



**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE  
COMMERCIAL COURT  
GROUP PROCEEDINGS LIST**

Case: S ECI 2025 00287

Filed on: 28/05/2025 04:24 PM

**No. S ECI 2025 00287**

BETWEEN

**SCOTT BYRNES**

Plaintiff

and

**ORIGIN ENERGY LIMITED (ACN 000 051 696)**

Defendant

**DEFENCE**

---

Date of Document:	28 May 2025	Solicitors Code:	420
Filed on behalf of:	Defendant	DX:	240
Prepared by:	Herbert Smith Freehills	Telephone:	+61 2 9225 5323
		Ref:	82740203
		Email:	Jason.Betts@hsf.com

---

Unless otherwise stated, a defined term in this Defence has the same meaning as assigned to it in the plaintiff's Statement of Claim dated 21 January 2025 (**SOC**). Headings and sub-headings used in the SOC have been replicated in this Defence. The defendant (**Origin**) does not make any admissions by the use of these headings. As to the allegations in the SOC, Origin says as follows:

**A. PRELIMINARY**

**A.1 The Plaintiff and the Group Members**

1. As to paragraph 1, it:

- (a) admits that the plaintiff has defined the persons on whose behalf he has purported to commence this proceeding;

- (b) denies that any person has suffered loss or damage as alleged in paragraph 1(b);
  - (c) otherwise does not know and therefore cannot admit the allegations in paragraph 1.
2. It does not know and therefore cannot admit the allegations in paragraph 2.
3. As to paragraph 3, it:
- (a) admits that, during the Relevant Period, there were seven or more persons who entered into a contract to acquire an interest in ORG Shares;
  - (b) does not know and therefore cannot admit that any person entered into a contract to acquire ORG Equity Swaps during the Relevant Period;
  - (c) refers to and repeats paragraph 1 above; and
  - (d) otherwise denies the allegations in paragraph 3.

## **A.2 The defendant**

4. It admits the allegations in paragraph 4.
5. It admits the allegations in paragraph 5.
6. It admits the allegations in paragraph 6.

## **A.3 Directors and Officers of Origin**

7. It admits the allegations in paragraph 7.
8. As to paragraph 8, it:
- (a) says that Ilana Atlas was, from 20 October 2021 to the end of the Relevant Period, a member of the Risk Committee and otherwise denies the allegation in paragraph 8(b);  
and
  - (b) otherwise admits the allegations in paragraph 8.

9. It admits the allegations in paragraph 9.
10. It admits the allegations in paragraph 10.
11. As to paragraph 11, it:
  - (a) admits the allegations in paragraph 11(a);
  - (b) says that Mick McCormack was a member of the Audit Committee during the Relevant Period and otherwise denies the allegation in paragraph 11(b); and
  - (c) otherwise admits the allegations in paragraph 11.
12. As to paragraph 12, it:
  - (a) admits the allegations in paragraph 12(a);
  - (b) says that Steven Sargent was a member of the Risk Committee from 1 January 2020 to the end of the Relevant Period and otherwise denies the allegation in paragraph 12(b); and
  - (c) otherwise admits the allegations in paragraph 12.
13. It admits the allegations in paragraph 13.
14. It admits the allegations in paragraph 14.
15. It admits the allegations in paragraph 15.
16. As to paragraph 16, it:
  - (a) admits the allegations in paragraph 16(a);
  - (b) admits the allegations in paragraph 16(b); and
  - (c) says that, from the start of the Relevant Period until 8 March 2022 John Akehurst was an officer of Origin within the meaning of s 9 of the Corporations Act and Listing Rule 19.12 and otherwise denies the allegation in paragraph 16(c).

17. It admits the allegations in paragraph 17.
18. It admits the allegations in paragraph 18.
19. It admits the allegations in paragraph 19 save to say that Lawrie Tremaine was appointed as Chief Financial Officers on 14 February 2017.
20. As to paragraph 20, it:
  - (a) admits the allegations in paragraph 20(a) save to say that Greg Jarvis was appointed on 2 December 2016; and
  - (b) denies the allegations in paragraph 20(b).
21. As to paragraph 21, it:
  - (a) says that on 2 December 2016 Anthony Lucas was appointed Executive General Manager, Future Energy and Business Development and otherwise denies the allegations in paragraph 21(a); and
  - (b) denies the allegations in paragraph 21(b).
22. As to paragraph 22, it:
  - (a) admits the allegations in paragraph 22(a); and
  - (b) denies the allegations in paragraph 22(b).
23. As to paragraph 23 insofar as the allegation concerns Samantha Stevens, it:
  - (a) admits the allegations in paragraph 23(a);
  - (b) denies the allegations in paragraph 23(b); and
  - (c) otherwise denies the allegations in paragraph 23.
24. As to paragraph 24:
  - (a) admits the allegations in paragraph 24(a); and

- (b) denies the allegations in paragraph 24(b).

## **B. ORIGIN'S BUSINESS AND THE CONTEXT IN WHICH IT OPERATED**

### **B.1 Overview of Origin's business**

25. It denies paragraph 25 and says that:

- (a) during the Relevant Period, the Origin corporate group reported against 3 operating segments organised according to the nature of the activities undertaken in each, and which reflected the way the group was managed, rather than its legal structure;

#### **Particulars**

FY2022 Annual Report, p 91.

- (b) the **Energy Markets Segment** included the following group businesses or business activities:
  - (i) energy (electricity and gas) procurement, retailing and wholesaling;
  - (ii) power generation;
  - (iii) LPG operations predominantly in Australia;
  - (iv) solar and energy services; and
  - (v) the investment in Octopus Energy Holdings Limited;

#### **Particulars**

FY2022 Annual Report, p 91.

- (c) the **Integrated Gas Segment** included the following group businesses or business activities:
  - (i) the investment in Australia Pacific LNG Pty Ltd (**APLNG**);

- (ii) exploration interests in the Beetaloo, Cooper-Eromanga and Canning basins and costs associated with growth initiatives such as hydrogen; and
- (iii) overhead costs (net of recoveries from APLNG) and costs incurred in managing the exposure to LNG pricing risk and impacts of its LNG trading positions.

#### **Particulars**

FY2022 Annual Report, p 91.

- (d) the **Corporate Segment** included various business development and support activities that were not allocated to the Energy Markets or Integrated Gas operating segments, including corporate treasury and tax items.

#### **Particulars**

FY2022 Annual Report, p 91.

## **B.2 The National Electricity Market and the regulatory scheme in which Origin operated**

### *B.2.1 The National Electricity Market*

26. As to paragraph 26, it:

- (a) admits the allegations in paragraph 26 insofar as they relate to the Relevant Period, save to say that:
  - (i) the references in paragraph 26(a) to “electricity and power generating plants” and “systems and facilities” are unparticularised and vague and liable to be struck out; and
  - (ii) as to paragraph 26(b), it denies that the electricity spot market defined in the SOC as the “National Electricity Market” involves the sale and purchase of electricity between electricity generators and retailers in a virtual pool, and says further that it is a wholesale market for the sale and purchase of

electricity under which money is exchanged for the physical delivery of electricity; and

(b) otherwise does not admit the allegations in paragraph 26.

27. It denies the allegations in paragraph 27 and says further that:

(a) in the period from 1 July 2021 until the end of the Relevant Period the National Electricity Market balanced electricity supply and demand through a process whereby:

(i) scheduled electricity generators submitted generation price and quantity offers known as 'bids' to AEMO to have the output from generators dispatched into the physical market;

(ii) AEMO forecasts expected demand;

(iii) AEMO dispatches the cheapest generator bid first, and progressively more expensive bids until sufficient electricity is dispatched to meet demand, subject to various constraints including transmission capacity;

(iv) the wholesale spot price is determined for each five-minute trading interval for each region;

(v) the wholesale spot price determined in accordance with sub-paragraph 27(iv) above is the price that all generators receive for supply during the five-minute trading interval, and the price that wholesale customers pay for the electricity purchased in that period; and

(vi) AEMO invoices market customers for electricity drawn and pays electricity and power generators for electricity supplied.

28. As to paragraph 28, it:

(a) admits the allegations in paragraph 28 insofar as they relate to the Relevant Period, save to say that:

(i) AEMO's functions and responsibilities under the National Electricity Rules include providing a financial settlement service in accordance with rule 3.15, including billing and clearance for all market trading;

#### **Particulars**

Rule 3.2.6, National Electricity Rules.

(ii) as to paragraph 28(b), it denies that AEMO manages a centralised national dispatch process and says further that AEMO manages a central dispatch process for the Participating Jurisdictions; and

(iii) as to paragraph 28(c), AEMO's function was to determine and publish a spot price for electricity in accordance with r 3.9 of the NER; and

(b) otherwise does not admit the allegations in paragraph 28.

#### ***B.2.2 National Electricity Law and the National Electricity Rules as applicable to Generators and Market Customers***

29. As to paragraph 29, it:

(a) admits the allegations in paragraph 29 insofar as they relate to the Relevant Period; and

(b) otherwise does not admit the allegations in paragraph 29.

30. As to paragraph 30, it:

(a) admits the allegations in paragraph 30 insofar as they relate to the Relevant Period; and

(b) otherwise does not admit the allegations in paragraph 30.

31. As to paragraph 31, it:

(a) admits the allegations in paragraph 31 insofar as they relate to the Relevant Period, save to say that during the Relevant Period, the National Electricity Rules applied with force of law in each of the Participating Jurisdictions by operation of s 9 of the National Electricity Law, subject to any jurisdictional derogations to the National Electricity Rules as may have applied in that Participating Jurisdiction; and

(b) otherwise does not admit the allegations in paragraph 31.

32. As to paragraph 32, it:

(a) admits the allegations in paragraph 32 insofar as they relate to the Relevant Period; and

(b) otherwise does not admit the allegations in paragraph 32.

33. It denies the allegations in paragraph 33 and says further that during the Relevant Period:

(a) the National Electricity Law and the National Electricity Rules prohibited a person from owning, controlling or operating a generating system connected to the interconnected national electricity system or directly or indirectly connected to a regulated stand-alone power system unless:

(i) that person was registered by AEMO as a Generator or appointed as an Intermediary; or

### **Particulars**

National Electricity Law, s 11(1).

(ii) that person was the subject of a derogation that exempted that person or was otherwise exempted by AEMO from the requirement to be a Registered

Participant in relation to that activity under the National Electricity Law and the National Electricity Rules.

