Khayen Prentice
Retailers Obligations to Customers – Energy Retail Code Amendments
Essential Services Commission
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By Email: Khayen.prentice@esc.vic.gov.au

Dear Ms Prentice,

Lumo Energy, (Lumo), would like to thank the Essential Services Commission, (Commission), for the opportunity to provide further submissions to the review of Retailers Obligations to Customers – Energy Retail Code Amendments.

We would firstly like to highlight what appears to be an error in the consultation paper. The second dot point under 'if the customer does not respond to further written and/ or telephone communications' (as detailed in the consultation paper under the general steps undertaken by the retailer) states that the customer is returned to a normal billing cycle. As the billing cycle /frequency is distinctly different to the collections cycle, which consists of reminder and disconnection notices, this is technically incorrect. The implication is that retailers change the billing cycle specifically for payment plans.

When establishing a payment plan/ arrangement we normally don't alter the invoicing cycle however, the systems do prevent the issuing of Reminder and Disconnection notices whilst the plan is active.

Lumo is encouraged that the requirements of Clauses 11.2, 12.2 and 15.2 of the Energy Retail Code (ERC) are being reviewed with the consideration that there is a mutual relationship involving both retailers and consumers and the intrinsic link between the nature of the regulations and consumer behaviour.

We do not see how the wording of the current regulation, clause 13.2, prevents a customer that has only failed one payment plan from being disconnected, as the requirement is that a retailer must use best endeavours to contact a customer and that the customer has accepted a payment plan within five business days.

Clause 13.2 then interacts with clause 11.2 requiring a retailer to assess, in a timely way, whatever information is available. As there is no information available due to no contact, there should be not grounds for any assessment. Even based on the original payment plan that failed as it was clearly deficient in either value or agreement, and there is no demonstrated reasonable assurance from the customer of their willingness to pay through failure to contact the retailer when prompted.

If contact was made with the customer, the retailer would offer the appropriate assistance otherwise, regardless of whether it is the first or second instalment plan, the retailer would not be able to obtain sufficient relevant information to appropriately assess a customer's capacity to pay.

Using a process of elimination, the remaining obligation is compliance with best endeavours to engage the customer, consistent with clause 13.2, detailing the availability of a subsequent payment plans is the remaining obligation, not the details of that subsequent payment plan, where the failure is adherence where contact is not made.

Establishing a mutual responsibility between the customer and retailer encourages retailers to utilise alternative methods and mediums to engage customers while not compromising the integrity of the protections.

Lumo suggests that, to achieve this, the wording of clause 13.2 be amended to state:

a) Despite clause 13.1, a retailer must not disconnect a domestic customer (other than by remote disconnection) if the failure to pay the retailers bill occurs through a lack of sufficient income until the retailer has:

    i. Used best endeavours to comply with clause 11.2 by;
        i. Assessing, in a timely way, the customers capacity to pay; or
        ii. If such an assessment can not be completed, used best endeavours to communicate information regarding the assistance available to that customer.

The above wording would provide flexibility to comply with both assessing where information is made available i.e. contact with the customer, and failing that contact, the information provided to customers suitably outlines the customers options for assistance.

We do however believe that the regulations should clearly stop at making judgements about the effectiveness of the content and likewise the methods and mediums used by retailers will differ significantly.

Businesses employ, consult and outsource marketing and brand recognition activities across a large number of mediums based on what they know about their customer base and or their target market. This is done because each individual responds to different forms of media, communication and or marketing approach in different ways, making a uniformed, or regulated, communication method redundant in capturing all of the intended targets. This establishes no useful best industry practice benchmark.

The practicality of regulating the information communicated to customers in these situations to prevent customer ignorance or embarrassment is bordering on being impossible to achieve full market saturation and likewise obliging customers to respond would be redundant if the customer simply asserts that they didn't receive it or were too embarrassed to act.

We recommend that, rather than expecting the form, content and medium or placing an obligation on the customer to respond within the regulation, appropriate guidance be provided to retailers and or education of customers regarding the rights and responsibilities prior to disconnection is invested in by the Commission.

We also note that the intention of the proposed changes to the ERC, through this consultation, contradict the level of detail in the amended ERC Version 8, 1 April 2011, in terms of the addition of clause 13.2 (b).

b) Despite clause 13.1, a retailer must not disconnect supply to a domestic customers supply address by de-energising the customers supply address remotely if the failure to pay the retailers bill occurs through a lack of sufficient income until the retailer has:

    i. also complied with clause 11.2; and
    ii. contacted the customer in person or by telephone, or, in the case of a remote disconnection, after unsuccessfully attempting to contact the

customer once in person or twice by telephone, contacted the customer my mail, email or SMS; and

iii. when contacting the domestic customer, set out all of the options for the customer; and
iv. the customer has not accepted an instalment plan within five business days of the retailer's offer.

