

Mr Greg Wilson
Chairperson
Energy Regulatory Review
Essential Services Commission
2nd Floor, 35 Spring St
MELBOURNE VIC 3000

26th March 2008

Dear Mr Wilson

RE: REVIEW OF REGULATORY INSTRUMENTS

Thank you for the opportunity to provide comment on the above review, currently being undertaken by the Essential Services Commission (ESC). Australian Power & Gas is supportive of any review that aims to improve and streamline the regulatory framework in Victoria and reduces compliance costs for energy retail businesses.

Australian Power & Gas understands that there is significant work being undertaken by the Retail Policy Working Group on determining a retail regulatory framework, in the context of a move to a national regulator. Notwithstanding, we believe that considerable gains can be made by updating the current Victorian energy regulations in the Review of Regulatory Instruments, which would enable a smooth transition to a national regime. In fact any changes that are made to the regulations under the ESC's review should take into account the objectives under the national reform process.

Australian Power & Gas therefore holds the view that the following principles should be adhered to in the Review of Regulatory Instruments:

1. Eliminate inconsistency with other jurisdictions given the work undertaken to move to a national regulatory environment;
2. Remove duplication with existing laws and regulation;
3. Simplify and streamline regulations to minimize compliance costs;
4. Avoid overregulation that counteracts the outcomes of a competitive market - rationalize regulations to only those that are specifically required where there is evidence of market failure.

We see the last principle as critical given the recent observations in the review undertaken by the AEMC on the competitiveness of the Victorian market, and in the outcomes of the Productivity Commission's recent report. We are also concerned that overly prescriptive regulation may stifle innovation and constrain retailers' ability to differentiate. Importantly, it

must be recognized that where retailers have a clear incentive to provide a service or information in a competitive market, there is a diminished need to regulate it.

Australian Power & Gas supports the objectives to streamline and simplify the regulations to a reduced number of instruments. The current regulatory environment in Victoria sees a plethora of guidelines and codes and there is evidence of repetition. Such a complex and confusing web of instruments adds to the regulatory burden places upon retailers in compliance. We are also supportive of the removal of redundant regulations.

We note in your letter dated 22nd February 2008 inviting submissions to the Review of Regulatory Instruments, references were made to the recent AEMC Second Draft Report, released in December 2007. The AEMC has now released a Second Final Report in late February, and it is to this report and the recommendations stemming from it that we have based our comments in the following pages.

If you have any queries in relation to our comments, please do not hesitate to contact me on 0419 350 533.

Yours sincerely

Libby Hawker

Regulation and Compliance Manager Victoria

INFORMATION PROVISION

Assess the obligations relating to the provision of information to customers to improve their access to the competitive market, in view of the increasing effectiveness of energy retail competition in Victoria (as noted in the Australian Energy Market Commission's Second Draft Report on the Effectiveness of Competition in Electricity and Gas Retail Markets in Victoria published in December 2007).

Australian Power & Gas notes the recent recommendations on information provision to customers made by the AEMC in their Second Final Report, as part of their review into the competitiveness of the Victorian market. These being:

"6. The Commission recommends that all retailers (new as well as host retailers) determine and publish standing offer prices and other terms and conditions to cover the retailers' obligations to offer to supply and sell energy and deemed supply arrangements. The Commission also recommends that retailers be required to publish in appropriate newspapers a summary notice advising consumers when standing offer prices are to change.

7. The Commission recommends that the Essential Services Commission of Victoria develop a guideline setting out the requirements regarding the format of the publication of retailers' own standing offer prices.

8. The Commission recommends that the Essential Service Commission gathers and publishes on its website current details of all retailers standing offer tariffs in an accessible format."¹

Australian Power & Gas is unconvinced of the benefits to regulating the publishing of standing offers and deemed supply arrangements and of the justifications to creating regulatory instruments to mandate the format. We see merit in the AEMC's concerns in the present rules surrounding the gazetting of standing offer terms and conditions. We would argue that such a process is in fact inconsequential to increasing customers' awareness, considering the average consumer would have little knowledge of the publication of gazettes. However, we disagree that publishing standing offers in newspapers is an effective alternative. Newspaper publication is costly for retailers, particularly when it is a medium that exhibits uncertainty in its effectiveness in coverage of relevant customers. We are doubtful that the benefits derived from such regulation outweigh its cost of implementation and management.