### **Particulars**

National Electricity Rules, cl. 2.2.1(a); cl 2.4.1(b); 2.9.3.

34. As to paragraph 34, it:
- (a) admits the allegations in paragraph 34 insofar as they relate to the Relevant Period;  
and
  - (b) otherwise does not admit the allegations in paragraph 34.
35. As to paragraph 35, it:
- (a) admits the allegations in paragraph 35 insofar as they relate to the Relevant Period;  
and
  - (b) otherwise does not admit the allegations in paragraph 35.
36. As to paragraph 36, it:
- (a) admits the allegations in paragraph 36 insofar as they relate to the Relevant Period;  
and
  - (b) otherwise does not admit the allegations in paragraph 36.
37. It denies the allegations in paragraph 37 and says further that:
- (a) the term “controlled entities” is not defined in the SOC and is vague and ambiguous and liable to be struck out; and

- (b) during the Relevant Period, OEEL (not Origin), as a Scheduled Generator, was required under the National Electricity Law and the National Electricity Rules to:
  - (i) operate its scheduled generating units in accordance with the central dispatch process operated by AEMO under the provisions of Chapter 3 of the National Electricity Rules; and
  - (ii) notify AEMO of the availability of each scheduled generating unit in respect of each Trading Interval.

38. As to paragraph 38, it:

- (a) admits the allegations in paragraph 38 insofar as they relate to the Relevant Period; and
- (b) otherwise does not admit the allegations in paragraph 38.

39. It denies the allegations in paragraph 39 and says further that:

- (a) the term “controlled entities” is not defined in the SOC and is vague and ambiguous and liable to be struck out; and
- (b) during the Relevant Period, OEEL (not Origin), as a Market Generator, was required under the National Electricity Law and the National Electricity Rules to:
  - (i) sell the amount of electricity supplied from a generating unit to the transmission network or distribution network, into the spot market;
  - (ii) accept payments from AEMO for that electricity at the spot market price applicable at the relevant connection point as determined by AEMO for each Trading Interval;
  - (iii) purchase all electricity supplied through the national grid (that is, the sum of all connected transmissions systems and distribution systems and regulated

stand-alone power systems within the NEM jurisdictions) to that Market Generator at a connection point from the spot market; and

- (iv) make payments to AEMO for such electricity supplied at the spot market price applicable at the relevant connection point as determined by AEMO for each Trading Interval.

40. It denies the allegations in paragraph 40 and says further that:

- (a) the term “controlled entities” is not defined in the SOC and is vague and ambiguous and liable to be struck out; and
- (b) during the Relevant Period, OEEL (not Origin), as a Market Customer, was required under the National Electricity Law and the National Electricity Rules to purchase all electricity supplied at the relevant connection point from the spot market and to make payments to AEMO for electricity supplied at the relevant connection point as determined for each Trading Interval in accordance with the provisions of Chapter 3 of the National Electricity Rules (contravention of such provision being a tier 1 civil penalty provision under the National Electricity Regulations).

### *B.2.3 National Energy Retail Law and National Energy Retail Rules*

41. As to paragraph 41, it:

- (a) admits the allegations in paragraph 41 insofar as they relate to the Relevant Period; and
- (b) otherwise does not admit the allegations in paragraph 41.

42. As to paragraph 42, it:

- (a) says that the National Energy Retail Regulations applied (with necessary modification) as regulations in force in South Australia, pursuant to s 5(a) of the SA Retail Act;

- (b) subject to the matters in sub-paragraph (a) above, admits the allegations in paragraph 42 insofar as they relate to the Relevant Period; and
- (c) otherwise does not admit the allegations in paragraph 42.

43. As to paragraph 43, it:

- (a) admits the allegations in paragraph 43 insofar as they relate to the Relevant Period; and
- (b) otherwise does not admit the allegations in paragraph 43.

44. It denies the allegations in paragraph 44, and says further that during the Relevant Period, it was an objective of the National Energy Retail Law to promote efficient investment in, and efficient operation and use of, energy services for the long-term interests of consumers of energy with respect to, inter alia, the price, quality, safety, reliability and security of supply of energy.

45. As to paragraph 45, it:

- (a) admits the allegations in paragraph 45 insofar as they relate to the Relevant Period save to say that exemptions for sellers are provided under Division 6 of Part 5 of the National Energy Retail Law; and
- (b) otherwise does not admit the allegations in paragraph 45.

46. Save to say that the authorisation held by OEEL since 1 July 2012 is an electricity retailer authorisation, it admits the allegations in paragraph 46.

47. As to paragraph 47, it:

- (a) admits the allegations in paragraph 47 insofar as they relate to the Relevant Period; and

(b) otherwise does not admit the allegations in paragraph 47.

48. As to paragraph 48, it:

(a) admits the allegations in paragraph 48 insofar as they relate to the Relevant Period;  
and

(b) otherwise does not admit the allegations in paragraph 48.

49. It denies the allegations in paragraph 49 and says further that:

(a) the term “controlled entity” is not defined in the SOC and is vague and ambiguous  
and liable to be struck out; and

(b) during the Relevant Period, OEEL (not Origin), as a retailer, was prohibited from  
providing customer retail services in the Retail Jurisdictions to small customers under  
any kind of contract or arrangement other than a standard retail contract or market  
retail contract (contravention of such provision being a civil penalty provision under  
the National Energy Retail Law).

50. As to paragraph 50:

(a) it admits the allegations in paragraph 50 insofar as they relate to the Relevant Period;  
and

(b) otherwise does not admit the allegations in paragraph 50.

51. It denies the allegations in paragraph 51 and says further that:

(a) the term “controlled entity” is not defined in the SOC and is vague and ambiguous  
and liable to be struck out; and

(b) during the Relevant Period, OEEL (not Origin) had in place written terms and  
conditions that applied to its market retail contracts for electricity in force in the

Australian Capital Territory, New South Wales, Northern Territory, Queensland and South Australia.

52. As to paragraph 52, it:

- (a) denies the allegations in paragraph 52(a) and says further that, during the Relevant Period OEEL's (not Origin's) standard retail contract was required to be consistent with the model terms and conditions in Schedule 1 of the National Energy Retail Rules;
- (b) admits the allegations in paragraph 52(b) insofar as they relate to the Relevant Period; and
- (c) otherwise does not admit the allegations in paragraph 52.

53. It denies the allegations in paragraph 53 and says further that:

- (a) the term "controlled entity" is not defined in the SOC and is vague and ambiguous and liable to be struck out; and
- (b) during the Relevant Period, the National Energy Retail Law operated to require OEEL (not Origin), as a retailer, to make offers to provide customer retail services to small customers for whom it is the designated retailer:
  - (i) at standing offer prices; and
  - (ii) under the retailer's form of standard retail contract –  
  
(contravention of such provision being a civil penalty provision under the National Energy Retail Law).

54. It denies the allegations in paragraph 54, and says further that:

- (a) the term "controlled entity" is not defined in the SOC and is vague and ambiguous and liable to be struck out; and

- (b) from 1 July 2019, the maximum standing offer prices that OEEL (not Origin), as a retailer, could charge small customers in New South Wales, South Australia, and South East Queensland on standard offer contracts was limited by operation of a price cap (known as the “Default Market Offer”) determined and set by the Australian Energy Regulator in accordance with the *Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019* made under the CCA (contravention of such provision being a civil penalty provision of the Electricity Retail Code of Conduct for the purposes of Part IVB and 76 of the CCA).

#### *B.2.4 Supply to domestic and small business customers in the State of Victoria*

55. As to paragraph 55:

- (a) it admits the allegations in paragraph 55 insofar as they relate to the Relevant Period;  
and
- (b) otherwise does not admit the allegations in paragraph 55.

56. As to paragraph 56:

- (a) it admits the allegations in paragraph 56 insofar as they relate to the Relevant Period;  
and
- (b) otherwise does not admit the allegations in paragraph 56.

57. As to paragraph 57:

- (a) it admits the allegations in paragraph 57 insofar as they relate to the Relevant Period;  
and
- (b) otherwise does not admit the allegations in paragraph 57.

58. As to paragraph 58:
- (a) it admits the allegations in paragraph 58 insofar as they relate to the Relevant Period;  
and
  - (b) otherwise does not admit the allegations in paragraph 58.
59. It admits the allegations in paragraph 59.
60. It denies the allegations in paragraph 60 and says further that:
- (a) the term “controlled entity” is not defined in the SOC and is vague and ambiguous and liable to be struck out; and
  - (b) during the Relevant Period, OEEL (not Origin) was a retailer for the purposes of the Victorian Retail Act.
61. It denies the allegations in paragraph 61 and says further that:
- (a) the term “controlled entity” is not defined in the SOC and is vague and ambiguous and liable to be struck out;
  - (b) as to paragraph 61(a), during the Relevant Period, OEEL (not Origin) was subject to a condition as alleged in paragraph 61(a); and
  - (c) as to paragraph 61(b), during the Relevant Period, OEEL (not Origin) was subject to a condition requiring it to offer to supply and sell electricity to domestic or small business customers on terms and conditions determined by OEEL and approved by the Commission and published by OEEL in the Government Gazette at least one month before those terms and conditions took effect, with such terms and conditions determined by OEEL not to be inconsistent with the terms and conditions decided by the Commission under subsection 36(1) of the Victorian Retail Act, or, from 1 December 2021 onward, a provision of a Code of Practice.

62. As to paragraph 62, it:
- (a) admits the allegations in paragraphs 62(a) and 62(b) insofar as they relate to the Relevant Period;
  - (b) denies the allegations in paragraph 62(c) and says further that from 1 December 2021, a term or condition in a contract for the supply or sale of electricity by a licensee to a relevant customer was void to the extent it was inconsistent with a provision of a Code of Practice; and
  - (c) otherwise does not admit the allegations in paragraph 62.
63. As to paragraph 63, it
- (a) admits the allegations in paragraph 63(a) insofar as they relate to the Relevant Period; and
  - (b) otherwise denies the allegations in paragraph 63 and says further that:
    - (i) the term “controlled entity” is not defined in the SOC and is vague and ambiguous and liable to be struck out; and
    - (ii) during the Relevant Period, OEEL (not Origin) was a regulated entity within the meaning of the Essential Services Commission Act.
64. As to paragraph 64, it:
- (a) admits the allegations in paragraphs 64(a) and 64(b) insofar as they relate to the Relevant Period;
  - (b) denies the allegations in paragraph 64(c) and says further that the Commission’s powers alleged in paragraph 64(c) were in force from 1 December 2021; and
  - (c) otherwise does not admit the allegations in paragraph 64.

