TRU energy

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Energy Regualtory Review
Essential Services Commission of Victoria
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By email (energyregulatoryreview@esc.vic.gov.au)

TRUenergy response: ESC Review of Energy Regulatory Instruments

TRUenergy welcomes the Essential Services Commission of Victoria (ESC) Review of Energy Regulatory Instruments.

General Comments

Victoria is almost universally acknowledged as having imposed the most onerous and costly energy regulatory framework in Australia. In part this reflects Victoria's position as the red tape capital of Australia[1]. Victoria was one of the first jurisdictions to commence FRC and implement a new rules framework, but subsequently failed to implement the reforms recommended in the 2004 competition review. To date it has been apparent that energy regulation in Victoria can only expand, and the continued imposition of new regulation in the absence of credible cost-benefit analysis has dogged businesses in the sector.

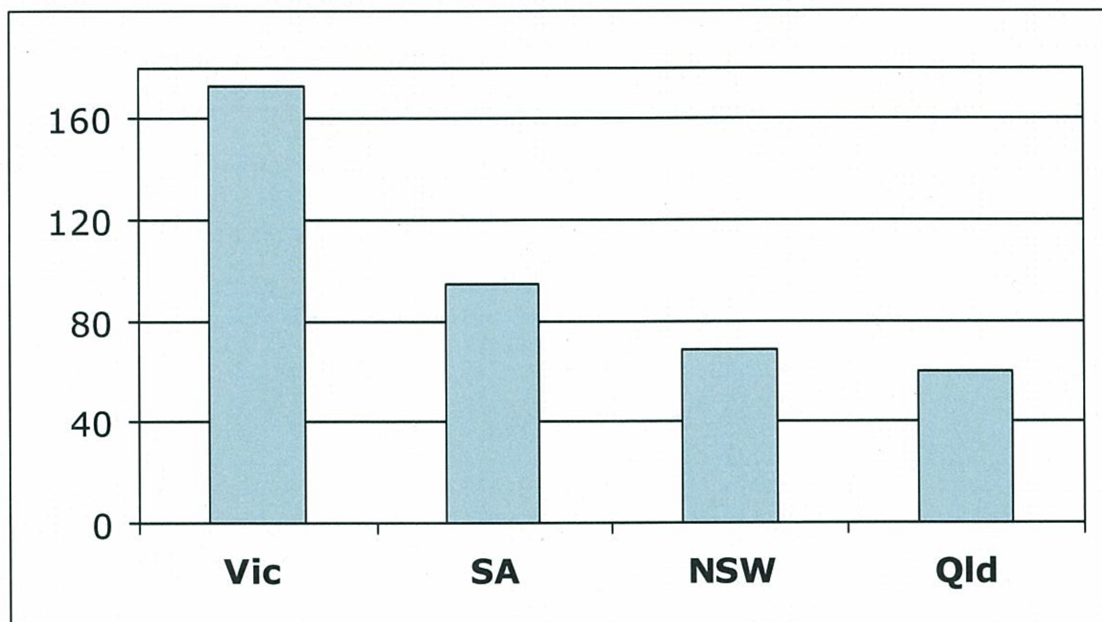
The Victorian energy regulatory framework was developed in 2001, prior to the commencement of FRC and with limited experience of how the competitive market would operate. During 2006, some five years after the initial work conducted in Victoria (and other jurisdictions) Queensland developed its regulatory framework for FRC. Over the course of nine months this involved detailed working group consultation with community and retail representatives co-ordinated by independent consultants, with all parties contributing the knowledge of their experiences over the previous five years in the south-eastern markets. As a consequence the Queensland regulatory framework represents the most current evaluation of the appropriate balance between consumer protection and minimising the regulatory burden.

For comparison, the following chart shows the number of pages of in force retail energy regulation imposed across the States. Victoria has three times the number of pages of regulation as Queensland. Queensland is both the most recent and most efficient regulatory framework established, delivering comparable retail

[1] Senator Michael Ronaldson, "*Ronaldson Releases 2006 Red Tape Shame File*" sourced from the Parliamentary Library Analysis, Parliament of Australia, calculated from in force Acts and regulations as at December 2006-January 2007

consumer protection outcomes to Victoria through a simpler and more streamlined regulatory framework.

