

Essential Services Commission
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Helping customers engage confidently in the retail energy market: Draft Decision

The Australian Energy Council (the Energy Council) welcomes the opportunity to make a submission on the Essential Services Commission (ESC) draft decision (the Draft Decision) that seeks to implement the remaining elements of Recommendation 3 of the Thwaites Review, and changes to the obligations regarding estimated reads. The AEC supports these measures, and welcomes the approach of the ESC to harmonise the new obligations with those contained in the National Energy Customer Framework. However, the AEC remains concerned that the ESC is rushing its implementation, heightening the possibility of unintended consequences not in the interests of Victorian Consumers.

The AEC is the industry body representing 23 electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. These businesses collectively generate the overwhelming majority of electricity in Australia and sell gas and electricity to over 10 million homes and businesses.

Consultation process

This Draft Decision is unusual in that it does not provide the detail necessary to implement the proposed changes. Given this, the Draft Decision is more akin to an approach paper, where a high-level view of the ESC is proposed, and stakeholders are encouraged to suggest amendments to better meet the needs of industry and consumers. This creates uncertainty for stakeholders, in particular licensed retailers who must implement the changes proposed.

We are encouraged by the ESC's decision to publish a second Draft Decision, detailing the practical requirements for implementing the proposed changes, including draft code amendments. The AEC will provide more substantive comments regarding the changes at that time.

Harmonisation with the National Framework

The AEC strongly supports the ESC aligning the Energy Retail Code (ERC) with the National Energy Customer Framework (NECF) wherever possible. The Draft Decision appears to do this, however as noted above, until the detail is known we cannot comment on whether genuine harmonisation will be achieved.

Genuine harmonisation requires alignment of the processes and procedures that underpin the regulatory obligations. To that end, we strongly support views of ESC staff that the Department of Energy, Land, Water and Planning will be implementing the technical delivery requirements for the new Victorian Energy Fact Sheets into the Victorian Energy Compare. As noted in the Draft Decision, this replicates the process in the National Framework. Amending VEC will dramatically reduce implementation costs for energy retailers, and ultimately consumers.

It is important to note that the framework underpinning the implementation of the VEFS will not be harmonised. The Australian Energy Regulator manages the EnergyMadeEasy price comparator that generates the fact sheets in the NECF, and as such have the ability to always ensure the technical and regulatory obligations align. The EME website also hosts fact sheets in the NECF, meaning retailer and third party websites merely need to maintain a link, rather than hosting PDFs as suggested in the Draft Decision.

This variation is of critical importance when it comes to third party obligations. While retailers might be expected to maintain both the links to some fact sheets on EME, and directly host others in Victoria, this is more difficult when it comes to third party channels. These organisations were recently required to amend their systems and processes for the national framework, before now being asked to amend them again to implement the changes in Victoria. The AEC is keen to discuss with the ESC transitional arrangements for these obligations as soon as the necessary detail is understood.

Regulatory control and governance

The AEC considers the design of the regulatory framework necessary to implement these obligations presents a significant risk to energy retailers. Energy retailers are required to comply with the ERC as a condition to their licence. In the current ERC (version 12) there are no obligations relating to retailer interactions with Victorian Energy Compare (VEC), other than a requirement to link to the site in various customer communications.

We are concerned that in implementing the obligation to deliver consumers the VEFS, the ESC may impose obligations on retailers in the ERC, with the intention that the practical delivery of these obligations will be performed by VEC. This is not appropriate. Retailers cannot be held responsible for something outside of their control. If the ERC expressly requires retailers to provide the content of the VEFS to consumers, and VEC amends their systems or it malfunctions, then retailers will be obliged to manually provide the information or risk breaching their licence conditions.

Our preference is that the regulatory obligation in the ERC regarding delivery of the VEFS to be drafted at a high level, outlining the instances the retailer will need to provide or publish the VEFS as delivered by VEC, rather than detailing its content. VEFS content should be managed in a separate guideline that is not binding on retailers.

Drafting in this manner will reduce obsolescence risk, but also make it easier for the VEFS to improve with increased technical capacity of VEC. An example of obsolescence risk is highlighted in the current ERC. Clause 15D permits retailers to meet their fact sheet obligations by complying with the relevant clauses in version 3.0 of the AER's Retail Pricing Information Guideline (RPIG). When this clause was inserted, it was intended to harmonise retailer obligations nationally. However, the RPIG is now at Version 5.0, and retailers who developed systems to harmonise were required to maintain the systems to deliver the old versions of the fact sheets in Victoria.

Customer read estimates

The AEC is comfortable with the decision to replicate the customer read estimates obligations from the NECF into the ERC. Our preference is that the final rule continues to explicitly exclude customers with smart meters, and additionally does not include customers who have provided EIC for alternative billing arrangements such as bill smoothing or those in the Payment Difficulties Framework.

Implementation

The AEC is concerned with the haste in which these amendments are being implemented. We would strongly suggest the ESC considers a reasonable and practical transitional schedule to implement these obligations

into the Victorian regulatory framework as efficiently as possible. On 1 July 2019, retailers already have to implement significant obligations arising from Recommendations 3G – 3H, amend solar FIT obligations, and manage the introduction of the Victorian Default Offer. This draft decision is complicated by the fact that the delivery of the VEFS will be via the retailer portal of VEC, something outside of the control of both the ESC and retailers. The experiences of our members in implementing the Basic Plan Information Disclosure changes with the AER showed that a period of two months was critical between EME being upgraded, and retailers being required to provide the BPIDs via their internal channels. Third party channels were allowed an additional four months to implement the changes.

Given this complexity, our preference is that the implementation date is set for two months post the completion of the VEC upgrade, and an additional period post that for implementation through third party channels. Once the upgrade date is confirmed, the ERC can be finalised.

The Energy Council looks forward to continuing engagement with the ESC as the necessary detail is determined to implement these changes. We are very keen to work with the ESC and other consumer stakeholders to ensure this reform is delivered in the long-term interests of Victorian Consumers.

For any questions about our submission please contact me by email at [REDACTED]

Yours sincerely,



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