



AMENDMENT OF GUIDELINE 13 AND REPEAL OF GUIDELINES 19 AND 21

Final Decision Paper

December 2014

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1 INTRODUCTION

1.1 PURPOSE

This final decision gives effect to the Essential Services Commission's (**Commission**) earlier decision to adopt the Energy Retail Code version 11 (**ERC v11**), which incorporates a number of Commission issued guidelines that must now be amended or repealed to avoid duplication of regulatory obligations.

1.2 BACKGROUND

The National Energy Customer Framework (**NECF**) is a regulatory regime applying, on adoption by individual State and Territory governments, to the sale and supply of energy to retail customers. The NECF was established to provide a single framework for regulating retailers across Australia. It was anticipated that Victoria would transition to the NECF in July 2012. However, in June 2012 the Victorian Government announced that it would defer Victoria's transition.

In July 2012, the former Minister for Energy and Resources wrote to the Commission requesting that the Commission consider harmonising the regulations contained in its Codes and Guidelines to the extent possible with the NECF.

In response to the Minister's request, the Commission released the 'Harmonisation of the Energy Retail Code and Guidelines with the National Energy Customer Framework (NECF) – Consultation Paper' (**Initial Consultation Paper**) and a draft ERC v11 for public consultation in December 2012.

The draft ERC v11 used the National Energy Retail Rules (**NERR**) as its base and, in addition to including relevant provisions of the Energy Retail Code version 10a, it incorporated the content of the following guidelines:

- Electricity Industry Guideline no. 13 – Greenhouse Gas Disclosure on Electricity Customers' Bills – January 2013 (**Guideline 13**);
- Guideline no. 19 – Energy Price and Product Disclosure – April 2014 (**Guideline 19**); and

- Guideline no. 21 – Energy Retailers’ Financial Hardship Policies – April 2014 (**Guideline 21**).¹

The Commission invited submissions from interested parties on the extent to which the draft ERC v11 achieved the objectives set out in the Initial Consultation Paper and any changes that would better achieve those objectives.

In July 2013, following the consideration of stakeholder submissions, the Commission released the ‘Harmonisation of the Energy Retail Code and Guidelines with the National Energy Customer Framework (NECF) – Draft Decision Consultation Paper’ (**Draft Decision Paper**), and an updated draft ERC v11. The Commission again invited stakeholders to provide submissions on the drafting of the ERC v11. The Commission considered the stakeholder submissions it received in relation to its Draft Decision Paper, and released the ‘Harmonisation of the Energy Retail Code and Guidelines with the National Energy Customer Framework (NECF) – Final Decision Paper’ in July 2014.²

1.3 REGULATORY POWERS OF THE COMMISSION

The Commission has responsibility for licensing electricity and gas retailers and distributors in Victoria. The Commission's powers are outlined in the *Electricity Industry Act 2000* (**EIA**), the *Gas Industry Act 2001* (**GIA**) and the *Essential Services Commission Act 2001* (**ESCA**).

Section 8 of the ESCA requires the Commission to promote the long term interests of Victorian consumers in performing its functions and exercising its powers, and in doing so have regard to the price, quality and reliability of essential services. In seeking to achieve this objective, the Commission must have regard to the following matters to the extent that they are relevant in any particular case:

- (a) efficiency in the industry and incentives for long term investment;
- (b) the financial viability of the industry;

¹ Guidelines 13, 19 and 21 have been updated during the harmonisation consultation. The dates listed reflect the latest version of each guideline, which is the version that has been incorporated into the final version of the ERC v11.

² For more information on the harmonisation project, and to view the decision papers, please visit www.esc.vic.gov.au/Energy/Harmonisation-of-Energy-Retail-Codes-and-Guideline

- (c) the degree of, and scope for, competition within the industry, including countervailing market power and information asymmetries;
- (d) the relevant health, safety, environmental and social legislation applying to the industry;
- (e) the benefits and costs of regulation (including externalities and the gains from competition and efficiency) for—
 - (i) consumers and users of products or services (including low income and vulnerable consumers);
 - (ii) regulated entities;
- (f) consistency in regulation between States and on a national basis;
- (g) any matters specified in the empowering instrument.

The Commission also has specific energy sector objectives under the EIA and GIA. These are:

- to promote a consistent regulatory approach between the electricity industry and the gas industry, to the extent that it is efficient and practicable to do so; and
- to promote the development of full retail competition.