It is interesting to note that in the AEMC's First Final Report of the *Review of the Effectiveness of Competition in Electricity and Gas Retail Markets in Victoria*, retailers surveyed in rating the effectiveness of sales channels for attracting customers, found newspapers and other print media to be relatively ineffective². Given the AEMC's own observations on the effectiveness of

¹ AEMC 2008, *Review of the Effectiveness of Competition in Electricity and Gas Retail Markets in Victoria*, Second Final Report, 29 February 2008, Sydney; summary ix.

² AEMC 2007, *Review of the Effectiveness of Competition in Electricity and Gas Retail Markets in Victoria*, First Final Report, 19 December 2007, Sydney; see Table 5.2 page 66 summarizing findings of the Retailer Survey by Wallis Consulting Group.

newspapers in being used as a medium to connect to customers, we are surprised that their advice is to publish tariffs rates in a “relevant local newspaper”³. Likewise we do not support any recommendation suggesting the ESC should govern the format of any standing offer publication. As competitive companies, retailers have an interest in making their products widely publicized, simple to understand and easily comparative, so as to attract customers and allow the savings derived from switching to them to be easily recognizable.

Though we question the usability and usage levels of the ESC’s current energy comparator by the average consumer, Australian Power & Gas sees no issue with the AEMC’s recommendations that the ESC gathers and publishes on its website current details of all retailers standing offer tariffs in an accessible format⁴.

Product Information Sheets, Guideline 19: Energy Product Disclosure

Australian Power & Gas believes that retailers are in the best position to understand consumers needs and have a strong incentive to respond to them in providing information on the products and services they offer. As the findings in the AEMC First Final Report suggest, energy is a low-involvement product and customers have vigorously switched and responded to the competitive market in Victoria, largely as a result of direct marketing by retailers, not through self searching of information⁵. Despite the ESC’s extensive regulations surrounding online publishing of product information statements through Guideline 19: Energy Product Disclosure (‘Guideline 19’), very few customers initiate investigations into procuring energy services from retailers on their own. In addition, there appears to be evidence that despite the mandating of product information statements, customers understanding of energy products have not significantly been impacted⁶. We believe the current regulation surrounding product information provision has been misdirected and is ineffective, targeting only a small proportion of consumers.

Further, Guideline 19 has gone beyond the legislation of publishing terms and condition on a website to forcing retailers to maintain an onerous and costly web based search facility, all for that very small proportion of consumers who are interested in investing large amounts of time self-searching. Guideline 19 in its present form is particularly onerous and costly to retailers who outsource web development work. Clause 2.6 of Guideline 19 requires that a Product Information Statement must be updated within five business days of any change to the information presented⁷. We are of the view that small second tier retailers who outsource webpage work are at a disadvantage to achieving compliance in this requirement compared to larger retailers who undertake their own development, as the timeframe provided to make changes through a third party is unrealistic.

³ AEMC 2008, Op cit, page 21

⁴ Ibid Summary ix

⁵ AEMC 2007, Op cit, Executive Summary ix and page 8

⁶ Ibid page 106.

⁷ Essential Services Commission, *Guideline No. 19: Energy Product Disclosure*, December 2005 page 4

In a competitive market, retailers are best positioned to determine and provide product information in a manner that will innovatively and adequately respond to customers needs. Further it is in retailer's best interests to do so to attract customers, and in accordance with disclosure requirements of general consumer law. We do not believe regulations as prescribed in Guideline 19 should be maintained beyond the current expiry date for consumer safety net provisions and should be phased out as part of any ESC's plan for regulatory instrument review.

We strongly disagree with the AEMC's recommendation that the ESC develop a guideline setting out the requirements regarding the format of the publication of retailers' own standing offer prices. Moreover we do not support any move that would add standing offers to the existing requirements under Guideline 19. This would not only be in conflict with the AEMC's own advice that the publication of all retail offers should be avoided⁸ (which is what effectively would ensue if both market offers and standing offers are published via Guideline 19) but also would add considerably to the regulatory burden on retailers. If publication of prices on a retailer's website must be mandated, it should not include market offers and should be in a format as determined by the retailers to be the most suitable for its potential customers.

