

# Changing the back-billing rules for retail energy customers

Final decision

8 July 2020

**An appropriate citation for this paper is:**

Essential Services Commission 2020, Changing the back-billing rules for retail energy customers: Final decision, 8 July

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# Executive summary

In December 2019, the Victorian Government provided terms of reference to the commission to implement the government's commitment to reduce the allowable back-billing period for retailers from nine to four months. In this final decision, we set out the amendments to the energy codes we will make to implement the government's commitment.

Our amendments to the energy codes will introduce equivalent obligations for energy distributors and retailers to ensure customers are not back-billed for more than four months when they are not at fault. After considering feedback to our February 2020 draft decision, we have amended the new back-billing rule for distributors to provide clarity that distributors can back-bill retailers beyond four months when a retailer is at fault for the undercharge.

## Consultation on our decision

In developing our final decision, we consulted with stakeholders through two rounds of public consultation and discussed changes to the back-billing rules in one-on-one discussions and workshops.

In December 2019, we published a draft decision as part of our broader reforms in the retail energy market.<sup>1</sup> As part of that draft decision, we commenced our consultation with retailers and consumer organisations on amendments to the Energy Retail Code to change the allowable back-billing period.<sup>2</sup> Stakeholder submissions to the December 2019 draft decision outlined the need to place equivalent obligations on energy distributors to give effect to the government's commitment.<sup>3</sup>

We then published an additional draft decision on 28 February 2020, in which we proposed equivalent obligations in the energy distribution codes to ensure customers are not back-billed for more than four months when they are not at fault. We received 24 written submissions to the February 2020 draft decision – nine from retailers, two from consumer organisations, four from

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<sup>1</sup> Essential Services Commission 2019, Ensuring energy contracts are clear and fair: Draft decision, 10 December

<sup>2</sup> Essential Services Commission 2019, Ensuring energy contracts are clear and fair: Draft decision, 10 December, pp. 53-54

<sup>3</sup> 1<sup>st</sup> Energy, Amaysim, Australian Energy Council, Lumo Energy & Red Energy, Origin Energy, Simply Energy, Tango Energy, submissions to the Essential Services Commission 'ensuring energy contracts are clear and fair' draft decision, January 2020

energy distributors, one from the ombudsman, two from industry bodies and six from consumers via Engage Victoria.

We would like to thank stakeholders for their involvement and contributions to the process.

## Our final decision

This section contains our final position on the changes we proposed in our February 2020 draft decision. Table 1 sets out the changes we have made between the February 2020 draft decision and our final decision.

**Table 1** Summary of changes between February 2020 draft decision and final decision

Decision	Status	Description
1. New back-billing rule for retailers	Unchanged	
2. New back-billing rule for distributors	Modified	Clarified that distributors can back-bill retailers beyond four months when a retailer is at some fault for the undercharge (the retailer would be unable to recover more than four months of undercharged amounts from the customer in this situation).
3. Commencement date of code amendments	Unchanged	

### Final decision 1: New back-billing rule for retailers

Retailers can only recover any amount undercharged in the four months before they notify the customer, unless the undercharging was a result of the customer's fault or unlawful act or omission.

### Final decision 2: New back-billing rule for distributors

An electricity or gas distributor is not permitted to recover charges from a retailer if the retailer is not permitted to recover those charges from a customer. Distributors' can back-bill retailers for more than four months if the undercharging was a result of some fault of the retailer.

### Final decision 3: Commencement date of code amendments

The code amendments giving effect to the back-billing rule change will take effect on 1 January 2021.

## **Timeline for implementation**

The reforms in this final decision that give effect to the government's terms of reference come into effect from **1 January 2021**.

# 1. Context for this decision

This chapter provides a brief overview of the Victorian Government's request to the commission, the current back-billing rules, and our approach in developing our final decision.

## **Energy Fairness Plan commitment to reduce the allowable back-billing period**

In November 2018, the government announced as a part of its Energy Fairness Plan that the allowable period an energy retailer should be able to recover undercharged amounts from a customer is four months. The government considered that 'it is unfair to have to pay a bill for nine months' worth of energy when you have been undercharged by the retailer and have done nothing wrong'.<sup>4</sup>

On 17 December 2019, the government provided us with terms of reference to implement this commitment (set out in appendix A). The government asked that we vary the Energy Retail Code so that the new four-month period for which undercharged amounts may be recovered commences from 1 July 2020.

## **Addressing our statutory objectives**

When considering any regulatory change, we have regard to our objectives to promote the long-term interests of Victorian consumers.

The Essential Services Commission Act 2001 sets out the commission's overarching objective to promote the long-term interests of Victorian consumers, having regard to the price, quality and reliability of essential services.<sup>5</sup> The commission is also guided by objectives under section 10 of the Electricity Industry Act 2000 and section 18 of the Gas Industry Act 2001, which include an objective to promote protections for customers.<sup>6</sup> Primarily, the change in the allowable back-billing period will reduce the potential of undue bill shock for customers, particularly where the customer is not at fault for a mistake in the billing or measurement of their energy use.

