

26 March 2008

Mr Greg Wilson
Chairperson
Essential Service Commission
2nd Floor, 35 Spring Street
MELBOURNE VIC 3000

By email: EnergyRegulatoryReview@esc.vic.gov.au

Dear Mr Wilson

Re: Review of Energy Regulatory Instruments

Thank you for the opportunity to contribute to the Essential Services Commission's (ESC's) Review of Energy Regulatory Instruments.

Based on your open letter dated 22 February 2008 and subsequent discussion, the Energy and Water Ombudsman (Victoria) (EWOV) understands the purpose of the ESC's review, ahead of the transition to national energy regulation, is to streamline regulation by removing redundant or duplicated provisions and to address ineffective regulation. EWOV understands the ESC's review will *not* impact the fundamental protections for Victorian consumers – including the content of the *Energy Marketing Code* and *Energy Retail Code*, and their application to residential and small business customers. The comments below are based on this understanding of the purpose and scope of the ESC's review.

1. Opportunities for streamlining or the removal or redundant provisions

Application of codes to small business customers

Notwithstanding the above understanding, EWOV takes this opportunity to state its belief that the protections applying to small businesses in the *Energy Marketing Code* and *Energy Retail Code* should not be lessened as a result of the removal of price oversight. Particularly for small businesses such as florists or milkbars, protections like the ones relating to backbilling in clause 6.2 of the *Energy Retail Code*, can be of vital importance.¹ EWOV's case experience has consistently shown that such small business owners are not necessarily in a stronger position than residential consumers when dealing with energy companies. A diminution of code coverage to small business customers is likely to increase complaints and make it harder to resolve such complaints.

¹ In 2007, EWOV received 125 electricity cases from business customers using 0-160 megawatt hours per annum about backbilling issues. This is just one illustration of the continuing relevance and importance of the *Energy Retail Code* and *Energy Marketing Code* continuing to apply to small business customers.

Streamlining of ESC Guidelines

EWOV believes that the ESC's Guidelines offer the best opportunity for consolidation and streamlining because they have been produced, quite reasonably, as the occasion arose, rather than as part of a planned approach to regulation.

Where there are separate guidelines for electricity and gas on the same topic, there is a clear opportunity to merge them, as with regulatory audits and regulatory information requirements.

EWOV also believes that the essence of Guideline No. 10, *Confidentiality and Explicit Informed Consent*, could be incorporated into relevant codes – namely the *Energy Retail Code* and the *Energy Marketing Code*. Some of the existing guideline is background to do with the National Privacy Principles which was useful at the time of the Guideline's introduction but which is now less useful.

2. Regulation to facilitate the implementation of Advanced Interval Metering

EWOV is of the view that some of the issues that have arisen with Type 5 (manually read) interval electricity meters could have been avoided if there had been clearer and more accessible regulation available on the obligations and rights of retailers, distributors and customers. There is an opportunity to address this before the start of the rollout of Type 4 (remotely read) meters at the end of this year.

Some of the issues that need regulatory attention are as follows:

- Is a consumer whose current metering allows a dedicated off-peak tariff for a controlled load (such as an electric hot water service on tariff Y6/Y8, or in-floor heating on tariff J6/J8) entitled to have an interval meter with the same capacity? If the answer is yes, it needs to be made clear that the meter should have two channels.
- What is going to be the process if a distributor installing a meter finds safety defects and issues a defect notice to that effect? On the one hand, it could be argued that the existing process is the one to be followed, but on the other, it could be argued that, but for the installation of the interval meter, about which the customer had no say, the consumer would not have incurred the cost and inconvenience. (This issue will be particularly acute for some tenants.)
- Is a decision to be made about whether Gross or Net metering is required where there is solar co-generation? EWOV is aware that the ESC has earlier been of the view that there should be customer choice about this, but cases coming to EWOV² suggest that customers have limited grasp of their choices and that it is unrealistic to expect retailers' billing systems to provide for both, even where the meters have the capability for both.

² For example, C/2007/8272, C/2007/8566, C/2008/633 and C/2008/4141.

- The clarification of the rights and responsibilities of customers with regard to the installation of advanced interval metering. For example, how much notice of the installation will be required and will customers have any control or influence over the timing of the installation?

3. Obligations relating to the provision of information to customers to improve their access to the competitive market

One of the most striking findings in the Consumer Research Report³ prepared by the Wallis Consulting Group for the Australian Energy Market Commission's *Review of the Effectiveness of Competition in Gas and Electricity Markets in Victoria* related to the sources of information used by customers in making their decision about an energy retailer.

The most common response among customers on market contracts was that they had referred to no sources of information in making their decision (24% domestic, 25% business). The most often cited sources of information by domestic customers were: someone at the door (19%); retailer (12%); and someone phoned (9%)... This result suggests that customers are accepting the offers made to them without further investigation. (page 46)

The ESC must have been disappointed by that finding, given the effort it has made to contribute to the impartial information available to the consumer. EWOV has also made an effort through fact sheets and marketing reporting and we too were disappointed.

