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Erin Dempsey
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National Energy Market Development
Energy Sector Development Division
Department of State Development, Business and Innovation

Lodged by email: erin.dempsey@dsdbi.vic.gov.au

Dear Erin

Submission to the Draft Consultation Paper – Reforms to retail regulation and planned outages.

EnergyAustralia welcomes the opportunity to provide input to the Draft Consultation Paper – Reforms to retail regulation and planned outages.

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.

1. Introduction

EnergyAustralia supports government initiatives to ensure customer protections are appropriate and to address affordability issues. However, we are concerned that the regulatory changes proposed in this Issues Paper have been developed without sufficient evidence or research to warrant the anticipated cost, and may in fact lead to adverse customer outcomes. We don't consider anecdotal accounts from consumers to the Government's website to be robust evidence on which to develop public policy.

EnergyAustralia is also disappointed by the lack consultation on the proposed regulatory changes. We encourage Government Ministers and Departments to engage widely on regulatory matters to ensure the most appropriate outcome for consumers can be reached.

2. Increases to the Wrongful Disconnection Payment (WDP)

EnergyAustralia is unable to comment on behalf of other retailers but we consider that that a major cause of wrongful disconnection is the fractured state of regulation in Victoria, particularly the inconsistency between the disconnection provisions of the National Energy Customer Framework (NECF) and the Energy Retail Code. EnergyAustralia (and other retailers) invested significant sums of money, the quantum of which has previously been disclosed to the Department and the ESC, to prepare for the introduction of NECF in July 2012 based on commitments from the government that the new framework would be introduced. When an announcement was made by the then Minister for Energy that Victoria would not adopt NECF just three weeks out from the proposed commencement date, retailers had adopted systems and process changes which were difficult to reverse. With relation to disconnections, some of the changes implemented included:

- timeframes for notifications;
- content for reminder and disconnection notices;
- call centre training and process.

A minor issue with any one of these factors can lead to a retailer being found to have disconnected wrongfully regardless of whether or not the customer was disadvantaged.
Following the decision not to proceed with NECF, the Minister charged the Essential Services Commission with investigating options for the harmonisation of the Energy Retail Code with the provisions of the National Energy Retail Rules. This process led to the development of a draft Energy Retail Code Version 11 which contained changes to disconnection requirements. Despite a commitment from the ESC that a final decision on the code would be made by 1 October 2013, no such decision has been made and retailers are still facing considerable uncertainty.

In light of the significant uncertainty surrounding Victoria's regulatory framework and the policy and regulatory failures which have led to this situation, EnergyAustralia considers that it is wholly inappropriate that retailers bear additional costs if customers are disconnected incorrectly. Although we strongly believe that retailers must follow due process before disconnecting a customer for non-payment and that where this does not occur compensation may be appropriate, we vigorously oppose amendment to the Wrongful Disconnection Compensation regime on the basis that it is bad policy to the extent that:

- The Government does not appear to have a view as to what an acceptable level of Wrongful Disconnections would be. Ideally, no customers would be disconnected incorrectly however human error, system issues and sometimes poor process will lead to disconnections being carried out improperly. The presentation of two data points in isolation – 2008-09 total WDPs and 2011-12 total WDPs - is not compelling evidence that action is required;

- If, as contended by DSDBI, the number of wrongful disconnections has increased to an unacceptable level, this may in fact be evidence that the Wrongful Disconnections Payment regime is a wholly inappropriate tool regardless of the level of the penalty. Retailers do not take customer disconnections lightly and it is highly unlikely that a retailer will knowingly disconnect a customer if they are aware that the correct process has not been followed. Increasing the penalty will not reduce the number of wrongful disconnections but will instead lead to increased costs to consumers as retailers either incur higher penalties or write off higher levels of unrecoverable debt as an alternative to disconnection.

Further, increasing the penalty to $500 per day provides incentives for customers to game the scheme in order to gain a windfall payment. Cases exist where consumers have been paid considerable amounts but have not suffered any loss as a result of disconnection. These cases have included instances of unoccupied holiday houses being disconnected and one instance where the

consumer was in prison. Customers who believe that they have been wrongfully disconnected will be incentivised to remain disconnected for as long as possible in order to maximise their payment. Any payment for wrongful disconnection must be and appropriately reflect the actual loss suffered by the impacted customer.

It may be appropriate to review the Wrongful Disconnection Payments regime but rather than arbitrarily increasing the penalty, EnergyAustralia suggests providing the Essential Services Commission with discretion to overrule EWOV decisions if the misstep in the disconnection process was inconsequential and limiting wrongful disconnection payments to eligibility to a customer's primary place of residence to minimise instances of gaming.

3. Fixed term contracts

EnergyAustralia generally considers that market outcomes are preferable to regulation except in the case of market failure. We do not believe that there has been a market failure in relation to this issue. In a competitive market, customers have the option to choose their provider based on the attributes they value. For some, it is a discount or other incentive, whilst for others it is price certainty.

