



14 March 2014

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

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

Consumer Protection Reforms

The Energy Supply Association of Australia (esaa) welcomes the opportunity to make a submission to the Victorian Department of State Development, Business and Innovation's consultation on reforms to energy retail regulation and planned outages.

The esaa is the peak industry body for the stationary energy sector in Australia and represents the policy positions of the Chief Executives of 34 electricity and downstream natural gas businesses. These businesses own and operate some \$120 billion in assets, employ more than 51,000 people and contribute \$16.5 billion directly to the nation's Gross Domestic Product.

The Victorian Government has led Australia in the deregulation of the energy sector which has helped to make Victoria one of the most competitive retail energy markets in the world. Victoria has led the way with rigorous consultation on detailed policy proposals before they are finalised, announced and legislated. It is concerning that these reforms are not following such a process, with outcomes announced as fait accompli before the policy details and impacts are considered.

The proposed changes to consumer protection reforms may undermine the years of work that have gone into creating free and open energy markets in the state. At best, it is unlikely that these proposed measures are the right solutions to any problems that do exist. At worst, the proposed changes could lead to unintended consequences which may actually increase prices for consumers.

The broader industry landscape and the consequences of over-regulation

Helped along the way by a period of extraordinarily generous subsidies, the rooftop solar market has boomed in recent years. Falls in panel and installation costs mean that uptake is likely to continue regardless of the subsidy level. Customers face a perfectly legitimate choice whether to invest in solar panels (and in due course other technologies to assist self-supply such as fuel cells and batteries may become cost-effective) to meet part of their supply needs. Other customers, including households who are not able to install solar (renters, apartment dwellers) and heavy industrial/commercial users will still be reliant on centrally produced generation, and thus bear in increasing share of the cost of policies that governments contrive to be

paid for through energy bills rather than on budget. For Victoria this includes the Energy Saver Incentive, the cost of the premium and transitional feed-in tariffs and the cost of complying with the excess energy concession requirements. This latter will be increased by the proposal for mandatory energy efficiency audits to be provided by retailers.

There is no policy rationale for self-suppliers (whether partial or full) to escape their share of such costs. Doing so distorts customer choices and leads to a more expensive electricity system (including behind the meter distributed generation) than otherwise. Adding to this cost differential exacerbates the distortion.

Increasing the regulatory burden on retailers also exacerbates the distortions between them and the emerging class of businesses known as energy service companies (ESCOs). This trend was identified in the AEMC's Power of Choice review, which recommended facilitating their emergence. The AER has recently issued multiple retail exemptions to ESCOs seeking to supply electricity via solar panels under their ownership mounted on customers' rooftops. These and other ESCO business models are legitimate innovations and Victorian consumers are better placed than other Australians to benefit from such innovations through their competitive market and the smart meter rollout. Note that ESCOs will typically not replace retailers but instead cherry-pick elements of their customers' consumption where it is profitable to do so. Existing retailer obligations such as hardship customer management will not be lessened, but will not apply to ESCOs.

But for customer decisions to result in an efficient electricity system, the playing field should be as level as possible. If ESCOs are able to avoid regulations that apply to electricity retailers, while the burden imposed on retailers grows ever greater, then the customer consumption base of traditional retailers will be quickly eroded, leaving the burden of regulatory costs to be shared across a dwindling volume of kWh and among customers who do not or cannot have access to self-generation.

It has always been the case that a trend towards less energy-specific regulation and removal of policy costs from the supply chain would be worthwhile steps for governments to take. But the rise of distributed generation has made these inherent distortions more acute. In this context, the Victorian government's proposals are a step in the wrong direction that could only be justified if there was a compelling individual case for each proposal. This is not the case, as explained below.

Increases to the Wrongful Disconnection Payment (WDP)

The underlying basis for the proposed changes to the Wrongful Disconnection Payment – that cases are increasing – appears flawed. The consultation paper uses just two data points as a comparison: 2008-09 and 2011-12. Once data from 2007-08 is considered, levels of wrongful disconnections can be shown to have decreased in real terms. In 2007-08 there were 241 cases of wrongful disconnection¹ from

¹ EWOV Submission to Essential Services Commission (ESC)'s Review of Energy Retail Performance Indicators

2,164,899 customers² (1 per 8983 customers), whereas the 233 cases in 2011-12 came from a base of more than 2.3 million customers (1 per 9924 customers).

There is also a broader question of the purpose for the WDP: is it a compensation payment or a penalty? If the WDP is compensation to customers for the loss of service then the Government has not shown that the value of the loss of service has increased enough to justify this increase. If it is a penalty, then caution is needed to ensure that the payment does not provide a perverse incentive for consumers to actively avoid working with retailers to ensure supply is disconnected.

Fixed-term contracts

The consultation paper acknowledges that a similar process around the use of the term “fixed” in electricity market contracts is underway through a rule change proposal lodged with the AEMC. The esaa recommends that although Victorian consumers would not be affected by the rule change if it is successful, the Victorian Government should adopt a “wait and see” approach to minimise the risk of retailers having to comply with different legislation in each state. Victoria is currently running a program to harmonise the Energy Retail Codes and Guidelines with the National Energy Customer Framework (NECF). It would be quite illogical for the state to simultaneously rush ahead with proposed changes that are not at all guaranteed to become part of the NECF.

