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## 2009–10 COMPLIANCE REPORT

FOR ENERGY RETAIL BUSINESSES

AUGUST 2011

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## PREFACE

The primary 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. In meeting this objective, one important function is to monitor the compliance of Victorian regulated energy businesses against their licence obligations. We outlined our broad approach to compliance and enforcement for retail energy businesses in the *Decision Paper – Energy Compliance Strategy*, November 2006 (Compliance Strategy).<sup>1</sup>

This report outlines our activities during the period 1 July 2009 to 30 June 2010 that were directed at ensuring compliance by the energy retailers. These activities include addressing serious and systemic issues arising from complaints referred by the public, the Energy Ombudsman and other Government or community organisations, and investigating breaches of regulatory instruments reported by the retail energy businesses. Issue of this report has been delayed by the preparation of the regulatory audit program and other matters reported here, including review and assessment of a significant number of wrongful disconnections.

Energy retailers must comply with a number of statutory and regulatory obligations in the competitive energy market. We found that in 2009–10, energy retailers satisfactorily complied with most of their regulatory obligations. The Victorian energy retail market is often cited as one of the most competitive in the world and during the year more than a million customers successfully changed retailer. It is estimated that several million others were invited to do likewise, but were not interested in a sales agent's offer. Twenty million bills were issued and twenty million payments credited to customers' accounts.

However, there were areas of retailers' operations that still cause some concern to Victorian consumers and the Commission. Not everybody appreciates a visit from even a well mannered door-knocker, and a small number of energy marketing agents show little regard for the laws and regulations that are established to govern their conduct and protect the customer. We followed up a number of marketing conduct issues, including failures to provide customers with contract information, and confirmed that the retailers were taking action to discipline or dismiss agents where appropriate.

In this context I acknowledge the recent authorisation by the Australian Competition and Consumer Commission (ACCC) of a self-regulatory scheme for door-to-door energy marketing that will include a register for approved and competency-tested sales agents.

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<sup>1</sup> See <http://www.esc.vic.gov.au/public/Energy/Regulation+and+Compliance/Decisions+and+Determinations/Compliance+strategy>

Another area of concern for the Commission during this period was an increase in the number of wrongful disconnections. A contributing factor appears to be preventable data processing errors. The Commission will pursue this matter with the industry to seek appropriate remedies.

We expect retailers to engage with the Commission in accordance with their regulatory obligations, and in a constructive manner that gives us reasonable confidence in their reports regarding their general compliance and their occasional breaches.

However, our regulatory auditing process provides us with a periodic independent view of retailers' operations from the inside. That process continued in 2009–10 with follow-up audits being completed and reported for two retailers, AGL and Simply Energy, and with the scope being documented and issued for audits of all the other retailers active in Victoria.

This audit program is now under way. All major retailers are required to undertake compliance audits in 2011; the results are being analysed and reported progressively through the year. The issue at the heart of these audits is the capacity of the retailers' systems to monitor their own compliance with their regulatory obligations and the willingness of the retailers to take effective action to correct their breaches and compensate customers where appropriate.

**Dr Ron Ben-David**  
**Chairperson**

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## 1.1 The purpose of this report

In 2009–10, thirteen licensed energy retailers were actively selling electricity to customers in Victoria; eight were also selling gas. The Essential Services Commission (the Commission) monitors the retailers' compliance with their licence obligations in various ways. These include investigating serious complaints raised by consumers, advocacy groups or the Energy and Water Ombudsman (Victoria) Limited ('the Energy Ombudsman').

Our role is not to investigate individual customers' complaints; the Energy Ombudsman operates a dispute resolution scheme for this purpose. However, by monitoring and analysing the information obtained from these sources, we may establish where there are systemic breaches of regulatory obligations requiring attention.

The retailers also report on incidents if they confirm that they have failed to comply with a regulatory obligation. They are required to report the most significant breaches to us immediately and other breaches at six-monthly intervals.

Their annual compliance reports should provide the Commission with information on all regulatory breaches. However, the ability of the retailers to monitor and report their own levels of compliance can be verified independently by regulatory audits that are reported directly to the Commission.

This report provides an overview of our compliance activities, information that we have gained from all the above sources and the level of compliance of the energy retailers active in the Victorian market in 2009–10.

## 1.2 The powers of the Commission

The energy retail businesses in Victoria are governed by three principal Acts, the *Electricity Industry Act 2000*, the *Gas Industry Act 2001* and the *Essential Services Commission Act 2001*.<sup>2</sup> As well as imposing obligations directly on the businesses, the Acts empower the Commission to issue licences to the businesses, and publish codes and guidelines for the conduct of their businesses.

We have a wide range of enforcement measures available when responding 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 where other measures have been ineffective, to address and rectify noncompliance.

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<sup>2</sup> Other businesses engaged in energy transmission and distribution, although licensed by the Commission, are regulated by a Commonwealth body, the Australian Energy Regulator (AER). Powers to regulate energy retailers are expected to pass to the AER in 2012.

### 1.3 Our approach to compliance and enforcement

The Commission's overall approach is to encourage a culture of compliance among the regulated businesses. We are committed to adopting a co-operative and persuasive enforcement approach because when this approach is successful it works better than punitive sanctions in accomplishing long-term compliance. We encourage retailers to adopt the Australian Standard AS 3806-2006 Compliance Programs. This 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. In this way, it gives appropriate assurance that the retailer's staff will detect and respond to actual or potential compliance failure.

As a condition of their licences we require retailers to monitor their compliance effectively and to report breaches to us. We also look for independent confirmation that retailers' compliance programs are indeed effective and that we can rely on their breach reports. Periodic regulatory audits provide this confirmation.

Where retailers' compliance reports, independent audits or other information we receive shows the need, we can apply sanctions to the retailers. Our enforcement actions, in order of increasing consequence, include:

- issuing a letter confirming that a breach has occurred and outlining the remedial action that the business is expected to take;
- serving a civil penalty notice under section 54A of the ESC Act requiring a business to comply with a licence condition or to rectify a contravention;
- serving a provisional or final enforcement order enforcement order, under section 53 of the ESC Act, requiring the business to comply with a licence condition or to rectify a contravention;
- levying a penalty for noncompliance with a provisional or final enforcement order;
- appointing an administrator to the business of a licensee where there has been a contravention of licence conditions which threatens the security of the energy supply, and any other remedies to enforce compliance have not been adequate; and
- varying or revoking a licence.

### 1.4 Our relationships with other organisations

We have well-established relationships with other jurisdictional regulators and both government and community agencies, which assist its 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 Department of Human Services (DHS) have an active role in monitoring the conduct of the regulated energy businesses in the market.<sup>3</sup>

Where potentially significant and widespread noncompliance issues have been identified, we will consult with the relevant agency to ensure that a consistent and efficient response to addressing the noncompliance is taken.

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<sup>3</sup> See <http://www.esc.vic.gov.au/public/About+ESC/Memoranda+of+Understanding/>

We also consult with the Australian Competition and Consumer Commission (ACCC) on marketing conduct matters. In 2009–10, we continued discussions with the Australian Energy Regulator (AER) to inform the AER of the scope and nature of our energy industry monitoring role, in preparation for the transfer of these functions which is expected in July 2012.

Our Customer Consultative Committee (CCC) and consumer organisations have also provided valuable information about customers' experiences that helps to identify potential noncompliance issues to be addressed with the retailers.

## **1.5 Structure of the report**

The remainder of this report is structured as follows:

- Chapter 2 summarises the retailers' 2009–10 annual compliance reports by categorising the breaches as systemic or isolated, and identifying the remedial actions taken by the retailers.
- Chapter 3 summarises the wrongful disconnection compensation cases identified by retailers, customers or the Energy Ombudsman.
- Chapter 4 summarises other compliance issues in 2009–10, through our marketing conduct work program, our investigation of customers' complaints the independent auditing program and other initiatives and events.
- The Appendix gives details of the retailers' compliance reports to the Commission.



## 2.1 Overview

There are 4.4 million electricity and gas customers in Victoria, approximately 1.12 million of whom changed retailer in 2009–10. There were almost 29,000 disconnections of residential customers, up from 19,500 a year earlier.<sup>4</sup>

In a dynamic and competitive market, retailers undertake periods of significant marketing; they report that their sales agents contact many thousands of customers in their marketing campaigns. In a year when residential gas prices rose by around 7 per cent and electricity by around 13.5 per cent, more customers than before found it harder to maintain supply.

In this context, the number of reported instances of noncompliance with the regulatory obligations was relatively low and in general, the retailers' reported remedial actions were sufficient to address any breaches.

Two areas of concern stood out: various breaches of the Commission's *Code of Conduct for Marketing Retail Energy in Victoria* (the Marketing Code), and wrongful disconnections in breach of the *Electricity Industry Act 2000* or the *Gas Industry Act 2001* through noncompliance with requirements of the Commission's *Energy Retail Code* (the Retail Code).

### *Marketing breaches*

Breaches of the Marketing Code tend to have an impact that goes beyond financial. Inappropriate or ill-timed marketing approaches can annoy or distress customers, while misleading statements may lead customers to accept offers that may not be suited to their needs. Failure to provide customers with the required information means that they are unable to give fully informed consent.

In terms of the number of customers affected, the most significant breaches were delays in providing new customers with the full details of their contract. Five retailers reported a total of seven such breaches, affecting more than 7000 customers in all. These breaches were caused by failures or delays in retailers' computer processing. In these cases, the retailers extended the cooling off period for the customers, allowing them to consider their new contract and cancel without penalty if they chose.

