

14 March 2014

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

By email: erin.dempsey@dsvdbi.vic.gov.au

Dear Ms Dempsey,

RE: Draft Consultation Paper – Reforms to retail regulation 2014 and planned outages

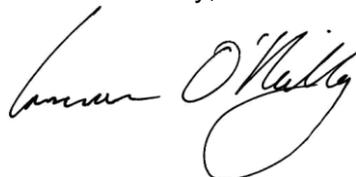
The Energy Retailers Association of Australia (ERAA) welcomes the opportunity to provide feedback in response to the *Draft Consultation Paper – Reforms to retail regulation 2014 and planned outages* (the Draft Consultation Paper).

The ERAA represents the organisations providing electricity and gas to almost 10 million Australian households and businesses. Our member organisations are mostly privately owned, vary in size and operate in all areas within the National Electricity Market (NEM) and are the first point of contact for end use customers of both electricity and gas.

The ERAA supports evidence-based policy and does not consider the feedback from the energy complaints form to be a sufficient basis for the proposed reforms. If implemented, these changes will impose increased costs on all retail energy businesses which will outweigh any perceived benefit. Due to the nature and cost impacts of the proposed reforms (and the limited time provided for responses to the Draft Consultation Paper), the ERAA requests that all proposals set out in the Draft Consultation Paper be subject to a formal Business Impact Assessment (BIA) for the proposals that would be implemented by primary legislation, and a Regulatory Impact Statement (RIS) for the proposals that would be implemented by regulation or amendment to the Energy Retail Code. This approach will provide consistency with the Victorian Guide to Regulation, ensure that the long term interests of consumers are maintained, and also assist the Victorian Government to achieve its commitment to a 25 per cent reduction in red tape.

Should you wish to discuss the details of this submission, please contact me on (02) 8241 1800 and I will be happy to facilitate such discussions with my member companies.

Yours sincerely,



Cameron O'Reilly
CEO
Energy Retailers Association of Australia



Increases to the Wrongful Disconnection Payment

The ERAA does not believe that the Draft Consultation Paper provides sufficient evidence to warrant changes to the Wrongful Disconnection Payment (WDP) caps. The ERAA does not agree that the increase in raw WDP numbers between 2008-09 and 2011-12 signifies a move by retailers to disregard the current requirements prior to disconnecting a customer. The number of disconnections varies each year, however the proportion of these found to be wrongful remains at only 0.5-1.0 per cent of all disconnections industry wide per annum. We are uncertain how an increase to WDPs will improve outcomes for consumers.

WDPs only make up a fraction of the cost of the Victorian wrongful disconnection scheme. The remainder comes from investigating reports of wrongful disconnection and implementing compliance measures; this constitutes a substantial cost for both retailers and the Essential Services Commission of Victoria (ESCV). Under this scheme retailers are already appropriately incentivised to ensure they undertake best endeavours to prevent WDPs. Increases to fines will merely increase costs, without introducing a disincentive that retailers can appropriately respond to.

In 2010, the Final Report from the ESCV's Review of Wrongful Disconnection Payment found that the previous scheme was, "too blunt in its application" and had "led to outcomes that the Commission believes are unintended and perhaps disproportionate."¹ The review recommended changes to the scheme including limiting daily compensation to \$250, and capping total compensation at \$3500.

By increasing the WDP to \$500 per day, and capping it at \$5000, this policy reform would reintroduce the blunt, unintended and disproportionate application of the previous WDP process. Under the proposed changes, customers that are wrongfully disconnected would be incentivised to disengage from retailers and remain disconnected, irrespective of best endeavour attempts by retailers in getting their site reconnected. Under this scenario, for example, a customer could choose to find alternative accommodation which could be funded by a proportion of the \$500 per day WDP. Some instances have occurred where consumers received wrongful disconnection payments for empty holiday homes, or in one case because they were in prison. These windfall payments and associated added costs ultimately force retailers to increase the risk premium for all customers, particularly those with bad payment records.

The ERAA believes that the scheme currently provides appropriate protections for customers. Unless evidence can be provided that demonstrates that the increased costs will be outweighed by any perceived benefits, the ERAA cannot support this proposed change.

Possible alternative approach

The ERAA would support providing the ESCV with greater discretion to consider the overall circumstances of disconnections, so that penalties for retailers are only applied when practices are inconsistent with the intention of the Retail Code rather than the letter of the Retail Code and Operating Procedure. The ERAA welcomes further discussions on this possible alternative approach.

¹ *Final Report – Review of Wrongful Disconnection Payment, Essential Services Commission of Victoria*, January 2010.