65. It denies the allegations in paragraph 65, refers to and repeats paragraphs 63 and 64 above, and says further that:
- (a) the term “controlled entity” is not defined in the SOC and is vague and ambiguous and liable to be struck out;
  - (b) from the beginning of the Relevant Period to on or about 28 February 2022, OEEL (not Origin) was bound by the Energy Retail Code; and
  - (c) from on or about 3 March 2022 to the end of the Relevant Period, OEEL (not Origin) was bound by the 2022 Energy Retail Code.
66. Save to say that it will rely on the full terms and effect of the Energy Retail Code and the Victorian Retail Act at trial, it admits the allegations in paragraph 66.
67. Save to say that it will rely on the full terms and effect of the Victorian Retail Act at trial it admits the allegations in paragraph 67.
68. As to paragraph 68, it:
- (a) save to say that it will rely on the full terms and effect of the Energy Retail Code and the Victorian Retail Act at trial, it admits that the Energy Retail Code and the Victorian Retail Act contained terms to the effect alleged during the Relevant Period;
  - (b) otherwise denies the allegations and says further that:
    - (i) the term “controlled entity” is not defined in the SOC and is vague and ambiguous and liable to be struck out; and
    - (ii) OEEL (not Origin) was the retailer to which the alleged terms in the Energy Retail Code and the Victorian Retail Act applied.

69. It denies the allegations in paragraph 69 and says further that:

- (a) the term “controlled entity” is not defined in the SOC and is vague and ambiguous and liable to be struck out; and
- (b) during the Relevant Period, OEEL (not Origin) had in place written terms and conditions that applied to its market retail contracts in force in Victoria.

#### *B.2.5 Supply to business and wholesale customers*

70. It denies the allegation in paragraph 70 and says further that during the Relevant Period, companies in the Origin corporate group contracted with customers who were not small, domestic and/or small business customers to sell electricity on various terms and conditions, including as to price (including fixed or index-linked energy rates) and term (including medium to long term contracts).

### **B.3 Specific features of Origin’s Business**

71. As to paragraph 71, it:

- (a) refers to and repeats paragraph 25 above; and
- (b) says that the primary revenue streams of the Origin corporate group related to the sale of electricity and natural gas to retail (residential and small to medium enterprises), business and wholesale customers, and the sale of generated electricity into the National Electricity Market; and
- (c) otherwise denies the allegations in paragraph 71.

72. As to paragraph 72, it:

- (a) refers to and repeats paragraph 25 above;

- (b) says that for each of the financial years ending 30 June 2019 to 30 June 2022, sales of electricity contributed the majority of the revenue for the Energy Markets Segment; and
- (c) otherwise denies the allegation in paragraph 72.

73. It admits the allegations in paragraph 73.

#### **B.4 Eraring Power Station**

74. It denies the allegations in paragraph 74 and says further that Origin Energy Eraring Pty Limited (**OEEPL**) (not Origin) owned and operated Eraring Power Station from 2013 and during the Relevant Period.

75. As to paragraph 75, it:

- (a) admits the allegations in paragraph 75(a) insofar as they relate to the Relevant Period;
- (b) denies the allegations in paragraph 75(b) and says further that Eraring Power Station was the only coal-fired power station owned by a company within Origin's corporate group;
- (c) admits the allegations in paragraph 75(c) insofar as they relate to the Relevant Period; and
- (d) denies the allegations in paragraph 75(d) and says further that in the financial years ending 30 June 2021 and 30 June 2022, Eraring Power Station accounted for approximately 78% and 81% of the total generated electricity from assets owned by companies in the Origin corporate group.

## **B.5 Centennial, Mandalong mine, Myuna mine and Banpu**

76. As to paragraph 76 it says that:

- (a) on 1 July 2013, OEEL and Centennial Coal Sales Marketing Pty Limited (**CCSMPL**) entered into:
  - (i) Contract No 010713–1 Coal Supply Agreement (Coal Quality One); and
  - (ii) Contract No 010713–2 Coal Supply Agreement (Coal Quality Two) (together the **2013 Coal Supply Agreements**);
- (b) by the 2013 Coal Supply Agreements, OEEL (subject to specified tolerances) agreed to purchase 24.5 Mt of coal in certain annual contract tonnages; and

### **Particulars**

Contract No 010713–1 Coal Supply Agreement (Coal Quality One), cl 3.1, 5.1.

Contract No 010713–2 Coal Supply Agreement (Coal Quality Two), cl 3.1, 5.1.

- (c) for the period 1 July 2021 to 30 June 2022, the cumulative annual contract tonnage under the 2013 Coal Supply Agreements was 4.0 Mt; and

### **Particulars**

Contract No 010713–1 Coal Supply Agreement (Coal Quality One), Sch 2.

Contract No 010713–2 Coal Supply Agreement (Coal Quality Two), Sch 2.

- (d) otherwise denies the allegations.

77. As to the allegations in paragraph 77, it:

- (a) admits the allegations in paragraph 77(a) insofar as they relate to the Relevant Period;

- (b) admits the allegations in paragraph 77(b), insofar as they relate to the Relevant Period;
- (c) admits the allegations in paragraph 77(c) insofar as they relate to the Relevant Period;
- (d) denies the allegations in paragraph 77(d) and says further that during the Relevant Period, the Mandalong mine supplied coal extracted from the Mandalong mine to the Eraring Power Station via a conveyor system which transported the coal through a series of underground and surface belts;

### **Particulars**

The Mandalong Longwall Extraction Plans 2023 Resident Information Pack dated in or around August 2023, p. 4.

- (e) admits the allegations in paragraph 77(e); and
- (f) otherwise does not admit the allegations in paragraph 77.

78. As to paragraph 78, it:

- (a) admits the allegations in paragraph 78(a) insofar as they relate to the Relevant Period;
- (b) denies the allegations in paragraph 78(b) and says further that during the Relevant Period, Centennial owned and/or operated the Myuna mine;
- (c) admits the allegations in paragraph 78(c) insofar as they relate to the Relevant Period;

- (d) denies the allegations in paragraph 78(d) and says further that during the Relevant Period all run-of-mine coal extracted from Myuna mine was transported via a privately owned overland conveyor to the Eraring Power Station;

**Particulars**

Myuna Colliery Annual Review dated 31 March 2023 for the period 1 January 2022 to 31 December 2022, p. 16.

- (e) denies the allegations in paragraph 78(e) and says further that the Myuna mine:
  - (i) during the period 1 January 2020 to 31 December 2020, supplied 973,040 tonnes to the Eraring Power Station; and
  - (ii) during the period 1 January 2021 to 31 December 2021, supplied 893,314 tonnes to the Eraring Power Station; and
- (f) otherwise denies the allegations in paragraph 78.

79. It admits the allegations in paragraph 79.

80. As to paragraph 80, it:

- (a) admits that in its Annual Report dated 21 March 2022, for the period ending 31 December 2021, Banpu described Mandalong Mine and Myuna Mine as being within Banpu's "Northern Operations" region; and
- (b) otherwise does not admit the allegations in paragraph 80.

81. It admits the allegations in paragraph 81.

82. It admits the allegations in paragraph 82.

**B.6 Eraring Power Station's coal requirements**

83. It admits the allegations in paragraph 83.

84. It admits the allegations in paragraph 84.
85. As to paragraph 85, it:
- (a) says that the volume of coal required to achieve a given level of generation depends on a multitude of factors, including the quality and energy content of the coal, and the manner in which the generating unit is operated;
  - (b) subject to the matters in sub-paragraph (a) above, admits the allegations in paragraph 85 insofar as they relate to the Relevant Period; and
  - (c) otherwise does not admit the allegations in paragraph 85.
86. As to paragraph 86, it:
- (a) refers to and repeats paragraph 76 above; and
  - (b) says further that OEEPL and OEEL (not Origin) were the contracting counterparties for agreements under which coal was to be supplied to Eraring Power Station in FY2022 by Centennial and/or its subsidiaries, and other providers including Glencore, Begalla Coal Sales New Hope, and Mach Mt Pleasant; and
  - (c) otherwise admits the allegations in paragraph 86.
87. It denies the allegations in paragraph 87 and says further that OEEPL (not Origin) entered into supply agreements to meet the FY2022 coal requirements of Eraring Power Station with providers other than Centennial and/or its subsidiaries, including Glencore, Begalla Coal Sales New Hope, and Mach Mt Pleasant, and received total volume in the following approximate proportions:
- (a) Centennial (Mandalong and Myuna): 48.96% (2,462,577 tonnes);
  - (b) Centennial (Airly): 6.30% (317,014 tonnes);

- (c) Glencore: 19.91% (1,001,624 tonnes);
- (d) New Hope: 20.05% (1,008,481 tonnes);
- (e) Mach: 4.77% (239,879 tonnes).

## **C. ORIGIN'S STATEMENTS TO THE MARKET PRIOR TO 1 JUNE 2022 AND THEIR CONTEXT**

### **C.1 Origin's statements in 2021**

#### *C.1.1 Origin's 30 July 2021 statements*

88. Save to say that at trial it will rely on the full terms and effect of the 30 July Announcement, it admits the allegations in paragraph 88.
89. As to paragraph 89, it admits that Origin made the statements alleged, and:
- (a) says that, on 29 July 2021, the Board of Origin resolved to endorse the inclusion of the FY2022 Energy Markets Guidance and the FY2023 Energy Markets Guidance in the 30 July Announcement;
  - (b) says that a document titled "FY22 Outlook" was presented to the Board of Origin on 29 July 2021 (**FY22 Outlook Presentation**);
  - (c) says that the FY22 Outlook Presentation forecast that:
    - (i) the FY 2022 underlying EBITDA for the Energy Markets segment would be lower than the previous financial year, and was in the range of \$450 million to \$600 million; and
    - (ii) the FY 2023 underlying EBITDA for the Energy Markets segment was estimated to be \$150 million to \$250 million higher than the FY 2022

underlying EBITDA for Energy Markets, and was in the range of \$600 million to \$850 million;

**Particulars**

FY22 Outlook Presentation, slide 2.