In more than 30 reported incidents of misconduct, sales agents failed to explain the nature and purpose of their visit adequately and honestly. Depending on the seriousness of the incidents, the agents were dismissed, or warned about their conduct and given further training and close supervision, while the customers' transfer to the retailer was cancelled if the customer wished. In 24 more serious incidents, two retailers reported that their agents impersonated the customer and fraudulently recorded consent to new contract. In these cases, the agents were dismissed and, although they may be reported to the police, prosecutions are uncommon because customers may not wish to give evidence.

<sup>4</sup> See Energy Retailers Comparative Performance Report – Customer Service 2009–10, and Energy Retailers Comparative Performance Report – Pricing 2009–10 at <http://www.esc.vic.gov.au/public/Energy/Regulation+and+Compliance/Performance+Reports/Energy+retail+comparative+performance+reports+2009-10>

Most retailers engage third-party sales channels to employ sales agents, often on a casual basis and usually paid a commission for completed sales. As in any such marketing operation, some misconduct may occur that the retailers do not condone. Nevertheless, the retailers are responsible for the training, supervision and conduct of the sales agents engaged on their behalf. They must ensure that sales agents' training and behaviour are effectively monitored, as well as customer complaints, to prevent or detect misconduct by agents.

Control over outsourced marketing activity is a special focus of the regulatory audits in 2011. We continue to consult with CAV where complaints about retailers' marketing conduct behaviour are serious or potentially systemic.

### ***Wrongful disconnections***

Breaches of the Retail Code leading to a wrongful disconnection may cause considerable hardship or discomfort to the customers involved. The retailers reported a total of more than 60 wrongful disconnections in the year (section 3.3 compares the retailers' reports to other sources of information). The most common cause appeared to be errors in the standing data – such as meter identifiers – that the retailers process in Service Orders to the distributors through the industry MSATS system, or errors in data-entry. These accounted for almost a third of the reported wrongful disconnections. Although retailers are not solely responsible for errors in the data that they process, we expect retailers to ensure that they adequately validate the data that they receive and process.

Other common causes were failures in identifying or responding to customers' financial hardship, failures to process customers' payments or offers to pay, and communication breakdown around the time of moving house or changing retailer. Together, these accounted for more than half of all the wrongful disconnections reported. Preventing such incidents is very largely the retailers' responsibility.

Because of the importance of compliance breaches that result in the wrongful disconnection of a customer, these are covered in more detail in chapter 3. The remainder of this chapter deals with the other reported breaches.

## **2.2 Retailers' reporting obligations**

### ***Classification – Type 1, Type 2, Type 3***

The Compliance Reporting Manual summarises the regulatory obligations of the retailers, and classifies them according to the possible severity of any breach.

A Type 1 breach is considered to be a breach of a regulatory obligation where noncompliance would have a critical impact on customers and where the impact of that noncompliance increases over time if it is not rectified quickly. Retailers must report all actual or potential Type 1 breaches to us immediately they are confirmed. Occasional delays occur in reporting such breaches; as noted below, retailers' compliance with breach reporting requirements and the reliability of their reports is being independently audited.

Type 2 breaches are to be reported six-monthly. They 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.

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. Considerations would include the following.

- Systemic breaches affect significant numbers of customers. For example, in computer-based operations that lack appropriate controls, a retailer's IT processes 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.
- 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. A single isolated error may affect a number of customers but, unless the error appears to be part of a pattern of similarly unreliable operation, it may be more appropriate to consider it an isolated incident.

### **2.3 The reliability of retailers' reporting systems**

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

However, such assurances 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 included in scope of the 2011 regulatory audit program.

### **2.4 2009–10 compliance reports**

#### **2.4.1 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 dealt with in Chapter 3.

#### ***Retail Code***

The retailers' reports included the following systemic breaches.

- Australian Power & Gas did not advise approximately 3,000 customers of a tariff increase, because of database errors. The customers' accounts were adjusted as necessary and the database was corrected.
- Four thousand customers of AGL and 1,600 of Australian Power & Gas were not advised of the impending expiration of their fixed-term contracts. Both retailers have reviewed their systems to prevent a recurrence.
- AGL received incorrect data from a distributor, resulting in incorrect network tariffs for 2,100 of its customers and incorrect bills for a further 1,000 customers. AGL corrected the tariff information and advised the distributor.
- Approximately 1,100 Neighbourhood Energy customers with manually read interval meters were billed on a tariff different from the contracted tariff. Neighbourhood Energy advised that it has credited customers who were overcharged and waived the amount of undercharging for customers who were undercharged.

Details of all the Type 1 breaches are set out in the Appendix section A.1.

## *Marketing Code*

The retailers' reporting of Type 1 marketing conduct compliance for 2009–10 shows that there continue to be both systemic and isolated noncompliance with obligations:

- at the most basic level, to refrain from conduct that is dishonest or misleading;
- to provide accurate and timely information to customers and to comply with fair trading laws, including cooling-off periods;
- to ensure that customers are able and ready to give their explicit informed consent to contracts.<sup>5</sup>

As in 2008-09, these breaches reflect the failure of retailers' IT processes and systems or problems with the training or supervision of sales staff.

Notably, both Simply Energy and EnergyAustralia reported that sales agents had fraudulently impersonated potential customers in order to record their consent to enter a contract. The 2 EnergyAustralia cases appear to be isolated incidents. However, the 22 Simply Energy cases involved 10 sales agents, supervised by 7 different team leaders; the fraudulent activity was detected through internal controls in the system. In these cases, other sales by the same agents were investigated and, where consent had been fraudulently recorded, the contract was cancelled. The individuals were dismissed and other agents were warned and retrained.

Other systemic and isolated breaches resulting from errors in the systems or processes included the following.

- AGL failed to send contractual information to approximately 1,500 customers within the required timeframe. AGL advised that it rectified the issue immediately and the information was sent.
- Origin Energy's internal processes for new connections initiated by builders did not provide approximately 3,700 customers with contractual material within the required timeframe. Origin Energy advised that it has established a working group to prevent recurrence.
- EnergyAustralia's mail room operations did not send over 1,200 customers their contract information in a timely manner. The retailer allowed affected customers to cancel their contracts with no penalties.
- EnergyAustralia also reported that 370 customers' accounts were switched without consent, because the wrong information was entered into their system. In general, the transfers were cancelled and the customers' were advised not to pay any EnergyAustralia bills.
- Simply Energy did not send contractual information to 570 customers in a timely manner. The information was later sent to customers who chose to remain with Simply Energy, and the 85 consumers who elected to return to their previous retailer were transferred without penalty.

Country Energy, EnergyAustralia, Red Energy, Simply Energy and Victoria Electricity reported both systemic and isolated breaches of the Marketing Code. Some sales representatives falsely claimed that the customer's current retailer was closing down; or they failed to show identification and then provided incorrect information; or they pretended to be working for the distributor.

These retailers advised that the customers' account transfers were cancelled or reversed at no charge, as required. The sales representatives responsible were retrained, warned or dismissed as appropriate.

Given the remedial actions undertaken by retailers, we did not take any further enforcement action in relation to these reported breaches. The Commission requires retailers to

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<sup>5</sup> Clauses 3.2, 3.3–3.5 and 4.1-4.3 of the Marketing Code

continuously monitor their sales agents' training and customer complaints to ensure that this behaviour does not continue. The effectiveness of training and supervision are included in the scope of the 2011 regulatory audits.

Details of the retailers' reports are tabulated in the Appendix section A.1.2.

### ***Electricity Licence***

Retailers are required under their licence to comply with all relevant laws.

Simply Energy advised that it failed to publish its standard feed-in tariff and also did not offer a standard feed-in tariff product to a small business consumer enquiring about the product. This is a breach of the licence condition 8.1 to offer to supply electricity at tariffs published by the licensee. Simply Energy subsequently published its standard feed-in tariff.

Neighbourhood Energy reported that its marketing activities had not complied with the Fair Trading Act before December 2009, because the welcome pack it sent to new customers who entered an agreement through telephone marketing did not provide a cancellation notice and other information in the required form. The retailer advised that it has provided an enforceable undertaking to Consumer Affairs Victoria to ensure future compliance.

### ***Guideline No. 19 - Energy Price and Product Disclosure***

Simply Energy reported that it had failed to provide the Commission with details of its Standing Offers when required, or with accurate details of its current Market offers for publication on the Commission's website. The required information was provided soon after at our request.

## **2.4.2 Type 2 breaches**

This section summarises the major Type 2 breaches of the licence, Retail Code and the Marketing Code reported by retailers.

### ***Retail Code***

Most of the systemic breaches reported by the retailers related to noncompliance with their billing obligations. Both AGL and Origin Energy estimated that a small proportion of their customer at any time would not be billed with the required frequency, due to a variety of issues including missing or incorrect meter readings. TRUenergy reported minor issues with accuracy or timeliness of billing, together affecting approximately 1100 customers. The retailers' reports also included the following systemic issues.

- AGL reported that 35,000 customers were billed at the wrong tariff. The errors were corrected and the customers reimbursed.
- Up to 1,200 Neighbourhood Energy customers with manually read interval meters, and a similar number of TRUenergy customers, did not receive their bills for varying periods. They were offered extended payment terms as required.
- Momentum Energy and Neighbourhood Energy bills did not contain all the foreign-language and graphical information required by the Retail Code. Both reported redesigning their bills.

### ***Marketing Code***

Only two retailers reported systemic breaches of clause 2 of the Marketing Code, which covers the conditions for contacting customers.

- Australian Power & Gas reported a deficiency in the way its 'no contact' list was set out, but advised that no customers on the list were approached in person or by telephone.

- EnergyAustralia reported a small number of customers were dissatisfied that the sales agents did not properly identify themselves. The retailer reported that the agents involved were retrained or dismissed.

***Guideline no. 19 – Energy Price and Product Disclosure***

Throughout the period 2009–10, the Commission maintained an emphasis on compliance with this guideline, which is intended to ensure that all customers have access to information they need in order to make informed decisions about available offers in a competitive market.

