



2011-12 COMPLIANCE REPORT

ENERGY RETAIL BUSINESSES

DECEMBER 2012



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CONTENTS

1	INTRODUCTION	1
1.1	The purpose of this report	1
1.2	The powers of the Commission	1
1.3	Our approach to compliance and enforcement	2
1.4	Our relationships with other organisations	2
1.5	Structure of the report	2
2	REGULATORY AUDITS	4
3	RETAILERS' COMPLIANCE REPORTS	6
3.1	Overview	6
3.2	Retailers' compliance reporting	7
3.3	Analysis of 2011-12 compliance reports submitted by retailers	8
4	WRONGFUL DISCONNECTION COMPENSATION	12
4.1	Overview	12
4.2	Cases requiring Commission involvement	12
4.3	Cases not requiring Commission involvement	14
A1	OTHER COMPLIANCE INITIATIVES	15
A2	RETAILERS' BREACH REPORTS	17
A2.1	Breach Type 1	17
A2.2	Breach Type 2	24
A2.3	Breach Type 3	31



CHAIRPERSON'S COMMENTARY

The objective of the Essential Services Commission (the Commission) is to promote the long term interests of Victorian customers with regard to the price, quality and reliability of essential services. To meet this objective, the Commission establishes standards and codes to regulate energy retailers' conduct. We monitor their compliance with their regulatory obligations and encourage or enforce compliance as necessary. This report outlines our monitoring activity in the 2011-12 financial year and the results.

To assist monitoring and compliance, each retailer must have a robust compliance system in place and working effectively. This must define how the retailer normally meets its regulatory obligations, and how it detects, corrects and reports to us any material breach. We also require retailers to confirm regularly that they have such a system and, therefore, that their reports of compliance breaches are accurate and complete.

Retailers' reports for 2011-12 reveal a number of recurrent problems, including system problems that affect several retailers' ability to:

- send contracts to new customers within the prescribed timeframe
- notify existing customers within the required timeframe of tariff increases and
- include necessary information on customers' bills.

These are not simply tasks a retailer performs to ensure its revenue stream; they are essential for maintaining an effective and trustworthy interface for its customers. Retailers' repeated failure to manage these and other functions adequately casts some doubt on their technical capability to perform as licensed retailers.

Our independent regulatory audits showed that most retailers complied overall with the licence obligations that were reviewed. However, some performance indicators reported to the Commission were neither reliable nor accurate. Of particular concern were indicators of complaint handling, financial hardship and wrongful disconnections.

To resolve continuing concerns about retailers' ability or readiness to comply with certain obligations, the Commission intends to strengthen its own auditing framework and recommence a program of annual regulatory audits. These will be targeted more selectively at the retailers' compliance programs, and will test the more problematic licence obligations.

Dr Ron Ben-David
Chairperson



1 INTRODUCTION

1.1 The purpose of this report

The Essential Services Commission (the Commission) licenses businesses that generate, supply and sell energy in Victoria, and establish codes and guidelines to regulate these businesses in the long term interests of Victorian consumers.¹ This report provides an overview of our compliance activities and the energy retailers' level of compliance with their regulatory obligations during the 2011–2012 financial year.

During 2011-12, 18 licensed energy retailers in Victoria actively marketed to residential and/or business consumers. Most of them sold electricity. Eight of them sold gas as well.²

The Commission monitors their compliance with the obligations in various ways, including the following matters outlined in subsequent chapters of this report:

- We continued to audit retailers.
- Retailers report breaches of their regulatory obligations under our guidance and direction and we follow up those reports.
- We assess complaints of wrongful disconnection, where the retailer and the Energy and Water Energy Ombudsman (Victoria) Limited ('the Energy Ombudsman') are unable to agree on a resolution, and decide the outcome pursuant to the regulations.

The Commission responds to instances of noncompliance by requiring retailers to make good the disadvantage experienced by customers and to correct the faults.

1.2 The powers of the Commission

The energy retail businesses in Victoria are governed by three principal Acts: the *Electricity Industry Act 2000* (EI Act), the *Gas Industry Act 2001* (GI Act) and the *Essential Services Commission Act 2001* (ESC Act). As well as imposing obligations directly on the businesses, the Acts empower the Commission to issue licences and publish codes and guidelines for the conduct of retail businesses.

We have a wide range of enforcement measures available to respond to allegations of noncompliance with licence obligations. These measures range from less formal administrative options to progressively more substantive statutory-based responses. We may proceed with more significant enforcement actions where required, or to address and rectify noncompliance where other measures were ineffective.

¹ The other businesses mainly engaged in generating, transmitting and distributing energy are licensed by the Commission, but are regulated by a Commonwealth body. Our powers to regulate energy retailers are expected to pass to the Australian Energy Regulator (AER) although we may retain some monitoring powers.

² Essential Services Commission 2012, *Energy retailers comparative performance report—pricing 2011-12*, September, pp. 11-14



1.3 Our approach to compliance and enforcement

The Commission encourages a culture of compliance among the regulated businesses through cooperation and persuasion where possible. We encourage retailers to adopt the Australian Standard AS 3806-2006 Compliance Programs which provides principles and guidance for implementing a flexible and effective compliance program within a business.

Such a program, if implemented effectively and resourced appropriately, builds compliance management and monitoring into the normal operating procedures of a business. This gives appropriate assurance that a retailer's staff can detect actual or potential compliance failure and respond promptly.

As a condition of their licences, retailers must monitor their compliance and report breaches. Periodic independent regulatory audits provide independent confirmation that retailers' compliance programs are indeed effective and that we can rely on their breach reports.

Where retailers' compliance reports, independent audits or other reports show the need, we can sanction the retailers for breaches of their regulatory obligations.

1.4 Our relationships with other organisations

We have well-established relationships with other jurisdictional regulators and both government and community agencies, which assist with compliance monitoring activities. Memoranda of Understanding (MOU) formalise the relationships between the Commission and the other bodies.

In particular, Consumer Affairs Victoria (CAV), the Energy Ombudsman and the Department of Human Services (DHS) are active in monitoring the conduct of the regulated energy businesses in the market.³ Where potentially significant and widespread noncompliance issues are identified, we consult with the relevant agency to ensure a consistent and efficient response to addressing the noncompliance.

We also consult with the Australian Competition and Consumer Commission (ACCC) on marketing conduct matters. In 2011-12, we continued discussions with the Australian Energy Regulator (AER) and the Department of Primary Industries about the scope and nature of our energy industry monitoring role.

Our Customer Consultative Committee (CCC) and consumer organisations also provide valuable information about customers' experiences, which helps to identify potential noncompliance issues.

1.5 Structure of the report

The remainder of this report is structured as follows:

- Chapter 2 outlines the results of audits undertaken during 2011-12.
- Chapter 3 summarises the retailers' 2011-12 annual compliance reports by categorising the breaches as systemic or isolated, and identifying the remedial actions taken by the retailers.

³ See the Commission's website at [About Us > Memoranda of Understanding](#)



- Chapter 4 summarises the wrongful disconnection compensation cases identified by retailers, customers or the Energy Ombudsman.
- Appendix A1 summarises other compliance activities in 2011-12
- Appendix A2 details the compliance breaches the retailers reported to the Commission.



2 REGULATORY AUDITS

The Commission may require the retailers to undertake periodic independent audits to assess their compliance with selected obligations and the accuracy of their periodic compliance and performance reports. In 2010-11, the Commission directed all major retailers to undertake such audits of their compliance for the period 1 July 2009 to 30 June 2010. These retailers included AGL, Lumo Energy, Neighbourhood Energy, Origin Energy, Powerdirect, Red Energy, Simply Energy and TRUenergy.⁴

Many of the retailers completed their audits during 2011-12 and summary reports of the audit findings for some retailers have been published on the Commission's website, along with other documents related to further action that these retailers were required to undertake.⁵ At the time of preparing this report, we were undertaking a review of our compliance auditing framework.

This chapter briefly outlines the audit outcomes in the summary reports that were published during the reporting period. Summary reports are available at www.esc.vic.gov.au.

