

1 February 2013

Attention: The Project Leader
Harmonisation of Energy Retail Codes and Guidelines with the National Energy Customer Framework (NECF) –
Consultation Paper
Essential Services Commission of Victoria
Level 37, 2 Lonsdale Street
Melbourne, VIC, 3000

By email:

Dear Sir/Madam

RE: Harmonisation of Energy Retail Codes and Guidelines with the National Energy Customer Framework (NECF) – Consultation Paper

The object of the NECF framework was to transfer current state and territory responsibilities to a new national regulatory regime governing the sale and supply of energy to retail customers. This was guided by a five year program of engaging all NEM jurisdictions to ensure that consumers and industry benefit from regulation, competition and efficiency. The ultimate benefit of the NECF is to provide efficiencies that reduce costs (and ultimately prices) and to reduce the regulatory burden for energy businesses that operate inside different energy market jurisdictions.

The Victorian specific adoption of the NECF has already been the subject of extensive DPI consultation. During the DPI's consultation it established that as a matter of principle it would be unacceptable for Victorian consumers to be materially disadvantaged by the move to the national framework. Regrettably the Victorian DPI consultation was an exercise in orthodoxy, justifying the retention of the Victorian derogations to the NECF, rather than focusing on improving efficiencies with a nationally consistent framework which had been thoroughly consulted on over the previous five year period.

Disappointingly, it is now apparent that much of the investment in the NECF in streamlining regulation will remain unrealised. Momentum Energy would like the Victorian Government to commit to reviewing its derogations at least once every three years to ensure progress toward the objective of a truly national energy customer framework is maintained.

Momentum Energy acknowledges that the Commission is not considering matters of policy as part of its consultation, however we note that the ESC's proposed harmonisation document draft reflects this continuing trend, a trend that unfortunately focuses on the retention of regulations and laws inconsistent with the NECF, regardless of how or why it attained its present authority.

Late payment fees - Electricity and Gas Industry Acts - 40C EIA and 48B GIA

Momentum Energy remains concerned that despite the overwhelming national consensus developed in the NECF, clause 14 of the NERL (Vic) Bill proposes to re-enact the prohibition of late payment fees in Victoria originally introduced by the previous Government back in 2005. This example helps typify the policy and regulatory trend towards the preservation of regulations which are no longer relevant.

Apart from the lost opportunity to streamline the Victorian regulatory framework with the NECF, this decision also represents a curious policy contradiction for the Victorian Government who at almost the rejecting changes in the NECF regarding the application of late payment fees for the essential service of energy, approved them for the essential service of water. Water is no less an essential service than energy, and the Victorian Government and Regulator have both endorsed the ESC decision that water retailers may charge interest on unrecovered amounts (late payments) to a maximum of ten percent¹. This decision is guided by the Assistant Treasurer, in the Second Reading Speech of the Water Amendment Act:

“The government acknowledges that there is a small number of people who choose to avoid paying for the water services they receive. The cost of their avoidance, if not properly managed, is unfairly borne by the whole community as it must ultimately be passed on to other customers in the price of water. The Water Act will keep two debt management powers, being the ability to charge interest on unpaid moneys² and providing that debts owed to a water corporation form a charge on the land to which they relate.”³

“It is not fair for all water customers to subsidise the cost of these debts through the price of water.”⁴

The Assistant Treasurer has a sound economic and equity argument. Whilst we are not privy to the ESC’s advice to the DPI in this regard, the impression is that the Government and Regulator appears to be simultaneously holding and prosecuting, through their policy and regulation, two conflicting objectives. We would like to believe that the Commission’s advice to the DPI reflected both the Assistant Treasurers view that it is not fair for all customers to subsidise the debts of those who are choosing to avoid payment.

“However, the bill will also ensure that a water corporation’s use of these two remaining powers can be regulated by the Essential Services Commission through a customer service code for water services, in consultation with the community, to make sure use of these powers is appropriate and sensitive to the needs of those in our community facing financial hardship.”⁵

Energy companies have comprehensive hardship policies in place, and support the Assistant Treasurers views on how to address financial hardship. Comparable protection to that for water could be obtained through a Victorian derogation that does in fact address consumer protection. Momentum Energy urges the ESC to actively re-engage with the DPI in the development of the current consultation on the ERC interim document, with advice as to why this regulatory inconsistency should persist, and importantly advise Government as to why a decision made seven years ago has more relevancy and currency for Victorians using essential services

¹ Essential Services Commission 2012, Water Customer Service Codes Review 2012, Regulation of debt management powers: Final Decision, December 2012.

² For all practical effect a fee for late payment.

³ VicHansard Second Reading Speech 15 March 2012 Water Amendment (Government and Other Reforms) Bill 2012, p. 1541

⁴ VicHansard Second Reading Speech 15 March 2012 Water Amendment (Government and Other Reforms) Bill 2012, p. 1542

⁵ VicHansard Second Reading Speech 15 March 2012 Water Amendment (Government and Other Reforms) Bill 2012, p. 1541

than one made barely a month ago. Consideration should then be given to consultation as to when they might be able to be aligned.

Compensation for wrongful disconnection

In 1994, the last year of Government ownership in Victoria, electricity disconnections were 2%, and had been steadily rising from the general 1% that they were under Government ownership from 1990. By 2000, in private hands, they were bouncing along between 0.5 and 0.7 percent annually. In 2002, 0.55 percent disconnected, in 2003, 0.58 percent disconnected and in 2004, 0.70 percent disconnected. The 2003 to 2004 variation was at the time misrepresented as a massive 20% annual increase in disconnections by various interest groups who argued, erroneously it would appear in hindsight, that introducing punitive damages for “wrongful” disconnection would change disconnection practices and benefit those experiencing hardship.