- (d) says that from time to time Origin issued earnings guidance statements to the market which were risk-weighted assessments constituting Origin's then current views as to the likely range for its earnings in its Energy Markets segment in the current financial year and the following financial year, including the disclaimer that the FY2022 Energy Markets Guidance and the FY2023 Energy Markets Guidance was provided on the basis that market conditions and the regulatory environment do not materially change and noting there continues to be considerable uncertainty in economic conditions and increased volatility in commodity markets;

**Particulars**

30 July Announcement, pg 3.

- (e) says that the FY2022 Energy Markets Guidance and the FY2023 Energy Markets Guidance issued by Origin to the market:
- (i) were made by it, and received by the market, in the context of the industry in which it operated, the economic environment prevailing at the time, and the presentations and reports in which they were contained, and it will rely, at trial, on the full terms and effect of those presentations and reports;
  - (ii) were point-in-time assessments made, and expressed, only at the date of issue, in light of then prevailing conditions, facts and matters known to Origin;
  - (iii) were subject to the uncertainties, risks and variable factors which exist in the market for the provision of Origin's services within the Energy Markets segment;

- (iv) were liable to be affected by a variety of risks and variables and changes in underlying assumptions;
- (v) were subject to future operational, technical and strategic decisions made by Origin having regard to the information available to it, and conditions affecting it, from time to time; and
- (vi) were consequently, and as was apparent:
  - A. difficult matters of judgement on which reasonable minds might differ;
  - B. all the more difficult and uncertain the longer the temporal range under consideration; and
  - C. inherently susceptible to revision as circumstances changed and new or different information emerged which had the potential to affect Origin's expectations; and
- (vii) therefore, were subject to various qualifications which were or ought to have been well understood by participants in the Affected Markets;
- (f) says that it routinely reviewed the guidance statements it issued to the market from time to time throughout the financial year as circumstances changed and new or different information emerged which had the potential to affect Origin's expectations and issued revised guidance as and when it determined that it was sufficiently certain that the guidance as previously issued would not be achieved;
- (g) says that for the purpose of conducting these reviews of its guidance statements, Origin had processes in place to monitor its financial performance from time to time during the current financial year, including to prepare budgets and forecasts and determine whether any guidance previously issued remained consistent with Origin's then current expectations;

- (h) says that the assumptions and forecasts underpinning Origin's guidance as to the Energy Markets segment of its business were subject to regular reforecasts which typically occurred in September, January and March of each financial year, or more frequently if changing market conditions required it (**Reforecasts**);

### **Particulars**

The process for preparing Reforecasts included:

- A. Each of the three business units comprising the Energy Markets segment (being Energy Supply and Operations, Retail, and Future Energy and Technology) drawing from monthly reporting by each sub-unit (together with their individual finance teams) for the purpose of analysing actual outcomes as compared to the forecast for that month in the Energy Markets annual budget for that financial year;
- B. Each business unit updating, as required, key assumptions and inputs relevant to that unit which underpinned the Energy Markets annual budget for that financial year and any Energy Markets guidance statements;
- C. Each business unit briefing their own and any other relevant Executive General Managers (**EGM**) as to current assumptions and forecasts;
- D. Each business unit presenting their current assumptions and forecasts to their EGM together with Origin's Executive Leadership Team (**ELT**), and continuing to test and amend forecasts and assumptions having regard to any feedback received; and

- E. A consolidated Energy Markets reforecast being presented to Origin's Board at the next board meeting after a reforecast was conducted.
- (i) says that Origin had systems in place for the preparation of a robust and detailed annual budget for FY 2022, which informed the guidance it issued to the Affected Markets during the Relevant Period (**FY22 Budget**);
- (j) says that in relation to FY 2022, it undertook the budget process between around March 2021 and August 2021;

### **Particulars**

The budget process for FY 2022 included, in relation to the FY 2022 budget for the Energy Markets segment:

- A. In around March 2021, each sub-unit (together with their individual finance teams) within the three business units comprising the Energy Markets segment (being Energy Supply and Operations, Retail, and Future Energy and Technology) commenced preparing assumptions for inclusion in the overall Energy Markets budget, having regard to relevant inputs received from other parts of Origin's business, such as, for example as regards Energy Supply and Operations, information as to expected customer demand, expected electricity supply mix, forecast electricity and other commodity prices, expected Eraring generation capacity from which expected coal consumption was derived, coal and gas supply and pricing, assumptions as to electricity and other commodity-related derivatives, and information as to the hedge trades expected to be entered into across the financial year;

- B. Each business unit would also consider and, where appropriate, incorporate into their assumptions information received in around March 2021 from Origin's Group Planning and Analysis team including as to commodity prices and foreign exchange rates;
- C. In around early April 2021, following consolidation and analysis of inputs across the various sub-units, each business unit provided internal draft budget forecasts and assumptions to the EGM of their respective business units for review and discussion as to the reasonableness of those assumptions;
- D. Additional work was then undertaken on these draft budget forecasts and assumptions during early April 2021, having regard to the feedback provided by the relevant EGM;
- E. In or around the end of April 2021, a further iteration of the draft Energy Markets budget for FY 2022 was presented to the ELT;
- F. This iteration of the draft budget, while advanced, was subject to any necessary amendments to key underlying inputs in or around May 2021 if it was considered those inputs (which were current in March 2021) would have a material impact on the assumptions and forecasts in the draft budget (for example, if commodity prices or foreign exchange assumptions incorporated in March 2021 had materially changed);
- G. Following the incorporation of feedback from the ELT, the preparation of a draft budget update for presentation to the Board at its July CY meeting; and

H. In around mid-June and July, the preparation of a further revised budget for final Board review and approval at its August CY meeting, including any amendments to budgeted cashflows in view of Origin's financial position as at the conclusion of the preceding financial year, and any necessary amendments to key underlying inputs if it was considered those inputs (which were current as at May 2021) would have a material impact on the assumptions and forecasts in the draft budget.

(k) says that following receipt of the FY22 Outlook Presentation the Board resolved to issue the FY2022 Energy Markets Guidance and the FY2023 Energy Markets Guidance;

(l) says that having regard to:

(i) the robust and detailed process undertaken for the purpose of preparing the FY22 Outlook Presentation; and

(ii) the fact that:

A. the estimate for FY 2022 underlying EBITDA for the Energy Markets segment in the FY22 Outlook Presentation was in the range of \$450 million to \$600 million; and

B. the estimate for FY 2023 underlying EBITDA for the Energy Markets segment in the FY22 Outlook Presentation was in the range of \$600 million to \$850 million;

the issuing of the FY2022 Energy Markets Guidance and the FY2023 Energy Markets Guidance in the 30 July Announcement was the result of a reasonable assessment as to the likely range for Origin's earnings in its Energy Markets segment in FY 2022 and FY 2023.

*C.1.2 Origin's 19 August 2021 statements*

90. Save to say that at trial it will rely on the full terms and effect of the FY2021 Full Year Report, the FY2021 Full Year Results Media Release and the FY2021 Analysts Presentation, it admits the allegations in paragraph 90 and says further that:

- (a) The FY2021 Full Year Report included various risk disclaimers, such as:
  - (i) That the risks identified in the FY2021 Full Year Report had the potential to materially affect Origin's ability to meet its business objectives and impact its future financial prospects and that the risks identified were not exhaustive;

**Particulars**

FY2021 Full Year Report, pg 34.

- (ii) That prices and volumes for electricity that Origin sources to on-sell to customers are volatile and are influenced by many factors that are difficult to predict;

**Particulars**

FY2021 Full Year Report, pg 36.

- (iii) The operating and Financial Review contains forward looking statements, including statements of current intention, statements of opinion and predictions as to possible future events and future financial prospects, that such statements are not statements of fact and there can be no certainty of outcome in relation to the matters to which the statements relate and that forward looking statements involve known and unknown risks, uncertainties, assumptions and other important factors that could cause the actual outcomes to be materially different from the events or results expressed or

implied by such statements, and the outcomes are not all within the control of Origin.

**Particulars**

FY2021 Full Year Report, pg 40.

(b) The FY2021 Analysts Presentation included various risk disclaimers, such as:

- (i) The fact the presentation contained forward looking statements, including statements of current intention, statements of opinion and predictions as to possible future events, that such statements are not statements of fact and there can be no certainty of outcome in relation to the matters to which the statements relate, and that these forward looking statements involve known and unknown risks, uncertainties, assumptions and other important factors that could cause the actual outcomes to be materially different from the events or results expressed or implied by such statements;

**Particulars**

FY2021 Analysts Presentation, slide 57.

- (ii) That none of Origin Energy Limited or any of its respective subsidiaries, affiliates and associated companies (or any of their respective officers, employees or agents) makes any representation, assurance or guarantee as to the accuracy or likelihood of fulfilment of any forward looking statement or any outcomes expressed or implied in any forward looking statements and that the forward looking statements in the presentation reflect views held only at the date of the presentation.

**Particulars**

FY2021 Analysts Presentation, slide 57.

91. As to paragraph 91, it:

- (a) admits that it made statements as alleged in paragraph 91 save to say that the FY2021 Full Year Report stated that *"Guidance is provided on the basis that market conditions and the regulatory environment do not materially change, adversely impacting on operations. Considerable uncertainty exists relating to the potential ongoing impacts of COVID-19 and this guidance is subject to any further material impact on demand and customer affordability"*;
- (b) refers to and repeats paragraphs 89(d) - (l) above (as to the basis on which guidance was issued and maintained);
- (c) says that the FY22 Budget was approved by the Board of Origin on 18 August 2021;
- (d) says that the preparation of the FY22 Budget enabled, subject to the matters set out in paragraph 89(e) above, the Board of Origin to make a risk-weighted earnings assessment for FY 2022 for the purpose of maintaining the FY2022 Energy Markets Guidance and the FY2023 Energy Markets Guidance in the FY2021 Full Year Report, the FY2021 Full Year Results Media Release, and the FY2021 Analyst Presentation;
- (e) says that on 18 August 2021, the Board of Origin resolved:
  - (i) that a committee be established, consisting of Scott Perkins, Bruce Morgan, and Frank Calabria (**Year End Committee**), with a quorum of two, to convene on the morning of 19 August 2021 to review and approve the final drafts of the FY2021 Full Year Report, the FY2021 Full Year Results Media Release, and the FY2021 Analyst Presentation, and, if appropriate, approve them for issue to ASIC, the ASX and other appropriate exchanges;
  - (ii) that the FY2021 Full Year Report, the FY2021 Full Year Results Media Release, and the FY2021 Analyst Presentation be endorsed for approval by

the Year End Committee, and, subject to its approval, be released to the ASX and other appropriate exchanges;

(f) on 19 August 2021, the Year End Committee resolved to approve the FY2021 Full Year Report, the FY2021 Full Year Results Media Release, and the FY2021 Analyst Presentation pursuant to the power delegated to them by the Board of Origin identified in the preceding sub-paragraph; and

(g) having regard to:

(i) the robust and detailed process undertaken for the purpose of preparing the FY22 Budget; and

(ii) the fact that:

A. the estimate for FY 2022 underlying EBITDA for the Energy Markets segment in the FY22 Budget was in the range of \$450 million to \$600 million; and

B. the estimate for FY 2023 underlying EBITDA for the Energy Markets segment in the FY22 Budget was in the range of \$600 million to \$850 million;

the maintenance of the FY2022 Energy Markets Guidance and the FY2023 Energy Markets Guidance in the FY2021 Full Year Report, the FY2021 Full Year Results Media Release, and the FY2021 Analyst Presentation was the result of a reasonable assessment as to the likely range for Origin's earnings in its Energy Markets segment in FY 2022 and FY 2023.

