

FILE No:

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## Form G

Commonwealth of Australia

*Trade Practices Act 1974 — subsection 93 (1)*

### NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

#### 1. Applicant

- (a) *Name of person giving notice:*  
(Refer to direction 2)

N94254 Origin Energy Electricity Limited (“Origin”)

- (b) *Short description of business carried on by that person:*  
(Refer to direction 3)

Origin Energy Electricity Limited is in the business of retailing electricity and related products, such as solar PV systems.

- (c) *Address in Australia for service of documents on that person:*

Megan Gallagher

Corporate Lawyer

Level 32, 360 Elizabeth St, Melbourne 3000

#### 2. Notified arrangement

- (a) *Description of the goods or services in relation to the supply or acquisition of which this notice relates:*

This notice relates to the “solar park package” (“**Package**”). The Package is one of the packages which will be offered as part of the Central Victoria Solar City Project (“**Project**”) (see Attachment 1 for further details of the Project). The Package includes two services:

- the retail supply of electricity from Origin; and
- an arrangement which is similar to a person “renting” a portion of the Bendigo and Ballarat Solar Parks from subsidiaries of Sustainable Regional Australia (“SRA”) (“**participation plan**”) (for details of the Solar Parks please see Attachment 1).

The Package is intended to simulate an arrangement where the customers rent their own panels in the Solar Parks, and receive the benefit of the electricity produced by their share of the park (“**Simulated Intent**”).

*Retail supply of electricity*

Origin will supply electricity under a special “Central Victoria Solar Park Energy Plan”. This will be a market contract for electricity to residential consumers in the central Victorian solar city catchment area (see question 3(a) for details). The terms and conditions have not yet been developed, but they will be based on Origin’s standard terms and conditions with amendments required for the purposes of the Project.

*Participation plan*

Under the participation plan, consumers will contract with either Bendigo Solar Park Pty Ltd or Ballarat Solar Park Pty Ltd for certain rights in relation a 150th share of the output of the 300 kW Bendigo or Ballarat Solar Park. This is approximately equivalent to the output of a 2kW PV system.

Consumers will not physically receive the electricity produced by the Solar Parks due to the nature of the national electricity market. They will also continue to purchase and pay for the electricity they do consume as they normally would – albeit under a special energy plan.

Consumers who enter into the participation plan will (notionally) be entitled to certain revenue streams which are funded by the Commonwealth Government:

- a simulated feed-in tariff known as the “Central Victoria Solar City Feed-in-Tariff”. This will be 60c/kWh per kWh of electricity generated by the 150th share of the Solar Park up to a maximum of 3250kWh per annum; and
- a capital allowance of component, called the Central Victoria Solar City Investment Allowance, which is a percentage of the cost of the asset over 4.5 years.

The intention was for the customer to receive information about the simulated feed-in tariff and the capital allowance component on their electricity bill in order to achieve the Simulated Intent. However, it is not feasible to achieve this due to a range of constraints. Accordingly, SRA has decided to charge customers a flat participation fee of \$220 (inc GST) per annum. The amounts the customer is entitled to receive (simulated feed-in tariff and capital allowance) will subsidise the participation fee but will be paid directly to SRA’s subsidiaries.

The trial will close on 30 June 2013, at which time SRA will determine the future ownership model for the Solar Parks. In particular, SRA will consider whether it is commercially feasible to offer, by way of an Initial Public Offering, the chance for investors to subscribe for capital so that the Solar Parks can remain in “community” ownership. If an IPO is commercially feasible, the Funding Agreement between the Commonwealth Government and SRA requires that the customers who have taken up the Package be given priority in the IPO.

*Other components of the Package*

Consumers who take up the Package will also:

- have a new interval meter installed by Powercor;
- take part in research on energy use which will be provided to the Commonwealth Government; and
- be paid a performance bonus of \$250 if they remain with the trial and the Package until the end of 30 June 2013 at the same residence.