In designing the implementation of this reform, we had regard to the cost of regulation shared by both retailers and distributors – in particular, our code changes focus on issues of billing errors caused by a retailer or distributor, where the party at fault will bear the cost of its error. We

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<sup>4</sup> Victorian Labor Party 2018, [Cracking down on dodgy energy retailers – Labor's energy fairness plan](#), November.

<sup>5</sup> Section 8 Essential Services Commission Act 2001.

<sup>6</sup> Section 10(c) Electricity Industry Act 2000 and section 18(c) Gas Industry Act 2001.

consider this approach will also promote continued efficiency in the industry to incentivise retailers to improve the accuracy of bills they issue to customers<sup>7</sup> and also incentivise distributors to ensure they accurately bill retailers for amounts that are ultimately paid for by the customer.

### **This change will help continue to build trust in the market**

We also consider the change in the allowable back-billing period is consistent with broader retail market reforms made by the commission that improve and build trust in the market. In particular, the link between billing errors, back-billing and consumer confidence in the market is demonstrated by complaint data from the Energy and Water Ombudsman (Victoria). In 2018-19, billing complaints continued to be the main reason why customers complained about their energy retailer to the ombudsman and back-billing was the ninth highest complaint sub-issue.<sup>8</sup> In the October to December 2019 quarter, the ombudsman received 294 cases about back-billing, which was 40 per cent higher than the previous quarter.<sup>9</sup> This was largely driven by one gas retailer's systemic billing error.<sup>10</sup> From 1 July 2019 to 24 March 2020, back-billing complaints were the ombudsman's third highest complaint sub-issue.<sup>11</sup>

We consider customers are more likely to have a positive relationship with their energy retailer if they are not subject to significant bill shock when they are not the cause of the back-billing.

### **The current framework for back-billing**

The Energy Retail Code sets out the time period for which energy retailers can recover an undercharged amount. Currently, an energy retailer may recover up to nine-months of undercharged amounts from its customer, if the undercharging had occurred for nine months or more and was not the customer's fault (for example, because the customer denied the retailer meter access) or caused by an unlawful act or omission of the customer.<sup>12</sup> The nine month period for the recovery of undercharged amounts is measured from the date the customer is notified of the undercharging.<sup>13</sup>

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<sup>7</sup> Section 8A(1)(a),(e) Essential Services Commission Act 2001.

<sup>8</sup> Energy and Water Ombudsman (Victoria) 2019, [2019 Annual report](#), October and; Energy and Water Ombudsman (Victoria) 2020, Submission to draft decision, March, p. 2

<sup>9</sup> Energy and Water Ombudsman (Victoria) 2020, Res Online: 1 October 2019 to 31 December 2019, February, p. 5.

<sup>10</sup> Energy and Water Ombudsman (Victoria) 2020, Res Online: 1 October 2019 to 31 December 2019, February, p. 5.

<sup>11</sup> Energy and Water Ombudsman (Victoria) 2020, Submission to draft decision, March, p. 2

<sup>12</sup> Energy Retail Code, Clause 30(2)(a).

<sup>13</sup> Energy Retail Code, Clause 30(2)(a).

Context for this decision

For distributors, the Victorian electricity and gas distribution codes do not currently provide explicit restrictions on the length of time that distributors can back-bill retailers for undercharged, or not charged, network charges. Back-billing arrangements between retailers and distributors are set out in Use of System Agreements between these parties.

## **Consultation in the development of our final decision**

In December 2019, we commenced consultation on proposed Energy Retail Code amendments with stakeholders and sought formal submissions. Stakeholder submissions to the December 2019 draft decision outlined the need to place equivalent obligations on both energy retailers and distribution businesses to give effect to the government's commitment.<sup>14</sup>

We then published a further draft decision in February 2020, where we proposed amendments to the retail and distribution energy codes and sought formal stakeholder submissions.

In addition to these two rounds of public consultation, we have also discussed proposed changes to the back-billing rules with stakeholders in one-on-one discussions and workshops.

We received 24 submissions on our February 2020 draft decision. The parties who made submissions are listed below. Their submissions are available on our website:

- AGL
- Ausnet Services
- Australian Energy Council
- Australian Gas Infrastructure Group
- Citipower, Powercor and United Energy
- Consumer Action Law Centre
- EnergyAustralia
- Energy and Water Ombudsman (Victoria)
- ERM Power
- Jemena
- Momentum Energy
- Origin Energy
- Powershop
- Red Energy & Lumo Energy
- Shopping Centre Council of Australia

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<sup>14</sup> 1<sup>st</sup> Energy, Amaysim, Australian Energy Council, Lumo Energy & Red Energy, Origin Energy, Simply Energy, Tango Energy, submissions to the Essential Services Commission 'ensuring energy contracts are clear and fair' draft decision, January 2020

Context for this decision

- Simply Energy
- Submissions via Engage Victoria from six members of the public
- Tango Energy
- Victorian Council of Social Service (via Engage Victoria).