92. As to paragraph 92, it:

(a) refers to and repeats paragraph 91 above; and

(b) otherwise admits the allegations in paragraph 92.

93. As to paragraph 93, it:
- (a) refers to and repeats paragraph 91 above;
  - (b) admits that it made statements as alleged in paragraph 93(a) – 93(c); and
  - (c) denies the allegations in paragraph 93(d) and says further that in the FY2021 Analyst Presentation, Origin stated that as to FY2023 Energy Markets Guidance, *“FY2023 Underlying EBITDA expected to rebound by an estimated \$150-\$250 million to \$600-\$850 million, assuming current forward commodity prices continue and flow through to tariffs, reflecting: a \$5-10/MWh rebound in electricity forward prices flowing through to tariffs, reconnection of JKM netback and east coast domestic customer pricing, Kraken costs to serve savings.”*

### **Particulars**

FY2021 Analyst Presentation, p. 39.

94. Save to admit that the FY2021 Earnings Call was held on 19 August 2021, it otherwise denies the allegations in paragraph 94.
95. As to paragraph 95, it:
- (a) refers to and repeats paragraphs 89(d) - (l) above (as to the basis on which guidance was issued and maintained);
  - (b) admits that it made statements to the effect alleged in paragraphs 95(a)-(c); and
  - (c) denies the allegations in paragraph 95(d) and says further that Origin stated that *“gas is a factor. You’re right about the \$5 to \$10 megawatt hour whilst – and what I will say around that is you’re making assessment of range. I think the coal price might be – I mean when we think of it, about it, we’re thinking that it might be up modestly, but not a big driver [...] rather than say coal is not a factor, I probably wanted to just temper my comment a little earlier to say that it’s not a massive driver in the way we’ve*

*currently formulated that. And based on where we are in terms of advanced negotiations in replacing volumes for that coal in that year.”*

### **Particulars**

FY2021 Earnings Call Transcript, at pp. 16-17.

#### *C.1.3 Origin's 17 September 2021 statements*

96. Save to say that at trial it will rely on the full terms and effect of the 2021 Annual Report, it admits the allegations in paragraph 96.
97. As to paragraph 97, it:
- (a) refers to and repeats paragraphs 89(d) - (j) above (as to the basis on which guidance was issued and maintained); and
  - (b) otherwise admits the allegations in paragraph 97.

#### *C.1.4 Origin's 20 October 2021 statements*

98. Save to say that at trial it will rely on the full terms and effect of the 2021 AGM Presentation, it admits the allegations in paragraph 98.
99. As to paragraph 99, it:
- (a) refers to and repeats paragraphs 89(d) - (j) above (as to the basis on which guidance was issued and maintained); and
  - (b) otherwise admits the allegations in paragraph 99.
100. As to paragraph 100, it:
- (a) refers to and repeats paragraphs 89(d) - (j) above (as to the basis on which guidance was issued and maintained); and
  - (b) otherwise admits the allegations in paragraph 100.

### C.1.5 Origin's 29 October 2021 statements

101. Save to say that at trial it will rely on the full terms and effect of the Q12021 Quarterly Report, it admits the allegations in paragraph 101.
102. As to paragraph 102, it:
- (a) refers to and repeats paragraphs 89(d) - (j) above (as to the basis on which guidance was issued and maintained); and
  - (b) otherwise admits the allegations in paragraph 102.

### C.2 Origin's reaffirmation of its FY2022 and FY2023 Energy Markets Guidance

103. Save to say that at trial it will rely on the full terms and effect of the 1H2022 Interim Financial Report, the 1H2022 Results, and the 1H2022 Investor Presentation, it admits the allegations in paragraph 103.
104. As to paragraph 104, it:
- (a) refers to and repeats paragraphs 89(d) - (j) above (as to the basis on which guidance was issued and maintained);
  - (b) admits that it made statements as alleged in paragraph 104(a);
  - (c) denies paragraph 104(b)(i) and says further that in the 1H2022 Interim Financial Report, Origin stated that *"Guidance is provided on the basis that market conditions and the regulatory environment do not materially change, adversely impacting on operations. Considerable uncertainty exists relating to the potential ongoing impacts of COVID-19 and this guidance is subject to any further material impact on demand and customer affordability"*;

### Particulars

1H2022 Interim Financial Report, p 8.

- (d) admits that it made statements as alleged in paragraph 104(c);
- (e) admits that it made statements as alleged in paragraph 104(d) but says further that as to FY2023 Energy Markets Guidance, Origin also stated that *“We expect a recovery in Energy Markets Underlying EBITDA in FY2023 of an estimated \$150-\$250 million, to \$600-\$850 million assuming higher wholesale electricity and gas prices continue and flow into tariffs. While the FY2023 outlook for Energy Markets anticipates higher coal purchasing costs associated with our uncontracted coal position, risk to the outlook remains from this uncontracted position”*; and

### **Particulars**

1H2022 Interim Financial Report, p 8.

- (f) admits that it made statements as alleged in paragraph 104(e).

105. As to paragraph 105, it:

- (a) refers to and repeats paragraphs 89(d) - (j) above (as to the basis on which guidance was issued and maintained); and
- (b) otherwise admits the allegations in paragraph 105.

106. As to paragraph 106, it:

- (a) refers to and repeats paragraphs 89(d) - (j) above (as to the basis on which guidance was issued and maintained); and
- (b) admits that it made statements as alleged in paragraph 106 but says further that the FY2023 Energy Markets Guidance was qualified by a footnote which said *“based on current forward prices for key commodities such as electricity, JKM and oil. Assumed coal prices based on ongoing confidential discussions with suppliers and current*

*forward prices, noting Origin typically buys 5500Kcal coal. Risks to the outlook remain from uncontracted coal.”*

### **Particulars**

1H2022 Investor Presentation, slide 38.

107. Save to admit that the 1H2022 Earnings Call was held on 17 February 2022, it otherwise denies the allegations in paragraph 107.
108. As to paragraph 108, it:
- (a) refers to and repeats paragraphs 89(d) - (j) above (as to the basis on which guidance was issued and maintained); and
  - (b) admits that it made statements as alleged in paragraph 108(a) but says further that Origin also stated as to underlying profit and underlying EBITDA that *“In the case of electricity, you’ll know we previously guided the lower electricity prices, but we’ve also had some higher costs of energy, particularly coal costs, which we’ll take you through and gas has really been in line with our expectations”*;

### **Particulars**

1H2022 Earnings Call Transcript, p. 2.

- (c) admits that it made statements as alleged in paragraph 108(b);
- (d) admits that it made statements as alleged in paragraph 108(c);
- (e) admits that it made statements as alleged in paragraph 108(d) but says further that the quoted statement in paragraph 108(d)(iv) began *“No, no. So what we have – just so you’re aware, because the existing 4 million tonne contract won’t deliver on those volumes this financial year to the full extent”*; and
- (f) admits that it made statements as alleged in paragraph 108(e).

### **C.3 Origin's Representations - to 16 February 2022**

#### **C.3.1 FY2022 Energy Markets Guidance Representation**

109. As to paragraph 109, it:

- (a) denies the allegations in paragraph 109;
- (b) refers to and repeats paragraphs 89(d) - (j) above (as to the basis on which guidance was issued and maintained);
- (c) says further that on and from 30 July 2021, 19 August 2021, 17 September 2021, and 20 October 2021, Origin qualified its statements to the Affected Markets as to its likely EBITDA for the Energy Markets segment in FY2022, including by noting ongoing uncertainty and relevant changes to market conditions, as follows:
  - (i) on 30 July 2021, Origin published the 30 July Announcement which stated as to the FY2022 Outlook that *"FY22 presents challenges for the Energy Markets business, and we are responding by targeting significant capital and operating cost savings, including from the introduction of the Kraken platform and new low cost and more efficient retail operating model, with customer migrations to the new platform continuing very well"*;

#### **Particulars**

July 2021 ASX/Media Release, p. 3.

- (ii) on 19 August 2021, Origin published the FY2021 Full Year Report, which stated as to FY2022 Guidance that *"Guidance is provided on the basis that market conditions and the regulatory environment do not materially change, adversely impacting on operations. Considerable uncertainty exists relating*

*to the potential ongoing impacts of COVID-19 and this guidance is subject to any further material impact on demand and customer affordability”;*

### **Particulars**

FY2021 Full Year Report, p. 12.

- (iii) on 17 September 2021, Origin published and lodged the 2021 Annual Report, which stated that:
- A. *“We estimate Energy Markets Underlying EBITDA to be lower than FY2021 at \$450-\$600 million, driven by Electricity Gross Profit reduction of \$400-\$480 million primarily driven by a ~\$20/MWh reduction in wholesale electricity prices flowing into customer tariffs, higher generation fuel costs and continued impacts of rooftop solar uptake and energy efficiencies. This is partially offset by lower wholesale electricity procurement costs with low-cost renewable supply coming online and capacity hedge contracts rolling off; Natural Gas Gross Profit reduction of up to \$50 million [...] offset by repricing of retail customer tariffs; and Cost to serve expected to be relatively stable”;*
- B. *“In our full-year results, we gave guidance to Underlying EBITDA in FY2022 of between \$1,850 - \$2,150 million, compared to \$2,048 million in FY2021. This reflects weaker performance from Energy Markets largely offset by an expected stronger contribution from Australia Pacific LNG. We anticipate that challenging conditions for our Energy Markets business will continue this year, ahead of a rebound in FY2023 if current forward prices continue and flow through to tariffs”;* and

- C. as to Financial Risks, *“Prices and volumes for electricity that Origin sources to on-sell to customers are volatile and are influenced by many factors that are difficult to predict. Long term fluctuations in coal and gas prices also impact the margins of Origin’s generation portfolio”*; and

**Particulars**

2021 Annual Report, pp. 3, 18, 42.

- (iv) on 20 October 2021, Origin held the 2021 AGM, at which it stated, in relation to the FY2022 outlook, that *“Guidance is provided on the basis that market conditions and the regulatory environment do not materially change, adversely impacting operations. Considerable uncertainty exists relating to potential ongoing impacts of COVID-19 and this guidance is subject to any further material impact on demand and customer affordability”*.