AGL

This retailer had been audited twice in the recent past – in 2009 and 2010. AGL was required to undertake another audit in 2011 as part of the Commission's 2010-11 program of regulatory audits of all major retailers.

The auditor found AGL complied overall with 20 of 21 licence obligations during the audit period. However, the Commission was concerned at AGL's failure to obtain and record explicit informed consent to some contracts and failure to provide some customers with the required contract information promptly.

Because most of the performance indicators had been recently audited, only four performance indicators were covered again in 2011. Of these four, the auditor found AGL failed to comply with reporting requirements for two of the indicators of customer hardship that were previously audited.

Following this audit finding, AGL undertook to conduct an independent audit to confirm that it now complies with the obligations. This follow-up audit was completed in May 2012 and AGL was considered to be compliant.

Lumo Energy

The auditor found that Lumo Energy complied overall with all 22 of its licence obligations during the audit period, but failed to reach an acceptable standard of reliability and accuracy for 35 of 43 performance indicators it had reported to the Commission.

In response to the audit findings, Lumo Energy has agreed to implement the auditor's recommendations on improving its reporting of the performance indicators, and to undertake a further independent audit.

⁴ [TRUenergy since October 2012 has been known as EnergyAustralia](#)

⁵ See ESC > Energy > Regulatory Audits of Retail Businesses > View all Publications



Origin Energy

The main areas of concern identified in the audit report for Origin Energy were complaint handling and the reliability of the performance indicators it reported to the Commission.

The audit found that Origin Energy relied heavily on a central team of compliance experts but, outside that team, not all staff appeared to know how to identify and handle breaches. As a result, Origin Energy staff did not consistently identify and record complaints and escalate them when required. Some complaints about Origin Energy's marketing activity were also not effectively handled or reported as compliance breaches.

The audit also found that Origin Energy did not report reliable or verifiable figures to the Commission on the complaints it received about wrongful disconnections or other matters.

The Commission has sought from Origin Energy undertakings it will rectify the obligations with which it has been found to be noncompliant. The retailer has since provided information to demonstrate to the Commission that it is now compliant.

Simply Energy

Simply Energy has been audited several times in the recent past – in 2008, 2009 and 2010. As a major retailer, Simply Energy was also required to undertake another audit in 2011. This audit found the retailer compliant overall with all its licence obligations, but eight of 18 performance indicators did not reach a satisfactory level of reliability and accuracy.

The results were concerning as two of the eight noncompliant performance indicators had been found to be noncompliant in the previous audit, which suggested that Simply Energy did not complete the remedial actions that it proposed in response to the earlier findings, or those actions failed to address the issues.

The Commission required the retailer to give an administrative undertaking to comply with its performance reporting obligations and to have its compliance verified in another independent audit. This was conducted in April 2012 and Simply Energy was considered compliant.

TRUenergy

The retailer was found to be compliant with 20 of 21 licence obligations audited, but more than half of its performance indicators were reported to be unreliable or inaccurate during the period audited. The auditor did not consider this to be intentional and found that data reporting had improved later.

TRUenergy has advised that it has completed some remedial action to improve its reporting, with further steps to be completed. TRUenergy undertook to conduct a further independent follow-up audit, which found that the retailer complied with the remaining licence obligation but that six performance indicators were still noncompliant. TRUenergy continues to report progress on a remedial action plan to the Commission and to provide relevant documentation for the Commission's review.



3 RETAILERS' COMPLIANCE REPORTS

3.1 Overview

Based on the breaches reported for 2011-12, the notable issues include:

- Systems problems seem to be a contributing factor in retailers' noncompliance with their regulatory obligations.
- Sales agents' behaviour continues to be of concern.
- Wrongful disconnections that breached the EI Act or the GI Act.

Systems error

It appears the problems in some retailers' IT systems have adversely impacted their ability to comply with the regulatory obligations. As an example, AGL, Origin Energy, Simply Energy and TRUenergy reported that errors in their systems resulted in customers being overcharged or undercharged. An estimated total of 58 770 customers were affected by the noncompliance due to systems difficulties. Affected customers received a credit against their account if they were overcharged or provided with an extended period to pay their bill if undercharged. The retailers have now resolved these system errors. However, other system-related issues have since emerged.

Similar to the previous reporting year, new customers continue to experience delays in receiving their contracts and errors in retailers' IT systems were cited as a factor, affecting a total of approximately 12 600 new customers. Retailers extended the cooling-off period for these customers.

Sales agents' conduct

Retailers continue to report that new customers were transferred to them from their existing retailers without explicit informed consent. These breaches were most often reported as errors in recording or processing customer details. Of more concern were breaches where sales agents misled customers, allegedly fabricated consent to contracts or otherwise pressed vulnerable customers into transferring from their existing retailer. More than 560 such cases were investigated over the period. The retailers reported taking different remedial actions, from instituting greater training and supervision, through to reporting incidents to the police, depending on the circumstances.

As noted in the Commission's *2010-11 Compliance Report* of energy retail businesses, an industry-based accreditation scheme and voluntary code of practice, established by Energy Assured Limited (EAL) and approved by the ACCC, began operating in January 2012. We indicated our expectation that the scheme and code should minimise noncompliance by sales agents. As the scheme has been in operation for less than a year, it is difficult for the Commission to form a view on its effectiveness in minimising the incidence of sales agents' misconduct. However, we note that retailers now report that some agents are being deregistered and prevented from working in this role for five years.



Wrongful disconnections

Breaches of the Retail Code leading to a wrongful disconnection may cause considerable hardship or discomfort to the customers involved. Because compliance breaches that result in the wrongful disconnection of a customer are very important, these are covered in more detail in chapter 4. The remainder of this chapter deals with the other reported breaches.

3.2 Retailers' compliance reporting

Classification — Type 1, Type 2, Type 3

Retailers reported breaches of their regulatory obligations are classified according to the likely severity of the breach on customers.⁶

Type 1 breaches could critically affect customers and includes incidents where the effect increases over time if not rectified quickly. Retailers must report all actual or potential Type 1 breaches immediately.

Type 2 breaches must be reported six-monthly. They are breaches of regulatory obligations where:

- noncompliance would seriously affect customers, and/or
- the obligation is 'new' or has not been complied with in previous years, and/or
- the impact of that noncompliance increases over time.

Type 3 breaches are breaches of all other regulatory obligations. The retailers are required to report them only once a year.

We generally assess whether the reported breaches are systemic or isolated:

- Systemic breaches affect significant numbers of customers. For example, in computer-based operations that lack appropriate controls, a retailer's IT processes can repeatedly fail to produce the intended results, and records are therefore wrongly selected or formatted, or calculations are incorrect. In manual operations, incorrect instructions to staff, inadequate error-checking or supervision and similar factors may cause recurrent breaches. We are generally more concerned by systemic breaches, as they often result from persistent failure to maintain normal management oversight and supervisory control, or to deal with the causes of customers' complaints rather than the symptoms.
- Isolated breaches affect fewer customers. Employees or agents may fail to follow established procedures or may process individual transactions incorrectly, but the impact is limited. One isolated error may affect many customers but, unless the error seems part of a pattern of similarly unreliable operation, it may be less significant than a systemic problem affecting fewer people.

We recognise that errors will occasionally be made but, when retailers report significant breaches to us, we ensure that they take appropriate remedial action to compensate customers, correct their systems and train their staff as appropriate.

⁶ The regulatory obligations and their classifications into Type 1, 2 or 3 breaches are summarised in the Commission's Compliance Reporting Manual (Energy Retail Businesses), which can be accessed on the Commission's website (www.esc.vic.gov.au) under Energy > Compliance.



The reliability of retailers' compliance reporting systems

The reliability of the reports of compliance breaches that we receive from retailers depends on their capacity and willingness to detect noncompliance and report accurately. As required, the retailers regularly assure the Commission that their compliance systems are effective and their reports of noncompliance are complete.

However, such assurances and reports need to be tested periodically. The ability of the energy retailers' compliance systems to prevent or detect noncompliance, and the accuracy of the compliance reports that they send the Commission, are tested in the Commission's annual regulatory audit program.