*(b) Description of the conduct or proposed conduct:*

The proposed conduct involves Origin:

- supply, or offering to supply, its Central Victoria Solar City Energy Plan to consumers on condition that they also acquire the participation plan from either Bendigo Solar Park Pty Ltd or Ballarat Solar Park Pty Ltd; and
- refusing to supply its Central Victoria Solar City Energy Plan to consumers for the reason that they have not acquired the participation plan from either Bendigo Solar Park Pty Ltd or Ballarat Solar Park Pty Ltd.

As noted above, although it is not feasible to include the participation fee on the electricity invoice, the parties still believe the proposed conduct will promote the Simulated Intent.

**3. Persons, or classes of persons, affected or likely to be affected by the notified conduct**

*(a) Class or classes of persons to which the conduct relates:  
(Refer to direction 5)*

Persons in the 14 Central Victorian Solar City municipalities, including Swan Hill, Buloke, Gannawarra, Loddon, Campaspe, Greater Bendigo, Northern Grampians, Mt Alexander, Central Goldfields, Ararat, Pyrenees, Ballarat, Hepburn and Macedon Ranges.

(b) *Number of those persons:*

(i) At present time:

There are no customers on the Package at the present time.

(ii) Estimated within the next year:

*(Refer to direction 6)*

300 Packages will be offered for supply – 150 for each of the Ballarat and Bendigo Solar Parks.

(c) *Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:*

*N/A*

#### **4. Public benefit claims**

(a) *Arguments in support of notification:*  
*(Refer to direction 7)*

There are clear public benefits flowing from the arrangement, including:

- providing eligible consumers with increased product choice;
- the benefits associated with the Australian Government's Solar City Program, including the collection of data such as energy use and behaviour surveys which Origin understand will be used by the Government in the development of future energy policies; and
- the benefits associated with the Project. The Project, through the range of products which are being offered a part of the Project (see Attachment 1), aim to:
  - help people save energy;
  - drive the use of Australia's leading-edge solar technologies;
  - reward energy efficiency and solar generation;
  - empower households by providing information to help them understand their energy usage and help them reduce their carbon footprint; and
  - showcase to the public the economic and environmental benefits of wiser energy choices.

(b) *Facts and evidence relied upon in support of these claims:*

The following extract from the website of the Department of the Environment, Water, Heritage and the Arts outlines some of the key benefits expected from the Solar City Program:

*“Each Solar City will integrate a unique combination of energy options such as energy efficiency measures for homes and businesses, the use of solar technologies, cost reflective pricing trials to reward people who use energy wisely, and community education about better energy usage in an increasingly energy-reliant world.*

*The information will be analysed to see how different members of a community can best reduce energy consumption, and how governments, industries and individuals can support wise energy use. In particular, the program aims to:*

- demonstrate the environmental and economic effects of combining cost reflective pricing with the widespread use of solar technology, energy efficiency and smart meters*
- find out what barriers exist regarding energy efficiency, electricity demand management and the use of solar technology, among businesses and householders in different parts of Australia, and test ways to deal with these barriers.*

*Solar Cities' consortia in each location are working with industry, businesses and their local communities to rethink the way they produce and use energy.”*

## **5. Market definition**

*Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):*

*(Refer to direction 8)*

The following markets may be affected by the conduct:

- (a) the national market for the retail supply of electricity;
- (b) the national market for the generation of electricity; and

(c) the national market for the retail supply of solar PV panels.

**6. Public detriments**

- (a) *Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:  
(Refer to direction 9)*

Origin submits that the conduct will not lead to any detriment to the public. The markets identified above are very competitive and consumers will continue to have a significant amount of choice in each of the retail markets. Origin will continue to supply its retail electricity in the affected geographical areas in the normal course of business. This Package will simply provide an additional product for consumers to choose from.

Further, only a small number of the Packages will be available for supply, so the conduct will only impact a minute proportion of the relevant markets.