Figure 1: Pages of retail regulation by jurisdiction, 2007



Based upon the Victorian Government's own estimates compliance costs should represent approximately 3.6% of total costs[2]. Assuming Queensland represents a best practice benchmark, the additional cost of the Victorian regime based on a total cost-to-serve estimate of $95 per customer is $6.84 per account,. Across 4 million customer accounts (gas & electricity) the additional cost in Victoria is $27 million per annum. This is a significant cost imposed on Victorian retail consumers, with insufficient evaluation, such as that which might have been achieved through a Regulatory Impact Statement process, as to whether the benefits of the additional regulatory burden outweigh these costs.

We would urge the ESC to use the Queensland energy regulatory framework as its benchmark in conducting its current regulatory review.

Specific Comments

1. Removal of regulatory provisions that may have become redundant

<u>Small Business</u>

For business customers energy is not an essential service in the sense that it is not a quality of life dependency - it is a business input. Businesses deal with far greater complexity in the form of labour, supply, financial and tenancy contracts as part of their daily operations than obtaining an electricity or gas supply. It has

[2] Victorian Government, *Reducing the Regulatory Burden*, 2006, page 4

yet to be demonstrated by the regulator why the general TPA misleading and deceptive as well as unconscionable conduct provisions and the Victorian FTA do not provide an appropriate level of protection to small businesses negotiating energy supply contracts

There appears to be no justification for continuing with industry specific safety net coverage for business customers contract terms. This is consistent with the findings and recommendation of the ESC's 2004 competition effectiveness review as well as the Victorian Government's decision to remove price oversight for small business from January 2008.

All States allow for aggregation of energy consumed at separate sites to the next level of consumption threshold - other than Victoria. The ESC examined this issue as part of its 2004 competition effectiveness review and stated that section 36 of the Electricity Industry Act—and similarly, section 43 of the Gas Industry Act—provides sufficient flexibility to permit amendment of the current orders[3] to enable customers with multiple associated business supply points to elect not to be a relevant customer.

TRUenergy recommends that the ESC should raise this matter for consideration by the Victorian Government. As the provisions currently stand, Victorian businesses are disadvantaged compared to their counterparts in other states, which can use the flexibility to aggregate across supply points and negotiate terms and conditions that are more appropriate to their needs and superior to those afforded by the Retail Code obligations.

Credit management provisions of the Retail Code

Credit management obligations are imposed in other States and jurisdictions through a single regulatory instrument, such as a Retail Code. By contrast, credit management obligations in Victoria are detailed in the Retail Code, as well as in Guideline 1- Credit Assessment; Guideline 4 - Wrongful Disconnection Operating Procedures; and Guideline 21 - Energy Retailers' Financial Hardship Policies.

Much of the Retail Code obligations associated with assessing a customer's capacity to pay are also repeated in the Victorian Government's hardship amendments to the Electricity and Gas Industry Acts made in 2006. Areas of repetition include the need to offer customers experiencing difficulty in paying their bills; instalment plans; access to financial counselling assistance and energy efficiency advice. Further, both the Retail Code and the hardship legislation require retailers not to disconnect a customer that is meeting the terms of their instalment plan. The Retail Code obligations that mirror the hardship legislative amendments should be removed from the Retail Code as they servr no practical purpose.

There are a number of Credit Management provisions in the Retail Code that disproportionately shift responsibility for meeting the financial obligations of supply for customers not paying for consumption from the customer to retailers. This results in both higher than necessary costs in collecting debt for retailers and

[3] Victorian Government Orders that relate to the definition of 'relevant' customer for electricity retail supply and gas retail supply and the application of the regulatory energy safety net

those customers with good payment history subsidising poor payers. Examples of these provisions include:

- No explicit obligation on customers to pay their final bill when they transfer to another retailer. The success rate on the collection of final bills payments from customers is around one third.
- Retailers are required to issue a new pay by date for the initial Bill, Reminder Notices and Disconnection Warning as part of the billing cycle. Energy is the only good and/or service that we are aware that creditors are required to change the Due Date of the original invoice to a new Due Date for reminder notices. The "pay by" or Due Date should remain the same throughout the collection cycle and should match the date on the original invoice.
- Incumbent retailers are required to connect customers that had previously transferred out and subsequently transfer back but have an outstanding amount due. The Retail Code allows incumbent retailers to request a security payment and place the customer on an instalment plan, however, the incumbent retailer is required to connect the customer prior to the customer either paying the security deposit and/or making the first instalment of the payment plan. This results in the customer accumulating a new debt before they are required to make any payment on the previous debt. For the sake of their avoiding further debt build up, these customers should be required to pay part or all their previous debt prior to being connected.