**Particulars**

2021 AGM Presentation, p. 15.

**C.3.2 FY2022 Energy Markets Implied Representation**

110. As to paragraph 110, it:

- (a) denies the allegations in paragraph 110;
- (b) refers to and repeats paragraphs 89(d)-(j) above (as to the basis on which guidance was issued and maintained);
- (c) refers to and repeats paragraph 109 above; and
- (d) says further that Origin identified to the Affected Market a number of factors that could affect its ability to achieve the FY2022 Energy Markets Guidance of EBITDA of between \$450 million and \$600 million, including the considerable uncertainties

caused by the ongoing impacts of COVID-19, and the volatility in long term fluctuations in coal and gas prices.

### **Particulars**

FY2021 Full Year Report, p. 14; FY2021 Full Year Results Media Release, p. 5; FY2021 Analyst Presentation, p. 39.

#### **C.3.3 FY2023 Energy Markets Guidance Representation**

111. As to paragraph 111, it:

- (a) denies the allegations in paragraph 111;
- (b) refers to and repeats paragraphs 89(d)-(j) above (as to the basis on which guidance was issued and maintained); and
- (c) says further that on and from 30 July 2021, 19 August 2021, 17 September 2021, and/or 20 October 2021, Origin qualified its statements to the Affected Markets as to its likely EBITDA for the Energy Markets segment in FY2023, as follows:
  - (i) on 30 July 2021, it published the 30 July Announcement which stated that “In FY2023, Origin expects a recovery in Energy Markets Underlying EBITDA of an estimated \$150 to \$250 million to \$600-850 million, provided current forward commodity prices continue and flow through into customer tariffs”;

### **Particulars**

July 2021 ASX/Media Release, p. 3

- (ii) on 19 August 2021, it published the FY2021 Full Year Report which stated that “*We expect a recovery in Energy Markets Underlying EBITDA in FY2023 of an estimated \$150 - \$250 million to \$600 - \$850 million, provided current forward commodity prices continue and flow into customer tariffs*”

and qualified this guidance as being *“based on current forward prices for key commodities such as electricity, coal and oil. Assuming KJM prices reduce by US\$2-US\$3/mmbtu from current forward prices, and assuming no material change in sales volumes and other costs”*;

**Particulars**

2021 Full Year Report, p. 12.

- (iii) on 19 August 2021, Origin published the FY2021 Full Year Results Media Release in which it qualified the FY2023 outlook by stating that *“Additional guidance is below and is provided on the basis that market conditions and the regulatory environment do not materially change and noting there continues to be considerable uncertainty and increased volatility in commodity markets”* and noting that this outlook assumed *“current forward commodity prices continue and are reflected in tariffs”*;

**Particulars**

2021 Full Year Results Media Release, pp. 3, 4.

- (iv) on 19 August 2021, Origin published the FY2021 Analyst Presentation, which repeated the matters pleaded at paragraph 111(c)(iv) above;

**Particulars**

FY2021 Analyst Presentation, pp. 35, 39.

- (v) on 17 September 2021, it published the 2021 Annual Report which stated that *“We expect a recovery in Energy Markets Underlying EBITDA in FY2023 of an estimated \$150-\$250 million to \$600-850 million, provided current forward commodity prices continue and flow into customer tariffs”* and qualified this guidance by stating that it was *“based on current forward prices for key commodities such as electricity, coal and oil. Assuming KJM*

*prices reduce by US\$2-US\$3/mmbtu from current forward prices, and assuming no material change in sales volumes and other costs”;*

- (vi) it also stated in the 2021 Annual Report that *“Approximately 16 TWh per annum (or ~50 per cent) of our electricity supply costs are relatively fixed, subject to recontracting coal from FY2023, representing Eraring and the bundled renewable PPAs.”;*

#### **Particulars**

2021 Annual Report, pp. 18, 27.

- (vii) during the 2021 AGM on 20 October 2021, Origin’s CEO stated that *“As we have previously said we expect an improvement in the performance of Energy Markets in FY2023. Earnings are expected to recover by \$150-\$250 million, on the basis that the recent recovery in wholesale energy prices continues and flows through to tariffs”.*

#### **Particulars**

20 October 2021 AGM Address and Presentation, p. 11.

#### **C.3.4 FY2023 Energy Markets Implied Representation**

112. As to paragraph 112, it:

- (a) denies the allegations in paragraph 112;
- (b) refers to and repeats paragraphs 89(d)-(j) above (as to the basis on which guidance was issued and maintained); and
- (c) refers to and repeats paragraph 111 above; and

- (d) says further that Origin identified to the Affected Market a number of factors which could affect its ability to achieve the FY2023 Energy Markets Guidance of EBITDA of between \$150 million and \$250 million as compared to FY2022.

### **Particulars**

2021 Annual Report, pp. 18, 27.

#### **C.3.5 *Origin's maintenance of the Representations***

113. As to paragraph 113, it:

- (a) denies the allegations in paragraph 113; and
- (b) refers to and repeats paragraphs 89 to 112 above.

114. It denies the allegations in paragraph 114.

#### **C.4 *Origin's representations on and from 17 February 2022***

##### **C.4.1 *Reaffirmed FY2022 Energy Markets Guidance Representation***

115. As to paragraph 115, it:

- (a) denies the allegations in paragraph 115;
- (b) refers to and repeats paragraphs 89(d)-(j) above (as to the basis on which guidance was issued and maintained); and

(c) says further that:

(i) its guidance as to the likely EBITDA of the Energy Markets segment in FY 2022 issued on or around 17 February 2022 was given and maintained on reasonable grounds and subject to qualifications including as follows:

A. in the 1H2022 Interim Financial Report dated 17 February 2022, Origin stated that:

*“Overall guidance range remains unchanged. We estimate Energy Markets Underlying EBITDA to be lower than FY2021 at \$450-\$600 million, driven by:*

*Electricity Gross Profit reduction of \$530-\$610 million driven by a ~\$20/MWh reduction in wholesale electricity prices flowing into customer tariffs, higher generation fuel costs and continued impacts of rooftop solar uptake and energy efficiencies. Electricity guidance is lower than previous due to coal constraints leading to lower Eraring output and higher coal costs;*

*Natural Gas Gross Profit increase of \$75-\$125 million, driven by increased volumes and prices on short term trading sales and the repricing of retail customer tariffs, partially offset by higher procurement costs and lower volumes and prices on C&I sales. Natural Gas guidance has improved due to increased volumes and prices on short term trading sales; and*

*Cost to serve expected to be relatively stable. Further savings associated with the adoption of Octopus’ Kraken platform and operating model are expected over FY2023-24”;* and

B. in the 1H2022 Interim Financial Report it stated that *“Energy Markets’ half-year earnings were lower primarily reflecting the previously*

*guided impact of retail electricity tariffs set during FY2021 when wholesale prices were at low levels due to COVID-19. The business was also impacted by increased wholesale energy procurement costs driven by higher fuel costs to generation, higher JKM-linked gas procurement costs and higher green scheme costs. Operational constraints at Eraring's primary coal supplier resulted in additional purchases of relatively high-price coal on the market and high price electricity swap contracts to manage the increased risk associated with less generation output. These negative impacts were partially offset by repricing of gas customer tariffs and the recovery of network costs"; and*

#### **Particulars**

1H2022 Interim Financial Report, p. 11.

- C. *in the 1H2022 Results dated 17 February 2022 it stated that "Underlying EBITDA for Energy Markets was \$268 million, lower than the prior half-year. This was largely driven by lower electricity customer tariffs which were set during FY2021 when wholesale electricity prices were at lows due to subdued economic activity and increased renewables penetration. In addition, there was an increase in wholesale energy procurement costs primarily related to coal supply issues at Eraring. The repricing of gas customer tariffs, and with gas supply and transport arrangements in place, means Origin is well positioned in a tightening market."*

#### **Particulars**

1H2022 Results, pp. 3-4.

- D. the 1H2022 Interim Financial Report also stated that: “Guidance is provided on the basis that market conditions and the regulatory environment do not materially change, or adversely impact operations. Considerable uncertainty exists relating to potential ongoing impacts of COVID-19 and this guidance is subject to any further material impact on demand and customer affordability.”

### **Particulars**

1H2022 Interim Financial Report, pp. 11, 8.

#### *C.4.2 Reaffirmed FY2022 Energy Markets Implied Representation and the FY2022 Energy Markets Conditions Representation*

116. As to paragraph 116, it:

- (a) denies the allegations in paragraph 116;
- (b) refers to and repeats paragraphs 89(h)-(j) above (as to the basis on which guidance was issued and maintained);
- (c) refers to and repeats paragraph 115 above; and
- (d) says further that Origin identified to the Affected Market a number of factors that could affect its ability to achieve the FY2022 Energy Markets Guidance of EBITDA of between \$450 million and \$600 million, including the considerable uncertainties caused by the ongoing impacts of COVID-19, and the volatility in long term fluctuations in coal and gas prices.

### **Particulars**

1H2022 Interim Financial Report, p 8.