3.3 Analysis of 2011-12 compliance reports submitted by retailers

Type 1 breaches

This section summarises the Type 1 breaches of the licence, Retail Code or Marketing Code reported by retailers, other than breaches related to wrongful disconnection (which are presented in chapter 4). Details of all the Type 1 breaches are set out in appendix section A2.1.

Retail Code

Since 2010-11, there has been little (if any) improvement in systemic breaches of the regulatory obligations to notify customers of the impending expiration of their energy contract (clause 24.3(a)), or of any increase in the customer's tariffs (clause 26.4(b)):

- Approximately 1400 Neighbourhood Energy and 1100 Origin Energy customers were not notified that their contracts were due to expire. To remedy their noncompliance, Neighbourhood Energy gave affected customers priority when mailing out information, while Origin Energy decided not to charge early termination fees to customers wishing to terminate the renewed contract.
- Origin Energy sent contract renewal notice containing the incorrect tariff to approximately 4000 customers. When the retailer discovered the error, affected customers were notified and provided with an opportunity to terminate the renewed contract without penalty.
- Over 4300 Click Energy and 5000 Origin Energy customers with smart meters did not receive from their retailer the required 20 business days' advance notice of increases in their tariffs. Origin Energy advised that its breach of the obligation was due to billing system issues. Origin Energy will revise its communication protocols with its billing system service provider to ensure that this breach does not occur in future. The Commission recognised that circumstances made compliance with this obligation considerably more difficult in 2011-12.
- Origin Energy customers with standard meters were not notified within the prescribed timeframe of increases in their tariffs. This breach affected over 100 000 customers. We are seeking further details of the remedial action that Origin Energy took on this occasion.

Other systemic breaches of the Retail Code include the following:

- Origin Energy did not charge approximately 11 000 customers on instalment plans the agreed amount because the details of their payment plans were not successfully transferred to its new billing system.



- AGL failed to comply with its obligations under clause 26.7 to provide distributors with updated information about customers on life support, due to a failure in its internal processes. The Commission's re-audit of AGL in May 2012 found that this noncompliance has been rectified.
- TRUenergy did not include contact details for the Ombudsman on its disconnection warning notices, as required under clause 28.3.

Marketing Code

There are eight Marketing Code obligations which, if breached, would be classified as Type I. However, the following three regulatory obligations feature prominently in several retailers' reports of noncompliance for 2011-12:

- the retailer must ensure its sales agents do not mislead, deceive, harass or place undue pressure on consumers
- contractual information must be provided to customers within two business days of the customer agreeing to enter into a contract with the retailer; and
- the retailer must obtain a consumer's explicit informed consent before transferring that customer from another retailer to itself.

Neighbourhood Energy, Origin Energy, Red Energy, Simply Energy and TRUenergy reported that their sales agents had misled, deceived or harassed consumers. Retailers investigated these complaints and have either dismissed the sales agents involved or required them to undertake further training. Where the consumer was coerced into signing a contract, the retailers have cancelled the contract, waived early termination fees and transferred the customer back to the previous retailer.

AGL, Lumo, Origin Energy, Simply Energy and TRUenergy failed to send contractual information to new customers within two business days, affecting approximately 17 500 customers in total. With the exception of Simply Energy, these retailers attributed the delay to systems issues and some retailers extended the cooling-off period for affected customers. The late receipt of pricing data and the delay in the introduction of the National Energy Customer Framework were reasons Simply Energy provided for the delay in sending out the contractual information to prospective customers.

Unlike the previous reporting year when the retailers' sales agents were responsible for many of the customer transfers without explicit informed consent, in 2011-12 the reports show that internal processing errors contributed to their noncompliance. Origin Energy and TRUenergy reported that consumers were transferred to them without their explicit informed consent due to data processing errors and the failure to stop the transfer within the cooling-off period. Both retailers have transferred these consumers back to their previous retailer.

Type 2 breaches

This section summarises the major Type 2 breaches reported by retailers (see appendix section A2.2 for all Type 2 breaches).

Retail Code

Three areas of systemic noncompliance that continued to appear in retailers' annual compliance reports are billing frequency, contents of bills and charging customers the incorrect amount:



- *Billing frequency:* TRUenergy reported that over 750 000 bills were delayed and sent outside the prescribed timeframe of every three months for electricity and two months for gas. The main causes were the limitations of TRUenergy's legacy systems and issues with data, delays in receiving meter readings or in completing customers' service orders. TRUenergy continued with the planned replacement of its systems (now complete) and applied further resources to customer billing and communication. We continue to monitor TRUenergy's billing issues and remedial efforts and note that the number of late bills as at 30 June 2012 was 30 000, down from 49 000 a year earlier. Lumo Energy also reported issuing bills to approximately 3400 customers outside of the regulated timeframes because it incorrectly sent out reminder notices before issuing bills. The noncompliance resulted from a processing error during the printing phase. Lumo Energy reissued the bills with the payment terms adjusted.
- *Contents of bills:* Some smart-meter customers with AGL, Dodo Power & Gas, EnergyAustralia, Origin Energy, Powerdirect and Simply Energy received bills that did not contain the correct consumption graph/information or were missing the meter (index) reads. Some customers whose accounts had been moved to Origin Energy's new system received bills without their consumption history. The retailers attributed their noncompliance to system issues. We are currently requiring all retailers to confirm that they comply with these requirements and are taking enforcement action against any who do not.
- Origin Energy, Simply Energy and TRUenergy continued to have problems in 2011-12 charging customers the correct tariff:
 - Origin Energy did not apply discounts to 1700 customers due to account establishment errors and a further 6000 customers did not receive Guaranteed Service Level (GSL) payments because of processing problems.. Customers have now received their discounts.
 - Approximately 60 Simply Energy customers also missed out on discounts due to a system design issue, which the retailer rectified by manually applying the discounts to the customers' accounts. The retailer's 500 feed-in tariff customers did not have their credits applied correctly to their accounts. This was also a system design issue, which has since been resolved.
 - Errors in TRUenergy's billing system have again resulted in over 40 000 customers not being charged the correct tariff . The retailer has refunded affected customers and chose not to recover from customers who were undercharged.

AGL customers were also affected by incorrect application of the tariff in 2011-12. Approximately 250 customers with solar systems installed were overcharged because of miscommunications with the distributors. All affected customers received their refund by September 2012. An additional 13 000 customers were undercharged because a systems issue resulted in AGL only billing them for the supply charge. AGL does not intend to recover from customers who were undercharged less than \$20, but have re-issued bills, with an extended payment date, to other impacted customers.

Other systemic Type 2 breaches of the Retail Code reported by retailers include:

- over 7000 customers did not have an actual meter read in over 12 months and have been billed on estimates (TRUenergy)



- direct debit payments were not processed as scheduled, affecting 4400 customers who were notified of the problem (Origin Energy)
- inadequate complaint handling resulting in some customer complaints not being recorded, processed and reported in accordance with the regulations (Powerdirect)
- new connection customers experience delays to their connection of up to eleven days (Origin Energy)

Marketing Code

The only Type 2 breach of the Marketing Code reported by retailers related to isolated breaches of clauses 2.1 to 2.3, which cover the conditions for contacting customers. A sales agent working on behalf of Australian Power & Gas ignored a ‘Do Not Knock’ sticker and persuaded the consumer to accept an offer; the retailer then proceeded with the transfer. The consumer has since been transferred back to the previous retailer. Lumo Energy’s sales agents ignored the ‘Do Not Knock’ stickers of two residents, and their requests for the agents to leave. These agents’ contracts were terminated and the rest of the team was suspended for further training.

Guideline no. 13 — Greenhouse Gas Disclosure on Electricity Customers' Bills

The only systemic breach of this guideline relates to clause 2, which sets out the minimum greenhouse gas information that must be shown on customers’ bills. Simply Energy’s customers on feed-in tariffs received incorrect emission information on their bills. As in 2010-11, Simply Energy reported that its noncompliance was due to problems with its IT systems, which have been resolved.