Context for this decision

Essential Services Commission **Changing the back-billing rules for retail energy customers**

## 2. Changing the allowable back-billing period

To implement the Victorian Government's commitment to reduce the allowable back-billing period for retailers from nine to four months, we are introducing equivalent code obligations for energy retailers and distributors.

In response to stakeholder feedback on our February 2020 draft decision, we have changed the new code obligations for energy distributors to clarify that distributors can back-bill beyond four months when the retailer is at fault for the undercharging.

### **New back-billing rule for retailers**

#### **Draft decision proposal**

To give effect to the government's commitment to reduce back-billing to four months, in our February 2020 draft decision, we proposed to amend the Energy Retail Code so that retailers are restricted to four months of back-billing instead of nine months of back-billing. This obligation would also apply to exempt persons in the categories specified in clause 30(6) of the Energy Retail Code.<sup>15</sup>

We did not propose to change the undercharging provisions of the Energy Retail Code for situations where back-billing occurs due to a customer's fault or unlawful act or omission.

#### **Stakeholder views**

Most stakeholders supported our proposed amendments to the Energy Retail Code.<sup>16</sup> While no stakeholder raised an issue with our proposed amendment to clause 30 of the Energy Retail Code, some stakeholders asked us to consider some other issues related to the reduction of the allowable back-billing period.

The Australian Gas Infrastructure Group and EnergyAustralia suggested that we consider providing guidance on the meaning of 'small customer's fault or unlawful act or omission' so that

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<sup>15</sup> In Victoria, some energy sellers do not require a licence – the majority of exempt sellers are people who supply electricity in an embedded network. Embedded networks may include apartment buildings, caravan parks, retirement villages, shopping centres and rooming houses.

<sup>16</sup> Australian Gas Infrastructure Group, Australian Energy Council, AGL, Ausnet Services, Consumer Action Law Centre, EnergyAustralia, ERM Power, Energy and Water Ombudsman (Victoria), Momentum Energy, Origin Energy, Powershop, Simply Energy, Tango Energy, submissions to Essential Services Commission 'changing the back-billing rules for retail energy customers' draft decision, March 2020.

stakeholders have clarity of when back-billing of more than four months is permitted.<sup>17</sup> Red Energy and Lumo Energy proposed that back-billing only be limited to four months if the undercharging was due to the retailer's fault or omission.<sup>18</sup>

The Shopping Centre Council of Australia suggested that the changes to the allowable back-billing period should not apply to customers in shopping centres.<sup>19</sup> The Shopping Centre Council considered that residential and business customers should not be treated the same. In addition, customers of shopping centres are often large companies and have entered into a business-to-business relationship with the shopping centre.

While supporting the proposed amendments, Momentum Energy suggested that the commission also consider how the amended undercharging rules will interact with other clauses of the Energy Retail Code.<sup>20</sup>

### **Our response and final decision**

As stakeholders have not raised concerns with our proposed amendments to clause 30 of the Energy Retail Code, we consider these amendments are appropriate and we will adopt these as our final amendments to clause 30 of the Energy Retail Code.

As summarised above, some stakeholders raised specific comments and questions on certain elements related to the reduction of the allowable back-billing period. We discuss these further in the following sections.

### **Definitions of the concept of small customer 'fault' or 'omission'**

We have not been provided evidence that the industry is having significant issues with determining whether a customer is at fault during disputes about undercharged amounts to justify the development of separate guidance on what would constitute 'small customer fault or unlawful act or omission' under the Energy Retail Code. However, we would consider providing separate guidance at a later date if it is shown to be necessary. In order to determine whether a customer is at fault, in most cases a retailer will need to identify that a customer has failed to comply with a

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<sup>17</sup> Australian Gas Infrastructure Group and EnergyAustralia, submissions to Essential Services Commission 'changing the back-billing rules for retail energy customers' draft decision, March 2020.

<sup>18</sup> Red Energy & Lumo Energy, submission to Essential Services Commission 'changing the back-billing rules for retail energy customers' draft decision, March 2020.

<sup>19</sup> Shopping Centre Council of Australia, submission to Essential Services Commission 'changing the back-billing rules for retail energy customers' draft decision, April 2020.

<sup>20</sup> Momentum Energy, submission to Essential Services Commission 'changing the back-billing rules for retail energy customers' draft decision, March 2020.