Retailers reported several systemic breaches of the guideline.

- Australian Power & Gas did not make its current Price and Product Information Statements (PPISs) available on its website for several days, due to delays in its outsourced support arrangements.
- Lumo provided new PPISs for the Commission’s Your Choice website comparison service, five weeks late.
- Momentum Energy provided incorrectly formatted and priced PPISs for the Your Choice website.
- Simply Energy did not publish the current standing offer on its own website for several weeks, twice during the period.

**2.4.3 Type 3 breaches**

There were a small number of breaches reported, including the following.

Systemic breaches of the Retail Code

- TRUenergy failed to obtain the explicit informed consent of 500 customers with manually read interval meters, before changing their billing cycle from quarterly to monthly to coincide with the meter-reading cycle. Customers who decline to give post-facto consent will have their meter-reading and billing periods changed to quarterly.
- AGL reported that 14,000 customers on standing offers were incorrectly charged merchant service fees when they paid; the money was refunded.

Systemic breaches of the licence

- Simply Energy had failed to pass on to some 4,000 customers the Guaranteed Service Levy payments (GSLs) that distributors had credited to Simply Energy for that purpose over many months. Simply Energy credited the amounts due to current customers and remitted the remainder to the State Revenue Office as required under the Unclaimed Monies Act. Simply Energy completed this work in May 2011.
- At various times, Simply Energy billed small numbers of customers incorrectly, processed debits or credits to their accounts twice and processed payments to the wrong payee. Simply Energy apologised to the customers and made the necessary corrections.

Systemic breach of the Marketing Code

- Australian Power & Gas failed to keep adequate and complete records of the training given to sales agents and of the customers whom agents contacted.

### 3.1 Overview

Victoria's wrongful disconnection payment (WDP) legislation came into force in December 2004.<sup>6</sup> The legislation requires a retailer who disconnects the energy supply to a customer to pay compensation if in doing so it has failed to comply with the relevant terms and conditions of the contract.

The legislation fixes a compensation rate of \$250 for each fuel and for each day that supply is disconnected from the customer's premises. The amount is paid pro-rata for periods shorter than a full day. If the disconnection is considered to be wrongful, the legislation currently does not permit any discretion to limiting the amount of the compensation payment.

This chapter outlines cases that were referred to us during 2009–10 and the number of cases that were settled by the retailers with the involvement of the Energy Ombudsman. Other cases are outlined in the appendix at A.1.1.

### 3.2 Cases requiring Commission involvement

The Commission becomes involved in wrongful disconnection cases where a customer has made a complaint to the Energy Ombudsman, if the Ombudsman cannot persuade the customer and retailer to agree to a resolution.

In 2009–10, the Energy Ombudsman made a total of eleven requests for a decision by the Commission regarding alleged wrongful disconnections by AGL (one case), Australian Power & Gas (two cases), Origin Energy (one case), Simply Energy (three cases) and TRUenergy (four cases). This was a significant increase on five cases referred in the previous year.

The Commission found that the AGL and Origin Energy cases were not wrongful disconnections. AGL had given its customer the required notification of disconnection, and Origin Energy had made many attempts to contact its customer whose lack of cooperation led to the disconnection.

In both Australian Power & Gas cases, it was found that the disconnection was wrongful because the retailer had disconnected the customer for failing the first payment plan. In one of these cases, the retailer also did not demonstrate that it assessed capacity to pay or provide necessary information and payment assistance, including information on the government's Utility Relief Grant Scheme.

In two Simply Energy cases, the disconnections were wrongful because the customer was disconnected for failure to pay on the first instalment plan. In one of these cases, the retailer did not take into account the customer's capacity to pay the instalments; in the other case, there was insufficient evidence that the retailer made an offer of a second plan that met regulatory requirements.

Simply Energy withdrew the third case from consideration and made a wrongful disconnection payment to the customer, acknowledging that a disconnection warning did not meet the specified requirements.

<sup>6</sup> Section 40B of the Electricity Industry Act 2000 and section 48A (1) of the Gas Industry Act 2001

In three of the TRUenergy cases, the retailer disconnected a customer after failure to pay on the first instalment plan. In one of these cases, capacity to pay was not adequately assessed and the required financial counselling, advice and information were not offered, but the amount of the wrongful disconnection payment was reduced because it was decided that a different person was occupying the property by the time that supply was restored.

In the fourth case, the street address of a property was changed but the relevant retailer and distributor were not advised and they did not update their records. TRUenergy sent bills and notifications to the previous street address and eventually disconnected the property. The Commission decided that the disconnection was wrongful because there was no evidence the customer had received TRUenergy's communications.

The cases decided in favour of the customers resulted in payments for wrongful disconnection, of between \$287 and \$9620.

Several of the cases decided by the Commission in the 2009–10 period hinged on the regulatory requirement for a retailer to make the offer of an instalment plan to a customer, taking into account an assessment of the customer's capacity to pay. The Commission recognises that retailers may encounter real difficulties in meeting their obligations, particularly when a customer is not able or willing to communicate effectively with the retailer.

Commission staff therefore engaged with retailers, consumer representatives and the Energy Ombudsman to address these and other problems related to supply disconnection. Consultation is continuing on changes to the regulatory obligations.

### **3.3 Cases not requiring Commission involvement**

The retailers also report statistics on the number of wrongful disconnection cases raised for investigation and settled by payment of compensation, as part of their performance indicators. However, the indicators reported in 2009--10 do not reconcile to the Energy Ombudsman's information and are not consistent with the details that retailers reported as compliance breaches. Minor differences may be attributable to timing issues, but it appears there is a significant noncompliance with the obligation to report all wrongful disconnections as breaches of the relevant Retail Code clauses. The processes for reporting wrongful disconnections and the accuracy of the reported results have therefore been included in the scope of the 2011 regulatory audits, to identify and deal with the causes of the differences in reporting.

The majority of wrongful disconnection cases are settled without the involvement of the Commission. Table 3.1 shows the number of complaints that the Energy Ombudsman investigated, where it was found that a customer had been wrongfully disconnected. It does not include complaints referred back to the retailer for resolution without further involvement of the Energy Ombudsman.



Table 3.1 **Wrongful disconnection cases for 2009–10**

	Reported by the Energy Ombudsman			Reported by the Energy Retailers				
	No.	Min (\$)	Max (\$)	Total (\$)	No.	Min (\$)	Max (\$)	Total (\$)
AGL (Electricity)	70	22	4,777	39,840	44	48	4,778	20,614
AGL (Gas)	50	72	58,002	120,364	26	150	58,003	90,398
Australian Power & Gas (E)	1	836	836	836	1	720	720	720
Australian Power & Gas (G)	1	536	536	536	–	–	–	–
Click Energy	1	15	15	15	–	–	–	–
Lumo Energy (E)	8	65	1,326	3,418	–	–	–	–
Lumo Energy (G)	44	35	7,813	43,043	–	–	–	–
Neighbourhood Energy (E)	3	281	548	1,193	–	–	–	–
Origin (E)	36	22	9,750	39,665	7	38	2,026	3,375
Origin (G)	22	35	5,262	17,897	6	36	708	1,772
Powerdirect	1	94	94	94	–	–	–	–
Red Energy	2	27	83	111	–	–	–	–
Simply Energy (E)	7	24	1,679	2,596	3	349	1,680	2,709
Simply Energy (G)	3	269	3,063	3,667	–	–	–	–
TRUenergy (E)	21	55	10,542	20,808	21	56	10,543	22,901
TRUenergy (G)	15	48	5,026	15,406	13	262	5,026	17,712
<b>All Retailers</b>	<b>285</b>	<b>15</b>	<b>58,002</b>	<b>309,489</b>	<b>122</b>	<b>36</b>	<b>58,003</b>	<b>160,452</b>

**Sources:** Energy Ombudsman - Wrongful Disconnection Payments - statistics for 2009-2010  
Retailers performance reports for 2009–10

This chapter outlines other compliance matters that have come to our attention through independent audits of regulatory compliance, through complaints received at the Commission, and through special initiatives and reviews that we have undertaken during the period

#### 4.1 Regulatory audits

The accuracy and completeness of the retailers' reports to the Commission depend on the reliability and effectiveness of their control and reporting processes. To assess retailers' compliance with selected obligations and the accuracy of their periodic compliance and performance reports, the Commission may require the retailers to undertake periodic independent audits.

The process for conducting these audits is detailed in the Commission's Guideline 22 - Regulatory Audits of Retail Energy Businesses.<sup>7</sup> This is designed to establish a common standard for assessing and reporting compliance, so that meaningful comparisons may be made between the findings of different teams of auditors in different energy retail businesses.

In 2009–10, we directed two retailers – AGL and Simply Energy – to undertake regulatory audits in order to assess their current compliance in selected areas, and their progress in resolving concerns identified in earlier audits. We also developed the scope of an audit program for all the major retailers in Victoria. These issues are described below.

##### 4.1.1 AGL

In 2009, an independent audit of AGL had found significant noncompliance with certain regulatory obligations, particularly in relation to customer billing, procedures for refundable advances, hardship programs and complaints. AGL also lacked an effective process to monitor its compliance with these and other obligations, and did not reach the required standards of reliability and accuracy in reporting many of its performance indicators to the Commission. We published details of the auditor's findings in a summary report in August 2009.

AGL entered into formal undertakings to remedy the noncompliance found in that audit and we followed up AGL's progress reports. There were some delays in implementing the required corrective actions and we required AGL to give an undertaking that it would not disconnect any customers until it correctly provided a contact telephone number for the Energy Ombudsman on its warning notices.