Fixed term contracts

The Draft Consultation Paper proposes a number of potential changes to the regulation of market contracts for retail energy. These changes have been proposed in a response to the Consumer Utilities Advocacy Centre's (CUAC) 2012 report *Fixing up fixed term contracts: Your questions answered*.²

Consumers are already protected by the Australian Consumer Law, and all consumers are already informed that prices may change during fixed term contracts. Retailers also offer fixed rate products to customers. The ERAA does not believe that the introduction of additional regulation would be in the best interests of consumers.

The Draft Consultation Paper notes that CUAC and the Consumer Action Law Centre submitted a rule change proposal to the Australian Energy Market Commission (AEMC) to prohibit price increases during contracts that have a fixed term.³ The ERAA supports this process as the most appropriate method of assessing the benefits of any changes to the regulation of fixed term contracts. The AEMC rule change process provides adequate time to consider potential changes to the National Energy Retail Rules (NERR), incorporating input from a range of stakeholders.

The Draft Consultation Paper states that the rule change would not apply in Victoria.⁴ The ERAA argues that Victoria could apply any potential changes to the NERR to the Victorian Energy Retail Code. This approach would be a sensible approach, especially as Victoria is currently in the process of harmonising the Victorian Energy Retail Code with the National Energy Customer Framework (NECF).

Backbilling

We understand that this policy has been proposed due to concerns that updates to retailer billing systems are causing billing delays. Whilst the ERAA appreciates these concerns, we do not support the proposal outlined in the Draft Consultation Paper as it has significant implications for the integrity of energy markets. The current nine month limit was introduced after extensive consultation in both Victoria and under the NECF. Reducing the time that retailers can recover undercharging from customers due to a failure of the retailer's billing systems will introduce a number of adverse consequences, some of which are outlined below.

Addressing concerns

The Draft Consultation Paper has highlighted that "customers have difficulty in budgeting as they do not have a bill to monitor their usage and costs".⁵ A monthly billing cycle, may address concerns of these customers. This may reduce some the risks outlined above. However, the Retail Code currently requires that customers must provide Explicit Informed Consent (EIC) in writing or by electronic signature to move to monthly billing, which inhibits the ability for retailers to proactively offer this option to customers and to respond to customer requests over the phone.

More efficient processes to enable customers to opt in to monthly billing must be a prerequisite to any reduction in backbilling timeframes. Furthermore, there remains a large

² Department of State Development, Business and Innovation (2014), Draft Consultation Paper – Reforms to retail regulation 2014 and planned outages, p.4

³ Ibid

⁴ Ibid

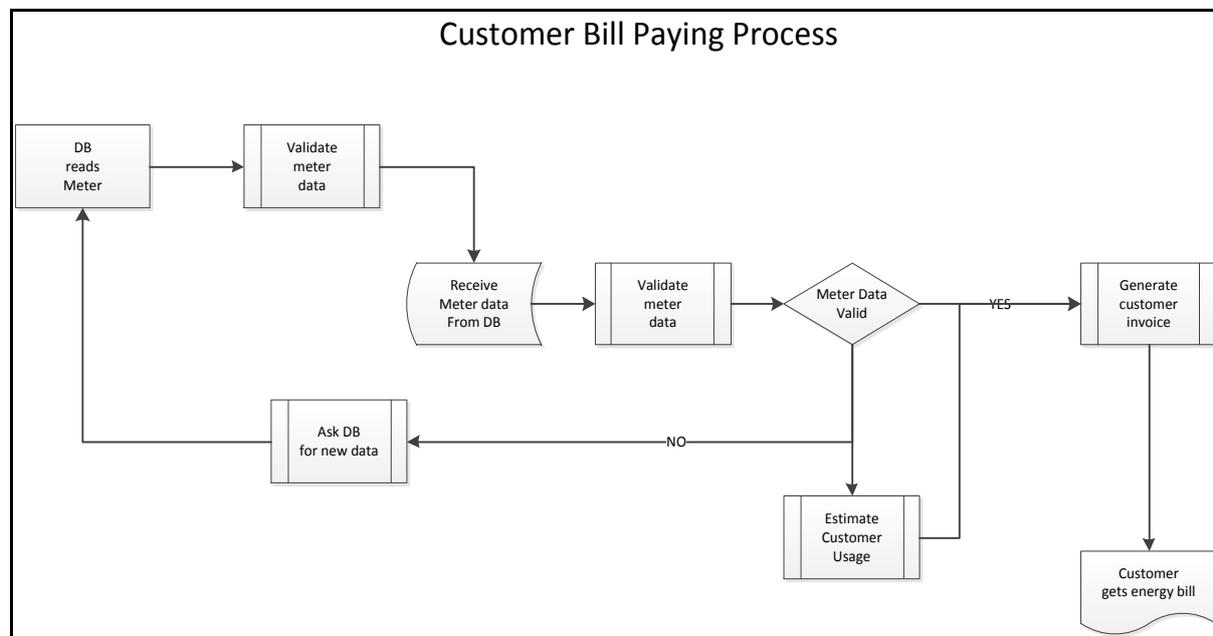
⁵ Ibid, p. 6.

number of customers in Victoria who do not have metering capable of delivering monthly billing. As many customers may not desire a shorter billing cycle, or be able to benefit from a shorter billing cycle, the potential benefits of smart meters are not relevant when considering this potential change.

