



EnergyAustralia

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Dear Dr. Ben-David

Harmonisation of Energy Retail Codes and Guidelines with the National Energy Customer Framework

1. Introduction

EnergyAustralia appreciates the opportunity to comment on the Harmonisation of the Victorian Energy Retail Codes and Guidelines with the National Energy Customer Framework (NECF). As a major electricity and gas retailer with 2.7 million customers across the National Electricity Market, EnergyAustralia is supportive of the implementation of the NECF in all jurisdictions. This will see all customers benefit from a single set of consumer protections. The increase in regulatory consistency will also better place retailers to offer improved services to customers at lower costs.

EnergyAustralia acknowledges the decision by the Victorian Government to delay the introduction of the NECF and its subsequent request to the Essential Services Commission (ESC) to consider harmonising the regulations contained in the current Victorian Energy Retail Code and Guidelines to the extent possible with the NECF.

EnergyAustralia seeks regulatory certainty as to when the NECF will be introduced in Victoria. EnergyAustralia is concerned that the ESC's efforts to harmonise the existing Code and Guidelines by simply overlaying the National Energy Retail Rules (NERR) has the potential to cause confusion in the application of Code requirements and could lead to technical non-compliance in a number of areas. EnergyAustralia strongly argues that an "all or nothing" approach is the only way to ensure that there are no negative outcomes, and that customer benefits are maximised.

The application of a new Code and Guidelines before 1 January 2014 presents a range of challenges for EnergyAustralia. The business is focused on ensuring compliance with all NECF requirements for New South Wales customers in time for the scheduled introduction of the NECF from 1 July 2013. Introducing a new Victorian Code and Guidelines at the same time increases the risk of technical non-compliance on non-substantive matters. Further to this constraint, EnergyAustralia is committed to working with the Victorian Government to make flexible pricing available to Victorian customers from 1 July 2013. Any requirement to comply with a new Code and Guidelines would require that resources be diverted away from ensuring the smooth introduction of flexible pricing for EnergyAustralia customers.

EnergyAustralia encourages the ESC to discuss the timeline for applying any new Code and Guidelines with the Victorian Government to ascertain when the NECF is likely to be implemented. This should help the ESC consider whether a new Code and/or Guidelines are necessary. If the intervening time is relatively short it would appear that the costs of harmonisation will exceed any possible benefits. EnergyAustralia does not

consider that the ESC has adequately outlined the benefits (if any) of a harmonised approach for an undefined interim period.

2. Transition Approach

EnergyAustralia has committed significant resources to ensure compliance with new customer protections and reporting requirements under the NECF. The decision by some State Governments to delay the introduction of the national framework has had a considerable impact on retailers. EnergyAustralia and other retailers have faced significant issues and costs associated with a requirement to comply with a number of, and often inconsistent, regulatory and reporting regimes.

The proposed redrafting of the Victorian Energy Retail Code (largely based on the NERR), will only further add to compliance costs with little (if any) value to consumers. In principle, EnergyAustralia welcomes moves to align the current reporting arrangements with the NECF. We are concerned, however, that anything less than complete adoption of NECF reporting requirements is likely to result in further costs to retailers and, ultimately, consumers. This increase in unnecessary regulatory burden is inconsistent with the Victorian Government's objective to reduce regulatory red tape for businesses by 25 per cent by 2014¹.

3. Technical non-compliance

Whilst acknowledging the ESC's effort to comply with the Victorian Government's request to consider harmonisation of the existing Energy Retail Code with the NECF, EnergyAustralia questions the ESC's approach of using the National Energy Retail Rules as a starting point and laying the existing Code over this document.

Given the late timing of decisions to delay the introduction of the NECF, EnergyAustralia had already committed to full compliance with the NECF. Since the decision to retain the existing regulatory arrangements was made (in Victoria and other jurisdictions), EnergyAustralia has adapted its processes to allow it to operate under the both the NECF and existing arrangements. In order to achieve this in an efficient manner we have undertaken to revert to jurisdictional processes where we have deemed that a material difference in customer protections exists.

EnergyAustralia points to the work already undertaken by retailers to ensure compliance with provisions that provide little benefit to customers or the industry. For example, EnergyAustralia was required to redraft contracts which were developed in readiness for NECF to meet the Victorian framework, despite the fact that they contained no material non-compliances. Similarly, retailers who redrafted their hardship policies to meet the more stringent NECF requirements were non-compliant with the Victorian regime as these policies were approved by the AER and not the ESC. Despite the fact that complying with the NECF provided a greater customer benefit, retailers were required to take action to comply with a technicality. This results in increased retail operating costs that are ultimately borne by customers.