The contradiction being that, under normal circumstances excluding a smart meter, customer contact is not a mandatory requirement prior to disconnection and it is recognised that the disconnection could reasonably occur even when the customer is not engaging in the process. However, where a smart meter is present, the customer can not be disconnected with out first being contacted by the retailer in person, by telephone, mail, email or SMS if conducted remotely.

This makes any disconnection of a customer with a smart meter wrongful where contact is not made with the customer and then subsequently wrongful where contact is made for not negotiating an appropriate payment plan or arrangement, unless there is a detailed record of the customer not participating with the process.

This fundamentally means that the liability for wrongful disconnection simply increases as meters are deployed and or customers in Victoria can not be disconnected for non payment.

Consulting on the application of clause 13.2 (a) and how it interacts with clause 11.2 with a mandated deployment of smart meters for the whole of Victoria appears to be a redundant exercise unless the requirement of clause 13.2 (b) is equally varied to accommodate the proposal.

We also view the obligations detailed under clause 13.2 (b) to be considerably more onerous than the existing requirements without consideration of the implications and associated costs. Clause 13.2 (b), (ii) specifies that initial contact, in person and via telephone twice, is required then failing that further attempts by mail, email and SMS, however the existing requirements only require contact in person for properties within 60kms of the Melbourne Central Business District (CBD).

As there is no physical limitation on this requirement, its is assumed that in the event of a smart meter that is being remotely de-energised, a site visit will have to be conducted regardless of the customers proximity to the Melbourne CBD.

We seek further advice from the Commission regarding the intent of clause 13.2 (b), (ii) in relation to contact in person, the interaction between this consultation and requirements of the clause and whether this consultation requires any mutual obligations between retailers and customers where a smart meter is present.

Specifically in relation to Clause 15.2 (b), Lumo supports the recommendation that the sub-clause be deleted from the ERC. However, we recognise that there would need to be a method defined for determining when a retailer's liability under the Wrongful Disconnection requirements would be determined.

We support the Commissions recommendation made to the Minister, during 2010, to cap payments to 10 business days in line with clause 15.1 (a), establishing a fair and reasonable time of which to expect that a customer would have sought to rectify the reason for the disconnection. However in instances where this benchmark does not apply, there is only the evidence of the re-energisation service order being raised by the retailer and the scheduled date.

The other proposal being that the obligation to the customer remains on the retailer, then the distributor and retailer settle any difference between the two parties. Which is reasonable however, there is no mechanism in which this can be achieved through the distribution regulation and or Use of System Agreements.

Additionally, if the second option is used as a preference, settlement between the two parties remains unequal in value through the Guaranteed Service Level provisions in the Distribution Code, January 2011, Clause 6.2 Failure to supply, where a distributor is only liable for $50.00 per day if connection is not completed at the agreed date.

The imposition of $250.00 per day, pro rated, for wrongful disconnection on retailers verses the ability to recover equal value from distributors for a retailer, unfairly maintains a higher level of liability for retailers for any disconnection and or delayed reconnection.

While this consultation paper focuses on the compliance obligations for the clauses 11.2, 13.2 and 15.2, there are other liability and procedural burdens that need to be specifically addressed and incorporated as part of these amendments.

To accept these changes, we believe that the interaction between each clause should be assessed in context with their liability, in practical terms, and more importantly how they will be viewed in the assessment of wrongful disconnection.

We envisage, that with the mandated rollout of smart meters across the state, the application of clause 13.2 (a) becomes redundant and clause 13.2 (b) prevents disconnection for non payment due to the intrinsic interaction between clauses 13.2 (b) and 11.2.

The addition of 13.2 (b) imposes cost on retailers that has not been appropriately explored in context of the process that a retailer undertakes prior to disconnection to meet best endeavours requirements and has implications for the wider assessment of wrongful disconnections where a smart meter is present.

If that assessment includes impractical requirements or requirements that are beyond the existing framework retailers will inevitably be significantly impacted by these changes and the associated liability.

If there are any questions regarding this matter please contact Ross Evans on 03 8680 6426 or via email at Ross.Evans@lumoenergy.com.au

Regards,

Ross Evans
Regulatory Compliance Analyst