Our approach to consultation and regulatory reviews is set out in our Charter of Consultation and Regulatory Practice which is available on the Commission's website at <http://www.esc.vic.gov.au/getattachment/About-Us/Consultation-Policy/CharterofConsultationforWeb.pdf.aspx>.

2 THE GUIDELINE OBLIGATIONS ARE NOW CONTAINED IN THE ENERGY RETAIL CODE

2.1 GUIDELINE 13

Guideline 13 specifies the minimum information a retailer must include in customer bills regarding the greenhouse gas emissions connected with the generation of electricity. It states that “[d]isclosure of the information specified by this guideline is required by . . . each retailer’s retail licence and by section 40 of the [EIA]”. By way of example, one retailer licence states that customer bills must include “information concerning greenhouse gas emissions connected with the generation of electricity supplied to the customer or the generation of electricity in general.” Section 40R of the EIA states that a licence is deemed to include a condition requiring greenhouse gas emissions information that the Commission specifies in its guidelines (without limiting the licence type). Additionally, Guideline 13 defines customer as “a person who buys electricity from a retailer”, which includes small, medium and large customers.

To give effect to the obligations contained in Guideline 13, the Commission introduced clause 25A – Greenhouse Gas Disclosure on electricity customers’ bills into the ERC v11. Guideline 13 also includes examples of acceptable formats for greenhouse gas disclosure on customers’ bills; these examples are replicated in Schedule 7 of the ERC v11.

The repeal of Guideline 13 would create a situation wherein a retailer serving medium and large customers would have an obligation to provide greenhouse gas emissions information to its customers (the licence condition) with no further guidance on how to present the information. As such, the Commission considers that it is appropriate to amend the definition of ‘customer’ in Guideline 13 to ensure there is no duplication of regulatory obligations.

The Commission invited submissions from interested parties on the proposed change to the definition of ‘customer’ in Guideline 13 and the repeal of Guidelines 19 and 21. The Commission received one submission, from the Consumer Utilities Advocacy Centre, which stated that it supported the proposed amendment to Guideline 13 and had no objection to the repeal of Guidelines 19 and 21.

The definition of ‘customer’ in Guideline 13 will be amended as follows:

customer means a person who buys electricity from a retailer, [where that customer is not a small customer as defined under the Energy Retail Code.](#)”

Guideline 13 will also be updated to refer to the Department as defined as the department with primary responsibility for the supporting Minister administering the *Electricity Industry Act 2000* (as opposed to the Department of Primary Industries, Victoria) and the references to Sustainability Victoria will be removed as its obligations were removed when Guideline 13 was previously revised.

2.2 GUIDELINE 19

The Commission issued Guideline 19 to implement the obligations created by sections 35C and 36A of the EIA and sections 42C and 43A of the GIA, which create statutory obligations regarding the publishing of tariffs and terms and conditions of sale.

The energy price and product disclosure provisions are found in Division 2A of the ERC v11 (clauses 15A – F). A template for the publication of standing offer tariffs is in Schedule 4 of the ERC v11, and Schedule 5 of the ERC v11 contains a template for the Price and Product Information Statement.

Guideline 19 defines ‘customer’ in accordance with the ERC v11. There are no issues with the repeal of Guideline 19 as there are no retailer obligations for medium and large customers.

2.3 GUIDELINE 21

Section 43 of the EIA and section 48G of the GIA require retailers to prepare financial hardship policies and submit the policies to the Commission for approval. The Commission issued Guideline 21 to assist retailers in the preparation of financial hardship policies by outlining the details the Commission expects to be contained in such a policy.

Part 3 of the ERC v11 (Customer hardship) incorporates the provisions of Guideline 21.³ The content of Guideline 21 was included in the ERC v11 to allow the Commission to continue to assess hardship policies against the current regulatory requirements.⁴

³ The NERR terminology for customer hardship was retained in order to maintain document consistency.

⁴ For more information and guidance on the requirements of financial hardship policies, please refer to 'Energy Financial Hardship Policy Performance Indicators: Final Decision, September 2007', which is available at <http://www.esc.vic.gov.au/getattachment/07fd382c-6e7e-4416-a4ba-7a74af1971af/Final-Decision-guideline-21-Hardship-Policies-2008.pdf>

3 NEXT STEPS

The amended Guideline 13 will be effective from 1 January 2015. A track changed version of Guideline 13 reflecting the changes outlined in this Paper will be available on our website.

The Commission has repealed Guidelines 19 and 21 effective from 1 January 2015. The repealed Guidelines will continue to be available on the Commission's website, but will be watermarked to note that they are no longer in force.