AGL also undertook to submit to an independent follow-up audit, which was conducted in between May and July 2010 and reported to us in October 2010. We published a summary report of the audit in December 2010.<sup>8</sup> This showed that AGL then complied with almost all of the performance reporting requirements and regulatory obligations in the audit. However,

<sup>7</sup> See <http://www.esc.vic.gov.au/public/Energy/Regulation+and+Compliance/Codes+and+Guidelines/Guideline+22+energy+industry+-+Regulatory+audits+of+retail+energy+businesses>

<sup>8</sup> See <http://www.esc.vic.gov.au/public/Energy/Regulation+and+Compliance/Audit+Reports/Summary+audit+report+-+AGL+Energy+Limited>

AGL continued to hold some refundable advances that it had previously undertaken to return to the customers.

AGL agreed to return those advances and compensate approximately 200 residential customers with a goodwill payment. AGL reported that it completed this undertaking in December 2010.

#### 4.1.2 Simply Energy

In June 2009, we published a report of an independent audit of Simply Energy's compliance with a number of regulatory obligations for the 2007–08 and 2008–09 financial years.<sup>9</sup> The audit found that Simply Energy complied with all of the regulatory obligations of an operational nature in the scope of the audit. However, most of the performance indicators in the scope were found to be both unreliable and inaccurate.

The Commission required Simply Energy to undertake a follow-up audit to verify compliance with the performance-reporting obligations, which was undertaken in September 2009. We published our report of this audit in November 2009.<sup>9</sup> This showed that there had been some improvement in the reliability of the reporting process, but it remained generally below the required standard. The accuracy of the performance indicators was initially poor but Simply Energy corrected its processes and recalculated most of them. The auditor was then satisfied with the accuracy of the results but found that reliability remained unsatisfactory, in part because the revised processes were not fully established and documented.

The Commission required Simply Energy to give undertakings to remedy the deficiencies in its performance reporting, with another audit to confirm its compliance. A further 13 indicators of customers' financial hardship were added to the scope of this audit, the report of which was received in June 2010. The auditor found that Simply Energy still did not achieve the required standard of reliability and accuracy for 7 of the indicators that had been audited twice before, and for 6 of the Hardship indicators that were audited for the first time. We took follow-up action to ensure coverage of these issues, in planning the audits that Simply Energy and all other major retailers were required to undertake in the 2010-11 period. Another summary report of Simply Energy's compliance is in preparation.

#### 4.1.3 All retailers

As noted above, any retailer may be required to undertake an independent audit of its compliance with selected regulatory and reporting obligations. Starting in 2009–10 we planned the scope of audits that all the major retailers would undertake. This scope took into account issues that had been raised by many people including customers and their advocates, the Department of Primary Industries, our Customer Consultative Committee, the Energy Ombudsman and the retailers themselves. It also considered other factors, such as:

- the results of the most recent audits of AGL and Simply Energy;<sup>10</sup>
- audits of retailers that are active in other jurisdictions;
- the impending transfer to national regulation.

This round of audits has been designed to focus on a number of issues of importance to the Victorian community as a whole, with special attention to the needs of vulnerable and disadvantaged customers in particular.

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<sup>9</sup> See <http://www.esc.vic.gov.au/public/Energy/Regulation+and+Compliance/Audit+Reports/Summary+Report+Regulatory+Audits+of+Energy+Retail+Businesses+2008-09>.

<sup>10</sup> The draft report of Simply Energy's auditor shows that 1 of 13 performance indicators previously audited was still inaccurate, as were 2 of 9 more, audited for the first time, but Simply Energy complied with all 22 other regulatory obligations in the audit. Review of the audit report was continuing at the time of drafting this Compliance Report.

- *Compliance monitoring and reporting*: the retailers' ability to maintain a high level of compliance with their regulatory obligations and report breaches as required.
- *Marketing Conduct*: the need to obtain explicit informed consent to an energy contract and to prevent or detect inappropriate marketing behaviour, for the benefit of individual customers — particularly vulnerable ones — and the competitive market as a whole.
- *Affordability and timeliness of services*: including billing, tariff changes, errors and adjustments; financial hardship policies and avoiding wrongful disconnection. These issues concern low-income customers in particular and their access to supply.
- *Complaints*: effective management of customer complaints, to identify systemic errors and correct them.
- *Solar power*: contracts, metering, tariffs and billing issues are matters of concern to a growing segment of the Victorian market.

The regulatory audits of the retailers according to this scope are largely complete and summary reports are in preparation.

## 4.2 Complaints

This section summarises some complaints that potentially raised systemic or serious compliance issues, as received from customers or other stakeholders and investigated by the Commission. Where appropriate, their complaints were referred to the Energy Ombudsman for investigation and resolution.

### 4.2.1 AGL

A customer with a Standing Offer contract complained to us that AGL had told him it would charge a merchant service fee if he paid his bill with a credit card. We asked AGL to explain an apparent breach of the Retail Code. AGL found that around 14,000 customers were being charged this fee, and refunded the amounts charged (this issue was also reported as a Type 3 breach in section 2.4.3).

Because of earlier concerns about AGL's handling of customer complaints, during this period we sought monthly statistics on the number of complaints that the Energy Ombudsman referred to AGL, and obtained these numbers separately from the two parties involved. By comparison, we were able to confirm that AGL was reporting the full number of cases to the Commission.

### 4.2.2 Australian Power & Gas

The National Electrical & Communications Association (NECA) on behalf of a member questioned whether a condition of the licence of Australian Power & Gas prevented it from accepting an electrical contractor as a customer who wanted a temporary building supply. Our investigation found that there was no such condition but one of the retailer's call centre operators had misunderstood recent training and had misinformed the contractor as a result.

### 4.2.3 Lumo Energy – formerly Victoria Electricity

One customer complained that a sales agent ignored her Do Not Knock sign, presented no identification and misrepresented the purpose of his visit. Lumo advised that the agent in question no longer worked as an agent for Lumo, but there had been no complaints against his conduct and a review of recent sales found no concerns. Based on this complaint and other concerns, however, Lumo had ended the sales agency's contract and reminded all other agencies to respect Do Not Knock stickers. The retailer also identified several other measures such as imposing financial penalties, which it says it uses to prevent or respond to complaints of misconduct.

A customer said that she had accepted a No Risk Offer from Lumo that allows customers to exit from their contracts if they find an alternative offer that Lumo does not match, but when she tried to cancel it the retailer applied an early termination fee. Lumo verified that it had in fact matched and bettered the customer's alternative offer and then applied the fee because the customer chose to cancel after the end of the cooling-off period. Lumo advised us that it would waive the termination fee.

A customer mistakenly alleged that a sales agent for Lumo had stolen cash from his property. The thief was identified to be an agent of an unrelated (but energy-related) company who visited the property at about the same time as the Lumo agent.

We received several other complaints about Lumo's marketing conduct over the period — some of which appeared to result from confusion arising from its 'official sounding' former name, but none that otherwise appeared to be serious or systemic.

#### 4.2.4 Origin Energy

Following complaints about a Smart Meter charge appearing on customer bills, we instructed the retailer to clarify the nature and purpose of the charge in its billing messages to customers. Origin Energy confirmed to us that it would correctly apply the government's Service to Property Charge concession to the Smart Meter charge as well as to the Supply charge.

### 4.3 Other initiatives

The Commission undertook a number of reviews and other initiatives that were mainly directed to ensuring compliance with regulatory obligations that protect customer interests during energy retailers' marketing activity.

#### 4.3.1 Respecting Customers – Monitoring Marketing Conduct

The Commission requires licensed energy retailers in Victoria to adopt and maintain marketing practices that are respectful, polite and courteous; accurate and informative; and do not bring the market into disrepute. The Commission published its *Respecting Customers* report, which set out our approach for regulating the marketing conduct of energy retailers in Victoria.<sup>11</sup>

In accordance with these expectations, the Commission followed a strategy that focused on informing customers of their rights in a competitive energy market; working with the industry and other regulators to deal with issues as they arose; consulting with community groups and the broader public on matters of concern; and monitoring and enforcing compliance.

We continued our campaign of Your Choice advertisements appearing in Greek, Italian, Turkish, Vietnamese, Arabic and Chinese language press, as well as metropolitan and regional papers. These were directed at customers who might be difficult to reach effectively in other ways, and dealt with key points to consider when approached by energy marketers with an offer. Similar advice was included in bill inserts that the Commission prepared for the retailers to send out. Since many customers now use the Internet as their main source of information, we continued to evolve the Your Choice website, with improved functions for independently comparing retailers' market offers. At the same time, the Your Choice call centre continued to provide personal assistance to customers with questions about Victoria's energy market.

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<sup>11</sup> See <http://www.esc.vic.gov.au/public/Energy/Regulation+and+Compliance/Reports+and+Investigations/Respecting+customers+-+Regulating+market+conduct+2009-10>

Our Chairperson and Chief Executive Officer continue to meet regularly with the Energy Ombudsman to discuss matters of concern. At the same time, staff of both organisations work together to identify systemic and material issues and to lead the retailers to resolve them fairly. The Commission and Consumer Affairs Victoria (CAV) continued to respond to public concern about aggressive or misleading marketing by some door-to-door and telephone sales agents.

Our Chairperson and the Director of CAV jointly wrote to the Chief Executive Officers of the retailers to remind them of their obligations to comply with Victorian legislation and the Commission's Code of Conduct for Marketing Retail Energy in Victoria. We also worked with industry through the Energy Retailers' Association of Australia (ERAA), and supported in principle the Association's development of a self-regulating Marketing Code for member companies.