Marketing Code of Conduct

Unlike the physical supply of energy, there is nothing inherently different in the sale process of energy compared to other products and services that warrant the application of the Marketing Code of Conduct. Marketing activities are appropriately governed by the general sales and marketing as well as the unfair contract provisions of the Victorian *Fair Trading Act* (FTA) and the misleading and deceptive conduct provisions of the *Trades Practices Act* (TPA) at the Commonwealth level.

Retailers have incurred additional systems costs, prescription and complexity through the re-interpretation of the TPA and FTA in the Marketing Code of Conduct without any noticeable commensurate benefit to consumers.

In Victoria just over 1.9 million customers have changed their electricity retailer since January 2002[4]. In comparison, the Energy and Water Ombudsman Scheme of Victoria (EWOV) has received around 2,400 cases[5] relating to retailers marketing conduct. This means that 0.12% of transfers result in a EWOV case that relates to sales and marketing. On average, energy retailers secure a sale for every seven customer contacts. This means that energy retailers have made some 13.5 million customer contacts in Victoria since the start of FRC and consumers raised 1.8 EWOV marketing cases for every 10,000 customer contacts over this period.

[4] NEMMCO, Victorian retail transfer statistical data
[5] EWOV defines cases as customer enquiries and complaints. As a general 'rule of thumb' EWOV receives two customer enquiries for every one complaint.

TRUenergy supports the removal of the Marketing Code of Conduct. We do not believe the removal of the Code would lesson consumer protection given the low level of customer complaints relative to the sales and marketing activity combined with the protection offered to customers through the FTA and TPA.

Confidentiality and Explicit Informed Consent Guideline

In May 2002 the ESC released Guideline 10 on Confidentiality and Explicit Informed Consent. The purpose of the Guideline was to give guidance to retailers on:

- Use and disclosure of customer information; and
- The meaning of explicit informed consent for contracts.

TRUenergy believes that the provisions contained in the Guideline for managing confidentiality and explicit informed consent are in excess of the Privacy law, and have restricted the benefits of related marketing available to Victorian customers relative to customers in other jurisdictions that have not written detailed Guidelines on these matters.

TRUenergy recommends that the ESC delete the Confidentiality and Explicit Informed Consent Guideline:

- The Federal Privacy, TPA and the Victorian FTA legislations adequately addresses issues of privacy and contract consent.
- The Victorian energy retail sector does not have needs over and above other like industries with respect to maintaining customer information confidential and obtaining customer consent in entering and/or varying a contract.

Wrongful Disconnection Operating Procedures

In August 2007 the ESC released the Operating Procedure for Wrongful Disconnection as a means of providing guidance to assist retailers and EWOV to satisfy the wrongful disconnection compensation obligations and to give customers greater assurance about the satisfaction of such obligations.

The Procedure has led to perverse outcomes whereby in certain circumstances consumers have experienced windfall gains disproportionate to their real loss as a consequence of a technical breach of the Procedures by retailers rather than the consumer incurring genuine material disruption, damage or hardship from a wrongful disconnection.

TRUenergy believes that there has to be a more workable process that balances a customer's need for supply with a retailer's right to mitigate financial loss from non-payment. TRUenergy understands that the ESC will shortly conduct a separate review of the Wrongful Disconnection Operating Procedures. We welcome the review and look forward to working with the ESC to ensure a more balanced application of the Wrongful Disconnection payment.

Direct Debit provision of Retail Code

In March 2007 the ESC issued draft changes to the Retail Code to enable energy retailers to sign customers to direct debit arrangements verbally provided explicit informed consent is obtained and the retailer provides the customer with written confirmation of the direct debit arrangement, including the terms and conditions, within 7 days. As part of the process, in June 2007, the ESC requested that retailers provide the ESC a copy of the direct debit terms and conditions.

Subsequently, the ESC has not made any further announcements on this matter. We would urge the ESC to enact the proposed changes as Victoria is currently the only jurisdiction that does not allow customers to sign up to a direct debit arrangement over the telephone.