Type 3 breaches

There were fewer systemic Type 3 breaches reported by retailers for 2011-12 when compared to the previous reporting period:

- *clause 4.1 of the Retail Code*: Approximately 110 solar customers of Powerdirect received invoices showing different ‘Total Amount’ figure on different pages of the invoice, because of printing system problems that have now been corrected.
- *clause 4.5 to 4.6 of the Retail Code*: EnergyAustralia’s billing system cannot allocate a dual fuel customer’s partial payment in proportion of the balance owing for each fuel. The retailer resolves any customer complaints as they occur.
- *clause 26.2, 26.3, 26.4(a) & 26.5 of the Retailer Code*: An estimated 3700 calls were suspended due to problems with AGL’s telecommunications systems, which was resolved on the day of its occurrence.
- *clause 2.4 & 2.5 of the Marketing Code*: Lumo Energy’s sales service provider used unapproved sales agents without the retailer’s knowledge and in contravention of the contract terms. As a consequence, Lumo Energy terminated its contract with the sales service provider.

See section A2.3 in the Appendix for further information on Type 3 breaches.



4 WRONGFUL DISCONNECTION COMPENSATION

4.1 Overview

Victoria's wrongful disconnection payment (WDP) regime came into force in December 2004.⁷ Under this regime, a retailer must compensate its customers if it breaches the terms and conditions of its contracts with them when it disconnects them. The compensation was fixed at \$250 for each fuel and for each day or part of a day that supply is disconnected from the customer's premises.

A cap was placed on the wrongful disconnection payment on 1 January 2012; a wrongful disconnection payment is now capped at \$3500 if the customer does not notify the retailer of the disconnection within 14 days of the disconnection.⁸ This change does not affect disconnections that occurred before that date, for which any compensation payment is unlimited.

The Commission has a limited role in the wrongful disconnection regime; the Commission becomes involved in a wrongful disconnection case only after a customer makes a complaint to the Energy Ombudsman and the customer or the retailer then disagrees with the Energy Ombudsman's proposed resolution.

This chapter outline cases that were referred to us by the Energy Ombudsman during 2011-12. It also outlines cases that were settled by the retailers, but involved the Energy Ombudsman. Other cases are outlined as Type 1 compliance breaches in the appendix.

4.2 Cases requiring Commission involvement

Eighteen cases of alleged wrongful disconnection were referred to us in the period between 1 July 2011 and 30 June 2012.⁹ The Commission reached a decision in 12 of these cases; in the other six, the retailer accepted that it had wrongfully disconnected the customer and withdrew the case from consideration.

The Commission made a final decision in 2011-12 in matters involving AGL (two cases), Lumo Energy (one case), Origin Energy (one case), Red (two cases) and TRUenergy (six cases). The Commission decided that eight of these 12 cases represented wrongful disconnections for which compensation was payable.

Decisions in favour of the customer

AGL

The Commission found that both disconnections by AGL were wrongful. In one case, we found that the retailer did not comply satisfactorily with its obligations to customers in financial hardship. Retailers must offer payment plans, provide telephone information about energy efficiency and the availability of independent financial advice, and/or assess the customer's

⁷ Section 40B of the *Electricity Industry Act 2000* and section 48A(1) of the *Gas Industry Act 2001*.

⁸ *Energy Legislation Amendment (Bushfire Mitigation and Other Matters) Act 2011*.

⁹ See *Energy Retailers Comparative Performance Report — Customer Service 2010-11* on the Commission's website at [Energy > Energy retail - performance reports > View all publications](#)



capacity to pay. In the other case, the disconnection was wrongful because AGL had continued with a disconnection process which it had initiated as the customer's retailer, after it had lost the right to disconnection when the customer transferred to a different retailer.

Origin Energy

The Commission found that Origin Energy had wrongfully disconnected one customer by failing to assess the customer's capacity to pay. As mentioned above, retailers are required to follow specific processes for customers in financial hardship, including assessing the customer's capacity to pay.

TRUenergy

In five of the six TRUenergy cases where the Commission proceeded to a decision, we found that the disconnection was wrongful. In one case, TRUenergy had twice sent the customer a warning of intended disconnection, but neither warning provided the required period of notice. In two more cases, the Commission found that TRUenergy had not offered an instalment plan, as required for a customer in financial difficulties.

In two cases involving the same customer at different properties, TRUenergy conceded that it had not complied with all the processes required for a customer in financial hardship. But TRUenergy maintained that there was evidence the customer had illegally reconnected supply soon after the disconnection of both properties. The Commission found that such a reconnection did not disqualify the customer from receiving compensation, but the evidence could be used to estimate the time for which the customer was without supply and entitled to compensation.

Decisions in favour of the retailer

Lumo Energy

The Commission decided that the retailer had not wrongfully disconnected the customer because the account had been transferred to Lumo in error and the deemed contract created by the customer's continued use of energy had expired. The Commission found that the Wrongful Disconnection Payment regime did not apply because supply cannot be disconnected in breach of contractual conditions in those circumstances.

Red Energy

In both cases, a disconnected customer made verbal promises to pay an amount owing and was reconnected, then failed to pay the promised amount and was disconnected again. The Commission held that the second disconnection was a continuation of the first and would not be wrongful if the first disconnection itself was not wrongful.

TRUenergy

We found that one customer was not wrongfully disconnected by TRUenergy. The customer had refused to engage with TRUenergy despite the retailer's endeavours to make contact. The Commission found that TRUenergy's view that the customer was not in financial difficulty was reasonable in the circumstances and a wrongful disconnection payment was not payable.



4.3 Cases not requiring Commission involvement

As part of their compliance reports, the retailers also report the number of wrongful disconnection cases investigated and settled by compensation payment without involving the Commission. There were 215 such cases and information provided by the retailers reveals:

- 75 per cent were cases where the retailer failed to comply with its obligations towards customers experiencing financial difficulties; for instance, by:
 - responding as required with information, assistance or an instalment plan or other payment arrangement for a customer in financial hardship or
 - assessing adequately the customers' capacity to pay
 - processing a payment made by the customer
- 15 per cent of reported wrongful disconnections resulted from data entry error
- Another 10 per cent of wrongful disconnection cases arose because the retailer's disconnection warning notices were:
 - not compliant with specific requirements such as the time allowed for payment
 - not sent to the correct address, so the customer did not receive the notice before disconnection or
 - not provided to the customer within the required timeframe and then the customer was subsequently disconnected



A1 OTHER COMPLIANCE INITIATIVES

This appendix outlines other compliance initiatives and reviews that we undertook during the period.

Smart meters

With the rollout of smart meters, the Commission undertook a number of activities to ensure that existing regulations will be sufficiently strong to protect customers and that retailers are complying with any new obligations.

Start and end meter reads

One of these activities resulted in an amendment to the Retail Code that now requires retailers to include in a customer's bill the meter read corresponding to the start and the end of the billing period.

In January 2012, the Commission wrote to distributors to ensure that they will be able to provide the relevant information so retailers can comply with the new obligations. Distributors' responses indicated that they can.

We also wrote to all major retailers in January and again in July 2012 to ensure that they would be able to comply with this new regulatory obligation. Two retailers remain noncompliant at the time of preparing this report. The Commission has received several complaints on this matter and is working with the retailers to ensure they comply in the near future.

Notification of tariff variation

Another amendment to the Retail Code arising from the rollout of smart meters requires retailers to provide smart meter customers with 20 business days' advance notice of a tariff variation. In response to developments and delays in the rollout and concerns that this requirement might have unintended consequences, the Commission wrote to retailers to exempt them from complying with the obligation in the December/January and June/July repricing periods of 2011-12. However, retailers must still notify smart meter customers of their tariff changes in their next bill.

Guideline 19 and time of use tariff

During the 2011-12 period, the Commission also started a Review of Guideline 19 to ensure that it remained relevant when Time of Use (TOU) tariffs are made more readily available. TOU tariffs are potentially complex and the consultation sought to ensure that the regulatory framework was sufficient to ensure that retailers can provide relevant and accurate information regarding TOU tariffs.