Continuing the work that started with workshops in April 2009 for the community and energy industry in Footscray, we organised further public meetings about marketing and other energy issues in Footscray, Shepparton and Morwell. Consumers attending the meetings expressed a lively interest in smart metering, tariffs and marketing activity in the competitive energy market. Details of all the above activities are included in the Commission's report: *Respecting Customers – Energy Retail Businesses – Final Report*.<sup>12</sup>

#### 4.3.2 Network Tariff Reassignment – Compliance review

In April 2010, we published a special compliance report about a systemic issue identified earlier, in which a small but significant number of customers complained that they had lost their off peak electricity tariffs in recent years.<sup>13</sup> This had happened when an interval meter was installed at their premises, either as a routine replacement for their old basic accumulation meter, or because they had installed solar cells that specifically require an interval meter. In general, the distribution businesses that supplied the meters had changed these customers' network tariffs to suit their new meters, and the retailers had changed the customers' retail tariffs accordingly.

After discussions and formal consultations in 2009–10 the Commission concluded that there had been retailer noncompliance with the Retail Code if a tariff had been changed without the customer being notified of the tariff change and without giving agreement or explicit informed consent. We also concluded that distributors did not comply with the relevant price determination where they removed a customer's access to the off-peak rate or a time-of-use (TOU) tariff when solar cells were installed, and when they failed to notify the customers in advance of this change.

We required retailers to use their best endeavours to change the customer to a peak and off-peak or a TOU retail tariff, and to compensate the customer. It was considered that a standard goodwill payment was more appropriate than an individual calculation of each customer's case for compensation. The amount of compensation reflected the difference in cost over a year to heat an average household's consumption of hot water, on relevant network and retail tariffs with and without off-peak rates. In June 2010, we wrote asking each retailer to investigate whether it had breached the Retail Code as defined in the Report. In the following months, we followed up their responses, verified that they reported paying

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<sup>12</sup> See <http://www.esc.vic.gov.au/public/Energy/Regulation+and+Compliance/Reports+and+Investigations/Respecting+customers+-+Regulating+market+conduct+2009-10>

<sup>13</sup> See <http://www.esc.vic.gov.au/public/Energy/Regulation+and+Compliance/Reports+and+Investigations/Regulatory+assessment+of+tariff+reassignment+due+to+installation+of+interval+metering>

compensation as required. We advised them that the regulatory audits in 2011 would verify their compliance; the matter has been included in the scope of the audits.

However, since the start of 2009 the AER has been responsible for regulating distributors and we therefore referred the question of distributors' compliance and enforcement action to the AER.

#### **4.3.3 Marketing to vulnerable customers – Capability review**

In December 2009, we undertook a desktop review of materials and processes that energy retailers use in marketing. The Commission's Marketing Code requires retailers to obtain customers' explicit informed consent when entering a market contract and transferring away from their current retailers. This standard of consent means that retailers' sales agents at the doorstep or over the telephone must clearly, fully and adequately disclose in plain English all matters that are relevant to giving and gaining consent, and the consumer must be competent to give that consent.

Material that retailers must provide to customers must be designed to be readily understood and written in plain English — there is no absolute requirement to provide the material in other languages. However, customers cannot give explicit informed consent if they do not understand the information they are given or the nature of the contract that is proposed.

We asked retailers for copies of the material they use to engage customers in contracts. We sought examples of the informational material they provide to the customer as well as the scripts, processes, checklists and other documents they use in training their agents and recording contracts.

We published a report in March 2010 which concluded that retailers in general have appropriate documents and processes to identify and assist vulnerable customers, to inform customers about their contracts and to establish explicit informed consent.<sup>14</sup> The materials that we reviewed presented no cause for concern. Retailers using them properly could be reasonably confident of explaining their market offers adequately to vulnerable customers with special needs and gaining their explicit informed consent. The retailers could also identify and stop marketing to customers who were not competent to give their consent. However, we recommended retailers to adopt more widely the best practices that we found in our review.

The existence of documents and processes, even if they appear to represent best practices, does not guarantee that they will be used correctly and in a manner that complies with regulatory obligations. Therefore the Commission included retailers' compliance with Marketing Code obligations and related performance reporting, when setting the scope of the independent audits for 2011.

#### **4.3.4 Complaint-handling procedures – Capability review**

Effective handling of customer complaints is critical to the retailers, for providing an acceptable level of service and redress to individual customers who do complain, and for identifying and rectifying systemic issues that may affect other customers.

During 2009, we identified a need to ensure that retailers correctly handle the complaints that they receive. The Retail Code states that they must follow the Australian Standard AS ISO 10002-2006, and that the customer charter they give to every customer must outline the way in which they handle complaints.

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<sup>14</sup> See <http://www.esc.vic.gov.au/public/Energy/Regulation+and+Compliance/Reports+and+Investigations/Respecting+customers+-+Regulating+market+conduct+2009-10>

We reviewed materials that the retailers provided on the way that their complaint-handling processes worked. We examined this material in another desktop review, to see how well it implemented several of the principles established in the Australian Standard: for instance, the requirement to provide easy access to raise a complaint.

We published a report in March 2010 which concluded that retailers generally complied with all the basic principles of the Standard that we looked for in their documentation. We also found that the retailers' practices, as documented, might lead to a range of outcomes and we recommended retailers to consider upgrading their processes by adopting the best practices that we identified.

Again, because a desktop review cannot assess actual compliance in practice, when setting the scope for the 2011 regulatory audits we ensured there would be detailed coverage of complaint-handling and reporting processes.

#### **4.3.5 Early Termination Fees – Compliance review**

In 2005–06, we reviewed retailers' compliance with requirements in the Retail Code regarding early termination fees (ETFs). We identified certain procurement costs (for instance, the remaining value of a free magazine subscription or other inducement) that could be fairly attributed to an individual customer and charged to anyone who exited a fixed-term contract early. But we assessed that other fees should not exceed \$20, reflecting an estimate of certain administration costs and possible losses on fuel hedging contracts. However, the Retail Code was not amended at that time to show a maximum dollar amount for these allowable costs.

In 2008, we again reviewed retailers' ETFs, asking them to explain how they were calculated. In September 2009, we published a report showing that ETFs ranged between zero and \$100 for a single fuel contract.<sup>15</sup> Four retailers had included costs (such as marketing campaigns) that were not allowable elements of the ETF. Three retailers included hedging costs that exceeded an amount that the Commission considered reasonable.

Because the review was based on commercial information that the retailers provided in confidence, the report did not detail their individual cost strategies. However, in October 2009, the Commission amended clause 31 of the Retail Code to set \$20 as the limit for the allowable costs (other than procurement costs) in an ETF.

#### **4.3.6 Offer Summaries and Tariff Increases**

We received reports during the period, direct from customer or through advocacy groups, saying that they had difficulty in obtaining an offer summary in writing when they were considering a market offer made by a sales agent at the doorstep or over the telephone. We therefore wrote to all retailers in April 2010 to ask them to review the processes by which they ensured that they complied with the requirement to provide a customer with an offer summary on request or when engaging in any marketing activity.<sup>16</sup> In the same letter, we also raised the concern of other customers on contracts who said that they experienced tariff increases that they did not expect or agree to. We asked the retailers how they ensured that customers gave explicit informed consent to tariff increases.

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<sup>15</sup> See <http://www.esc.vic.gov.au/public/Energy/Regulation+and+Compliance/Reports+and+Investigations/Early+termination+fees+compliance+review>

<sup>16</sup> See <http://www.esc.vic.gov.au/public/Energy/Regulation+and+Compliance/Codes+and+Guidelines/Guideline+no+19+Guideline+19+-+Providing+Information+for+Consumers>



The retailers' replies included extracts from written agreements, telemarketing scripts, and contract terms and conditions that could ensure customers were aware of the possibility of tariff changes during the life of the contract.

In respect of Offer Summaries, the retailers generally advised that they produced offer summaries written in clear English (two retailers acknowledged that they could be clearer). Otherwise, the replies were disappointing. Some said they did not provide information until a customer had entered a contract, and less than half outlined a process that they could use to monitor their compliance effectively.

These responses did not show that the retailers had satisfactory controls in place, and customers continued to report that they did not receive offer summaries when they asked for them. The Chairperson of the Commission therefore wrote to the Chief Executive Officer of each retailer in July 2010 and again in April 2011 to seek further information and reinforce the retailers' obligation to comply.

The retailers' obligations — to provide a customer with written details of tariffs and contracts and to obtain the customer's explicit informed consent to tariff changes — are central to maintaining an informed competitive retail market. To gain independent confirmation of compliance with both obligations, they were included in the scope of the 2011 regulatory audits.

#### **4.4 Retailer of Last Resort (RoLR) Event**

In December 2009, Jackgreen International Pty Ltd (Jackgreen), an energy retailer based interstate but also operating in Victoria, went into administration. As a consequence, Jackgreen was suspended from trading as an electricity or gas retailer, according to the National Electricity Rules. To maintain supply to more than 3000 Jackgreen customers in Victoria, they were transferred to become customers of three other retailers: AGL, Origin Energy and TRUenergy.

Earlier decisions of the Commission had designated these businesses as Retailers of Last Resort (RoLRs). Also known as the local retailers, as successors to three regionally defined franchises set up when the energy industry was first privatised, they still have a considerable market presence in the areas of the state they were created to serve. Their relative size would enable them to absorb a sudden increase in their number of customers and energy demand.

The Commission had previously established that tariffs for small customers who were transferred would be based on the local retailers' current Standing Offer tariffs for a minimum period of three months, with a one-time administration fee. The terms and conditions for these customers would be those of the Standing Offer. With the cooperation of industry participants, we had established procedures, communication strategies and an operating manual for the RoLR process.

Immediately after the suspension of Jackgreen, in accordance with the RoLR scheme, Jackgreen's customers were transferred to one of the three retailers depending on where their home (or business) was located. Their supply continued uninterrupted. Each customer was sent a letter from the Commission to inform them of the transfer and advise them of their options.

## APPENDIX – DETAIL OF REPORTED BREACHES

The tables below summarise the reports of noncompliance made by individual retailers in their annual reports for the period July 2009 to June 2010. The Commission has analysed the breaches to assess whether they appear to be systemic or isolated.