In light of these examples, EnergyAustralia believe that harmonisation would be more effective if the ESC were to start with the Energy Retail Code and review it to remove any provisions where a technical non-compliance would occur if a retailer were to follow NECF. This approach would allow retailers to meet compliance obligations in a low cost manner by continuing with whatever arrangements they implemented when the decision not to proceed with the NECF was made and would suit retailers who implemented the NECF in its entirety and those who remained completely compliant with the existing Victorian regulatory framework.

4. Compliance Systems Management

Although the proposed harmonisation brings the Victorian regulatory framework much closer to the NECF requirements, the approach taken by the ESC reflects neither the current Victorian Energy Retail Code nor the National Energy Retail Rules in structure. While complying with the provisions of the Code may be relatively simple as retailers have previously been prepared for NECF introduction, this approach may impact on the capacity of retailers to verify that they are compliant.

In order to meet their compliance reporting obligations, retailers establish complex systems to capture regulatory obligations. The basis of these systems is the suite of regulatory instruments in force in a jurisdiction and the processes and procedures which retailers implement to enable them to operate reference

¹ Kim Wells, Media Release 'VCEC draft report highlights importance of regulatory reform to cut red tape', 17 February 2011.

these instruments. Major changes to the format of the code as proposed in this review necessitate the updating of references in all of these processes and procedures. It is a costly and resource intensive exercise to re-map all compliance obligations to align with new regulatory references. If this exercise is undertaken under time pressure, there is a possibility that references may be missed ultimately leading to a failure of reporting systems. EnergyAustralia do not believe that any change which may lead to a potential deterioration in the ESC's visibility of compliance within the industry is warranted.

The requirement to remap compliance systems would extend to the ESC as it necessitates the updating of compliance reporting manuals to enable retailers to appropriately report non-compliances. This may or may not have been considered by the ESC in opting for the approach taken. EnergyAustralia considers that, much like the additional effort required from retailers, it is difficult to justify undertaking this work for an interim framework which may be in place for as little as six to twelve months.

Should the proposed amendments to the Energy Retail Code be implemented in line with proposed timings, EnergyAustralia would undertake to re-map its obligations register and compliance management systems. However, we consider that it is difficult to justify the resourcing required to undertake this task as the harmonisation of the Code is an interim step towards full NECF. The work required to include NECF obligations in the compliance management systems has already been undertaken at considerable cost based on the expectation of a universal rollout. Any steps to re-map obligations would add further costs to customer bills for little (or no) benefit.

5. Review of additional regulatory instruments

EnergyAustralia notes that the ESC refers to the potential downstream impacts of the harmonisation package and the consequential amendments which will be required to other regulatory instruments. We are concerned that adoption of the Energy Retail Code Version 11 without having undertaken the required review of other instruments is likely to cause a number of hitherto unidentified compliance issues. We believe that the ESC must first review and amend the full suite of regulatory instruments and then provide industry with appropriate lead time to allow for compliance, before effecting any changes.

EnergyAustralia further notes that some consequential amendments may require legislative change, which can be a lengthy process to achieve. The full review of consequential amendments must ensure that there are no legislative amendments required, the absence of which may provide material barriers to compliance.

6. Timing

EnergyAustralia understands that the ESC is considering two possible commencement dates for any changes to the Energy Retail Code – 1 July 2013 or 1 January 2014. EnergyAustralia's preference is for the ESC to seek confirmation from the Victorian Government as to when the NECF is likely to be introduced. This advice should guide the ESC in considering whether a new Code and/or Guidelines are necessary.

The Victorian Government has clearly identified the introduction of flexible pricing for residential and small business customers, enabled by smart meters, as a key priority in 2013. Retailers, including EnergyAustralia, are working with the Department of Primary Industries to ensure flexible pricing can be introduced from 1 July 2013 on an optional basis. The Government has stated that the new pricing regime will be supported by a range of consumer protections including reversion rights for customers and a website comparator service. EnergyAustralia has committed substantial resources to support the Government's work program to date, working within tight time constraints. Should the proposed harmonisation of the Energy Retail Code with the NECF proceed EnergyAustralia would be forced to reassign resources from the flexible pricing introduction to the Code revision implementation. This would potentially threaten EnergyAustralia's ability to meet the requirements of the Government, which are aimed at encouraging customers to take up flexible pricing.

In addition to flexible pricing resourcing requirements, the number of physical and logical smart meter exchanges is expected to increase throughout 2013 as the rollout draws to completion. This activity places ongoing strain on EnergyAustralia's billing system and distracts the company from being able to deliver customer-focussed initiatives such as the *eWise* energy reporting system.