This consultation was discontinued due to the impending transition of Victoria's retail regulatory functions to the Australian Energy Regulator and the National Energy Customer Framework on 1 July 2012. At that time, it was not clear what role, if any, the Commission will have in energy retail regulation.



However, in June 2012, Victoria's Minister for Energy and Resources announced that this transition will be deferred. In light of this development, we are now reviewing the future course of this consultation.

Wrongful disconnection

In December 2010 the Commission invited interested parties to discuss possible changes to the Retail Code and to the retailers' operating procedures for disconnection. This consultation resulted in a final decision that articulates the principles that retailers should adopt in dealing with a customer to demonstrate a disconnection is not wrongful. We would consider these principles in reviewing any alleged wrongful disconnection referred to us, and we would expect the Energy Ombudsman to do likewise.

Contract variation

We also started a consultation on the current regulatory provisions allowing energy retailers' to vary contract terms and conditions, including tariffs, during the life of a fixed-term contract, simply by giving notice to their customers. There may be a lack of customer protection and transparency if there is a delay between a customer entering a contract and being advised of a tariff changes. The Commission considered that any improvements to existing obligations regarding customer communications should ensure that customers are made fully aware of their rights and obligations each time a retailer sought to rely on a contractual term to vary the price or other terms of an energy contract.

The consultation was subsequently discontinued for the reason already specified above; that is, Victoria's energy retail regulatory functions were expected to be transferred to the Federal government. However, this transfer of functions has been deferred. We are now reviewing the future course of this consultation and determining the extent of the problem and whether current regulatory obligations are sufficient.



A2 RETAILERS' BREACH REPORTS

The tables below summarise the reports of noncompliance made by individual retailers in their annual reports for the period July 2011 to June 2012. We analysed the breaches to assess whether they appear to be systemic or isolated.

A2.1 Breach Type 1

Retail Code

This Code specifies the terms and conditions required in a contract for the supply or sale of energy.

Clause 11.2 & 11.4(b) — Payment difficulties

Outline the process for assessment and assistance to domestic customers experiencing financial difficulties, and for invoking legal proceedings in relation to debt collection.

Retailer	Incident	Cause and response	Nature
Lumo	A customer in financial hardship was not identified and provided with the necessary information, and was wrongfully disconnected for non-payment.	This was an internal process error. The customer was reconnected and received a wrongful disconnection payment	Isolated
Red Energy	A customer in financial hardship was not properly assessed.	The retailer has since undertaken a proper assessment and arranged a payment plan with the customer, who was also admitted to retailer's hardship program	Isolated

Clause 12.1 & 12.2 — Instalment plans

The retailer's options and requirements when offering an instalment plan.

Retailer	Incident	Cause and response	Nature
Origin	11,000 customers on an instalment plan were not charged the agreed amount.	This was due to issues associated with the transition to the retailer's new billing system. The retailer notified affected customers of the issue and re-established their payment plan.	Systemic

Clause 13 (except 13.5) — Grounds for disconnection

The process that must be followed before disconnecting a customer:

- a retailer's obligations to customers before disconnecting their services under certain circumstances
- instances where the retailer may not disconnect a customer's service under any circumstances
- a retailer's obligations to reconnect customers that it has disconnected.



Retailer	Incident	Cause and response	Nature
Australian Power & Gas	For 2011-12, the retailer disconnected 31 customers without following the regulated processes.	The regulated processes that were not complied with, included failing to assess customers' capacity to pay, disconnecting the customers without warning, not complying with the disconnection timeframes, failing to provide advice to customers in financial hardship and disconnecting a customer on an instalment plan. The retailer paid wrongful disconnection payments to the customers.	Systemic
Click Energy	A data entry error resulted in two customers being disconnected.	The customers were reconnected and received a wrongful disconnection payment from the retailer.	Isolated
Lumo	14 customers disconnected for non-payment received disconnection notices that were not compliant with the Energy Retail Code.	The disconnection notices did not contain prescribed texts. Customers received a wrongful disconnection payment.	Systemic
Lumo	2 customers were disconnected without warning.	The disconnection warning notices were sent to the incorrect address. The customers received wrongful disconnection payments.	Isolated
Red Energy	Four customers were disconnected earlier than requested.	The non-compliance was due to human error. The retailer apologised to the customers and paid a wrongful disconnection payment. One customer was reconnected at no charge. The relevant staff member received further training and monitored.	Isolated
Simply Energy	The retailer disconnected 38 customers without following the regulated processes.	The regulated processes that were not complied with, included failing to assess customers' capacity to pay, disconnecting customers without warning, not complying with the disconnection timeframes, failing to provide advice to customers in financial hardship and not offering to place customers on an instalment plan. The retailer paid wrongful disconnection payments to the customers.	Systemic
TRUenergy	114 customers were wrongfully disconnected.	The retailer failed to provide sufficient notice of the impending disconnection, identify customers in hardship and review the customer's account history. There were also other data integrity issues that resulted in customers being wrongfully disconnected. The retailer has made wrongful disconnection payments to affected customers and implemented a number of projects to minimise the number of wrongful disconnections.	Systemic
TRUenergy	Approximately 905 customers did not receive sufficient notice of their impending disconnection.	The retailer advised that its non-compliance was due to systems and processing errors, which has been corrected.	Systemic



Clause 14 — No disconnection

The circumstances in which a retailer may not disconnect a customer.

Retailer	Incident	Cause and response	Nature
Australian Power & Gas	Four customers were disconnected earlier than they had requested.	The disconnection resulted from an error in processing the customer's request. The retailer paid wrongful disconnection payments to the customers.	Isolated
Australian Power & Gas	Three customers switching retailers were disconnected.	This was an inadvertent error. The retailer made wrongful disconnection payments to the customers.	Isolated
Lumo	A customer was disconnected one month earlier than the requested date.	The retailer's staff entered the wrong date resulting in the customer being disconnected earlier than requested. The retailer reconnected the site and paid a wrongful disconnection payment to the customer.	Isolated
Simply Energy	The retailer disconnected four customers whose outstanding debt was less than \$120.	The customers received wrongful disconnection payments. The retailer continues to educate staff and external providers about the disconnection process.	Isolated
Simply Energy	A customer who had lodged a complaint against the retailer with EOVW was disconnected.	The customers received wrongful disconnection payments. The retailer continues to educate staff and external providers about the disconnection process.	Isolated

Clause 15 — Reconnection

A customer's right of reconnection and time of reconnection.

Retailer	Incident	Cause and response	Nature
Origin Energy	Customers calling after 6pm for same-day reconnection cannot be reconnected.	The retailer's call centre closes at 6pm. The retailer has made arrangements with its nationally based call centre to take after-hours reconnection requests.	Systemic
Red Energy	A customer was inconvenienced when the reconnection request was delayed.	This was due to a service order issue. The retailer apologised to the customer and arranged the reconnection at no cost to the customer.	Isolated

Clause 24.1(d), 24.2(a) & 24.3(a) — Termination

When a retailer may impose an early termination fee.

When a retailer may terminate a contract for a customer's breach.

Information provided to a customer before the expiry of fixed term contract.



Retailer	Incident	Cause and response	Nature
AGL	Some customers were charged an early termination fee twice when they moved to a solar tariff.	This was caused by a system error, which was resolved in July 2012. All affected customers have been identified and credited the overcharged amount.	Systemic
Neighbourhood Energy	Approximately 1400 customers on fixed term contracts were not notified of the impending expiry of their contract.	Affected customers were identified and received priority in the mail out. Those whose contracts had been renewed were allowed to exit without penalty if they wished.	Systemic
Origin Energy	Approximately 4000 customers received contract renewal notices that contained incorrect tariffs.	The retailer advised customers of the error, provided them with an opportunity to terminate the renewed contract without penalty and will treat any billed consumption under the incorrect tariff as an overcharge.	Systemic
Origin Energy	Approximately 1100 customers did not receive the required 20 business days' notice before contract expiry.	The retailer delayed notifying customers of the expiration of their contract because of uncertainties surrounding the introduction of the National Energy Customer Framework. The retailer will not charge early termination fees to customers wishing to terminate the renewed contract.	Systemic

Clauses 26.4(b), 26.7 – Information on tariff changes and life-support

A retailer must give notice to a customer as soon as practicable, of any variation to the tariff that affects the customer.