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requirement placed on customers - such as failure to provide convenient and unhindered access to the meter.<sup>21</sup>

We have also decided to not introduce the concept of ‘retailer’s fault or omission’ in the Energy Retail Code. Our package of code amendments (including the distribution code amendments discussed later in this chapter) should ensure that retailers are not penalised when an undercharged amount is the fault of a customer or a distributor. Since this issue is addressed through the distribution code amendments, we do not consider there is a need to add the concept of ‘retailer’s fault or omission’ into the Energy Retail Code.

### **Consequential impacts on other clauses of the Energy Retail Code**

We have considered how the reduction in the allowable back-billing period would interact with other clauses of the Energy Retail Code.

Momentum Energy raised three key areas of the Energy Retail Code for the commission to consider, which we discuss in more detail below:

- the basis for billing and meter access
- customer meter read estimates
- frequency of billing and special bills.

#### *Billing and meter access*

Clause 20 of the Energy Retail Code specifies how a retailer must calculate a customer’s bill. Under this clause, retailers are required to use best endeavours to ensure that actual readings of the meter are carried out as frequently as is required to prepare its bills consistently with the metering rules and in any event at least once every 12 months.<sup>22</sup> As this is a requirement on a retailer, and not a customer, we do not consider that any amendment to this clause is necessary at this time. We consider the reduction in the allowable back-billing period will likely incentivise retailers to meet their obligations under clause 20 and ensure actual readings of the meter are frequently carried out and retailers can fully recover any previously undercharged amounts.

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<sup>21</sup> Electricity Distribution Code, clause 3.3.2(a) and Gas Distribution System Code, clause 11.1(b)

<sup>22</sup> Energy Retail Code, clause 20(2)

### *Customer meter read estimates*

Clause 21 of the Energy Retail Code specifies when retailers are permitted to issue a bill based on estimated usage. Customers, after receiving a bill based on estimated usage, can request an adjusted bill based on the customer's reading of the meter.<sup>23</sup>

Momentum Energy suggested that there are major discrepancies between customer read estimates and network estimated reads, which are only revised when an actual meter reading is obtained.<sup>24</sup> The commission strengthened the customer read estimate obligation from 1 July 2019 in order to allow customers to receive more accurate bills, rather than waiting for a billing adjustment at the time of the next actual read.<sup>25</sup> Our decision was of most relevance to gas customers, because electricity customers with smart (interval) meters are very unlikely to receive an estimated meter read from their retailer. We consider that if customers are providing their retailer with an accurate meter reading, this should result in a lower prevalence of undercharging than when a retailer is basing bills on estimated usage. Retailers can provide guidance to their customers on how to read and lodge a customer read estimate as per clause 21(3C) of the Energy Retail Code. In its submission, Momentum Energy also noted that distributors are not obligated to accept customer read estimates and suggested that the billing rules for retailers should be consistent with how distributors bill retailers for meter reads.<sup>26</sup> In our decision to strengthen the customer read estimate obligation, we did not preclude the use of customer read estimates for market settlement purposes by metering parties or distributors.<sup>27</sup> Our expectation was that retailers and distributors would continue to exchange relevant data and information for market settlement.<sup>28</sup>

### *Frequency of billing and special bills*

Clause 24 of the Energy Retail Code specifies that a retailer must issue bills to a customer at least once every three months. A retailer and customer may agree to a regular billing cycle that differs from the retailer's usual recurrent billing cycle. This requires the retailer to obtain the customer's explicit informed consent.

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<sup>23</sup> Energy Retail Code, clause 21(3A)

<sup>24</sup> Momentum Energy, submission to Essential Services Commission 'changing the back-billing rules for retail energy customers' draft decision, March 2020.

<sup>25</sup> Essential Services Commission 2019, Helping customers engage confidently in the retail energy market: Final decision, pp. 24-27.

<sup>26</sup> Momentum Energy, submission to Essential Services Commission 'changing the back-billing rules for retail energy customers' draft decision, March 2020.

<sup>27</sup> Essential Services Commission 2019, Helping customers engage confidently in the retail energy market: Final decision, p. 26.

<sup>28</sup> Essential Services Commission 2019, Helping customers engage confidently in the retail energy market: Final decision, p. 26.

### Changing the allowable back-billing period

We recognise Momentum Energy's concern that customers that are currently on a quarterly billing cycle may need to be issued with special bills issued under clause 30(2)(c) if their retailer uncovers an undercharged amount.<sup>29</sup> However, we do not consider that this concern warrants the removal of customer's explicit informed consent in relation to their billing frequency. The rules are currently sufficient to permit retailers to engage with their customers and agree to a regular billing cycle.

### **Exempt categories that will be subject to the new back-billing rules**

We have not changed the categories of exempt persons that must comply with the back-billing rules in the Energy Retail Code. We consider that customers of exempt sellers should receive a level of protection comparable to customers of licensed retailers. In the context of shopping centre embedded networks, we do not consider that small businesses should be treated differently by their energy retailer if they are located within a shopping centre.