- (b) *Facts and evidence relevant to these detriments:*

N/A

**7. Further information**

- (a) *Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:*

Megan Gallagher

Corporate Lawyer

Level 32, 360 Elizabeth St, Melbourne 3000

03 8665 7583

Dated 12 October 2009

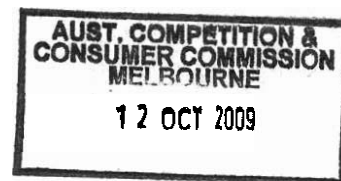
Signed by/on behalf of the applicant

M Gallagher  
(Signature)

Megan Gallagher  
(Full Name)

Origin Energy  
(Organisation)

Corporate Lawyer  
(Position in Organisation)





## **DIRECTIONS**

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the business of the person giving the notice in the course of which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in section 47 of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. Describe the business or consumers likely to be affected by the conduct.
6. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.
7. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
8. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.



## **Attachment 1**

### **Further description of Central Victoria Solar City Project**

The Commonwealth of Australia, acting through the Department of the Environment, Water, Heritage and the Arts (“DEWHA”), by the provision of financial assistance under the Solar Cities Program, is trialling new sustainable models for electricity supply through the use of distributed solar technologies, energy efficiency, load management, smart meters and cost-reflective pricing combined in large-scale grid-connected urban sites. In essence, the Solar Cities Program is testing the willingness of consumers to adopt new business initiatives in relation to photovoltaic systems, solar hot water, energy efficiency, cost reflective pricing and solar energy technology for their everyday energy use in a retail consumer environment.

Sustainable Regional Australia Pty Ltd (“SRA”) was the successful bidder to the Commonwealth of Australia to deliver the Central Victorian Solar City Project (“Project”) and acts as the lead proponent for the joint activities of the consortium for the Project. The consortium members are: SRA, Bendigo and Adelaide Bank Limited, Powercor Australia Ltd, Central Victorian Greenhouse Alliance Incorporated, and Origin Energy Retail Limited (“Consortium”).

The Commonwealth of Australia is supporting the Project by providing funding of approximately \$15 million to the Consortium, which is used for a range of activities that include the construction of two large scale, flat plate ground mounted PV parks. In doing so and subsidising the consumer’s cost to obtain the eventual retail products provided by the Applicant the program is testing in a trial environment possible policy settings that are available to government to use in fostering the uptake of power generated from renewable sources. The State Government of Victoria is also providing funding of approximately \$3 million to help funds tasks relating to the Project.

#### **Solar Parks**

Two Solar Parks are being constructed as part of the Project – one in Bendigo and one in Ballarat. Each Solar Park comprises a grid of solar panels that produce solar energy via photovoltaic or solar cells, and have an estimated operating capacity of 300kW (approximately equivalent to 150 households each accessing their own a 2 kW solar panel).

The Solar Park located in Bendigo is owned and managed by Bendigo Solar Park Pty Ltd, a wholly owned subsidiary of SRA, while the Solar Park located in Ballarat is owned and managed by Ballarat Solar Park Pty Ltd, again a wholly owned subsidiary of SRA.

The intended commercial operations of the wholly owned subsidiaries during the life of the Central Victoria Solar City trials are to produce energy output from the Solar Parks, which:

- is sold from Ballarat Solar and Bendigo Solar to Origin under a Power Purchase Agreement, with the pricing reflecting a simulation of a usual electricity retailer acquiring renewable energy at higher than traditional wholesale rates; and
- is then fed into the national electricity grid by Origin.

#### **Other packages included in the Project**

The other packages/products available as part of the Project are as follows:

- conducting energy use audits within homes located in the regions;
- installing 'retrofit' technologies within homes located in the regions addressing insulation and sealing, hot water management, lighting and general power;
- providing new demand management based tariff retail products, comprising either a 'Critical Peak Pricing' tariff or a 'Time of Use' tariff, which are to be sold by Origin to retail customers in the region;
- supply of solar hot water systems;  
supply of 2kW photovoltaic solar panel system to be fitted on the roofs of national electricity grid connected households' in the region; and
- a full suite, including all of the above products.