As soon as practicable, a retailer must provide details to the distributor of an address where life support or continued supply is necessary.

As soon as practicable, a retailer must report a fault at such an address to the distributor.

Retailer	Incident	Cause and response	Nature
AGL	The retailer had not reconciled its life support customer information with distributors.	This was due to a failure in the retailer's internal processes. The retailer reviewed these processes and an ESC re-audit in May 2012 confirmed that the issue has been resolved.	Systemic
Origin	Over a 120 000 customers were not notified of price increases.	The retailer has subsequently notified affected customers.	Systemic
Origin	Approximately 5000 smart meter customers were not notified of tariff increases within the required timeframe.	Billing system problems delayed the notification mail out. The retailer will revise its communication protocols with its billing system provider to prevent recurrences.	Systemic



Clause 28.3 – Energy and Water Ombudsman Victoria

The Energy and Water Ombudsman Victoria phone number must be shown on any disconnection notices.

Retailer	Incident	Cause and response	Nature
TRUenergy / Energy Australia	Disconnection warning notices did not include the contact details for the Energy and Water Ombudsman, Victoria.	The oversight resulted from an IT project to amend invoices. The retailer has since updated its disconnection warning notice templates.	Systemic

Marketing Code

This code specifies standards and conditions for the marketing of energy including cooling off and explicit informed consent.

Clause 3.2–3.6 – Information, cooling-off and conduct

Retailers must not mislead consumers, provide certain information to them and allow a cooling off period.

The retailer's obligations in relation to the conduct of sales agents and the provision of offer Information to consumers.

Retailer	Incident	Cause and response	Nature
AGL	Approximately 4900 customers did not receive the contract.	The delays in sending out the contracts to customers was due to various systems issues. Some of the systems issues were resolved within 2 days of the problem being identified, while other system issues are expected be resolved by December 2012. The retailer also extended the cooling-off period for all affected customers.	Systemic
Lumo	Approximately 480 new customers did not receive their contract within the required timeframe.	The delay in sending out the contracts was due to a system error. The retailer has resolved this error and extended the cooling-off period for impacted customer.	Systemic
Neighbourhood Energy	The retailer's sales agents were fabricating sales contracts.	The retailer was able to identify the fabricated contracts and cancelled them before the transfer occurred. The sales agents were deregistered.	Isolated
Origin Energy	Approximately 3800 new customers did not receive their contract within the required timeframe.	The cause of the delay is partly due to the implementation of a new billing system and partly due to human error when processing applications. The retailer has since resolved these issues. Affected customers were provided with an extended cooling-off period and eventually received their contract.	Systemic



Retailer	Incident	Cause and response	Nature
Origin Energy	The retailer investigated 253 instances of alleged misconduct by its sales agents.	The retailer investigates and manages the alleged misconduct on a case-by-case basis. The complaints are recorded, reviewed and investigated. The retailer also monitors trends in complaints. Outcomes of the investigations include staff retraining, monitoring and supervising field sales agent, imposing financial penalties on sales agent or terminating the sales agent's contract.	Systemic
Red Energy	Three consumers claimed that the retailer's sales agent provided misleading information.	The sales agents involved were made aware of the complaint, some have received additional training and they are all being monitored by the retailer.	Isolated
Red Energy	A customer did not receive confirmation about rate increases.	The retailer confirmed the rate increases and apologised to the customer. A credit was also applied to the account.	Isolated
Simply Energy	Ten elderly, disabled and non-English speaking consumers were targeted and pressured to transfer by the retailer's sales agent.	The retailer subsequently cancelled the contract, waived the early termination fees and any debt, and apologised to the affected consumers. The retailer regularly seeks assurances from its sales service providers that their staff are properly trained.	Isolated
Simply Energy	14 consumers were misled by the retailer's sales agents, who: <ul style="list-style-type: none"> • provided misleading advice about the tariffs, their retailer's tariffs, discounts, early termination fees, the supply charge or billing frequency • failed to advise the customer about the cooling-off period or • failed to disclose the conditions of the prompt payment discount. 	The retailer's investigation of these complaints found that its sales agents had misled the consumers. The retailer regularly seeks assurances from its sales service providers that their staff are properly trained.	Systemic
Simply Energy	Two consumers' request to transfer to the retailer did not proceed as requested.	The transfer did not occur for one consumer because the sales agent did not believe that the consumer was the authorised account holder when he/she in fact is. The other consumer's transfer request was unsuccessful because the sales agent did not proceed with the verification process.	Isolated



Retailer	Incident	Cause and response	Nature
Simply Energy	The retailer's sales agents ignored a 'Do Not Knock' sticker at two consumer's front door.	The retailer's investigation into these complaints confirmed that its sales agents had in fact ignored the 'Do Not Knock' sticker. The sales agents received more training. The retailer regularly seeks assurances from its sales service providers that their staff are properly trained.	Isolated
Simply Energy	A consumer did not receive a discount.	The retailer's sales agent signed the customer up for an incorrect offer. The retailer regularly seeks assurances from its sales service providers that their staff are properly trained.	Isolated
Simply Energy	Over 5400 new residential and business customers were not provided with the contract within the required timeframe.	The delay in mailing out the contract was due partly to the late receipt of pricing data, processing errors and the deferral of the introduction of the National Energy Customer Framework. All contracts have since been sent out.	Systemic
Simply Energy	Three consumers claimed that a contract in their name was signed fraudulently	The retailer's investigation into these claims confirmed the consumers' complaints. The retailer regularly seeks assurances from its sales service providers that their staff are properly trained.	Systemic
TRUenergy	Over 3500 new customers did not receive their contract within the required timeframe	The non-compliance was due to a mailing system error, which the retailer resolved immediately upon identifying the error. Affected customers received their contract material and were given a new cooling-off period.	Systemic
TRUenergy / Energy Australia	There were 121 consumer complaints regarding misleading conduct, harassment and failing to cease marketing by sales agents working on behalf of the retailers	The retailers have investigated and resolved these complaints, and will continue to do so upon receiving further complaints. Affected customers wishing to cancel the contract were allowed to do so without penalty and were transferred back to the previous retailer as soon as possible	Systemic

Clause 4.1 & 4.3 – Consumer consent

Retailers must obtain explicit informed consent (EIC) of the consumer and the rules regarding sales to minors and authorised consumers.

Each calendar year, the retailer must audit a sample of customers' market contracts to ensure that each customer has given EIC.

Retailers must keep records for one year, which must be made available for independent audit as required.



Retailer	Incident	Cause and response	Nature
AGL	An ESC audit identified 3 instances where the sale proceeded without the customer's explicit informed consent.	The non-compliance is due to recently trained staff engaged to undertake telemarketing activity. The retailer has notified the relevant department of the non-compliance so that further training and process improvements could be made.	Isolated
AGL	Call scripts used to verify customers provided explicit informed consent was not sufficiently satisfactory to ensure compliance. This means some transfers occurred without explicit informed consent.	The retailer is now backing up call recordings and conducting more audits and quality checks of working being carried out by its sales agents.	Systemic
Origin Energy	Approximately 2 per cent of transfers to the retailer were in error and had to be reversed.	Possible causes of the non-compliance are data errors and failure to request or process customer cancellations within the cooling off period. The retailer transferred approximately 1700 customers back to their previous retailer.	Systemic
Red Energy	A customer alleged that he/she did not agree to transfer to the retailer.	While the sales agent is partially responsible for the non-compliance, the retailer also believed that the customer's lack of understanding was a contributing factor. The retailer advised the sales agent's manager of the incident. The sales agent received a warning and has undertaken further training and will be monitored.	Isolated
Simply Energy	The retailer's sales agents failed to obtain the explicit informed consent of 150 customers to the transfer.	The retailer has reported these instances of non-compliance to the ESC and Victoria Police. The sales agents involved have been deregistered and consent audits subsequently conducted. The retailer regularly seeks assurance from its sales service providers that their staff are properly trained.	Systemic
Simply	The retailer's sales agent contracted with a minor.	The retailer has since cancelled the account and communicated with the affected customer. The sales agent was required to undertake further training.	Isolated
TRUenergy	Consumers were transferred to the retailer without providing their explicit informed consent.	Possible causes of the non-compliance are data processing errors and failing to process customer cancellations within the cooling off period. The retailer allowed affected customers to return to their previous retailer and cancelled any bills that have been sent out, advising affected customers not to pay.	Systemic

A2.2 Breach Type 2

Type 2 breaches are breaches of regulatory obligations where:



- noncompliance would seriously impact on customers and/or
- the obligation is ‘new’ or has not been complied with in previous years and/or
- the impact of that noncompliance increases over time.