Other Information Provision

Australian Power & Gas considers that the overarching intent of any review by the ESC of regulatory instruments should be to remove those regulations that are unnecessary given the overwhelming evidence of the competitiveness in the Victorian market. Consistent with our view that regulation should only be used where there is evidence or threat of market failure, we believe many regulations are not required given that there is an obvious incentive for retailers to act. Regulations surrounding information provision on bills and bill format is now redundant. Market forces in a competitive environment provide an incentive for retailers to ensure information on bills is as consistent and as clear as possible. Retailers need to minimize customer complaints and enquiries and to maintain a high level of service which will stop customers from switching away. Further, prescriptive regulation, as exists in the Energy Retail Code's rules on billing information and bill format, stifles innovation in retailer's service provision.

DUPLICATION AND INCONSISTENCIES

Examine whether the obligations in regulatory guidelines would be better placed in existing codes and whether existing obligations are appropriately drafted or unnecessarily duplicate other regulation. This approach is consistent with the findings of the Productivity Commission's recent Draft Report: Review of Australia's Consumer Policy Framework, published in November 2007.

⁸ AEMC 2008, op cit page 18

Australian Power & Gas believes reiterating obligations across various instruments and duplicating existing general consumer law does not increase the protection to customers but only serves to add complexity and ambiguity to compliance. Currently, various rules are haphazardly duplicated and scattered through the ESC current regulatory instruments.

Examples of this include:

Contract information provision – covered in the Energy Retail Code clause 23.4 and also in the Marketing Code of Conduct clause 6.3;

Cancellation and disclosure of cancellation rights – covered in the Energy Retail Code clause 23.4, 23.1, Energy Retail Code Appendix 4; Marketing Code of Conduct clauses 6.3 and 6.5;

Contract variations and advice of – Retail Electricity Licence clause 9.2, Retail Gas Licence clause 10.2, Energy Retail Code clauses 20, 20.1, 26.4 (b);

Expiry of a fixed term contract – Energy Retail Code clause 24.3, Retail Electricity Licence clause 9.5, Retail Gas Licence clause 10.7;

Dispute resolution – Marketing Code of Conduct clauses 10.1, 10.2, 10.3; Energy Retail Code clauses 28.1, 28.2, 28.3, 4.2, Retail Electricity Licence clauses 17.1, 17.2, 17.3, Retail Gas Licence clause 20; Electricity Customer Metering Code clause 1.7.

Australian Power & Gas supports any move by the ESC to rationalize these regulations into one area or within one instrument but while doing so, the ESC should remove all regulations that are duplicated in general consumer law. We agree with the findings of the Productivity Commission's in their recent draft report, that streamlining of industry specific consumer regulation and the transfer of responsibility to the national level is required.⁹ Australian Power & Gas also believes that regulation should only be applied where market failure warrants such regulation.

Under any review of current regulatory instruments the ESC should give consideration to the Fair Trading Act, Trade Practices Act and Privacy law provisions in condensing regulations to a simple and streamline form. This would be consistent with the work undertaken currently by the Retail Policy Working Group in formulating recommendations for a new national regulatory regime¹⁰. These existing laws adequately protect customers against unbalanced market power and inappropriate behaviour by retailers and duplicating them or having regulations inconsistent with them is unnecessary and adds significant compliance costs to retailers.

Unnecessary duplication of consumer protection law is evident in the provisions surrounding marketing conduct, disclosure of contract information in sales agreements and cancellation

⁹ Productivity Commission 2007, *Review of Australia's Consumer Policy Framework*, Draft Report, Canberra; Vol 1 page 58.

¹⁰ Ibid page Vol 2 page 416.

rights and to an extent, cooling off provisions in the Energy Retail Code. We strongly believe the ESC should trim existing duplication within the current regulations and remove those obligations that replicate existing consumer protection law from any regulatory instrument.

