



EnergyAustralia

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Ms Victoria Rosen
Energy Regulatory Manager
Essential Services Commission of Victoria
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Dear Ms Rosen

Harmonisation of the Energy Retail Code and Guidelines with the National Energy Customer Framework – Draft Decision

EnergyAustralia welcomes the opportunity to make a submission to the ESC on its Draft Decision on the Harmonisation of the Energy Retail Code and Guidelines with the National Energy Customer Framework.

EnergyAustralia is one of Australia's largest energy companies, providing gas and electricity to over 2.7 million household and business customers in NSW, Victoria, Queensland, South Australia and the Australian Capital Territory. EnergyAustralia owns and operates a multi-billion dollar portfolio of energy generation and storage facilities across Australia, including coal, gas and wind assets with control of over 5,600 MW of generation in the National Electricity Market.

The Victorian Government's decision to delay the introduction of the National Energy Customer Framework (NECF) has resulted in many of the touted benefits of NECF remaining unrealised as retailers have been required to continue to comply with multiple regulatory frameworks which can differ markedly on some issues. We appreciate the ESC's efforts to bring the Victorian regulatory framework broadly into line with the NECF to enable retailers to gain further efficiencies.

EnergyAustralia is pleased with the generally pragmatic direction taken in the draft decision and provides comments on specific issues below.

Best Endeavours – Clause 3

EnergyAustralia considers that the ERC V10 definition of 'best endeavours' is not required. Given the purpose of the harmonisation exercise is to align more closely with the NECF, we consider that the approach taken in the National Energy Retail Rules (NERR), which remains silent thereby invoking accepted common law definitions of best endeavours is appropriate.

EnergyAustralia considers this approach to be appropriate to ensure that retailers operating under enforcement regimes administered by a variety of regulators are held to the same standard. Similarly, consumers in each state should expect best endeavours (of all parties) to be defined consistently regardless of the state in which they reside.

Explicit Informed Consent – discussion of clause 3C and general concerns.

EnergyAustralia is concerned that the requirement to explain all matters to the customer in plain English may invalidate any accounts established via the use of an interpreter or in a non-English speaking customer's native language. We are unaware if any retailers are actively marketing in languages other than English however we are concerned that the proposed wording may prohibit this. We believe that marketing to a customer in their preferred language should be acceptable provided that the responsible retailer establishes appropriate mechanisms to provide the ESC with assurance of their compliance.

EnergyAustralia supports the intent of the provision that clear, unambiguous wording should be used when dealing with customers, but is concerned that specifying that the language must be English could potentially be discriminatory.

Further to this, EnergyAustralia does not support the inclusion of a provision to require explicit informed consent in writing for the purposes of providing customers with a bill on an alternative billing cycle (ie, not necessarily based on a meter read). Whether provided verbally or in writing, a consumer's consent reflects their exercising their ability to choose. Requiring a customer to provide that consent in writing creates a barrier to the customer being able to exercise that right. Consent in writing does not carry more weight than verbal consent and if its considered appropriate that a customer can enter a contract on the basis of verbal consent, it is puzzling that written consent would be required in negotiating one of terms of that contract.

Aggregation of business customer site consumption

The ESC makes the comment that policy decisions are outside the scope of the harmonisation exercise and consequently will not include clause 5 of the NERR which allows for the aggregation of consumption at two or more business premises. We concur that decisions on policy are outside the remit of the ESC but EnergyAustralia contends that the Government clarified its policy intent on this matter in the drafting of the National Energy Retail Law (Victoria) Bill 2012 which foreshadowed a move to allow for aggregation.

Notwithstanding the fact that this Bill is not current law, it clearly reflected Government Policy of a move towards a nationally consistent regulatory regime, which the ESC has been asked to continue to facilitate. EnergyAustralia sees no reason that specific policy points outlined in the Bill should not be within the scope of the harmonisation exercise.

Tariffs and Charges – Clause 46

EnergyAustralia maintains its assertion that the 20 day notification for smart meter customers was introduced purely to protect customers in the case of tariff reassignments initiated by the network. The draft decision queries the basis for EnergyAustralia's belief that mandatory tariff reassignments would take place. Granting distributors the right to reassign customers to time of use network tariffs was a key principle of the AMI rollout and was captured in the Victorian AMI Process Model. The ESC has previously acknowledged this principle in its decisions.¹

To facilitate the rollout of interval meters, the Commission has also permitted mandatory reassignment of customers to an interval meter tariffs. Arrangements have been set in place to ensure that customers are informed on the changes prior to any reassignment occurring.