Customer bill validation

Figure 1 shows a typical process undertaken by a retailer prior to issuing a bill.

Figure 1: Customer bill paying process



Retailers are committed to ensuring that bills are issued to customers in a timely fashion, however, they also would like to ensure that they are correct as possible prior to them being issued. When retailers receive data from distribution businesses they undertake an extensive validation process to ensure bill integrity.

Figure 1 indicates that restricting backbilling to three months would result in some retailers expediting the validation process in order to produce a customer bill or increase the issuing of bills based on estimated reads. Retailers use this validation process to address such issues as changes to standing data initiated by either distribution or meter data providers, through to network tariff reassignments. As retailers would be unable to recover undercharged amounts under the proposed policy reforms (should validated meter data indicate an initial underestimation) then this risk would be reflected in higher premium risks applied to customer tariffs. This rise in premiums will impact all customers.

As this proposed change only relates to delays caused by retailer billing system failures, it may introduce a disincentive for system upgrades. Retailers need to upgrade systems for a variety of reasons, including the implementation of changes to government policies such as concession frameworks.⁶ It also may introduce uncertainty around whether the delay relates

⁶ In the 2013-14 state budget the Victorian Government announced the introduction of the Excess Energy Concession. The Excess Energy Concession (EEC) will affect concession households with annual electricity bills of more than \$2,763 or gas bills of more than \$1,462 for the six winter months (GST inclusive). Concession households with high energy usage will need to apply for the new Excess Energy Concession to receive a concession on the energy consumed above these amounts. The Department of Health and Services (DHS) have proposed a complex process to implement the EEC which requires significant changes to back end billing systems and bills.

to a system error or a separate issue. For example, a billing delay may occur whilst a retailer is upgrading their system, although the delay may not be related to the failure of retailer's billing systems. This may introduce customer confusion over the actual limit. This confusion will likely result in increased costs for retailers through increased interaction with customers and the Ombudsman.

As outlined above, there are indirect costs associated with the proposed change. For example, Ombudsman complaints will increase as retailers shorten their data quality validation processes and introduce risk premiums into their retail tariffs. More importantly, as retailers hold the relationship with consumers and are their primary contact point with the NEM and its underlying market, this proposal would dilute one of the key validation processes that has underpinned the integrity of the NEM.

Similarly, the ERAA has developed a set of customer service principles that members voluntarily adopt during times of natural disaster. Members may suspend billing to customers located in a natural disaster area.⁷ Whilst this proposed reform will not impact the suspension of billing to customers located in the disaster impacted area, there is a risk that customers may misunderstand this difference.

Application of policy change

The ERAA would not support applying this restriction on backbilling to retailers only. As retailers rely on numerous parties to produce a validated customer bill (as shown in Figure 1), the ERAA would assume that the same restrictions would apply to these parties. Distributors are able to seek revenue for network charges for missing data past the three months. As retailers settle distribution charges on a monthly bill, and recover these charges from consumers through quarterly accounts, it would seem financially irresponsible for the Victorian Government to assume that retailers will absorb these costs as they won't be able to recover these amounts. If it is assumed that this is a consequence of the policy reform, then retailers will factor this in to retail tariffs. If the Victorian Government intends to also exclude retrospective charging of network charges by distributors (especially as meter data is revised in some point in time) then one would assume that distributors would factor this in the pricing of retail prudentials. Again, these costs will be reflected in higher retail tariffs.