Jurisdictional Harmonisation

Australian Power & Gas believes that the ESC should take the opportunity to remove all inconsistencies with other jurisdictions as part of any review of the current regulatory instruments. Harmonization with other jurisdictions will go some of the way to remove the regulatory burden facing retailers operating in a national market. Further if Victorian regulatory instruments are reviewed and updated, we see no benefit in continuing with jurisdiction differences at this stage of the national reform process.

As noted in the Productivity Commissions report, jurisdictional inconsistency has added considerable to compliance costs¹¹. We see that it would be only sensible to remove unnecessary jurisdictional differences if there is an overhaul of the current regulatory instruments. Some key areas that are subject to inconsistency with other jurisdictions include greenhouse graphs; over and undercharging, contact hours for marketing and information disclosure.

Consider the compliance and reporting requirements arising from the existing framework and whether improvements can be made to reduce or remove unnecessary administrative burden, consistent with the Victorian Government's policy initiative.

Just as consumer protection should be rationalized to minimize jurisdictional divergence, so too should compliance and reporting requirements. Australian Power & Gas believes the current Information Specification (Service Performance) requirements should take into account the statistics sought by other jurisdictional regulators. We believe an attempt should be made to cost-justify each required statistic that is inconsistent with other jurisdictions.

OTHER POTENTIAL CHANGES

Australian Power & Gas believes it would be timely to review a number of regulations that currently are confusing, unessential and questionable as to the intent of the regulation.

Examples of such regulations include:

- Bill Content – in the Energy Retail Code Clause **4.2 Information**:
 - (e) whether the bill is based on a **meter** reading or is wholly an estimated bill;

¹¹ Ibid page 416.

(f) whether the bill is based on any substituted data (consistent with the **retailer's** obligations under clauses 17.2 and 23.2 of the *Electricity Customer Metering Code*);

The content of substituted data within a bill maybe of little consequence to customers and we question the requirement to inform customers when substitution is made and the basis of which substitution is made; particularly in the cases when substituted data is never replaced and is treated as actual. Further there is often confusion as the terms 'estimated' and 'substituted' are undefined and often interchanged as substituted data may be used as the basis of an estimated bill.

- Overcharging – in the Energy Retail Code Clause **6.3**:

Where a **retailer** has overcharged a **customer**, whether this becomes evident as a result of a review under clause 6.1 or otherwise, the **retailer** must inform the **customer** within **10 business days** of the **retailer** becoming aware of the error and repay the amount in accordance with the **customer's** reasonable instructions or, if no reasonable instructions are given, by crediting the amount on the **customer's** next bill.

Seeking reasonable instructions from a customer is superfluous for small amounts if the bill is not a final bill, as the cost of seeking instructions may outweigh the amount in question.

- Refusal to provide acceptable identification or refundable advance, clause Energy Retail Code Clause 13.4

A **retailer** may **disconnect** a **customer** if the **customer** refuses when required to provide **acceptable identification** (if the **customer** is a new **customer** of the **retailer**) or a **refundable advance** but only if:

(b) the **customer** has continued not to provide the **acceptable identification** or the **refundable advance**.

The classification of customers as "new" is unclear particularly if the previous customer to the site has not informed the retailer that they have moved out.

- Disconnection for Denying Access to a meter, Energy Retail Code Clause clause 13.3.

A **retailer** may **disconnect** a **customer** if, due to acts or omissions on the part of the **customer**, the **customer's meter** is not accessible for the purpose of a reading for three consecutive bills in the **customer's billing cycle...**

The minimum time that a meter is not accessible (including the notification period) that could lead to disconnection, should not exceed the final revised settlement timeframe in the wholesale market (30 weeks).

- Retail Charter – Energy Retail Code Clause 26.2 (d)

"A **retailer** must periodically include a statement on a **customer's** bills that, on



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request, the **customer** is entitled to a free copy of the **retailer's** charter.”

Inconsistent with the requirements in other jurisdictions; the customer has already been provided with a copy of the charter at the beginning of the contract and on request. Further a copy is on the website. Periodic bill messages appear to be excessive.