The undercharging provisions in the Energy Retail Code are important customer protections that ensure customers are not subject to lengthy periods of cost recovery despite not being the cause of the undercharging error. The new rules should encourage exempt sellers (including shopping centres) to ensure that meter data is collected accurately and customers are billed correctly.

#### **Final decision 1: New back-billing rule for retailers**

Retailers may only recover any amount undercharged in the four months before they notify the customer, unless the undercharging was a result of the customer's fault or unlawful act or omission.

## **New back-billing rule for distributors**

### **Draft decision proposal**

To ensure customers are not back-billed for more than four months when they are not at fault, and that retailers are not invoiced by distributors for past undercharged network charges beyond four months that the retailer cannot then recover from the customer, our February 2020 draft decision proposed that new obligations be placed on Victorian energy distributors in the Electricity Distribution Code and Gas Distribution System Code. We based these new obligations on equivalent clauses in the national electricity and gas rules. Our proposed amendments were intended to allow both retailers and distributors to recover up to four months of previously undercharged, or not charged, amounts.

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<sup>29</sup> Momentum Energy, submission to Essential Services Commission 'changing the back-billing rules for retail energy customers' draft decision, March 2020.

## Stakeholder views

Most stakeholders supported our proposed amendments to the Electricity Distribution Code and Gas Distribution System Code.<sup>30</sup> Several retailers indicated that they strongly supported the proposed amendments.<sup>31</sup> Simply Energy also commended harmonisation with the national electricity and gas framework.<sup>32</sup>

Several electricity distributors asked for additional clarification in the drafting of the new clause 15A of the Electricity Distribution Code.<sup>33</sup> For example, Citipower, Powercor and United Energy asked that the commission specify that distributors can recover undercharged amounts beyond four months when the retailer or their Meter Data Provider is at fault.<sup>34</sup>

Some retailers raised additional issues for us to consider in our final decision, including:

- EnergyAustralia asked whether the Use of System Agreements require consequential amendments to resolve issues with disputed undercharged amounts
- Powershop suggested that further responsibility for distributors when they are at fault for undercharging should form part of the overall code amendments
- Tango Energy asked the commission to review the interaction between the new clauses 15A.1.2 and 15A.1.3 with the new clause 15A.1.1 to ensure the intent of clause 15A.1.1 is not negated.

## Our response and final decision

We consider some minor changes are required to the amendments we proposed in our February 2020 draft decision to the Electricity Distribution Code and Gas Distribution System Code. These changes will clarify that energy distributors' can back-bill retailers for more than four months if the undercharging was a result of some fault of the retailer. As discussed below, we have made these changes in response to stakeholder feedback to our February 2020 draft decision.

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<sup>30</sup> AGL, Australian Energy Council, AusNet Services, Consumer Action Law Centre, EnergyAustralia, Energy and Water Ombudsman (Victoria), ERM Power, Jemena, Origin Energy, Powershop, Red Energy & Lumo Energy and Simply Energy, submissions to Essential Services Commission 'changing the back-billing rules for retail energy customers' draft decision, March 2020.

<sup>31</sup> Australian Energy Council, ERM Power, Red Energy & Lumo Energy and Simply Energy, submissions to Essential Services Commission 'changing the back-billing rules for retail energy customers' draft decision, March 2020.

<sup>32</sup> Simply Energy, submission to Essential Services Commission 'changing the back-billing rules for retail energy customers' draft decision, March 2020.

<sup>33</sup> Citipower, Powercor & United Energy and Jemena, submissions to Essential Services Commission 'changing the back-billing rules for retail energy customers' draft decision, March 2020.

<sup>34</sup> Citipower, Powercor & United Energy, submission to Essential Services Commission 'changing the back-billing rules for retail energy customers' draft decision, March 2020.

Changing the allowable back-billing period

In the section below we also outline our response to other stakeholder comments on our proposed amendments to the distribution codes.

### **Back-billing beyond four months when the undercharging is due to retailer fault**

Based on feedback from electricity distributors, we have decided to make some changes to our amendments to the Electricity Distribution Code and Gas Distribution System Code. In particular, we have:

- added an additional sentence to clarify that distributors can back-bill retailers beyond four months when the retailer is at some fault for the undercharging, which would address circumstances where a retailer has caused an undercharging of a customer (for example, due to a billing system issue)
- clarified the wording to describe when distributors are not permitted to recover undercharged amounts from retailers.