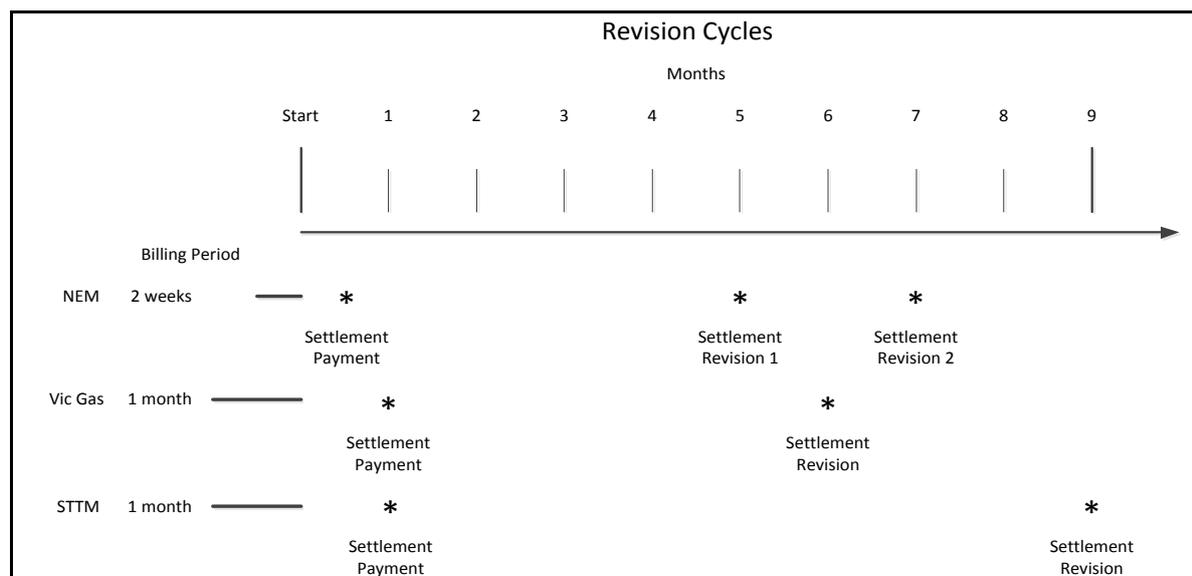
Backbilling and the wholesale markets

The ERAA provides the following information to the Draft Consultation Paper relating to wholesale market settlement and the interaction with retailer backbilling, as requested in the Draft Consultation Paper.

Wholesale markets operate a process to financially settle market participants for their sales and purchases of energy in the market for a billing period. There is an initial settlements payment made soon after the billing period ends; for electricity it is two weeks after the billing period and for gas it is a month after the billing period. However, not all the necessary meter data is available when the initial settlements payment is made. Therefore, wholesale markets operate a revision process which allows for additional changes to data and charges to be included in the settlements process (as shown in Figure 2). For example, this would include customer meters not previously read, customer movements (e.g. retrospectively transferred customers), corrections to meter data and adjustments to wholesale charges.

⁷ This set of customer service principles is a voluntary undertaking by ERAA members to assist customers impacted by a natural disaster event (such as floods and bushfires). One of the principles states that billing and credit collection cycles would be temporarily suspended for customers impacted directly by the event.

Figure 2: Revision cycles in the wholesale markets



To account for this additional data each market operates different settlement revision cycles. The NEM undertakes an initial revision (Revision 1) at approximately five months and then again at approximately seven months. Unless the proposed reforms allow for adjustments as a result of the receipt of better quality meter read data beyond three months, retailers would not be able to account for these latter revisions, and would account for this risk by applying higher premiums to all tariffs.

Energy efficiency audits

At any one time there will be members of the community facing financial hardship. This can be either temporary hardship, where someone might be going through a difficult period, or chronic hardship, where people are indefinitely in a financially disadvantaged position. Energy retailers provide hardship programs for people who are experiencing temporary difficulty in paying for their energy consumption.

Addressing energy hardship is a shared responsibility of governments, energy retailers, community groups and individuals. While energy retailers make efforts to identify and contact customers who are having difficulty paying their bills, they are limited in their ability to proactively identify customers who require support. It is ultimately up to the customer to engage with the retailer to advice of a need for support, and to then participate in their hardship support program.

Energy retailers accept that some of their customers might not be able to pay their energy bills from time to time. To help these customers out, retailers have support mechanisms to assist customers to manage energy debt. These include payment plans, flexible payment arrangements and advice on how customers can save on their energy bills. While these might assist those in temporary hardship, these support mechanisms alone are not the solution to more chronic hardship.

Providing customers in hardship with free energy efficiency audits comes at a cost. These costs will be passed on to all consumers unless audits are funded by government. An energy audit might, for example uncover a need for appliance replacement. Hardship customers are by definition in financial difficulty and may not be able to afford the purchase of a new appliance. Should the opportunities for energy efficiency require upgrades to the home, the

split incentives faced by rental tenants also remain. Whilst some opportunities for funding under the existing Victorian Energy Efficiency Target (VEET) scheme exist, the majority of 'low hanging fruit' that could suit customers in hardship may have already been picked.

The current arrangements where retailers have the option of providing an energy audit where they believe it will be beneficial are more appropriate. This approach reduces the likelihood that audits will be requested where they are unlikely to be of benefit. Rather than introduce this policy initiative, the ERAA would support increasing Government funded programs such as the Home Energy Saver Scheme (HESS).

Whilst we believe a BIA or a RIS would show that costs of requiring the offer of free audits would outweigh the benefits that they would provide to consumers, we believe these assessments are necessary should the Government retain their support for this proposal.