A breach of a Type 2 regulatory obligation is to be reported on a six monthly basis.

Retail Code

This Code specifies the terms and conditions required in a contract for the supply or sale of energy.

Clause 2 — Retailer's obligation to connect.

A retailer must connect as soon as practicable.

Retailer	Incident	Cause and response	Nature
Origin Energy	An undetermined number of new connections were delayed by up to eleven days.	New connection delays resulted from the transfer of customer information into a new system. The retailer has placed additional staff to manage the backlog of connection requests and made system changes.	Systemic
Red Energy	A customer's connection request was not met within the required timeframe.	An unplugged meter caused the delay. The retailer apologised and financially compensated the customer.	Isolated

Clause 3.1 — Billing cycles

Retailer obligations to issue bills to customers:

- electricity — issued every three months
- gas — issued every two months
- dual-fuel — issued as agreed between retailer and customer.

Retailer	Incident	Cause and response	Nature
Energy Australia	Approximately 1300 customers were not billed within the prescribed timeframe due to practical difficulties such as meter reading problems, production and postage delays.	The retailer monitors and resolves these issues as they occur.	Systemic
Lumo	Approximately 3400 customers received a reminder notice before their invoice.	An error in the retailer's print house resulted in the reminder notices being mailed out before the invoice. The retailer notified affected customers of the problem, removed reminder notices from their accounts and revised the due date on reissued invoices.	Systemic
Lumo	Approximately 2200 customers did not receive a final bill.	This was due to an error in its billing system, which has been resolved.	Systemic

Retailer	Incident	Cause and response	Nature
Origin Energy	The retailer estimates that approximately four per cent of customers across the nation did not receive their bills within the required timeframes.	The delay in issuing invoice was due to various system problems. The retailer has implemented new processes and a new project to ensure future problems are resolved.	Systemic
Red Energy	There was a delay in issuing a bill to a customer.	This was due to a data error. The retailer extended the due date for payment and allowed the customer the pay on time discount.	Isolated
Simply Energy	The retailer estimates that approximately one per cent of new customers experienced delays in receiving their bills.	This was due to account establishment issues. The retailer has ensured that future non-compliance will be minimised as its system will send out a notification if a bill is issued beyond the scheduled date.	Systemic
TRUenergy	Over 750,000 bills were not sent to customers within the prescribed timeframes.	Causes include the limitations of TRUenergy's legacy systems and data; delays in receiving meter readings or in completing customers' service orders. The retailer has placed additional resources in the billing area. Customers making enquiries are encouraged to make a payment towards their account. The retailer continues to monitor its performance in this matter.	Systemic

Clause 4.2 & 4.4 – Information and graphs

Rules governing the minimum information to be included on a customer's bill and the rules requiring consumption graphs to be included on all bills.

Retailer	Incident	Cause and response	Nature
AGL	Customers were receiving bills that did not contain all the required information.	The retailer's billing system was not configured to produce all the information required by the Retail Code. Customers were advised to contact the retailer should they want access to the missing information. The issue was resolved in July 2012.	Systemic
Click Energy	Smart meter customers received bills without a start index read.	The retailer expected to modify its bill to include the start index read by 31 October. In the meantime, customers have been advised to call the retailer should they wish to access this information.	Systemic
Dodo	Approximately 8000 smart meter customers were receiving bills with consumption graph based on quarterly data rather than monthly.	The retailer's IT system was not producing the relevant data. However, monthly data are now being aggregated, graphed and shown on bills for smart meter customers.	Systemic



Retailer	Incident	Cause and response	Nature
Energy Australia	Smart meter customers received bills that did not contain the index reads.	The retailer's billing system was not capable of producing index reads. TRUenergy, which purchased Energy Australia, is in the process of developing a solution to enable Energy Australia's billing system to produce the required information.	Systemic
Origin Energy	Approximately 1800 customers across the country received bills without their consumption history.	In the migration of customer information to a new billing system, customers' historical consumption and greenhouse gas emissions were excluded. Affected customers were advised to contact the retailer for the details. As billing history builds up in the new system, the situation will be corrected.	Systemic
Origin Energy	Some smart meter customers received bills that did not contain accumulated consumption reads, relevant estimation information, or historical consumption.	Country Energy, which was purchased by Origin Energy, did not implement the ESC's smart meter decision. Country Energy's customer information has since been migrated to Origin Energy's new systems.	Systemic
Powerdirect	Customers were receiving bills that did not contain all the required information.	The retailer's billing system was not configured to produce the information required by the Retail Code. Customers were advised to contact the retailer should they want access to the missing information. The issue was resolved in July 2012.	Systemic
Simply Energy	Smart meter customers have been receiving bills with no end index read.	The retailer failed to include the end index read on customer bills. From May 2012, customer bills include the end index read.	Systemic

Clause 5.1–5.3 — Basis of bill

The bill must be based on actual meter readings at least once every 12 months or based on estimations as per prescribed conditions. Estimated bills may be applied under a bill smoothing arrangement.

Retailer	Incident	Cause and response	Nature
Red Energy	A customer did not receive any bills for three billing cycles.	The billing delays were caused by the distributor. The retailer apologised to the customer, who received a 'customer service gesture', a pay on time discount and a longer timeframe in which to pay the bill.	Isolated
Red Energy	Two customers were billed on an estimate even though there was access to the meter.	The retailer apologised to the customers and provided an explanation.	Isolated



Retailer	Incident	Cause and response	Nature
TRUenergy	Over 7000 customers were billed on estimated reads	The inability to obtain actual reads at least once a year is due to several factors including no access to meters or metering data. The retailer has introduced processes to ensure that actual reads are obtained at least once every year. This includes advising customers to ensure meters are accessible and arranging with customers for access to the meter. The retailer is also changing its system to notify the customers of the reason given by the distributors for not providing actual readings.	Systemic

Clause 6.2 & 6.3 – Undercharging and overcharging

Sets out conditions under which a retailer may recover money from a customer who has been undercharged, unless this is due to an unlawful act by the customer, and conditions under which the retailer must repay a customer who has been overcharged.