The intention of the proposed amendments to the distribution codes in our February 2020 draft decision was to ensure retailers are not penalised by the new back-billing rules when energy distributors are at fault for undercharged amounts. We stated that our proposed code amendments would ensure that retailers would not be invoiced by distributors for past undercharged network charges beyond four months that the retailer cannot then recover from the customer.<sup>35</sup>

However, it was not our intention that energy distributors be penalised by the new back-billing rules when retailers are at fault for undercharged amounts. In their submissions to our February 2020 draft decision, several electricity distributors suggested that additional clarification is necessary in the code amendments to ensure that energy distributors can back-bill retailers for undercharged amounts that are the fault of the retailer.<sup>36</sup> As the retailer is at fault for the undercharged amounts in this situation, the retailer would not be permitted to then recover more than four months of undercharged amounts from the customer. We consider it is appropriate to make this clarification as it will ensure that our package of code amendments (including the Energy Retail Code amendments discussed earlier in this chapter) will not penalise a party that is not at fault for an undercharged amount (whether that be customer, retailer or distributor).

We provide further detail on the distribution code amendments in chapter 3, appendix C and appendix D of this final decision.

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<sup>35</sup> Essential Services Commission 2020, Changing the back-billing rules for retail energy customers: Draft decision, 28 February, p. 5

<sup>36</sup> Citipower, Powercor & United Energy and Jemena, submissions to Essential Services Commission 'changing the back-billing rules for retail energy customers' draft decision, March 2020.

## **Other points raised in stakeholder submissions**

In relation to whether amendments to the Use of System Agreements are necessary, we do not have sufficient evidence to conclude that the terms and conditions of these agreements are not fair and reasonable.

In response to Tango Energy's submission, we have reviewed the interaction of the new subclauses in the energy distribution codes and we are satisfied that these subclauses meet the intent of the amendments. Under the new subclauses, distributors can adjust previously charged amounts provided that the retailer is not prevented from recovering those amounts from their customers.

### **Final decision 2: New back-billing rule for distributors**

An electricity or gas distributor is not permitted to recover charges from a retailer if the retailer is not permitted to recover those charges from a customer. Distributors' can back-bill retailers for more than four months if the undercharging was a result of some fault of the retailer.

## 3. Amending the energy codes

In Victoria, energy retailers and distributors are required to comply with the energy codes as a condition of their licence.<sup>37</sup>

This chapter outlines the amendments to the Energy Retail Code to give effect to the new allowable back-billing period of four months for customers. This chapter also outlines amendments to the Electricity Distribution Code and Gas Distribution System Code that will ensure that a distributor may only invoice a retailer for an amount that the retailer is permitted to recover from the customer under the Energy Retail Code amendments.

### Summary of amendments

To give effect to the government's commitment to reduce the allowable back-billing period to four months, we are making changes to several energy codes. To summarise, we will:

- amend subclause 30(2)(a) of the Energy Retail Code to change the allowable back-billing period from nine months to four months.
- create a new clause 15A in the Electricity Distribution Code to limit the circumstances when an electricity distributor may recover charges from a retailer, to align with retailers' obligations under the Energy Retail Code.
- create a new clause 12.3 in the Gas Distribution System Code to limit the circumstances when a gas distributor may recover charges from a retailer, to align with retailers' obligations under the Energy Retail Code.

The code amendments are provided in appendixes B, C and D.

We consider that these amendments will reduce customer bill shock due to the compressed billing recovery period. Retailers and distributors may also be incentivised to deliver customers with more accurate bills in response to the new recovery period limit.

### Amendments to the Energy Retail Code

Our amendments to the Energy Retail Code will change the allowable back-billing period for retailers from nine to four months. We consider that this would meet the policy intent of ensuring

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<sup>37</sup> The licence conditions requiring retailers and distributors to comply with the energy codes are made under section 20(2) of the Electricity Industry Act 2000 and section 28(2) of the Gas Industry Act 2001.

that retailers cannot recover more than four months of undercharged, or not charged, amounts from customers.<sup>38</sup>

## **Amendments to the Electricity Distribution Code**

To amend the Electricity Distribution Code, we will insert a clause based on an equivalent clause in the National Electricity Rules (NER). The purpose of clause 6B.A3.1 in the NER is to ensure that an electricity distributor is not permitted to recover network charges from a retailer if the retailer is not permitted to recover those charges from the customer. Currently, clause 6B.A3.1 of the NER does not apply in Victoria.

We consider that including a clause similar to clause 6B.A3.1 of the NER in Victoria would meet the policy intent of ensuring that customers are not back-billed for more than four months when they have done nothing wrong. To do this, we will insert a new clause 15A in the Electricity Distribution Code. The new clause will prohibit distributors from back-billing a retailer when the retailer cannot back-bill the customer for that amount. The new clause will also permit distributors to back-bill a retailer beyond four months when the retailer is at some fault for the undercharged amount.

## **Amendments to the Gas Distribution System Code**

To amend the Gas Distribution System Code, we will insert a clause based on an equivalent clause in the National Gas Rules (NGR). The purpose of clause 508 in the NGR is to ensure that a gas distributor is not permitted to recover network charges from a retailer if the retailer is not permitted to recover those charges from the customer. Currently, clause 508 of the NGR does not apply in Victoria.