And the confusion caused by the initial introduction of the “wrongful disconnections” legislation without any procedural guideline did create a disconnection and did lead to a sharp fall in disconnections, however by 2009/10 it was back at 0.59%, or close to the long term average where it stays, indicating that the protections of “wrongful disconnections” legislation has not led to fewer disconnections over all. The NECF recognises this, but the retention of “wrongful disconnections” legislation by the DPI as essential to the protection of Victorian consumers, and the ESC’s lack of rigour in assessing the “wrongful disconnections” legislation efficacy, points again towards the policy and regulatory bias of preserving whatever has currency, regardless of how or why it attained its present authority.

Conversely, those components of hardship programs⁶ offered by retailers to keep customers experiencing genuine payment difficulties connected do work:

Of all residential electricity and gas consumers in 2009-10, 24 000 or 0.6 per cent accessed retailers’ financial hardship programs. This was the same in the previous year. A total of 2.6 per cent of customers who participated in the hardship programs were disconnected, down from 5 per cent in 2008-09. Customers who have previously participated in a hardship program were disconnected less in 2009-10 than the previous year with 642 customers disconnected down from 1222 in 2008-09.⁷

The NECF has the effect of retaining these effective components of hardship programs.

Momentum Energy does not support the retention of Wrongful Disconnection Procedures, However if retained, the Victorian Government should implement all the recommendations from the Essential Services Commission as proposed in its Report of January 2010.

Energy audits and appliance assistance - Electricity and Gas Industry Acts 43(2) EIA and 48G(2) GIA

Whilst the NECF does not impose these requirements upon retailers, the DPI has indicated that Victoria intends for the existing requirements to continue to apply to retailers.⁸ This decision has been made without citation of any empirical evidence of the effectiveness or benefits or analysis of the costs of the scheme that would justify its continuance. The approach of the DPI again raises concerns about policy and regulatory bias of preserving whatever is current, regardless of how or why it attained its present mandate.

⁶ Excluding audits and appliance purchasing, which will be addressed later

⁷ Energy retailer’s comparative performance report – Customer service 2009-10, December 2010

⁸ Essential Services Commission 2012, *Harmonisation of the Energy Retail Code and Guidelines with the National Energy Customer Framework (NECF) – Consultation Paper*, December 2012, p.7

Momentum Energy recognises the logical appeal of energy audits and appliance purchase assistance, but does not believe these regulations have proven to assist the long term interests of customers in hardship. The provision of both audits and appliances to hardship customers has proven to be difficult due to the need to assess the customers' energy usage and appliances. In most cases this requires a representative from the retailer's business to visit the customer, and such visits are often difficult to arrange with the customer. When they do take place they have often not resulted in significant changes in the customer's energy usage. They are expensive and paid for by other customers who subsidise these free programs through their electricity and gas prices. Therefore, consistent with the NECF, Momentum Energy believes this requirement should be deleted.

Pre-payment meters

While Momentum Energy accepts that the regulations associated with smart metering may need to sit outside the NECF, the current arrangements may not deliver the best outcomes for either customers or the industry.

Timeframes for disconnecting customers - Energy Retail Code Electricity Distribution Code Gas Distribution System Code - 14(d), 12.6.1, 4.1(b)

DPI has indicated that the existing timeframes which apply in Victoria in relation to disconnection and reconnection should continue to apply as implementation of the national approach would diminish current customer protection standards in Victoria. Like wrongful disconnection, the case is not apparent that consumers have benefitted in any way by the shortening of disconnection activity times. From our experience in multiple jurisdictions these discrete Victorian time frames for disconnection do not address any issue which is specific to the Victorian market. Momentum Energy therefore does not support this derogation requiring customer in Victoria not to be disconnected after 2pm whilst the NECF stipulates that retailers cannot disconnect customers after 3pm.

Retail fees and charges on standing offer contracts- Energy Retail Code 7.5(b)

The DPI found that customers on standing offers should not be subject to new retail fees and charges. There are an increasing numbers of customers on standing offers who choose to pay by credit card and some card companies charge energy retailers these fees. It is interesting that the DPI prefer these fees being socialised across all standing offer customers, rather than their pass through to the individual customer. Momentum Energy agrees with the St Vincent De Paul Society that:

The purpose of the standing offer is to ensure that all small customers have access to at least one offer and that this offer is linked to an obligation to supply and minimum contract terms and conditions. Furthermore, the standing offer is regarded as the basic (no-frills) offer available to consumers not actively participating in the market.⁹

As the basic and no frills offer available to the market, Momentum proposes regulation to limit the pass through to the actual cost of the merchant service fee as the more appropriate consumer protection derogation than to have consumers not actively participating in the market fund the rewards programs of those choosing to pay by credit card.

Conclusion

⁹ Customer Protections and Smart Meters – Issues for Victoria, St Vincent De Paul Society , Mauseth Johnson, 2009 p. 18

Momentum Energy acknowledges that the Commission is not considering matters of policy as part of its consultation, however the trend that unfortunately helps to preserve whatever has currency, regardless of how or why it attained its present authority, has been a hallmark of this consultation, and should not remain unchallenged.

Even though it is now apparent that much of the investment in the NECF in streamlining regulation will remain unrealised, Momentum Energy would like the Victorian Government to commit to reviewing its derogations at least once every three years to ensure progress toward the objective of a truly national energy customer framework is maintained.

Momentum Energy thanks the Commission for the opportunity to contribute to this important consultation. Should you or your staff wish to discuss this matter further please feel free to give me a call on (03) 8612-6471.

Yours sincerely

Alastair Phillips
General Manager Regulatory and Compliance