In light of the possibility the Victorian Government may introduce NECF from as early as 1 January 2014, EnergyAustralia considers it unnecessary to introduce an interim arrangement which may be in place for as little as six months. Regardless of the approach taken to achieve harmonisation, EnergyAustralia does not believe that a six month interim measure justifies the cost involved of implementing it and advocate that the

ESC finalise an approach to harmonisation and commit to its introduction on 1 January 2014 as a fallback position should NECF not be adopted by this time. This provides industry with a degree of certainty that "NECF like" arrangements will be in force from this time but also provide sufficient lead time to ensure that adequate compliance systems are in place. This lead time will also allow industry to work towards NECF with Government and balance resourcing requirements based on an agreed transition path. Without this agreed path retailers will continue to incur unnecessary costs, which will be passed onto customers.

7. Specific Issues

While EnergyAustralia appreciates efforts by the Commission to assist in reducing the regulatory burden on retailers by harmonising with NECF, we feel that a number of opportunities were missed while a wholesale review of the Energy Retail Code was being undertaken.

Energy price and product disclosures

EnergyAustralia shares the ESC's view that the presentation of offer and pricing information is a matter of considerable importance. The consultation paper rightly states, *As the AER is not currently responsible for producing pricing guidelines in Victoria, the draft ERC has incorporated the current Guideline 19*, however it fails to acknowledge the existence of AER's Guideline 4 which outlines the requirements for Energy Price Fact Sheets. Although the AER Guideline cannot be enforced in Victoria at this time, it outlines the format requirements for the fact sheet, which differ from those required under Guideline 19. EnergyAustralia believes that the format requirements should have been aligned to reduce the costs faced by retailers to provide what is essentially the same information.

Greenhouse gas disclosure on customer's bills

EnergyAustralia is concerned at the Commission's inclusion of Guideline 13 into the Energy Retail Code. The ESC notes the requirement in the *Electricity Industry Act 2000* for retailers to include either a greenhouse gas emissions graph or benchmarking information on a customer's bill and acknowledges the Department of Primary Industry's preference for retailers to provide benchmarking information. The ESC's decision to incorporate Guideline 13 into the draft Energy Retail Code Version 11 appears to undermine this preference as it codifies the requirement for a greenhouse gas emissions graph and leaves benchmarking information as an optional inclusion. Further, this provision is inconsistent with the NECF as benchmarking information is a requirement under the national framework.

Price Change Notification

EnergyAustralia is disappointed that the opportunity was not taken to address the drafting error that occurred when 26.4 (b) was incorporated into the Energy Retail Code. This provision requires retailers to provide smart meter customers with 20 business days notice of changes to their prices and was enacted in order to ensure that customers had sufficient warning when they were mandatorily assigned a time of use tariff. Unfortunately the drafting at the time created the unintended consequence that smart meter customers would have to be informed 20 business days prior to any price change. EnergyAustralia notes that this provision has been retained in the draft Code Version 11.

EnergyAustralia understands that the policy intent of this requirement was to provide advanced notification for customers with smart meters at a time when network tariff reassignment was to be mandatory. Given the Victorian Government's current commitment to deliver flexible pricing on an opt in basis the mandatory notification period is no longer warranted. Customer's choosing to take up a flexible tariff offer would be required to give explicit informed consent and would therefore, by definition, be adequately informed. If the ESC considers that advanced notification should be required for other circumstances consultation on this matter should be undertaken.

EnergyAustralia suggests that the review of the Energy Retail Code provides the ESC with an ideal opportunity to remove clause 26.4(b) as it no longer serves its intended purpose, but simply imposes an additional, unnecessary regulatory burden on retailers.

8. Summary

EnergyAustralia is pleased the ESC is mindful of the difficult scenario that retailers were placed in when the NECF was deferred. We are concerned however that the approach to harmonisation that has been taken cannot be implemented in a straight forward manner and the considerable uncertainty that still exists around a NECF commencement date makes it difficult to mount a business cases to undertake the work required.

We believe that the ESC could assist in reducing regulatory uncertainty by taking a two staged approach to harmonisation.

Step 1

Review the Energy Retail Code from the point of view of a NECF compliant retailer and amend any areas where compliance of NECF is inconsistent with the code (with the exception of areas concerning the Victorian Government's stated policy objectives).

Step 2

Commit to the introduction of a "NECF like" code, similar to the approach taken in the current review, from 1 January 2014 should NECF not be in force in Victoria by this time.

If you would like to contact me about this submission, please call me on (03) 8628 1185.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Lee Evans', written in a cursive style.

Lee Evans
Regulatory Manager