Generation Licensing

Generators should not be licensed in Victoria consistent with the Electricity Industry Act 2000 [6] given they are required to comply with more onerous obligations under the regulatory regime. Key examples of their regulatory obligations include:

a) NEMMCO registration requirements

Generators are required to comply with performance standards which are monitored by NEMMCO. These technical requirements needed to achieve NEMMCO registration far exceed any compliance requirements faced by generators under their license requirements.

b) Connection agreements

These agreements set high standards of technical compliance on the generators drawing on their obligations from regulatory instruments including the National Electricity Rules, the Victorian Electricity System Code and other Victorian regulatory instruments. The obligations in these connection agreements far exceed the regulatory requirements in the license.

The National Electricity Law compels all existing and intending generators to submit themselves to these instruments and the National Electricity Rules. A Victorian licence effectively reproduces the same obligations.

Finally, TRUenergy notes that New South Wales generators' are not required to be licensed. The obligations imposed on the generators under the regulatory regime more than satisfy the jurisdiction that licensing appears unwarranted. Accordingly, Victoria should follow New South Wales to abolish licensing generators.

[6] The Commission grants a licensee a license to generate electricity under section 19 of the Electricity Industry Act 2000.

Modify regulation to facilitate advanced interval metering program

TRUenergy believes that many of the central regulatory and specifications requirements surrounding the roll-out of interval meters, including functionality, pricing and access to meter data are consistent across jurisdictions and the ESC should work within the national framework to harmonise theses requirements so as to minimise the regulatory costs of rolling out and managing interval meters.

Assess the obligations relating to information provision to customers

As stated previously around 1.9 million or over 60% of Victorians have exercised their right to transfer into a market based contract. As part of the sales process, Victorian retailers are subject to stringent price disclosure guidelines developed by the ESC for price disclosure on market based contracts as well as requiring retailers to publish standing offer tariffs in the Government Gazette.

If the Victorian Government adopted the AEMC recommendation to remove retail price oversight for residential customers from January 2009, the adoption of the 'published tariff' model adopted by the Victorian Government as part of the removal of price oversight for small business is an appropriate replacement for the publication of standing offer tariffs in the Government Gazette. The publication of a FRMP's standing offer prices on the web-site and/or on request from customers provides an appropriate balance from informing customers and the administrative burden involved with publishing tariffs for standard offers. Any regulatory requirement to publish standing offer prices beyond the web-site (such as in newspapers) has the potential to confuse market contract customers who may believe that the prices referred to are their own.

We would not support the AEMC's recommendation for a new regulatory guideline that would require estimates of annual expenditure based on pre-determined consumption levels. We note that the ESC rejected such an approach when it considered its preferred model for price disclosure arrangements during 2005. Estimates of annual expenditure require assumptions to be made regarding energy consumption, in particular the spread of consumption across tariff blocks and peak/off-peak periods. Consequently, the estimate will be misleading for all customers whose consumption patterns differ from the underlying assumptions.

Consider the compliance and reporting requirements arising from the existing framework

In 2007 under the guise of facilitating the transition to national retail regulation, the ESC introduced a Compliance Reporting obligation that was based on the compliance reporting approaches in other jurisdictions, including New South Wales and South Australia.

TRUenergy, in a joint submission with AGL and Origin, recommended that:

1. the ESCOSA compliance framework is the most consistent with the ESC's national consistency and also represented the 'best practice' arrangements as it was the most recent developed and based on the learnings of the NSW arrangements; and

2. the ESC only require retailers to report on Type 2 obligations on a yearly basis, unless:

   - The retailer is a new entrant to the Victorian Energy market and has not undertaken a regulatory audit; or
   - The ESC has determined that a particular retailer's compliance system is not robust as a consequence of previous regulatory audit outcomes.

The ESC did not adopt either recommendation but instead implemented further obligations.

The ESC should adopt the two recommendations outlined above. This would ensure that their compliance reporting arrangements would be more consistent with national uniformity and reduce the administrative costs associated with compliance reporting.

Finally, we would urge the ESC to conduct a workshop with retailers to explore in more details issues raised and for retailers to better understand the scope and parameters of the ESC review.

If you would like to discuss TRUenergy's comments please contact Con Hristodoulidis on (03) 8628 1185 or e-mail con.hristodoulidis@truenergy.com.au or Con Noutso on (03) 8628 1240 or email con.noutso@truenergy.com.au.

Yours sincerely

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