117. It denies the allegations in paragraph 117 and refers to and repeats paragraphs 115-116 above.

### C.4.3 Reaffirmed FY2023 Energy Markets Guidance Representation

118. As to paragraph 118, it:

- (a) denies the allegations in paragraph 118;
- (b) refers to and repeats paragraphs 89(d)-(j) above (as to the basis on which guidance was issued and maintained); and
- (c) says further that:
  - (i) its guidance as to the likely EBITDA of the Energy Markets segment in FY 2023 issued on or around 17 February 2022 was given and maintained on reasonable grounds and subject to qualifications including as follows:
    - A. in the 1H2022 Interim Financial Report dated 17 February 2022, Origin stated that: *“We expect a recovery in Energy Markets Underlying EBITDA in FY2023 of an estimated \$150-\$250 million, to \$600-850 million assuming higher wholesale electricity and gas prices continue and flow into tariffs. While the FY2023 outlook for Energy Markets anticipates higher coal purchasing costs associated with our uncontracted position, risk to the outlook remains from this uncontracted position;”*
    - B. in the 1H2022 Results dated 17 February 2022, Origin stated that *“Origin expects a rebound of \$150-\$250 million in Energy Markets Underlying EBITDA in FY2023, to \$600-\$850 million, with the current higher commodity prices flowing through to customer tariffs. However, some risks to the outlook remain, with the price of uncontracted coal primary amongst them”*; and

- C. in the 1H2022 Investor Presentation, Origin stated that it maintained this guidance range including because *“Underlying FY2023 EBITDA expected to rebound by an estimated \$150-\$250 million to \$600 million - \$850 million, assuming higher wholesale electricity and gas prices continue to flow through to tariffs, and reflecting higher coal costs; existing fixed price supply gas contracts; Kraken costs to serve savings”*;
- D. the 1H2022 Investor Presentation also stated that the guidance as to Energy Markets’ FY 2023 EBITDA was *“based on current forward prices for key commodities such as electricity, JKM and oil. Assumed coal prices based on ongoing confidential discussions with suppliers and current forward prices, noting Origin typically buys 5500Kcal coal. Risks to the outlook remain from uncontracted coal”*;
- E. the 1H2022 Interim Financial Report also stated that: *“Guidance is provided on the basis that market conditions and the regulatory environment do not materially change, or adversely impact operations. Considerable uncertainty exists relating to potential ongoing impacts of COVID-19 and this guidance is subject to any further material impact on demand and customer affordability.”*

*C.4.4 Reaffirmed FY2023 Energy Markets Implied Representations and the FY2023 Energy Markets Conditions Representation*

119. As to paragraph 119, it:

- (a) denies the allegations in paragraph 119; and
- (b) refers to and repeats paragraphs 89(h)-(j) above (as to the basis on which guidance was issued and maintained);

- (c) refers to and repeats paragraph 118 above; and
- (d) says further that Origin identified to the Affected Market a number of factors which could affect its ability to achieve the FY2023 Energy Markets Guidance of EBITDA of between \$150 million and \$250 million as compared to FY2022.

### **Particulars**

1H2022 Investor Presentation, pp 38 and 55.

120. It denies the allegations in paragraph 120 and refers to and repeats paragraphs 118-119 above.

#### *C.4.5 Origin's maintenance of the Representations*

121. It denies the allegations in paragraph 121 and refers to and repeats paragraphs 103 to 108 and 115 to (c) above.

122. It denies the allegations in paragraph 122.

### **D. MATTERS AFFECTING ORIGIN IN 2020 TO 2022**

#### **D.1 Events at Mandalong mine in 2020 to mid-February 2022**

123. It does not know and therefore does not admit the allegations in paragraph 123.

124. It does not know and therefore does not admit the allegations in paragraph 124.

125. It does not know and therefore does not admit the allegations in paragraph 125.

126. It does not know and therefore does not admit the allegations in paragraph 126.

127. It does not know and therefore does not admit the allegations in paragraph 127.

128. It does not know and therefore does not admit the allegations in paragraph 128.

129. It does not know and therefore does not admit the allegations in paragraph 129.

130. It does not know and therefore does not admit the allegations in paragraph 130.

131. It does not know and therefore does not admit the allegations in paragraph 131.

132. It does not know and therefore does not admit the allegations in paragraph 132.

133. It does not know and therefore does not admit the allegations in paragraph 133.

134. It does not know and therefore does not admit the allegations in paragraph 134.

135. It does not know and therefore does not admit the allegations in paragraph 135.

136. It does not know and therefore does not admit the allegations in paragraph 136.

137. It does not know and therefore does not admit the allegations in paragraph 137.

138. It does not know and therefore does not admit the allegations in paragraph 138.

## **D.2 Mandalong mine and Myuna mine declines in coal output**

139. It does not know and therefore does not admit the allegations in paragraph 139.

## **D.3 Banpu disclosures in 2021**

140. As to paragraph 140, it:

- (a) admits that on or about 23 February 2021 Banpu published a document to the SET titled "Management's Discussion and Analysis for the Year Ended 2020" (**2020 Banpu Analysis**);

- (b) admits the allegations in paragraph 140(a) and says further that in the 2020 Banpu Analysis, Banpu stated, in relation to the fourth quarter of 2020 that *“Australia coal business reported coal sales volume of 3.1 million tonnes, slightly lower by 5% QoQ”*;

**Particulars**

Banpu Management’s Discussion and Analysis for The Year Ended 2020, p. 3.

- (c) admits the allegations in paragraph 140(b); and
- (d) says further that at trial it will rely on the full terms and effect of the 2020 Banpu Analysis.

141. Save to say that the document titled “FY20 &4Q20 results – Investor and analysts update” disclosed that the period alleged in paragraph 141(b) was 1 July 2020 to 30 September 2020, it admits the allegations in paragraph 141 and says further that at trial it will rely on the full terms and effect of that document.

**Particulars**

FY20 & 4Q20 results – Investor and analysts update, p. 50.

142. It admits the allegations in paragraph 142 and says further that at trial it will rely on the full terms and effect of the document titled “1Q2021 Results Highlights”.
143. It admits the allegations in paragraph 143 and says further that at trial it will rely on the full terms and effect of the document titled “Management’s Discussion and Analysis for the 1<sup>st</sup> Quarter 2021”.
144. It admits the allegations in paragraph 144 and says further that at trial it will rely on the full terms and effect of the document titled “1Q2021 results – Investor and analyst update”.

145. As to paragraph 145, it:

- (a) denies paragraph 145(a) and says further that the document titled “2Q/2021 Results Highlights” published by Banpu states that “*Australia coal business reported sales volume of 2.5 million tons, slightly lower compared to previous quarter as Mandalong experienced scheduled longwall move for 4 weeks, resulted in the cost of sale at 82 AUD/ton*”; and

### **Particulars**

Banpu 2Q/2021 Results Highlight, p. 1.

- (b) otherwise admits the allegations in paragraph 145 and says further that at trial it will rely on the full terms and effect of the document titled “2Q/2021 Results Highlights”.
146. It admits the allegations in paragraph 146 and says further that at trial it will rely on the full terms and effect of the document titled “Management’s Discussion and Analysis for the 2<sup>nd</sup> Quarter 2021”.
147. It admits the allegations in paragraph 147 and says further that at trial it will rely on the full terms and effect of the document titled “2Q21 Results – Investor and analyst update”.
148. It admits the allegations in paragraph 148 and says further that at trial it will rely on the full terms and effect of the document titled “Management’s Discussion and Analysis for the 3<sup>rd</sup> Quarter 2021”.
149. It admits the allegations in paragraph 149 and says further that at trial it will rely on the full terms and effect of the document titled “3/Q 2021 Results Highlight”.
150. It admits the allegations in paragraph 150 and says further that at trial it will rely on the full terms and effect of the document titled “3Q21 Results – Investor and analyst update”.

#### **D.4 Events at Mandalong mine from mid-February 2022**

151. It does not know and therefore does not admit the allegations in paragraph 151.

152. It does not know and therefore does not admit the allegations in paragraph 152.

153. It does not know and therefore does not admit the allegations in paragraph 153.

154. It does not know and therefore does not admit the allegations in paragraph 154.

#### **D.5 Banpu disclosures in 2022**

155. It does not know and therefore does not admit the allegations in paragraph 155.

156. Save to say that 2.06Mt represents a 21% decrease, it otherwise admits the allegations in paragraph 156 and says further that at trial it will rely on the full terms and effect of the document titled "Management's Discussion and Analysis for the Year Ended 2021".

157. It admits the allegations in paragraph 157 and says further that at trial it will rely on the full terms and effect of the document titled "2021 Results Highlight".

158. It admits the allegations in paragraph 158 and says further that at trial it will rely on the full terms and effect of the document titled "FY21 & 4Q21 Results – Investor and analyst update".

159. It admits the allegations in paragraph 159 and says further that at trial it will rely on the full terms and effect of Banpu's 2021 Annual Report.

160. It admits the allegations in paragraph 160 and says further that at trial it will rely on the full terms and effect of the document titled "1Q/2022 Results Highlights".

161. Save to say that Banpu's disclosure did not refer to complex geology, it otherwise admits the allegations in paragraph 161 and says further that at trial it will rely on the full terms and

effect of the document titled “Management’s Discussion and Analysis for the 1<sup>st</sup> Quarter 2022”.

162. It admits the allegations in paragraph 162 and says further that at trial it will rely on the full terms and effect of the document titled “1Q22 Results – Investor and analyst update”.

#### **D.6 Escalation of coal prices and forecasts in 2021 and 2022**

163. As to paragraph 163, it says:

(a) the expression “Newcastle index” is vague and unparticularised and liable to be struck out; and

(b) under cover of that objection, does not admit the allegations in paragraph 163.

164. As to paragraph 164, it:

(a) refers to and repeats paragraph 163 above;

(b) says the expression “global benchmark price” is vague and liable to be struck out; and

(c) does not admit the allegations in paragraph 164.

165. It denies the allegations in paragraph 165 and says further in relation to the Relevant Period that OEEPL (not Origin) purchased coal for delivery to Eraring Power Station at fixed prices which were negotiated from time to time having regard to the quality of the coal and market conditions.

166. It denies the allegations in paragraph 166.

167. It admits the allegations in paragraph 167.

168. It admits the allegations in paragraph 168.

169. It admits the allegations in paragraph 169.

170. It admits the allegations in paragraph 170.

171. It admits the allegations in paragraph 171.

**D.7 Surge in electricity prices and electricity procurement costs**

172. It admits the allegations in paragraph 172.

173. It admits the allegations in paragraph 173.

174. It admits the allegations in paragraph 174.

175. It admits the allegations in paragraph 175.

176. It denies the allegations in paragraph 176 and says that:

- (a) in the Relevant Period, companies in the Origin corporate group incurred net pool costs, being gross pool purchase costs net of pool revenue from generation, gross and net settled Power Purchase Agreement (**PPA**) and other contracts;
- (b) in FY2021, companies in the Origin corporate group incurred net pool costs of approximately \$230 million; and

**Particulars**

FY2022 Annual Report, p 30.