### A.1 Breach type 1

#### A.1.1 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*

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

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
Red Energy	A customer experiencing hardship was initially not properly assessed.	The customer was later given a proper assessment, an appropriate payment plan arranged and admitted to the hardship program.	Isolated
TRUenergy	Two customers experiencing financial hardship were not referred to the Customer Welfare Team. As a result, the customers were disconnected.	The customers received a wrongful disconnection payment and the relevant staff received further training on the correct procedures.	Isolated
TRUenergy	The retailer failed to offer a customer, who did not comply with the first instalment plan, a second instalment plan or to provide information on concessions.	The retailer's noncompliance with this clause resulted in the customer being disconnected. The customer received a wrongful disconnection payment.	Isolated

##### *Clause 12.1 & 12.2 – Instalment plans*

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

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
Red Energy	Due to an issue with Centrepay, the retailer could not locate missing payments.	Red Energy located the missing payment and confirmed the arrangement with the customer. Red Energy also apologised to the customer.	Isolated

**Clause 13 (except 13.5) – Grounds for disconnection**

The process which must be followed prior to 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; and
- a retailer’s obligations to reconnect customers that it has disconnected.

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
Country Energy	Six customers were disconnected even though they had made the required payment, made arrangements to pay the account on time or made arrangements to reduce the amount owing to avoid disconnection.	The retailer updated its disconnection process to prevent a recurrence of the noncompliance and made wrongful disconnection payments to the affected customers.	Isolated
Country Energy	Even though the amount a customer owed was below the threshold for disconnection, Country Energy still disconnected the customer.	The retailer updated its disconnection process to prevent a recurrence of the noncompliance and made a wrongful disconnection payment to the affected customer.	Isolated
Country Energy	The retailer disconnected two customers without following the regulated processes.	The retailer updated its disconnection process to prevent a recurrence of the noncompliance and made wrongful disconnection payments to the affected customers.	Isolated
Country Energy	A communication failure between Country Energy and the relevant distributor resulted in a customer being wrongfully disconnected.	The retailer updated its disconnection process to prevent a recurrence of the noncompliance and made a wrongful disconnection payment to the affected customer.	Isolated
EnergyAustralia	Four electricity and three gas customers were wrongfully disconnected due to human error	The staff member involved was counselled and additional checks were introduced to prevent a recurrence of the noncompliance. The customers affected received wrongful disconnection payments.	Isolated
Red Energy	One customer was disconnected due to the incorrect issue of a NMI.	An apology was issued to the customer and a wrongful disconnection payment was made to the customer.	Isolated
Simply Energy	A customer was not participating in the retailer’s hardship program when a disconnection service order was raised. Although the customer was subsequently placed in the hardship program, the service order was not cancelled resulting in the customer being disconnected.	A wrongful disconnection payment was made to the customer and the relevant staff member was re-trained.	Isolated
Simply Energy	The retailer disconnected four customers without following the regulated processes.	A wrongful disconnection payment was made to the customer and the relevant staff member was re-trained.	Isolated

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
Simply Energy	One customer was disconnected for non-payment of a bill when the customer had had the bill.	A wrongful disconnection payment was made to the customer and the relevant staff member was re-trained.	Isolated
Simply Energy	Two customers were wrongfully disconnected at the request of previous customers at the site.	A wrongful disconnection payment was made to the customer and the relevant staff member was re-trained.	Isolated
Simply Energy	One customer was disconnected prior to the requested date.	A wrongful disconnection payment was made to the customer and the relevant staff member was re-trained.	Isolated
Simply Energy	The retailer wrongfully disconnected a customer who was changing retailer and requested the account be finalised.	A wrongful disconnection payment was made to the customer and the relevant staff member was re-trained.	Isolated
TRUenergy	Eleven customers were wrongfully disconnected due to the retailer's failure to follow the regulated processes.	Wrongful disconnection payments were made to the customers and the relevant staff were advised of the regulated processes. TRUenergy also reviewed its internal processes to ensure future compliance.	Isolated
TRUenergy	Even though a billing issue with a customer had been resolved, the retailer disconnected the customer.	A wrongful disconnection payment was made to the customer and the relevant staff was advised of correct procedures and processes.	Isolated
TRUenergy	Ten customers were wrongfully disconnected due to human error.	The affected customers received wrongful disconnection payments and staff that committed the error were provided feedback and improvements to its internal processes and procedures were made.	Isolated

### ***Clause 15 – Reconnection***

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

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
Red Energy	A customer's request for a reconnection was delayed due to a debt from the previous tenant at the premise.	Red Energy arranged a reconnection at no expense to the customer and also issued an apology.	Isolated
Simply Energy	The retailer failed to comply with the regulatory requirement to arrange after hours reconnection requested by its electricity and gas customers.	A more efficient way of compliance with this obligation was being considered. The Commission has followed up to ensure that corrective action is effective.	Systemic

### ***Clause 20(a) – Variations require customers consent***

Variations in tariffs and terms and conditions of an energy contract may only be varied by agreement in writing, unless it is a gazetted term or condition.

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
Australian Power & Gas	Australian Power & Gas failed to advise 3,050 customers of a tariff increase.	This was due to a failure of its database, which Australian Power & Gas promptly rectified. Affected customers were advised of the tariff variation and their account credited.	Systemic

***Clause 24.1(d), 24.2(a) & 24.3(a) – Termination and expiry***

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 prior to the expiry of fixed term contract.

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
AGL	The required information was not provided to 4,006 electricity and gas customers before the expiry of their fixed term contracts.	There was a failure in AGL's billing system. AGL implemented a system solution to resolve it. AGL subsequently sent the necessary information to affected customers.	Systemic
Australian Power & Gas	1,618 customers were not advised of the impending expiry of their contracts,	Australian Power & Gas sent out the necessary information to affected customers and established a review of the process to limit any potential recurrence of this incident.	Systemic

***Clause 26.4(b), 26.7(a) & 26.7(b) – Information***

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, if supplied by the customer.

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
AGL	Network tariffs for 2,135 residential customers were not correctly updated and a further 1,081 customers were incorrectly billed. Both incidents resulted in the removal of the off-peak component of customers' tariff.	The incorrect tariff was removed.	Systemic
Neighbourhood Energy	Certain system changes were not implemented resulting in 1,197 customers being billed based on a tariff that is different from the contracted tariff. Some customers were overcharged whilst the others were undercharged.	Overcharged customers were credited in the next bill while customers who were undercharged were waived the amount. Neighbourhood Energy advised that measures have been introduced to avoid such system errors occurring again.	Systemic

## A.1.2 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 & Conduct*

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

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

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
AGL	AGL failed to send contract information to 1,570 electricity and gas customers within the required timeframe.	This was due to a failure in AGL's billing system, which AGL immediately rectified and the necessary information sent to affected customers.	Systemic
Country Energy	A sales representative misled 8 customers of other retailers by saying that: <ul style="list-style-type: none"> <li>Country Energy was 100 per cent owned by the NSW government</li> <li>the government sent them as they were being overcharged by their existing retailer</li> <li>their retailer was closing down or</li> <li>the customer would receive certain gifts.</li> </ul>	The relevant sales representative was issued a warning and the customers were transferred back to their previous retailers without penalty.	Isolated
Country Energy	A customer of another retailer mistook Country Energy's sales representative for his/her retailer and signed a contract with Country Energy.	The customer remained with Country Energy.	Isolated
Country Energy	After signing a contract with Country Energy, a customer decided to cancel the transfer within the cooling-off period, but still received a bill from Country Energy	The customer was transferred back to the previous retailer without penalty	Isolated
EnergyAustralia	EnergyAustralia failed to send contract information to 1,289 electricity and gas customers within the required timeframe.	This was due to a failure in EnergyAustralia's mailing room. Affected customers were immediately sent the necessary information and were allowed to cancel their contract without any early termination fees.	Systemic
EnergyAustralia	Sales representative misled 359 consumers by not providing correct information about the contract or by giving them inadequate information.	EnergyAustralia investigated the complaints, retraining the relevant sales representatives, or terminating their contract. The affected customers were transferred back to their previous retailer without penalty.	Systemic

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
Neighbourhood Energy	Welcome/confirmation packs were not sent to customers within the required timeframe, whilst other customers did not receive information packs.	Neighbourhood Energy advised that an increase in customer acquisition activities resulted in its failure to provide welcome/confirmation packs within the required timeframe. Neighbourhood Energy has since sent out the packs to affected customers with the 10 day cooling off period applying from when they received the packs.  In relation to information packs not being sent out, Neighbourhood Energy advised that it was a system issue, which has been resolved. Affected customers were sent an apology letter and the 10 day cooling off period applied from receipt of the information pack.	Systemic
Origin Energy	Contract material was not provided to approximately 3,750 electricity customers within the required timeframe.	Origin Energy advised that its noncompliance was due to a failure in its provision of information process for new connections initiated by builders, and subsequently for new home owners. A working group has been established to ensure that future noncompliance does not occur. The Commission has followed up to ensure that corrective action is effective.	Systemic
Red Energy	Sales representatives misled six electricity and gas consumers by: <ul style="list-style-type: none"> <li>• pretending to be from the consumer's existing retailer</li> <li>• claiming that prices of the consumer's existing retailer was increasing</li> <li>• failing to show identification and then providing incorrect information</li> <li>• claiming that prices of the consumer's existing retailer was increasing and</li> <li>• failing to confirm that prices are increasing.</li> </ul>	Apologies were given to affected customers and the sales representatives' activities were monitored to ensure compliance. Red Energy also took action against some sales representatives.	Isolated
Simply Energy	Sales representatives misled three consumers by claiming: <ul style="list-style-type: none"> <li>• to be calling on behalf of SP AusNet</li> <li>• that 'nothing would change' if the consumer transferred to Simply Energy and</li> <li>• the customer could be transferred to Powercor for cheaper rates and then failing to show identification.</li> </ul>	Simply Energy terminated the sales representatives' contract and one customer was transferred back to the previous retailer.	Isolated
Simply Energy	Five customers' request to cancel their contract during the cooling-off period was not processed.	The affected customers were transferred back to their previous retailer.	Isolated

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
Simply Energy	570 customers were not provided with contracts in a timely manner.	Simply Energy advised that this was due to a system error and those who chose to remain with Simply Energy were sent welcome packs. The 85 consumers who chose to return to their previous retailer were transferred back with no penalty.	Isolated
Victoria Electricity	Sales representatives misrepresented Victoria Electricity's role within the smart meter project, advising 20 consumers that they were with CitiPower/Powercor and had to inspect the meter.	The sales representative was suspended and re-trained and affected customers were advised that an early termination fee has been waived.	Systemic

#### ***Clause 4.1 & 4.3 – Consumer consent***

Retailers must obtain explicit informed consent (EIC) of 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.

