

16 August 2012

Ms Victoria Rosen
Energy Regulatory Manager
Essential Services Commission
Level 37, 2 Lonsdale Street
MELBOURNE VIC 3000

By email: victoria.rosen@esc.vic.gov.au

Dear Ms Rosen

RE: Submission to the *Harmonisation of the Energy Retail Code and Guidelines with the National Energy Customer Framework (NECF) - Draft Decision (Consultation Paper)*

ERM Power Retail Pty Ltd welcomes the opportunity to make a submission in relation to the Essential Service Commission's *Draft Decision – Harmonisation of the Energy Retail Code and Guidelines with the National Energy Customer Framework* (the Draft Decision).

About ERM Power Limited

ERM Power Limited is an energy company listed on the ASX that operates electricity sales, generation, and gas exploration and production businesses across Australia.

Our energy sales business, ERM Power Retail is licensed to sell electricity in all Australian states, the Australian Capital Territory and the Northern Territory, and has grown organically to become the fourth largest seller of electricity in the National Electricity Market by load.

ERM Power Retail (branded as ERM Business Energy) specialises in providing electricity to business and government customers. We have accrued over 13 per cent of the large Commercial and Industrial (C&I) customer market, and this year we have started to offer electricity to the Small to Medium Enterprise (SME) segment of the market.

A Utility Market Intelligence survey by independent research company NTF Group found ERM Power Retail has provided the greatest business customer satisfaction for two years in a row, with the 2012 result setting a new record for the survey with a customer satisfaction rate of 93 per cent.

ERM Power Retail's Victorian licence permits us to sell electricity to business customers and gas to large customers only, so we have no comment on the elements of the harmonised Retail Code that

apply to residential customers, unless they directly relate to the approach the Commission has adopted when finalising its Draft Decision.

The problem of regulatory regime uncertainty

It is one thing to experience regulatory uncertainty as part of an established regulatory regime, and quite another to experience the uncertainty of not even knowing which regulatory regime (and regulator) will be in place in the near future. This is the situation in Victoria, and we acknowledge that the Commission is as much victim to this uncertainty as the retail energy industry.

The last information provided by government was that the Victorian version of the National Customer Framework (NECF) was to commence in Victoria by 1 January 2014; however, this was communicated some time ago and the likelihood of a shift to NECF (as enforced by the Australian Energy Regulator and with all that entails) seems increasingly remote.

We welcome the Commission's initiative to commence the 'intermediate solution' of the Retail Code/NECF harmonisation project (and acknowledge that the harmonisation project was prompted to some degree by industry requests). However, the current timing of the project (to be completed around September/October 2013), combined with government's current intent to adopt NECF for 1 January 2014 calls into the question the value of the Commission's work continuing.

Surely it is in no one's interest to change the Retail Code in Victoria for a matter of two or three months before shifting to a new regime and new regulator. This would have been useful a year ago when we first discovered that Victoria was not going to adopt NECF, but its value is now lost.

In our view the Victorian Government must clarify its position on NECF as a matter of urgency to determine if the Commission's work is to continue.

The benefits of the harmonised Retail Code

If we assume that NECF will not be adopted in Victoria in 2014, we support the Commission's ongoing work in this area.

ERM Power Retail agrees with the Commission's decision to not reopen or re-litigate matters of energy policy previously settled through the NECF deliberations. We also support the exclusion of the Marketing Code in the harmonised Retail Code and are pleased that the Commission has recognised that there are appropriate protections already enshrined in federal law and within the ACCC endorsed *Energy Assured Limited Code*.

We also support the harmonised Retail Code to the extent that it provides the Commission with an opportunity to replace the dated and often ambiguous sections of the current Energy Retail Code.

The retail energy market in Victoria has matured significantly since the Retail Code was first introduced in 2001 and the overly legalistic drafting reflecting the market at the time is no longer warranted. Therefore we support the Commission's proposed Option 1 as the least worst compromise.

In the main, the Draft Decision reflects a fair compromise between the existing Energy Retail Code (v10) and the NECF provisions (including the Victorian derogations as settled prior to July 2012.).

We have some concerns that despite the broad principles adopted by the Commission when commencing this work, there is an element of 'scope creep' evident in the Draft Decision. It remains unclear whether the Victorian derogations, as settled prior to July 2012, will remain the same.

The Commission's rationale for introducing non-NECF (and non-defined) 'flexible pricing' regulatory obligations, post initial consultation, in response to the introduction of flexible pricing in Victoria is not clear. The Draft Decision does not outline or demonstrate any market failure, nor any analysis of potential shortcomings in the NECF regulatory obligations that would warrant the inclusion of specific flexible pricing regulations.

The Commission should instead consider a review of the harmonised Code obligations to identify any material gaps after flexible pricing has been introduced.

Specific comments on the harmonised Retail Code

Section 6.1 – Best endeavours

We note that the definition of what constitutes 'best endeavours' has been a vexed issue for industry, consumers groups and the Victorian Energy and Water Ombudsman since the Retail Code introduced the term. The current draft also uses this undefined term.

In the interests of providing for consistency and certainty, we believe that the Commission should publish its position on what it considers would constitute retailer 'best endeavours' under a range of circumstances.

The publication of any position paper in relation to this matter should not further delay the finalisation of the harmonised Code and should ideally also be consistent with AER's interpretation of similar NECF provisions.

Section 6.5 – Payment plans

We are concerned at the 'scope creep' evident with the inclusion of an obligation on a retailer to offer a payment plan to a customer it believes is experiencing repeated difficulties.

This inclusion does not adhere to the Commission's stated intent of harmonising the Retail Code with the NECF obligations and further is inconsistent with the Victorian Government's agreed policy position.

Retailers are already sufficiently motivated through the relationships they have formed with their customers to provide payment assistance and to minimise the likelihood of subsequent credit defaults and bad debt write-offs.



Please contact me on the number below if you require any clarification.

Yours sincerely

[signed]

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