- (c) in FY2022, companies in the Origin corporate group incurred net pool costs of approximately \$363 million.

**Particulars**

FY2022 Annual Report, p 30.

177. It denies the allegations in paragraph 177 and says that:

- (a) in the Relevant Period, companies in the Origin corporate group entered into “market contracts”, including swap and energy hedge contracts, to mitigate the group’s exposure to pool prices;
- (b) in FY2021, companies in the Origin corporate group incurred costs of approximately \$485 million in connection with “market contracts”;

**Particulars**

FY2022 Annual Report, p 30.

- (c) in FY2022, companies in the Origin corporate group incurred costs of approximately \$727 million in connection with “market contracts”.

**Particulars**

FY2022 Annual Report, p 30.

**D.8 Change in market conditions**

178. It denies the allegations in paragraph 178, and refers to and repeats paragraphs 25, and 89 to 121 above.

179. It denies the allegations in paragraph 179, and refers to and repeats paragraphs 25, and 89 to 121 above.

180. It denies the allegations in paragraph 180, and refers to and repeats paragraphs 89 to 121 above.

181. It denies the allegations in paragraph 181 and refers to and repeats paragraphs 89 to 121 above.

**D.9 Information as to coal supply constraints and impacts, and the achievability of Guidance**

*D.9.1 Coal Supply Constraint and Impact Information*

182. It denies the allegations in paragraph 182.

*D.9.2 The Energy Markets Earnings Information*

183. It denies the allegations in paragraph 183 and refers to and repeats paragraphs 89 to 121 above.

*D.9.3 The Reaffirmed Energy Markets Earnings Information*

184. It denies the allegations in paragraph 184 and refers to and repeats paragraphs 89 to 121 above.

**E. CONTINUOUS DISCLOSURE CONTRAVENTIONS**

**E.1 Coal Supply Constraint and Impact Information**

185. As to paragraph 185, it:

- (a) denies the allegations in paragraph 185;
- (b) refers to and repeats paragraph 89 and 182 above; and
- (c) says that to the extent that the plaintiff:
  - (i) relies on matters of which Origin and officers of Origin ought to have been (but were not) aware, such matters could not found “awareness” within the meaning of ASX Listing Rule 19.12; and

- (ii) relies on information of which Origin or officers of Origin ought to have been (but were not) aware, such information was not information of which Origin was “aware” within the meaning of ASX Listing Rules 3.1 or 19.12.

- 186. It denies the allegations in paragraph 186 and refers to and repeats paragraph 185 above.
- 187. It denies the allegations in paragraph 187 and refers to and repeats paragraphs 185 and 186 above.
- 188. It denies the allegations in paragraph 188 and refers to and repeats paragraphs 185 to 187 above.
- 189. It denies the allegations in paragraph 189.
- 190. It denies the allegations in paragraph 190 and refers to and repeats paragraphs 185 to 189 above.
- 191. It denies the allegations in paragraph 191 and refers to and repeats paragraphs 185 to 190 above.
- 192. It denies the allegations in paragraph 192 and refers to and repeats paragraphs 185 to 190 above.
- 193. It denies the allegations in paragraph 193 and refers to and repeats paragraphs 185 to 190 above.

## **E.2 Energy Market Earnings Information**

- 194. As to paragraph 194, it:
  - (a) denies the allegations in paragraph 194;
  - (b) refers to and repeats paragraph 89 above; and

(c) says that to the extent that the plaintiff:

(i) relies on matters of which Origin and officers of Origin ought to have been (but were not) aware, such matters could not found 'awareness' within the meaning of ASX Listing Rule 19.12; and

(ii) relies on information of which Origin or officers of Origin ought to have been (but were not) aware, such information was not information of which Origin was "aware" within the meaning of ASX Listing Rules 3.1 or 19.12.

195. It denies the allegations in paragraph 195 and refers to and repeats paragraph 194 above.

196. It denies the allegations in paragraph 196 and refers to and repeats paragraph 194 and 195 above.

197. It denies the allegations in paragraph 197 and refers to and repeats paragraph 194 to 196 above.

198. It denies the allegations in paragraph 198.

199. It denies the allegations in paragraph 199 and refers to and repeats paragraphs 194 to 198 above.

200. It denies the allegations in paragraph 200 and refers to and repeats paragraphs 194 to 199 above.

201. It denies the allegations in paragraph 201 and refers to and repeats paragraphs 194 to 199 above.

202. It denies the allegations in paragraph 202 and refers to and repeats paragraphs 194 to 199 above.

### **E.3 Reaffirmed Energy Market Earnings Information**

203. As to paragraph 203, it:

- (a) denies the allegations in paragraph 203;
- (b) refers to and repeats paragraph 89 above; and
- (c) says that to the extent that the plaintiff:
  - (i) relies on matters of which Origin and officers of Origin ought to have been (but were not) aware, such matters could not found “awareness” within the meaning of ASX Listing Rule 19.12; and
  - (ii) relies on information of which Origin or officers of Origin ought to have been (but were not) aware, such information was not information of which Origin was “aware” within the meaning of ASX Listing Rules 3.1 or 19.12.

204. It denies the allegations in paragraph 204 and refers to and repeats paragraph 203 above.

205. It denies the allegations in paragraph 205 and refers to and repeats paragraphs 203 and 204 above.

206. It denies the allegations in paragraph 206 and refers to and repeats paragraphs 203 to 205 above.

207. It denies the allegations in paragraph 207.

208. It denies the allegations in paragraph 208 and refers to and repeats paragraphs 203 to 207 above.

209. It denies the allegations in paragraph 209 and refers to and repeats paragraphs 203 to 208 above.

210. It denies the allegations in paragraph 210 and refers to and repeats paragraphs 203 to 208 above.

211. It denies the allegations in paragraph 211 and refers to and repeats paragraphs 203 to 208 above.

**F. MISLEADING OR DECEPTIVE CONDUCT CONTRAVENTIONS**

212. It denies the allegations in paragraph 212 and refers to and repeats paragraphs 89 to 121 above.

213. It denies the allegations in paragraph 213 and refers to and repeats paragraphs 89 to 121 above.

214. It denies the allegations in paragraph 214 and refers to and repeats paragraphs 89 to 121 above.

**F.1 The FY2022 Energy Markets Guidance Representation and the FY2022 Energy Markets Implied Representations**

215. It denies the allegations in paragraph 215 and refers to and repeats paragraphs 212 to 213 above.

216. It denies the allegations in paragraph 216 and refers to and repeats paragraph 215 above.

**F.2 The FY2023 Energy Markets Guidance Representation and the FY2023 Energy Markets Implied Representations**

217. It denies the allegations in paragraph 217 and refers to and repeats paragraphs 212 to 213 above.

218. It denies the allegations in paragraph 218 and refers to and repeats paragraph 217 above.

**F.3 The Reaffirmed FY2022 Energy Markets Guidance Representation and the Reaffirmed FY2022 Energy Markets Implied Representations**

219. It denies the allegations in paragraph 219 and refers to and repeats paragraphs 212 to 214 above.

220. It denies the allegations in paragraph 220 and refers to and repeats paragraph 219 above.

**F.4 The Reaffirmed FY2023 Energy Markets Guidance Representation and the Reaffirmed FY2023 Energy Markets Implied Representations**

221. It denies the allegations in paragraph 221 and refers to and repeats paragraphs 212 to 214 above.

222. It denies the allegations in paragraph 222 and refers to and repeats paragraph 221 above.

**F.5 The FY2022 Energy Markets Conditions Representation and the FY2023 Energy Markets Conditions Representation**

223. It denies the allegations in paragraph 223 and refers to and repeats paragraphs 212 to 214 above.

224. It denies the allegations in paragraph 224 and refers to and repeats paragraph 223 above.

**G. ORIGIN'S REVISED FY2022 GUIDANCE AND WITHDRAWAL OF FY2023 GUIDANCE**

**G.1 1 June 2022 Corrective Disclosure**

225. As to paragraph 225, it:

(a) save to say that at trial it will rely on the full terms and effect of the Update on FY2022 and FY2023 Guidance, admits the allegations in paragraph 225(a); and

(b) save to admit that the 1 June Earnings Call was held on 1 June 2025, denies the allegations in paragraph 225(b).

226. Save to say that the statement alleged in paragraph 226(a)(ii) said “...*additional replacement coal purchases at significantly higher prices...*” it otherwise admits the allegations in paragraph 226 and says further that at trial it will rely on the full terms and effect of the Update on FY2022 and FY2023 Guidance.
227. It admits the allegations in paragraph 227 and says further that at trial it will rely on the full terms and effect of the Update on FY2022 and FY2023 Guidance.
228. It admits the allegations in paragraph 228 and says further that at trial it will rely on the full terms and effect of the statements made during the 1 June Earnings Call.

## **G.2 Price response following the 1 June Corrective Disclosure**

229. As to paragraph 229, it:

- (a) says that ORG Shares:
  - (i) closed on 31 May 2022 at \$6.85;
  - (ii) closed on 1 June 2022 at \$5.91; and
- (b) otherwise denies the allegations in paragraph 229.

## **H. CONTRAVENING CONDUCT CAUSED LOSS**

### **H.1 Market based causation**

#### *H.1.1 ORG Shares*

230. It denies the allegations in paragraph 230.
231. It denies the allegations in paragraph 231.
232. It denies the allegations in paragraph 232.
233. It denies the allegations in paragraph 233.

### *H.1.2 ORG Equity Swaps*

234. It denies the allegations in paragraph 234.

235. It denies the allegations in paragraph 235.

### **H.2 Reliance**

236. It denies the allegations in paragraph 236.

237. It denies the allegations in paragraph 237.

238. It denies the allegations in paragraph 238.

239. It denies the allegations in paragraph 239.

### **H.3 Loss and damage suffered by the plaintiff and Group Members**

240. It denies the allegations in paragraph 240.

### **I. COMMON QUESTIONS OF LAW OR FACT**

241. It does not plead to paragraphs 1 to 10 of section I of the SOC as it contains no direct allegations against it and says further that the identification of common questions is properly a matter to be addressed following the close of pleadings and evidence.

Dated: 28 May 2025

**R G CRAIG  
J A FINDLAY  
S NAMBIAR**

**Counsel for the Defendant**

*Herbert Smith Freehills*  
**HERBERT SMITH FREEHILLS**  
**Solicitors for the Defendant**