Retailer	Incident	Cause and response	Nature
AGL	Approximately 250 customers with solar systems installed were overcharged from \$89 to \$216.	The retailer's investigation revealed that this was due to a communication error with the distributor. The retailer expected to refund all affected customers by mid-September 2012.	Systemic
AGL	Over 13 000 customers were billed only for the service charge, but not for their consumption.	This was a result of a system issue that is now resolved. The retailer notified customers of the issue, rebilled them and provided an extension on the due date for payment. The retailer does not intend to recover from customers who were undercharged less than \$20.	Systemic
Origin Energy	Approximately 1700 customers had their accounts incorrectly established in the billing system resulting in discounts not being applied.	This was due to a system error, which the retailer has resolved. Affected customers received an adjustment on their next bill to reflect the discounts.	Systemic
Origin Energy	Approximately 6000 customers did not receive Guaranteed Service Level payments	This was due to a processing error. The retailer has since applied the payments to the affected customers and used best endeavours to mail out the payments to customers who have transferred to another retailer.	Systemic
Simply Energy	Approximately 60 customers paying their bills through direct debit did not have discounts applied to their bills.	This was due to a system design issue. The retailer manually applied discounts to the affected customers.	Systemic



Retailer	Incident	Cause and response	Nature
Simply Energy	Over 510 feed-in tariff accounts did not have the credits applied correctly resulting in customers being overcharged.	Changes to the feed-in tariff scheme in November 2009 were not implemented in the retailer's system. The retailer discovered the problem in January 2011 and updated its systems in February 2011. All customer contracts have been reviewed and updated, and new processes introduced to ensure customers receive the correct credits.	Systemic
TRUenergy	The retailer's billing system was back billing customers beyond the 9 months allowed under the Retail Code.	The retailer has manually rebilled and credited affected customers. The retailer is also fixing its billing system to prevent a recurrence of this non-compliance .	Systemic
TRUenergy	Tariff misalignment in the retailer's billing system resulted in incorrect charging of over 42 500 customers.	The retail tariff was not aligned with the network tariff in the retailer's old billing system. The misalignment has been corrected. Customers have been advised of the changes. The retailer has not charged affected customers an early termination fee when they transfer to another retailer, refunded overcharged customers and not recovered from undercharged customers. The retailer expects that any future tariff misalignment would be promptly resolved in its new billing system implemented in September 2012.	Systemic
TRUenergy	Over 1000 customers were charged multiple time for the same meter readings	This was due to an error in the billing system. The retailer has refunded affected customers and now monitors, resolves and reports on these problems as they occur as part of normal business activities. TRUenergy has not charged customers transferring to another retailer early termination fees. Affected customers who are no longer with TRUenergy were requested to contact the retailer to receive reimbursement	Systemic

Clause 7.1(b) & (c), 7.2 – Payment of a bill

The pay-by-date is not less than 12 days from date of despatch which is the date of the bill unless specified.

Retailer	Incident	Cause and response	Nature
Origin Energy	A scheduled direct debit payment was not processed affecting approximately 4400 customers.	This was due to a system issue affecting communications with financial institutions. The retailer has investigated and resolved the issue, and established a new date for payment.	Systemic



Clause 28.1 — Complaint handling

All complaints must be handled according to prescribed Australian Standard or otherwise. Information on the process must be included in the charter.

Retailer	Incident	Cause and response	Nature
Powerdirect	A 2011 ESC audit found the retailer's complaint handling process to be inadequate. Therefore, some customer complaints made before the audit may not be recorded, processed and reported in compliance with the regulations.	This was a failure in the retailer's compliance framework. The retailer has developed an improved complaint handling policy and process, implemented this improvement and staff have undertaken the necessary training.	Systemic

Marketing Code

Clauses 2.1 to 2.3 — Contact with consumers

Times at which retailers may contact consumers, information to be provided to consumers, requirements to keep 'no contact lists' and observe them, requirement to observe 'no canvassing' signs.

Retailer	Incident	Cause and response	Nature
Australian Power & Gas	The retailer's sales agent ignored a 'Do Not Knock' sticker and proceeded to transfer the customer to the retailer.	The retailer has returned the customer to the previous retailer.	Isolated
Lumo Energy	Two consumers were misled by sales agents who ignored a 'Do Not Knock' sticker and did not leave the premises when asked to do so.	The retailer suspended the entire sales team, requiring them to undergo further training. The two sales agents involved have been deregistered and their contracts terminated.	Isolated

Guideline no. 13 — Greenhouse Gas Disclosure on Electricity Customers' Bills

Clause 2

Content of the information to be disclosed includes emissions calculated as specified for current period and past year, with a graph and other matter.

Format of the information to be approved by the Commission.



Retailer	Incident	Cause and response	Nature
Momentum	A customer's account was set-up incorrectly resulting in the incorrect greenhouse gas emissions information being shown and the customer being overcharged.	This was due to a problem in the customer's account, which was subsequently re-established. The bill was reversed and a new invoice issued showing the correct graph. The retailer also updated its system to ensure other customers are not affected.	Isolated
Simply Energy	The greenhouse gas emissions information shown on customers' bills was incorrect. This affected all customers on feed-in tariffs.	This was due to problems with the retailer's IT system, which have been resolved.	Systemic

Electricity retail licence

Clause 9.1 to 9.3 & 9.5 - Information to customers

A Licensee is obliged to provide information to customers:

- include certain information on bills issued to customers
- notify customers of changes to terms and conditions
- give notice to a customer who becomes a party to a deemed contract
- notify customers of expiry of fixed term contracts.

Retailer	Incident	Cause and response	Nature
TRUenergy	Approximately 3400 deemed customers did not receive the contract.	The retailer's business processes did not take into consideration the requirements applying to deemed customers. The retailer is now reviewing the processes applying to deemed customers and amending correspondence templates.	Systemic

A2.3 Breach Type 3

Type 3 breaches are all other breaches of regulatory obligations.

Retail Code

Retailer	Incident	Cause and response	Nature
Powerdirect	<i>Clause 4.1:</i> 114 customers with solar systems received invoices that showed different 'Total Amount' figure on different pages.	The inaccurate billing information was due to a printing problem, which is being rectified. Affected customers have been notified of the problem.	Systemic



Retailer	Incident	Cause and response	Nature
Energy Australia	<u>Clause 4.5 to 4.6:</u> The retailer's billing system does not allocate a customer's partial payment in proportion to the balance owing for each fuel, as required.	The retailer's billing system was not designed to deal with such scenarios. If a complaint is received regarding the allocation of payments to a customer's account, the retailer reallocated the payments as directed by the customer. If the customer is having difficulty paying the bill, the debt recovery process would be stopped and a payment plan established with the customer. The retailer monitors and resolves these issues as they occur.	Systemic
AGL	<u>Clause 26.2, 26.3, 26.4(a) & 26.5:</u> A systems issue created difficulties and delays in the call centre's ability to process and respond to customer calls. Approximately 3700 calls to the retailer had to be suspended during the day.	This was due to problems with AGL's telecommunications system. The problem was resolved on the day of its occurrence.	Systemic
Red Energy	<u>Clause 13.5:</u> Three customers' requests to be disconnected were not met.	This was due to a billing issue, which the retailer has resolved with the customers. One customer's bill was waived.	Isolated

Electricity Retail Licence

Retailer	Incident	Cause and response	Nature
AGL	<u>Clause 18:</u> The ESC's 2011 audit found that AGL's reporting of hardship KPIs did not achieve an adequate level of compliance.	This was due to a lack of robust and documented reporting process. The retailer has reviewed its processes and put in place measures to improve this.	Isolated

Marketing Code

Retailer	Incident	Cause and response	Nature
Lumo	<u>Clause 2.4 & 2.5:</u> 18 sales were made by unapproved sales agent.	The sales service provider used by the retailer had breached its contract by using unapproved sales agents. Consequently, the contract with this sales service provider was terminated. The retailer's investigation found that the customers did give their explicit informed consent to the transfer even though the sales agents were unapproved.	Systemic

Guideline no. 13 — Greenhouse gas disclosure on electricity customers' bills



Retailer	Incident	Cause and response	Nature
Momentum	<i>Clause 1.5:</i> The ESC's Greenhouse Gas Guideline was not published on the retailer's website.	This was an oversight, which the retailer rectified immediately upon discovering the non-compliance.	Isolated

Guideline no. 21 — Energy Retailers' Financial Hardship Policies

Retailer	Incident	Cause and response	Nature
TRUenergy	<i>Clause 2.4:</i> The retailer's Hardship Policy had not been updated to reflect the Code requirements relating to smart meters.	This was an oversight, which the retailer has since resolved by rewriting its hardship policy. The retailer has also implemented a review regime into its business processes.	Isolated

Information Specification (Service Performance) for Victorian Energy Retailers

Retailer	Incident	Cause and response	Nature
Simply Energy	The retailer reported a number of KPIs for 2008/09 and the 2009 calendar year that did not achieve a satisfactory accuracy and reliability grading.	All KPIs have been retested and satisfactory in a new audit in 2011.	Isolated
Simply Energy	The ESC's 2011 audit found 8 non-compliant KPI measures.	Subsequent ESC audit found the 8 KPIs to be compliant.	Isolated