EnergyAustralia prides itself on being "straight talking" and believes that consumers also value this and will consciously choose to contract with EnergyAustralia as a result. We go to great lengths to ensure that our customers understand their energy contracts and for this reason we avoid using the term "fixed" in any collateral for products which allow price variations throughout the benefit term. We currently offer contracts with a fixed benefit term which provides the customer with either a guaranteed or conditional (on prompt payment) discount from the underlying tariff for the period of the benefit term, as well as contracts which lock in the rates for a fixed term. We believe that the difference between these products is plainly evident to consumers and have developed these products based on consumer feedback. On this basis, we do not believe that making this a requirement is strictly necessary.

With the exception of our Rate Fix product, we reserve the right to vary tariffs for products with a minimum benefit term, but we do not so in the manner in which CALC and CUAC outline in their proposal to the AEMC seeking a change to the National Energy Retail Rules. The rule change proposal indicates that retailers are luring customers with the promise of low rates and then increasing prices arbitrarily. This is certainly not EnergyAustralia's practice and if this practice is occurring elsewhere in the market, we do not believe that it is widespread.

Generally speaking, retailers vary tariffs in line with movements in with network price increases – these occur on an annual basis. Although it is fair to say that customers do not welcome price increases, we do not believe that there is an expectation that these will not occur during a defined term contract and consequently, there is no need to impose this regulation. We believe that consumers are aware that they may be subjected to tariff variations if they do not enter a fixed rate product. In fact, in the CUAC research referred to in the Issues Paper,[1] it highlights that over 50% of customers surveyed were aware of the contract terms on price variation within the benefit term. In our view the CUAC research is not robust enough to form the basis for this regulatory change. The Australian Competion and Consumer Commission (ACCC) has publicly stated that it will be scrutinising energy retailers and taking enforcement action where appropriate. To the best of EnergyAustralia's knowledge, the ACCC has to date been comfortable with retailer practices regarding disclosure of when prices may vary.

[1] CUAC, 2012, Fixing up fixed term contracts: Your questions answered, available at www.cuac.org.au/index.php?Itemid=30&option=com_docman&limitstart=5

As outlined above, EnergyAustralia only uses the term "fixed" in relation to our Rate Fix product where the rates are in fact locked in for the entire benefit term. The popularity of this product and the fact that other retailers are offering similar contracts suggests that competitive pressures are addressing consumer concerns by providing a range of different contract options. The take up of this product also suggests to us that consumers do have an understanding of the different options available and that by choosing a traditional fixed term contract they may be subjected to price variations if a retailer's costs increase. Regardless of EnergyAustralia's own practices with regard to terminology, if, as stated in the Issues Paper, there is recognition that labelling contracts as "fixed term", is not necessarily misleading, it is difficult to see how the current practice can be regarded as anything other than appropriate, thereby obviating the need for regulatory intervention.

In any case, the Government should wait for the AEMC to conduct a thorough analysis of the Rule change proposal currently before it to test whether its benefits outweigh the costs. Whilst we acknowledge that Victoria has not yet applied the National Energy Retail Rules, it is prudent public policy to await the outcome of the AEMC's deliberation. If the Government considers this issue to be urgent, it may wish to explore a temporary memorandum of understanding with retailers on the use of the word "fixed" until the outcome of the Rule change proposal is known.

Finally, EnergyAustralia already informs customers that prices may vary during a contract period (and that we will contact them prior to this occurring) at the time they sign up for a product. We understand this is also common practice for other retailers. Given it is common behaviour, any regulatory intervention to mandate a desired outcome is unnecessary and inconsistent with the Victorian Government's commitment to reducing red tape.

4. Backbilling

EnergyAustralia acknowledges that billing delays can have a significant impact on consumers where the delay results in the customer subsequently receiving a bill for a period of greater than three months. While it is regrettable that billing delays occur when retailers upgrade systems, placing a restriction on backbilling is likely to seriously impact the business case for any retailer who is looking to upgrade.

Retailers need to upgrade systems from time to time to allow for business growth, development of new products and services and to allow them to meet new regulatory obligations. The introduction of EnergyAustralia's flexible pricing products are an example of innovative new products made possible by a more agile customer care and billing system. Although it is prudent business practice to ensure that any billing system is installed with a minimum of known defects, EnergyAustralia's experience (and that of 1st Tier retailers before us) showed that even a thoroughly developed and tested system can lead to unexpected issues.

If EnergyAustralia did not have the ability to backbill consumers in line with the current Energy Retail Code provisions our entire customer base would have been impacted through higher prices resulting from increased debt write-off. The current framework allowed us to continue to provide a high standard of service to those customers who were not directly impacted and develop strategies to minimise the impact on those customers who bore the brunt of the issue.
Whilst we shared customer's frustration, EnergyAustralia implemented a number of strategies to ensure that impacted customers were not unduly burdened, including;

- Notifications to customers that their bills had been delayed;
- An invitation to make payments in line with previous consumption in order to minimise billshock when the delayed bill arrived;
- Extending due dates to allow customers longer time to make payment on delayed bills.