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
Country Energy	The retailer transferred two customers to Country Energy without obtaining their explicit and informed consent.	Customers were transferred back to their retailer without penalty.	Isolated
EnergyAustralia	Two door-to-door sales agents forged a sale using a false name, but the customer's actual MIRN and supply address and made a verification call pretending to be a customer.	The contracts were cancelled and the customer returned to the previous retailer. The sales agents were dismissed.	Isolated
EnergyAustralia	A sales representative negotiated a contract with a minor and persuaded the minor to sign the contract and complete a verification call pretending to be the father.	The contract was terminated without penalty and the employment contract of the sales representative was terminated.	Isolated
EnergyAustralia	There were 626 instances where customers' accounts were transferred to the retailer without consent.	More than half of these customers were transferred without consent or transferred even though customers had withdrawn their consent. The transfers were reversed. Any EnergyAustralia bills were cancelled or customers were advised not to pay them.	Systemic
Red Energy	The retailer's sales representatives did not obtain two customer's explicit informed consent to transfer by failing to advise one customer that he was from another retailer and taking advantage of another customer's lack of understanding of the English language.	The relevant sales representatives were provided with additional training.	Isolated



<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
Simply Energy	Consumers were transferred to Simply Energy without their explicit informed consent when its door-to-door sales representatives impersonated the consumers on sales verification calls.	The relevant sales representatives were dismissed and the consumers' contracts with Simply Energy cancelled. Simply Energy also advised that it has improved its training of sales representatives and would undertake ongoing review of sales made by sales representatives to establish the extent of the fraudulent activity.	Systemic

### ***Clause 6 – Marketing and consumer information***

Retailers must abide by the Privacy Act and not misrepresent their intentions as market research and not selling. Retailers must comply with the National Privacy Principles and any relevant guidelines issued by the Commission.

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
Country Energy	A customer was visited by the retailer's sales representative, who advised that he was not there to sell her anything even though he was.	The customer did not sign a contract and the door-to-door sales company contracted to work on behalf of Country Energy has also shut down.	Isolated
Simply Energy	The retailer's sales representative misled a consumer by stating that the purpose of the visit was to conduct a survey.	The sales representative was issued a warning and underwent further training.	Isolated

### **A.1.3 Electricity Retail Licence**

Electricity and gas Licences are issued under the relevant Industry Act and require licensees to comply with specific obligations set out in the licence, as well as general obligations to comply with designated codes and guidelines.

#### ***Clause 8.1 – Obligation to offer to sell***

A Licensee must offer to supply electricity to any domestic or small business customer at tariffs published by the Licensee and on terms and conditions approved by the Commission and published by the Licensee in the Government Gazette and a newspaper.

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
Simply Energy	The retailer failed to offer a standard feed-in tariff product to a small business consumer enquiring about the product, and also failed to publish its standard feed-in tariff.	A standard feed-in tariff was subsequently published in the Victorian government gazette and all small business consumers offered the product when enquiring.	Systemic

#### ***Clause 21 – Compliance with laws***

The retailer must comply with all laws and report:

- any criminal charge brought against the company or any of its officers (in relation to the affairs of the business)
- any civil proceedings brought, or enforceable undertaking sought, by a regulatory authority

- any reasonable grounds for suspecting that the business is insolvent or would become insolvent if it continues to trade.

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
Neighbourhood Energy	The marketing activities of Neighbourhood Energy did not comply with the <i>Fair Trading Act</i> .	Neighbourhood Energy has provided an enforceable undertaking to Consumer Affairs Victoria and amended its Welcome Pack to ensure future compliance.	Systemic

#### **A.1.4 Guideline no. 19 – Energy Price and Product Disclosure**

This guideline specifies minimum requirements in relation to:

- the process to be established to enable customers to access relevant published information and
- the details and format for publication of energy standing offers, and price and product information statements (PPIS).

This guideline also contains obligations for certain written information, in the form of offer summaries that retailers must provide customers.

##### ***Clause 2.1(b) – Provision to the Commission***

A retailer must provide details of its Standing Offer to the Commission in a prescribed form.

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
Simply Energy	As a result of an issue with its systems, the retailer failed to properly label its Price and Product Information Statement (PPIS) and provide its PPIS to the Commission in the approved format.	The retailer made the necessary changes according to the Commission's requirement and further changes will be made for future compliance.	Isolated

## **A.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.

### **A.2.1 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.

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
Country Energy	A customer's second NMI was not connected. The previous retailer at that site had requested the distributor to classify the site as 'vacant'.	The customer's second NMI was identified and connected.	Isolated
EnergyAustralia	The retailer failed to connect several customers at their supply address either because the new customer's supply was disconnected, EnergyAustralia was unable to discover the customer's NMI or MIRN or the request for connection was received near the distributor's cut-off time for same day connection.	EnergyAustralia's Contact Centre and back office has been looking at ways to improve the connection process.	Systemic
Red Energy	Three customers were not connected in a timely manner due to: <ul style="list-style-type: none"> <li>• a plugged meter</li> <li>• a service order error</li> <li>• an incorrect request.</li> </ul>	Red Energy apologised to the customers. Two customers received financial compensation, and one customer received an after hour connection at Red Energy's expense.	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.

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
AGL	An incorrect post code was held caused 35,000 customers to be billed at the wrong tariff.	The errors were corrected and bills adjusted 3 months later	Systemic
AGL	A system error led to 14,000 customers on standard contracts being charged merchant service fees.	The customers received a letter of apology and reimbursement.	Systemic
AGL	Due to system related issues and infrequent meter reading by distributors, some customers were not billed as often as required.	AGL continues to improve its systems and processes to ensure that infrequently billed customers are kept to a minimum.	Systemic
EnergyAustralia	153 electricity and gas customers did not receive bills within the prescribed timeframe due to practical difficulties such as meter reading problems, production and postage delays, etc.	EnergyAustralia does not believe that full compliance with this obligation is possible without a major redesign of the operation of the energy market.	Systemic
Neighbourhood Energy	Due to a failure in the retailer's system, 1,197 customers with manually read interval meters did not receive their bills.	The affected customers were eventually invoiced. Those customers requiring payment assistance were provided with payment plans.	Systemic

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
Origin Energy	The retailer failed to issue bills to an estimated 3 per cent of customers within the required timeframes.	The outsourcing of billing functions to a third party provider has led to a halving of the proportion of late bills.	Systemic
Red Energy	Due to system issues, customers did not receive their bills within the required timeframes.	The retailer apologised to the customers affected an extended the time for payment.	Systemic
Simply Energy	Customers failed to receive their bills within the required timeframes due to administrative and system issues.	The retailer has corrected the issues and letters were sent to customers advising of the situation.	Systemic
TRUenergy	An issue with the product and customers' meter type resulted in 1,168 customers not receiving bills within the required timeframes.	Affected customers were advised of the situation and provided with flexible payment options as well as the opportunity to terminate the contract.	Systemic
TRUenergy	Due to system configuration issues, approximately 385 customers did not receive their bills within the required timeframes.	Changes to the system that will resolve this problem have been implemented.	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.

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
Momentum Energy	The retailer's bill did not contain the minimum information to be included on a customer's bill.	Formatting of the bill will be re-designed to ensure compliance with the Retail Code.	Systemic
Neighbourhood Energy	The bills issued by Neighbourhood Energy to its customers did not contain a usage graph.	Neighbourhood Energy has commenced redesigning its bill and the usage graph will be included. The retailer may also seek the Commission's approval of an alternative format for its bill.	Systemic

#### ***Clause 5.1 to 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.

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
Red Energy	The retailer billed the customer on the basis of an estimate rather than actual reading of the meter.	The customer was advised of the situation and the distributor was given feedback.	Isolated
Simply Energy	Nearly 7,000 customers did not receive adjustments to their smooth payment plans.	Smooth payment plans were no longer offered and existing smooth payment plans have been phased out with the customer's consent.	Systemic
TRUenergy	32 dual fuel customers were not notified that their payments may need to be adjusted due to human	Letters were sent to affected customers and a new process was implemented to ensure this type of error does not re-occur.	Systemic

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
	error.		

### ***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.

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
TRUenergy	The retailer failed to apply off peak rates during weekend hours to 600 customers' accounts.	All affected customers were notified of the effort and TRUenergy's computer mapping system was corrected.	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.

Payment methods to be accepted, requirements for direct debits.

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
AGL	137 customers received incorrect "pay-by-date" from AGL.	Affected customers were contacted by phone and the records corrected. AGL's IT support also completed a review.	Systemic

## **A.2.2 Marketing Code**

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

The requirements of clause 2 below are substantially similar to the requirements of clause 5 of the previous version.

