on the key matters of concern.

1. Public Register for Onsellers

As mentioned in our response to the AER's Issues Paper, the jurisdictional approach to managing onselling activities has been piecemeal and inconsistent. Origin is of the view that onselling activities are growing, and that there are an increasing number of customers being excluded from the competitive market. Such customers do not have access to the market's comprehensive customer protection mechanisms mandated to be delivered by licensed retailers.

While Origin understands that many of onselling arrangements were established prior to retail competition and in some cases there were sound technical and commercial reasons for creating onselling situations, regulation should not promote unnecessary proliferation of these arrangements. Without an appropriate level of oversight, many customers will experience lower levels of customer protection without any commensurate benefits.

Origin notes the AER has now agreed to introduce a public register for onselling activities that are covered under a class exemption. This initiative is supported by Origin, however to fully understand the scope of onselling activities Origin also believes that every site covered under deemed onselling categories should also be listed on the public register. A fundamental precursor to understanding any activity is to measure the scope of that activity. This will allow the AER to monitor the growth in this market and to evaluate if its regulatory controls are effective. The key problem in the past, under jurisdictional regulatory oversight, has been that onselling arrangements (and embedded networks) lose transparency in the market and hence there is a risk that consumers can be exploited.

In the recent industry forum the AER argued that a comprehensive public register would be an administrative burden that it would be unwilling to implement. Origin does not



agree with this position and believes that with relative low cost information technology the AER could readily introduce a mandatory online self registration process for onsellers coupled with a suitable education and penalty regime to encourage compliance. There was an expectation by retailers', following the move to national regulation, that onselling would be addressed in a far more comprehensive and consistent manner than that undertaken by jurisdictional regulators particularly considering the increased resource base available to a national regulator. Moreover, there appears to be a double standard whereby licensed retailers face an ongoing increase in performance monitoring and regulatory oversight while monitoring of the operations of all energy onsellers remains limited or non-existent.

## 2. Mitigation Measures for Customers when Onsellers Fail

In the AER's Issues Paper respondents were requested to comment on how customers of onsellers could be protected from failure of supply by a defaulting onseller. Origin made the following suggestion:

*The only real way to solve this problem is for the AER to request securities (equivalent to at least 3 months energy supply) in the form of bank guarantees or cash from on-selling applicants before an exemption is granted. These securities could be called upon to ensure supply was not disconnected. It would also allow some time for a new on-seller to be found during the intervening period. Obviously this is not unlike the prudential arrangements that authorised retailers are subjected to in wholesale energy markets.*

The Consultation paper under section 3.22 raises the AER's concerns that customers of onsellers are not protected if onsellers default on their energy purchases but no new provisions have been contemplated. Clarity is sought on what measures are now being considered.

## 3. Registration Of Parent And Child Meter In MSATS

In the AER's Issues Paper Origin suggested the use of the Australian Energy Market Operator's Market Settlement and Transfer System (MSATS) to identify parent and child meters for each National Meter Identifier (NMI) as a means of tracking the loads and sites associated with onsellers and embedded networks. We note that the AER has agreed to consider this as part of the AER's consultation on the Network Service Providers Exemption Guidelines. While Origin sees some merit in referring this issue to another forum, care must be taken to ensure that this suggestion is not overlooked; this consultative process will focus on network technical issues and may fail to adequately address the importance or relevance of this particular market issue in the context of onselling.

## 4. Access to Ombudsman Schemes

The AER has commented on the problems and barriers which exist for onsellers to be captured under existing Energy Ombudsman schemes to ensure that exempt customers can have access to impartial and independent external dispute resolution processes. The AER has agreed to consider the application of the Australian standard ISO 10002-2006 to onsellers on a case by case basis. Origin is of the view that this is not a satisfactory outcome and leaves the issue largely unresolved. Exempt customers, in many cases, will not have access to the competitive market whereby they can ultimately limit their exposure by exercising their right to change retailers. Without this right at the very



minimum, an exempt customer requires access to a robust dispute resolution process. Origin suggests that more work needs to be done by the AER and onseller associations to provide a more consistent and acceptable solution for this important issue.

#### 5. Class D5 Unmetered Gas

The deemed onselling category Class D5 Unmetered gas applies for gas used for - "*limited purposes that is, for use in cooking appliances and, possibly, heating water*". It is not clear when this category will or will not apply to heating water (for domestic hot water). The intent for this categorisation to apply to cooking is supported but its application to domestic hot water or 'water heating' needs to be clarified and restricted. As individual domestic hot water use can be quite variable the gas used to supply hot water should be metered to achieve an equitable allocation.

It would not be in the best interests of consumers if the gas market were to see a proliferation of new unmetered gas supplies in the domestic market. Origin requests that the application to domestic hot water be clarified.

#### 6. Exemption Arrangements For Specialist Onsellers

The AER is considering whether to grant individual exemptions on an entity-specific basis rather than on a site-specific basis for those onsellers that operate across multiple locations and are largely subject to the majority of the Retail law and Retail rules. Origin believes that this approach somewhat contradicts the AER's comment "*...that in general onselling will not always be in the long term interests of consumers*".<sup>1</sup> A blanket exemption to a single entity could, over time, encourage the development of new premises specifically designed to limit or deny customer access to the competitive market. Such an outcome may not have been the original intention or business model of the exempt entity; however, as management and ownership of such entities change, the basis of the original business model and conditions may change or be interpreted differently, creating the potential for blanket exemptions over time. Origin does not support entity-specific exemptions.

Should you have any questions regarding this submission please do not hesitate to contact me on 03 9652 5880.

Yours sincerely

[Signed]

Randall Brown  
Energy Relationships Manager

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<sup>1</sup>AER's Consultation paper and response to Submissions Retail Exemptions - page 16