We consider that including a clause similar to clause 508 of the NGR in Victoria would meet the policy intent of ensuring that customers are not back-billed for more than four months when they have done nothing wrong. To do this, we will insert a new clause 12.3 in the Gas Distribution System Code. The new clause will prohibit distributors from back-billing a retailer when the retailer cannot back-bill the customer for that amount. The new clause will also permit distributors to back-bill a retailer beyond four months when the retailer is at some fault for the undercharged amount.

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<sup>38</sup> To avoid doubt, a reference in clause 30(2) to undercharging by a retailer includes a reference to a failure by the retailer to issue a bill (as per clause 30(3) of the Energy Retail Code).

## 4. Commencement of new requirements

### Draft decision proposal

We proposed a commencement date of 1 January 2021 for the amendments to the Energy Retail Code, Electricity Distribution Code and Gas Distribution System Code arising from our final decision.

While the government had asked us to implement this change by 1 July 2020, we stated that a delay of six months was necessary to further consult on the code amendments and give industry sufficient time to prepare for the new obligations.

### Stakeholder views

The Victorian Council of Social Service and the Energy and Water Ombudsman (Victoria) expressed a preference that the reform is introduced sooner than 1 January 2021.<sup>39</sup> In particular, the Victorian Council of Social Service suggested that delaying this reform until January 2021 could create additional financial stress on low-income Victorians that have a risk of being asked to pay back five to nine months of undercharged amounts during the coronavirus pandemic.<sup>40</sup>

Some retailers (and the Australian Energy Council) requested that we consider allowing an additional delay for this reform in the context of the coronavirus pandemic.<sup>41</sup> These retailers generally noted that a delay would allow retailers to focus on supporting their customers during the coronavirus pandemic. The Australian Gas Infrastructure Group also supported a delay as parties in the energy supply chain are currently focusing on delivering for customers during the pandemic.<sup>42</sup>

### Our response and final decision

We are mindful that the coronavirus pandemic is causing significant health and economic impacts across the Victorian community. While we acknowledge that retailers will rightfully be focused on

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<sup>39</sup> Energy and Water Ombudsman (Victoria) and Victorian Council of Social Service, submissions to Essential Services Commission 'changing the back-billing rules for retail energy customers' draft decision, March 2020.

<sup>40</sup> Victorian Council of Social Service, submission to Essential Services Commission 'changing the back-billing rules for retail energy customers' draft decision, March 2020.

<sup>41</sup> Australian Energy Council, AGL, EnergyAustralia, ERM Power, Momentum Energy, Powershop and Red Energy & Lumo Energy, submissions to Essential Services Commission 'changing the back-billing rules for retail energy customers' draft decision, March 2020.

<sup>42</sup> Australian Gas Infrastructure Group, submission to Essential Services Commission 'changing the back-billing rules for retail energy customers' draft decision, March 2020.

supporting their customers through the coronavirus pandemic, we consider that an implementation date of 1 January 2021 would continue to provide retailers and distributors with sufficient time to prepare for the new obligations. We are not aware of any significant system changes that would justify further delaying the implementation of this reform. We have also had regard to outcomes for Victorian energy customers and that they should be able to benefit from this reform as soon as practicable.

We are also aware that some retailers have been deferring bill pay-by-dates during the coronavirus pandemic in response to customer requests. If retailers are reflecting accurate charges on customers' bills, we do not anticipate that our final decision would restrict retailers from deferring pay-by-dates and collecting those full amounts at a later time.

We note that an implementation date of 1 January 2021 would represent a six-month delay from the initial expected commencement date of 1 July 2020. In addition, industry has been aware of this government commitment since November 2018.

Our final decision is that the reforms to give effect to the government's terms of reference will come into effect from 1 January 2021.

### **Final decision 3: Commencement date of code amendments**

The code amendments giving effect to the back-billing rule change will take effect on 1 January 2021.

# Appendix A: Terms of reference

## Energy Fairness Plan

### Terms of Reference for the Essential Services Commission

The Essential Services Commission (the ESC) is requested to provide advice under section 10(g) of the *Essential Services Commission Act 2001* (the Act) to support the Government's commitment under its Energy Fairness Plan to reduce the period available for retailers to back-bill energy consumers.

#### **Background**

On 20 November 2018, the Government released the 'Energy Fairness Plan' which committed to a range of reforms to the energy retail market aimed at 'cutting the cost of energy for families across the state, increasing transparency and competition in the market and making sure that companies that do the wrong thing face the consequences'.

#### **Request**

The ESC is requested to implement the Government's commitment to reduce the period available for retailers to recover undercharged consumption.

Energy retailers are currently able to recover from customers an amount for a period of up to nine months when they have previously undercharged or not charged for consumption. The Victorian Government has committed to reduce this time period so that an energy retailer is only able to recover from customers an undercharged amount for a maximum period of four months from when the customer is notified of the undercharging.