### ***Clause 2.1 – 2.5 – Contact with Consumers***

Times at which retailers may contact consumers, information to be provided to consumers, requirements to keep 'no contact lists', requirements to maintain visit and telephone records.

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
Australian Power & Gas	The retailer failed to format its 'no contact list' according to the Marketing Code.	The 'no contact list' was reformatted for compliance.	Systemic
Country Energy	A Country Energy sales representative ignored a consumer's 'do not knock' sign, proceeding to misrepresent who he was working for.	The relevant sales representative has since left Country Energy.	Isolated

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
EnergyAustralia	26 consumers may have been misled by EnergyAustralia door-to-door sales representatives, who failed to wear identification badges or to explain the purpose of their visit.	EnergyAustralia investigated the matter, resulting in the relevant sales representatives being retrained or their employment contract terminated.	Systemic

### **A.2.3 Guideline no. 13 – Greenhouse Gas Disclosure on Electricity Customers' Bills**

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.

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
Neighbourhood Energy	The retailer used outdated parameters for calculating the greenhouse gas emissions on customers' bills.	The noncompliance resulted from a failure by the retailer to update its system with the correct parameter. The outdated parameter has now been updated.	Systemic

### **A.2.4 Guideline no. 19 – Energy Price and Product Disclosure**

This guideline specifies minimum requirements in relation to:

- the process to be established to enable customers to access relevant published information and
- the details and format for publication of energy standing offers, and price and product information statements (PPIS).

This guideline also contains obligations for certain written information, in the form of offer summaries that retailers must provide customers.

#### ***Clause 2.1(a) & 2.2 – Internet publication***

A retailer must publish its Standing Offer on its website.

The home page must link easily and logically to the Standing Offer.

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
Simply Energy	Due to an administrative error, the retailer failed to upload its new standing offer on its website.	The standing offers were uploaded onto its website.	Systemic

#### ***Clause 3.4 & 3.5 – Information and format requirements***

Detailed requirements for the content and format of a retailer's PPIS.

An alternative format may be used with the Commission's prior approval.

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
Momentum Energy	Momentum Energy displayed incorrect formatting and content of its PPIS.	The retailer has been pro-actively working with the Commission to resolve this issue and ensure that its PPIS will be correctly formatted and contain the required content.	Systemic
Australian Power & Gas	Consumers searching the website of Australian Power & Gas for PPIS may have obtained outdated versions for a short duration. This was due to the outsourcing of its website development work.	To resolve this ongoing issue, Australian Power & Gas has been considering returning website development work in-house.	Systemic

### ***Clause 3.6 – Timing of update***

A retailer must update a (PPIS) within 5 business days of changing any information in it.

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
Australian Power & Gas	Consumers searching the website of Australian Power & Gas for PPIS may have obtained outdated versions for a short duration. This was due to the outsourcing of its website development work.	To resolve this ongoing issue, Australian Power & Gas has been considering returning website development work in-house.	Systemic
Momentum Energy	Momentum Energy failed to update its PPIS with new prices.	The PPIS was corrected and new processes were established to ensure Momentum Energy's PPIS contains the correct prices.	Systemic
Victoria Electricity	The retailer failed to update its PPIS within the required timeframe.	Prices were updated on the Commission's Your Choice website and the retailer confirmed that the updated PPIS has been uploaded onto its website.	Systemic

## **A.2.5 Electricity Retail Licence**

Electricity and gas Licences are issued under the relevant Industry Act and require licensees to comply with specific obligations set out in the licence, as well as general obligations to comply with designated codes and guidelines.

### ***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.

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
Origin Energy	The retailer failed to show the distributor's name on customer's bill for two billing cycles.	A request to alter its billing system to include distributor's name on customers' bills has been submitted.	Systemic

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
Simply Energy	Customers were not provided with information about their deemed contract due to a processing error.	The relevant customer service staff was re-trained	Systemic

### A.3 Breach type 3

Type 3 breaches are all other breaches of regulatory obligations.

#### ***Retail Code***

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
Simply Energy	<b>Clause 4.3:</b> Issues with Simply Energy's systems resulted in some invoices not showing charges.	Simply Energy has rectified the system issue and invoices have been re-issued to customers.	Systemic
EnergyAustralia	<b>Clause 4.5 to 4.6:</b> EnergyAustralia's billing system does not allocate a customer's partial payment in proportion to the balance owing for each fuel, as required.	The payment is allocated differently but the customer can change the allocation later. EnergyAustralia noted that each jurisdiction has different requirements for payment allocations.	Systemic
TRUenergy	<b>Clause 10.1:</b> Explicit informed consent was not obtained from approximately 500 customers before TRUenergy changed the frequency of their billing cycle.	Affected customers were contacted to obtain their explicit informed consent. For customers who did not provide consent, TRUenergy has reinstated the quarterly billing cycle.	Systemic
Red Energy	<b>Clause 13.5:</b> Red Energy failed to disconnect a customer and finalise the account on the customer's request.	Red Energy waived the bill.	Isolated
EnergyAustralia	<b>Clause 26:</b> EnergyAustralia did not advise customers that its customer charter is available free of charge.	EnergyAustralia advised that it has since corrected this error.	Systemic

#### ***Electricity Retail Licence***

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
Simply Energy	<b>Clause 6.4:</b> As a result of a processing error, Simply Energy did not apply GSL payments to 4,000 customer accounts.	GSL payments were applied to affected customers and Simply Energy introduced a payment process to ensure the error does not occur again.	Systemic
Simply Energy	<b>Clause 7.2:</b> Due to an administrative error, Simply Energy failed to apply the correct tariffs to customers on feed-in tariff products, direct debited customers twice and refunded customers twice.	The feed-in tariff customers affected by the incorrect tariffs were advised in writing regarding the incident.  Customers who were direct debited twice were refunded and received an apology letter from Simply Energy.  Customers who received a refund twice received a letter from Simply Energy advising of the error and the amounts were reversed.	Systemic



<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
Simply Energy	<b>Clause 7.2:</b> Due to systems error, Climate Saver customers received incorrect bills.	All affected Climate Saver accounts were reviewed and the correct bills re-issued. Where required, customers received refunds.	Systemic
Simply Energy	<b>Clause 7.2:</b> Due to systems error in the payment portal, Simply Energy applied customers' credit card payment to another business.	The amounts incorrectly charged to the customers' credit cards were reversed and correctly processed. Customers were also advised of the incident and re-assured that correct payments would be applied in future.	Isolated
Neighbourhood Energy	<b>Clause 9.4 &amp; 9.6:</b> Neighbourhood Energy failed to publish new standing offer tariffs in newspapers circulating in Victoria.	The retailer will ensure that any future gazetting of tariffs will be accompanied with a publication in a newspaper circulating in Victoria	Systemic
EnergyAustralia	<b>Clause 26:</b> EnergyAustralia did not advise customers that its customer charter is available free of charge.	EnergyAustralia advised that it has since corrected this error.	Systemic

### ***Electricity Industry Act 2000***

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
Origin Energy	<b>Part 2, Section 47 to 49:</b> The correct tariff was not applied to customers on life support.	Origin Energy has held discussions with the Commission and recommendations were tabled for corrective action.	Systemic
Simply Energy	<b>Part 2, Section 47 to 49:</b> Simply Energy failed to comply with concessions validations requirements to a small number of customers.	A new process has been implemented to meet future requirements.	Systemic

### ***Marketing Code***

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
Australian Power & Gas	<b>Clause 1:</b> The retailer's Customer Service Product Specialist Team failed to maintain complete records of training for marketing.	New procedures have been implemented to improve record keeping as part of the post audit action plan.	Systemic
Australian Power & Gas	<b>Clause 2.4 to 2.5:</b> As a result of undertaking an internal audit, it has become apparent to the retailer that it has not maintained complete records of visits and telephone contact with consumers.	As part of the post audit action plan, new procedures have been implemented to improve its record keeping.	Systemic

**Guideline 19 – Energy Price and Product Disclosure**

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
Country Energy	<b>Clause 4.1:</b> Offer summaries were not provided to Victorian consumers. Country Energy did not believe that many consumers were affected as it has ceased all marketing activity in Victoria.	Procedures were implemented to ensure customers will be provided with an offer summary upon request or when terms and conditions of new retail contract are provided.	Systemic
Momentum Energy	<b>Clause 4.1:</b> The retailer failed to promptly provide Victorian consumers with offer summaries.	Momentum has implemented a system change to ensure that all customers are provided with an offer summary upon request.	Systemic
Origin Energy	<b>Clause 4.1:</b> Door-to-door sales agent did not provide offer summary to customers upon request.	Origin Energy met with the Commission to discuss its noncompliance.	Systemic
TRUenergy	<b>Clause 4.2 &amp; 4.3:</b> TRUenergy's Offer Packs did not state the following text "For information about choosing an energy retailer visit <a href="http://www.esc.vic.gov.au/yourchoice">www.esc.vic.gov.au/yourchoice</a> ".	Information on the Offer Packs and details available on the TRUenergy website were updated to refer to the Commission's Your Choice website. TRUenergy also wrote to the Commission to confirm that it is now compliant with this requirement.	Systemic

**Guideline 22 – Regulatory Audits of Retail Energy Businesses: Electricity and Gas Industries**

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
Neighbourhood Energy	<b>Clause 1.1.3 &amp; Appendix A:</b> Due to a staff deleting records prior to ceasing employment with the retailer, records of consent audits performed in 2009 were no longer available.	Neighbourhood Energy is implementing a new tracking and record keeping system to ensure that consent audit records will be securely maintained.	Systemic

**Information Specification (Service Performance) for Victorian Energy Retailers**

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
Simply Energy	<b>Reporting Framework:</b> A regulatory audit discovered several KPIs reported in 2008 and 2009 were non-compliant.	New processes and governance arrangements have been put in place to improve reporting	Systemic