Notwithstanding this, several retailers already offer fixed rate products where prices do not change over the life of the contract. The Association therefore considers that the need to then restrict the terms used for other forms of contracts is unclear. Retail energy contracts already contain provisions spelling out that energy companies can vary prices, the notice period they have to give consumers and how many times they can vary prices during the life of the contract. If consumers are not aware this is the case, this represents a failure of education and communication, rather than of the contracts. Existing provisions in the Australian Consumer Law also adequately protect consumers without the need for additional intervention in the Victorian Energy Retail Code.

The proposed legislation fails to account for the realities of the energy retail system. The high level of risk and uncertainty, particularly around network costs and various government interventions – all of which can change annually – means energy retailers need flexibility to change prices. Signing customers to a contract provides more certainty to retailers, which reduces their risks and allows them to offer larger discounts. Restricting offers of fixed-term contracts results in higher risks for energy retailers and, in contrast to the intent of this measure, will likely lead to higher prices overall.

² esaa, Electricity Gas Australia 2009

Backbilling

The esaa has concerns about the proposed changes to backbilling arrangements. The changes will likely increase costs for retailers.

Limits on backbilling periods exist to balance the rights of retailers wanting to legitimately recover revenue with the rights of consumers wanting to avoid large bills covering long periods of time. The current nine month limit has been in place for some years; in some other jurisdictions it is twelve months. The proposed move to three months is a radical change and the esaa recommends significant consultation and testing before such a measure is introduced, to avoid unintended consequences.

There are a range of reasons outside a retailer's control that customers may be undercharged such as not being provided with meter data (and consequently using estimated reads) or because a meter's accuracy is being tested. In certain cases, sending a bill may only exacerbate problems. The proposed changes could force retailers to send bills before the problems are resolved in order to meet the proposed three month deadline. This may, perversely, lead to further disputes with customers.

Due to shifts to new billing systems, some retailers have faced difficulties in billing customers on time. The energy industry is working hard to ensure that customers are billed correctly and on-time and has every incentive to do so under the present regulatory framework.

Furthermore, the current provisions in the Energy Retail Code give customers an equal amount of time to pay a bill as the length of time covered by the backbilling. Better enforcement of this requirement would likely do more to protect customers than the proposed restriction of backbilling.

Energy Efficiency Audits

The esaa supports greater efficiency and productivity across the Australian economy. This includes the use of energy itself. Energy efficiency is not an end in itself, but is worthwhile when the costs to achieve lower energy use are lower than the costs to produce and transport the energy saved.

While the proposal to require retailers to provide energy efficiency audits for hardship customers is admirable in intent, the esaa considers that it will likely fail to achieve meaningful results. For some hardship customers, an energy efficiency audit may only identify areas where energy efficiency could be improved. Capital constraints or the possibility that customers live in rented accommodation (split-incentive) may actually limit the possibilities for these customers to be able to implement any major changes. In these cases, an energy efficiency audit may achieve little. Direct government programs to address these barriers would be more appropriate.

Requiring energy retailers to provide energy efficiency audits to all hardship customers will only serve to increase costs for retailers while providing little genuine improvement in energy efficiency for households in hardship. For hardship cases in public housing, a more appropriate approach would be for the Government to

implement projects through its own Greener Government Buildings program to improve energy efficiency.

Planned Electricity Outages on Hot Days

There is little evidence that a regulatory approach is needed to avoid planned electricity outages on hot days. As highlighted as a possibility in the consultation paper, a memorandum of understanding between energy distributors and the Victorian Government would be a more appropriate solution to any perceived problem. This would enable them to jointly find reasonable criteria to ensure that planned outages do not occur on days of extreme heat. Furthermore, companies already tend to prohibit works that are not “emergency response” during times of extreme heat for OH&S reasons.

Distribution businesses have no interest in having customers offline; they want customers to maintain access to electricity for as long as possible. Where maintenance is required in summer, distribution businesses endeavour to have their maintenance crews performing this work early in the morning or in the evening, to avoid working in the heat of the day. Maintenance schedules are determined in advance and sudden cancellations such as these proposals can be costly.

In particular, defining and applying exemptions for “essential maintenance works” is problematic. Does the Government consider the nature of the works in detail before providing such an exemption? What level of proof does the distributor need to provide before an exemption is provided? If an exemption is sought but refused and the assets in question start a bushfire, will the state cover any liability? This warrants a detailed cost-benefit study well beyond the current consultation.

In addition, there are potential problems with both proposed approaches of how to classify hot days. There appears to be no clear process for the Department of Health to declare heat health alert days, nor for the declaration to be rescinded if temperatures change, such as after cool change.

Using a temperature based threshold provides similar challenges as temperatures can vary markedly within Melbourne; sea breezes may make some bayside areas cooler than central Melbourne. Similarly to using heat health alert days, it is unclear what would happen if temperatures fell during the day. It could overly restrict the days that distribution businesses have available to perform maintenance in the event that temperatures fail to exceed the forecast maximum.

The esaa considers that the Government should have more detailed discussions with the energy industry and conduct a full regulatory impact study before implementing any such changes.

Conclusion

There is little justification for the Government's proposed consumer protection reforms. In most cases, they will lead to higher prices. The esaa calls on the Government to consult with industry to identify where more practical changes could be made to enhance consumer protections without increasing prices as a consequence.

Any questions about our submission should be addressed to Ben Pryor, by email to ben.pryor@esaa.com.au or by telephone on (03) 9205 3103.

Yours sincerely

A handwritten signature in black ink that reads "Kieran Donoghue". The signature is written in a cursive, slightly slanted style.

Kieran Donoghue
General Manager, Policy