In providing this advice, the ESC is required to have regard to its objectives under the Act and the *Electricity Industry Act 2000*, and other matters it deems relevant.

#### *Reporting*

In carrying out this request, the ESC will advise the Assistant Treasurer and the Minister for Energy, Environment and Climate Change about its progress and final approach.

#### *Consultation*

In carrying out this request, the ESC is required to consult publicly.

## **Completion**

Unless otherwise determined by Government, the ESC must vary the Energy Retail Code so that the new period for which undercharged consumption may be recovered commences from 1 July 2020.

# Appendix B: Draft Energy Retail Code amendments

## Amendments to Part 2, Division 3 – Customer retail contracts

### AMENDMENTS TO THE ENERGY RETAIL CODE: UNDERCHARGING (BACK BILLING)

JULY 2020

Amendments made by the Essential Services Commission on 08/07/2020

#### 1 Nature and commencement of this instrument

- (1) This instrument amends the *Energy Retail Code*.
- (2) This instrument comes into operation on 1 January 2021.

#### 2 Table of amendments

- (1) In subclause 30(2)(a), omit the number “9” and substitute “4”.
- (2) In subclause 12.1(b) of Schedule 1, omit the number “9” and substitute “4”.

# Appendix C: Draft Electricity Distribution Code amendments

## AMENDMENTS TO THE ELECTRICITY DISTRIBUTION CODE: UNDERCHARGING (BACK BILLING)

JULY 2020

Amendments made by the Essential Services Commission on 08/07/2020

### 1 Nature and commencement of this instrument

- (1) This instrument amends the Electricity Distribution Code.
- (2) This instrument comes into operation on 1 January 2021.

### 2 Table of amendments

#### New clause 15A—Adjustment of network charges

- (1) After clause 15 insert new clause 15A:

15A.	Adjustment of network charges
15A.1.1	A <b>distributor</b> is not permitted to recover charges from a <b>retailer</b> if the <b>retailer</b> is not permitted to recover those charges from a <b>small customer</b> under the <b>Energy Retail Code</b> .
15A.1.2	Subclause 15A.1.1 does not apply where the reason the <b>retailer</b> is not permitted to recover charges is the result of some fault of the <b>retailer</b> .
15A.1.3	Subject to subclause 15A.1.1, a charge that may be

imposed by a **distributor** and included in a statement of charges provided to a **retailer** may be adjusted to account for any error in, or correction or substitution of:

- (a) **metering data**; or
- (b) any other amount or factor that affects the calculation of the charges that may be imposed by a **distributor**.

15A.1.4 An adjustment under subclause 15A.1.3 may be made by a **distributor** by including, in a subsequent statement of charges, the amount required to be paid by, or credited to, the **retailer** together with an explanation of the adjustment.

### Clause 19—Definitions

(2) After the definition of **metering code** insert the following definition:

**metering data** has the meaning given to it in the **Energy Retail Code**.

(3) After the definition of **short rural feeder** insert the following definition:

**small customer** has the meaning given to it in the **Energy Retail Code**.

# Appendix D: Draft Gas Distribution System Code amendments

## AMENDMENTS TO THE GAS DISTRIBUTION SYSTEM CODE: UNDERCHARGING (BACK BILLING)

JULY 2020

Amendments made by the Essential Services Commission on 08/07/2020

### 1 Nature and commencement of this instrument

- (1) This instrument amends the Gas Distribution System Code.
- (2) This instrument comes into operation on 1 January 2021.

### 2 Table of amendments

#### New clause 12.3—Adjustment of network charges

- (1) After clause 12.2 insert new clause 12.3:

#### 12.3 Adjustment of network charges

- (a) A *Distributor* is not permitted to recover charges from a *Retailer* if the *Retailer* is not permitted to recover those charges from a *Small customer* under the *Energy Retail Code*.
- (b) Subclause (a) does not apply where the reason the *Retailer* is not permitted to recover charges is the result of some fault of the *Retailer*.
- (c) Subject to subclause (a), a charge that may be imposed by a *Distributor* and included in a statement of charges provided to a

*Retailer* may be adjusted to account for:

- (i) differences between estimated meter readings used for the purposes of a statement and *metering data* obtained after the issue of the statement; and
- (ii) any error in, or correction or substitution of:
  - A. *metering data*; or
  - B. any other amount or factor that affects the calculation of the charges that may be imposed by a *Distributor*.
- (d) An adjustment under subclause (c) may be made by a *Distributor* by including, in a subsequent statement of charges, the amount required to be paid by, or credited to, the *Retailer* together with an explanation of the adjustment.

#### **Clause 13.1—Glossary**

(2) After the definition of ***service pipe*** insert the following definition:

*Small customer* has the meaning given to it in the *Energy Retail Code*.