The statement clearly refers to both small and large customers as the paper outlines different timeframes for customers who consume less than 20 MWh per annum and although it no longer reflects Government policy, the prospect of mandatory tariff reassignments was the basis for discussion between industry and the ESC on tariff change notification requirements.

¹ Essential Services Commission Victoria *Electricity Distribution Price Review 2006-10, October 2005 Price Determination as amended in accordance with a decision of the Appeal Panel dated 17 February 2006, Final Decision Volume 1.*

In light of the fact that flexible pricing is now being rolled out on a purely opt in basis, the requirement for 20 day notification of price changes for smart meter customers should be removed from Version 11 of the Energy Retail Code.

Consequential Amendments to Standing Offer Contracts

Although EnergyAustralia welcomes the harmonisation, we are disappointed with the ESC's compliance approach to date. The uncertain policy environment, coupled with the rigid approach adopted by the ESC, has resulted in considerable cost and confusion to consumers.

EnergyAustralia, and other retailers, undertook substantial investment to ensure NECF readiness on 1 July 2012. This preparation included the development of nationally consistent Standing Offer Terms and Conditions. When the decision was made not to proceed with NECF implementation, EnergyAustralia's Standing Offers became technically non-compliant on the basis that they had not been approved by the ESC and contained minor deviations from the Victorian regulatory framework (notwithstanding that any provision in the contract which were contrary to prevailing law would be automatically invalid).

During discussions about the best way to remedy this non-compliance, EnergyAustralia raised with the ESC the spectre of ongoing confusion and cost to customers if contracts had to be amended to meet the ESC's requirements. Despite raising these issues, limited flexibility has been allowed.

The draft decision on harmonisation means EnergyAustralia will once again be required to amend its Standing Offer Terms and Conditions to reflect the regulatory framework. We have identified that the harmonisation will lead to a number of inconsistencies with the revised terms and conditions that the ESC required us to develop and we will investigate the most appropriate way of moving forward which will cause the least impact to consumers. We urge the ESC to be more flexible and customer focused in relation to the implementation of Energy Retail Code changes. Given that a move to full adoption of NECF appears to still be government policy, a further amendment will be required at the time that NECF comes into force and EnergyAustralia does not believe that the ESC's approach to compliance to date has been in the best interest of consumers.

Timing of Changes

EnergyAustralia notes the commitment by the ESC to provide a three month window between the release of the final decision and the commencement of Energy Retail Code Version 11. The draft decision indicates that a final decision could be made in early October 2013 with a commencement of 1 January 2014. We ask the ESC to reaffirm its commitment to at least a full three month implementation timeframe. This window is crucial to allow retailers time to amend their standing offer contracts to align with the revised Energy Retail Code if necessary, have the revised contracts approved by the ESC as required by Division 5 of the *Electricity Industry Act 2000* and then allow one month after their publication in the Government Gazette before they take effect.

If a full three month window is not allowed, the ESC will have created a situation where compliance is near impossible, not due to the implementation of operational changes, which retailers are keen to do, but because the ESC's requirements will conflict with those of the wider regulatory framework in terms of the process required to be undertaken.

Summary

EnergyAustralia welcomes moves to harmonise the Victorian Energy Regulatory Framework with NECF and we are mindful of the fact that the ESC is constrained in its ability to completely align regimes due to uncertainty around Government policy on some matters and the fact that some compliance obligations stem from instruments that the ESC does not have the ability to amend. With these constraints in mind, we ask the ESC to recognise that industry participants are also in a difficult situation and that by adopting a flexible, cooperative and common sense approach to compliance, the ESC can best promote the long term interests

of Victorian consumers as per their objective under the *Essential Services Commission Act 2001*.

If you require any further information with regard to this issue, please contact me on (03) 8628 1731 email joe.kremzer@energyaustralia.com.au

Yours sincerely

A handwritten signature in black ink, appearing to read 'Joe Kremzer', with a long horizontal flourish extending to the right.

Joe Kremzer
**Regulatory Manager, Retail
EnergyAustralia**