The finding suggests that the effort made to provide information to consumers has not been successful. It also suggests that only information provided at or shortly after the point of sale is likely to be effective. Some retailers have developed checklists that have to be filled in by the customer (or, more probably, the sales representative) at the point of sale. This seems to us to be a promising approach, and the ESC may like to re-consider some existing information requirements and instead look at requiring summary and readily comparable information at the point of sale.

4. Opportunities for improvement

EWOV wishes to take this opportunity to draw the attention of the ESC to regulatory provisions that are difficult to interpret, could be improved or which seem to fall heavily on consumers. It is EWOV's contention that clarity in regulation is a reduction in the regulatory burden, as it reduces the time spent in interpreting regulation, and defending that interpretation. Clear regulation can reduce complaints and the time spent to resolve complaints.

Distributors to inform as to FRMP or FRO

A task that EWOV frequently performs is finding out the details of the current Financially Responsible Market Participant (FRMP) or Financially Responsible

³ August 2007 (on www.aemc.gov.au)

Organisation (FRO) for a site. There are a number of scenarios that can lead to consumers not knowing and needing this information, but one of the more common ones is moving into a property and not knowing who previously supplied the electricity and/or gas. This could be overcome by a straightforward requirement on the de-energising distributor to leave a card that includes on it the name of the company that requested the de-energisation and the date it was done.

Acquiring retailers to tell customers they may face an exit fee from their previous retailer

EWOV notes that a Telecommunications Industry Guideline, *ACIF G574:2001 Mobile Number Portability – Customer Information* states as a key message “*Outstanding contractual obligations and costs relating to an existing mobile service will have to be settled by the Customer but their existence will not restrict or prevent a decision*”. It then sets out a number of points that the Gaining Supplier is obliged to tell the customer, which includes points about their possible debt to the losing provider.

EWOV believes that this approach could be usefully applied in the energy sector as well, so that one of the pieces of information an acquiring retailer would have to relate, prior to a customer accepting a market offer, is that the customer may incur a termination or exit fee from their previous retailer. This would increase transparency and integrity in the sale. This could be achieved by a simple amendment to clause 6.3 of the *Energy Marketing Code*.

‘Authorised’ customers

The same telecommunications guideline makes it clear that a mobile number can only be ported (that is, transferred to another service provider) by the authorised customer.

With a view to preventing complaints, EWOV strongly believes that any transfer from one energy retailer to another should be consented to by the account holder – that is, the salesperson should be required to obtain the consent of the current account holder to switch retailer, or at least the account holder’s verbal authority for someone else to act on their behalf.

This is a slightly weaker position than in the telecommunications industry, but an appropriate one, considering that an energy account generally applies to a household, rather than being a personal service like a mobile service. EWOV has argued this position to the ESC on previous occasions and has not been successful in spite of the regular occurrence of complaints relating to the transfer of electricity and/or gas accounts without the authority of the account holder.⁴

⁴ From July – December 2007, EWOV noted a further 33 complaints specifically about energy marketing to non-account holders.

Electricity network demand tariffs

The current basis on which electricity distributors set demand tariffs for medium-large usage customers seems to be uncodified, except that it may be mentioned in their annual Tariff Reports to the ESC. EWOV has been involved in a number of cases in which a business customer has suffered real detriment because the demand tariff was set either by a previous business or by that business prior to a change in its nature – and in some cases they were advised it could not be reviewed for a year.⁵ A year is a long time to be paying for several times the electricity a business is using, and can make the difference between that business being viable or not.

EWOV recognises the interests of electricity distributors which may have incurred costs to make a supply of a specified size available to those premises, but currently there does not seem to be a mechanism that adequately balances the interests of the two parties. Furthermore, the basis on which distributors reset tariffs following a spike in usage, or decline to reset tariffs without a year's notice, seems to be very hazy and reliant on policies and orders which may no longer have any effect. EWOV suggests this is an appropriate subject for regulatory guidance.

Purpose of Marketing

It appears from EWOV cases that some door-to-door sales representatives represent their visit as being for other than sales purposes at least initially.⁶ For example, they may purport to be carrying out a survey, or checking that the customer is receiving 'the discounts to which they are entitled'. It would enhance consumer confidence in the sales process if sales representatives were obliged to state the *purpose* of their visit at the start. This would prevent complaints and complement the current obligation to produce an identity card. This could be achieved by a simple amendment to clause 5.2 of the *Energy Marketing Code*.

We trust the comments above are useful in the conduct of your review of Victorian energy regulatory instruments. If you require clarification or expansion of these comments, please contact Stephen Gatford, Manager Public Affairs and Policy, on (03) 9649 7599 or by email at stephen.gatford@ewov.com.au.

Yours sincerely



Fiona McLeod
Energy and Water Ombudsman (Victoria)

⁵ For example, C/2007/1018, C/2007/7595, C/2007/8507 and SI/2006/21

⁶ For example, C/2007/1073, C/2007/11818, C/2007/11939 and C/2008/4198