

16 August 2013

Ms Victoria Rosen
Energy Regulatory Manager
Essential Services Commission
Level 37
2 Lonsdale Street
Melbourne VIC 3000

Lodged via email to: energy.submissions@esc.vic.gov.au

Dear Ms Rosen

Harmonisation of the Energy Retail Code and Guidelines with the National Energy Customer Framework: Draft Decision (Consultation Paper), July 2013

Momentum Energy welcomes the opportunity to provide comments in response to the *Harmonisation of the Energy Retail Code and Guidelines with the National Energy Customer Framework: Draft Decision (Consultation Paper)*.

Momentum Energy is a second tier retailer with current retail electricity licences in Victoria, New South Wales, South Australia, Queensland and the Australian Capital Territory. Momentum Energy is fully owned by Hydro Tasmania, one of the largest clean energy producers in Australia.

Overview

Momentum prefers the Commission's "base case of making one transition to NECF at a date to be determined by the Victorian Government (without first implementing harmonisation or other changes)."

The process proposed by the ESC for the harmonisation of the Victorian Energy Retail Code (ERC) with the National Energy Customer Framework (NECF) will impose substantial extra work for retailers without tangible countervailing benefits. Momentum's preferred approach is to move directly from the current regulatory regime to NECF implementation, even if NECF implementation is not until 2015. Contrary to the way that the base case and Option 2 are characterised in the Consultation Paper, they do not preclude implementation of standalone important reforms between now and NECF commencement in Victoria, for example allowing retailers to provide an Energy Price Fact Sheet as an alternative to a Price and Product Information Statement).

Compared to earlier harmonisation processes in NSW and Queensland, the proposed approach for Victoria is not, in fact, harmonisation but actually the establishment of a new framework. This is acknowledged in the Consultation Paper as an "intermediate solution". This intermediate solution might be short lived but it will require an additional process of implementation and compliance. Because the intermediate solution is neither the current ERC nor the actual NECF, retailers will need to undertake a separate process of development and implementation of changes to systems, processes and contracts; and their staff will have to come to grips with a third approach instead of two, but probably only for a relatively short period.

While implementation of this harmonisation process on 1 January 2014 would be less difficult than it would have been on 1 July 2013 (due to the commencement of NECF in NSW and flexible pricing in Victoria), it will still involve substantial work. The re-mapping of compliance obligations to align with new regulatory references is a substantial, costly exercise; as are the drafting of new and consistent terms and conditions and sales and development of marketing collateral. Training and rectifying mistakes made by confused staff will further costs. Ultimately, increased retail operating costs are borne by consumers.

Contrary to the Commission's assertion in the Consultation Paper, the benefit of work done by retailers prior to the Victorian Government's decision to delay NECF implementation will be captured when the NECF commences in Victoria; it will not be lost if this intermediate solution is abandoned. The question is whether the benefits of this intermediate solution outweigh the costs. In addition, the benefit of the substantial work by the Commission toward harmonisation will be captured irrespective of whether the intermediate solution proceeds, so long as Victoria does adopt the NECF. The same applies to leveraging the experience of other states and territories that have already transitioned to the NECF.

Momentum believes that the intermediate solution cannot carry sufficient benefits to make the costs worthwhile because of constraints on the Commission's approach. It does not appear to be possible for the Commission to make the ERC sufficiently consistent with the NECF when on the one hand it is constrained from considering important policy questions while on the other hand it is trying to "ensure adequate consumer protection during the transition to a flexible pricing environment". This approach is inconsistent with the Commission's rejection of other policy questions, and it introduces the risk of entrenching additional Victorian derogations.

This conflicts with the rationale of the NECF – to provide efficiencies that reduce costs (and ultimately prices) and to reduce the regulatory burden for energy businesses that operate across different energy market jurisdictions. This is a very disappointing outcome, especially in light of the exhausting eight year engagement process.

Momentum acknowledges that the Commission has resisted a number of attempts at additional 'regulation aggregation'. For example, in relation to the Privacy Act notice at Clause 18 of Schedule 1, the Consultation Paper proposes to stick to the National Energy Retail Rules (NERR) approach despite exhortations to impose additional requirements. Momentum supports this approach and believes it should be applied more consistently.

Specific issues

Explicit informed consent (EIC)

That harmonisation has to too great an extent become an exercise in incorporating NECF regulation when that regulation is additional rather than substituting NECF regulation for existing Victorian regulation is exemplified by the proposed approach to the definition of EIC in draft ERC v11. Previously v11 was drafted in accordance with the NECF provisions but it is now an aggregation of NECF and additional Victorian regulation.

Momentum does support the decision to retain the NECF provisions at clauses 3C and 24 rather than prohibiting retailers from obtaining a customer's verbal EIC when they agree to a shortened billing cycle. Likewise, verbal EIC should not be prohibited in relation to a customer's bill not being based on an actual meter read.

Model terms

Momentum believes that, if retailers are going to have to deal with an intermediate Victorian regulatory scheme, they should be allowed to use the NECF model terms for Victorian customers. This should be possible, so long as the Australian Energy Regulator (AER) will agree to minor modifications to the existing NECF model terms to allow for Victoria's continued issues. This would give a retailer the option of adopting the NECF modified model terms for consistent application across jurisdictions and before and after NECF adoption by Victoria. This would reduce the scope of retailers' approval requests to the Commission, as only alternative terms would require its approval. This would also be a means by which this process could deliver a bit of the promised consistency and efficiency.

Aggregation of Business Customer Site Consumption

In the Consultation Paper, the Commission states in relation to aggregation of business customer site consumption that "[i]t would be a decision for Government rather than the Commission to adopt the NERR position, as customer definitions in Victoria are dealt with in Orders in Council and not in Commission instruments." In Momentum's view, the point of this harmonisation process is called into question by the fact that it will not address such a fundamental issue as the ability for a customer to agree to having its sites' consumption aggregated in order to be treated as a large customer.

Approval of Hardship Policies

Momentum notes that, because this harmonisation process cannot countenance amendment of the Electricity Industry Act, during the intermediate regulatory approach, retailers' national, AER-approved hardship policies will have to be approved by the Commission. This is another example where a lack of benefit undermines the case for the intermediate solution.

Timing issues

Implementation of the intermediate solution would involve substantial work for retailers – potentially more work than NECF commencement and certainly more work than previously foreshadowed. In recognition of that fact, in the event that the Commission and the Victorian Government proceed to finalise ERC v11, Momentum believes that the Commission's intended timeline is ambitious. It does not appear likely that ERC v11 and the consequential amendments will be finalised in time for there to be three months leading into 1 January 2014. If the Commission's final harmonisation decision (including in relation to all consequential amendments) is delayed, the commencement date should be adjusted accordingly.

If you would like to discuss this submission or any other matter, please contact Momentum's Regulatory Manager Luke Brown on (03) 8612 6437 or luke.brown@momentum.com.au.

Yours sincerely



Alastair Phillips
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