We consider that an appropriate response in terms of customer management is just as important as the statutory customer protections in the Energy Retail Code.

From a practical perspective, EnergyAustralia has concerns around the application of limitations on backbilling. We are concerned that the issues paper incorrectly references the Energy Retail Code by suggesting that it relates to billing system upgrades. The provisions of the Code actually refer to "failure of the retailer's billing systems" and does not limit this to scenarios where the failure is the result of an upgrade. Furthermore, the term "system" itself is not defined and retailers have generally taken the position that where the error or delay is due to an issue which could broadly be considered at least partially within their control, then the current provision would apply.

Delayed bills and undercharges can occur for a range of reasons, both inside and outside a retailer's control, often due to meter data issues. Sending a bill in these circumstances can exacerbate the issue and cause customer anguish. Although the actual issuing of a bill is the responsibility of the retailer, the dependencies on other parties means that limiting a retailer's ability to collect payment for energy usage is highly inequitable as these other parts of the supply chain are still guaranteed income. Any move to limit revenue recovery at the retail level must have application to all industry players and also provide for equivalent limits for network billing and wholesale settlements or risk inflicting a significant imposte on the retail industry, ultimately leading to service degradation and increased costs to consumers.

Reducing the recovery period to three months would not provide any opportunity for retailers to recover any undercharge from the previous bill if an error is discovered as a standard billing period is approximately 90 days. The Energy Retail Code currently hampers retailer efforts to move customers to shorter billing periods and consequently, we are disappointed that government is seeking to impose greater risk on retailers, while it has historically resisted efforts to help customers move to shorter bill cycles to enable them to reduce the chance of bill shock.

Further, we are mindful of government commitments to harmonise with the National Energy Customer Framework (NEFC). A three month limit on backbilling is a material difference to the regime. As outlined previously in this submission, retailers operating in Victoria are doing so under extremely uncertain regulatory conditions. Any moves away from the customer protection framework which has been implemented or committed to within stated timeframes across the rest of the NEM creates additional uncertainty and may ultimately lead to retailers exiting the Victorian market, even if NECF is eventually in favour of more attractive markets. This would be to the detriment of Victorian consumers.

EnergyAustralia is mindful of the impact on customers of delayed bills. We are concerned however by any moves to further limit the amount that a retailer can recover when it issues delayed bills. We believe that the current undercharge recovery period strikes an adequate balance between obligations to bill customers' obligations to pay for energy use and appropriately acknowledges the complexity of the end to end billing process, including the roles played by other entities.

5. Energy efficiency audits

EnergyAustralia supports efforts to improve energy affordability and believes that energy efficiency audits can be a useful tool in this regard. However, we do not believe that it is appropriate that retailers should be mandated to offer them free of charge to all hardship customers.

EnergyAustralia questions whether mandatory provision of energy efficiency audits is the most effective means of improving affordability for hardship consumers. We currently use them in a targeted fashion where our hardship experts consider it will assist the customer in managing their

energy bills. Audits can be effective in helping consumers reduce energy usage in the longer term however; significant outlays (for new, efficient appliances etc) are often required to achieve this. This expenditure can be beyond the reach of some hardship customers. The effectiveness of energy efficiency audits is also limited by the split-incentives issues which arise when a consumer is renting their home. Where the cost of the efficiency measure would be the responsibility of the landlord rather than the tenant, the landlord has no incentive to undertake the improvements.

The cost of providing audits to all hardship customers, regardless of how appropriate it is, will be met by increasing tariffs for all consumers. This would, in effect, mean revenue from customers who are not in a retailer's hardship program will be used to cross subsidise those hardship customers. We consider that administering social policy of this nature should remain the domain of government and may be better served through a government scheme to encourage low income households purchase energy efficient products or support to improve rental accommodation.
We are happy to support government initiatives to improve energy affordability, but are opposed to being required to administer and fund programs of limited efficacy and consider that direct government programs to address the issue will be more effective.

6. Planned Electricity Outages on Hot Days

EnergyAustralia is not strongly opposed to restrictions of distributors' ability to conduct planned maintenance on hot days however we question the value of any such measure.
Distribution companies will generally schedule maintenance around temperature peaks during summer months to avoid outages when there is heavy customer reliance on the network. Notwithstanding this fact, there may be times where there are outages during hot temperatures. Although this is unfortunate for impacted consumers, EnergyAustralia considers it preferable to a situation where maintenance which has been scheduled long in advance is cancelled at short notice which will involve considerable cost to the network, and ultimately the consumer. Imposing additional costs in this manner is contrary to the government's intention of improving energy affordability.

7. Summary

EnergyAustralia does not consider that there is sufficient evidence that the proposed regulatory changes are required and we urge government to work closely with industry to address any issues of concern in the industry.
If you wish to discuss any aspect of this submission, please contact me on 8628 1731 or email joe.kremzer@energyaustralia.com.au

Yours sincerely

Joe Kremzer
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EnergyAustralia