

7 July 2011

Ms Khayen Prentice
Regulatory Review – Smart Meters
Essential Services Commission
Level 2, 35 Spring Street
Melbourne, VIC 3000

By email: khayen.prentice@esc.vic.gov.au

Dear Ms Prentice,

Smart meters regulatory review – capacity control and verifying bills draft decision (June 2011)

The Consumer Utilities Advocacy Centre Ltd (CUAC) is an independent consumer advocacy organisation. It was established to ensure the representation of Victorian consumers in policy and regulatory debates on electricity, gas and water. In informing these debates, CUAC monitors grass roots consumer utilities issues with particular regard to low income, disadvantaged and rural consumers.

CUAC has been actively engaged in the development of customer protections related to the Victorian smart meter roll out. CUAC participated in the Essential Services Commission (ESC) smart meter regulatory review which commenced in early 2010, and to date has submitted five responses to this process.¹ We welcome the opportunity to comment on the ESC Smart meters regulatory review – capacity control and verifying bills draft decision (June 2011) (hereinafter called “Draft Decision”).

¹ List of CUAC submissions on smart meters regulatory review: 18 February 2010 response to ESC Open letter regulatory review - Smart meters; 25 May 2010 response to ESC Issues paper regulatory review – Smart meters (April 2010) with additional materials prepared by Etrog Consultancy; 13 August 2010 response to ESC Smart meters regulatory review draft decision (July 2010); 4 October 2010 response to ESC Regulatory review – Smart meters final decision (September 2010); 4 February 2011 response to ESC Smart meters regulatory review – capacity control and verifying bills issues paper (December 2010).

Capacity control products

Draft Decision

The ban on retailers offering supply capacity control for credit management purposes stands until 31 December 2013 unless earlier revoked. It is too early at this stage of the smart meter roll-out for the Commission to make a decision on allowing or regulating retailers offering supply capacity control for non-credit management purposes. It is also too early to make a decision about allowing or regulating retailers' use of load control.

The Commission acknowledges supply capacity control and load control may be used by distributors in emergencies to ration power and avoid outages. Their use by distributors outside of emergencies is not sanctioned without further consideration.

CUAC recognises that distributors use supply capacity control and load control in emergency situations to ration power and to avoid outages. CUAC has, in previous submissions to the ESC, raised concerns around supply capacity control and load control outside these situations. We highlight them again in this submission as we are not confident that our concerns have been adequately addressed in the Draft Decision. We also raised these concerns in CUAC's recent submission to the Department of Treasury and Finance on the advanced metering infrastructure program issues paper (May 2011) (hereinafter called "DTF issues paper").²

Supply capacity control is an automated disconnection product. It will potentially expose consumers to constant and repeated self-disconnection arising from consumption over the agreed threshold. This would be equivalent to self-disconnection from prepayment meters in jurisdictions which allow them. In Victoria, one of the significant measures taken to protect households from energy related financial hardship and disconnection of supply was the banning of prepayment meters.³ A 2004 CUAC joint research report into access to energy and water in Victoria argued that the claim that customers like prepayment meters because they make it easier to manage expenses was misleading and recommended that the Victorian Government introduced a ban on prepayment meters on the basis that:

Prepayment meters would not help households in financial hardship any more than affordable instalment payment plans or Centrepay. On the other hand, prepayment meters would assist suppliers to avoid the need to deal directly with customers in financial hardship.

In other words, prepayment meters discourage suppliers from improving their processes for dealing with customers in hardship as they are able to disengage from these issues.[...] If suppliers are of the opinion that the provision of alternative or flexible payment arrangements is a worthy objective in itself, they should ensure that the flexibility and range of alternative payment plans, billing cycles

² Available at <http://www.cuac.org.au/database-files/view-file/5490/>

³ In late 2004, the Victorian Parliament passed the Energy Legislation (Amendment) Act 2004, making important changes to the Electricity Industry Act 2000 and the Gas Industry Act 2001 which govern the regulation of the Victorian energy industry.

*and payment methods offered by them are optimal and meet the demands of customers before embarking on such risky changes as the introduction of prepayment meters.*⁴

Consumers with significant payment difficulties should have additional support to help manage their energy bill payments so as to retain access to essential services. This includes effective and robust hardship programs encompassing payment plans (with incentive arrangements, debt waivers), flexible payment options, energy efficiency advice, energy audits and appliance replacements.

There is a need to ensure that low income or vulnerable consumers do not sign up for these products as a means of managing their payment difficulties through limiting their consumption to unsafe levels. There is a risk of this happening especially with rising energy prices. CUAC is concerned that low income or vulnerable customers may inadvertently choose to accept supply capacity control products that expose them to disconnection, less reliable supply and potential health and welfare detriment rather than looking at more appropriate options (as mentioned in the paragraph above). Ofgem is currently undertaking consultations on modifications to licences as part of its smart metering consumer protections package. Ofgem has acknowledged that the load limiting functionality (also known as trickle disconnection) can expose customers to disconnection “by the backdoor.”⁵ In Ofgem’s proposed licence modifications, “disconnection” has been defined to include “load limiting where the supply to the domestic premises is significantly constrained.”⁶

CUAC believes that the risks of supply capacity control products are greater with regard to low income or vulnerable customers; the risks arguably outweigh the benefits for this particular customer group.

CUAC notes that during the ESC Customer Consultative Committee meeting on 16 June 2011, the ESC regulatory manager cited various examples of the use of supply capacity control products for debt management purposes. CUAC is of the view that the boundary between supply capacity control products for debt management purposes, and supply capacity control products for non-debt management purposes (that is, for incentive purposes), may not be clear particularly in the context of low income and vulnerable customers. Arguably, by limiting consumption to unsafe or unhealthy levels to receive a financial incentive, (which such customer groups may be inclined to do), supply capacity control becomes almost equivalent to a debt or credit management tool. We believe that it would be difficult to regulate effectively, to prevent these customer groups, from signing up to supply capacity control products which could expose them to further detriment.

⁴ Nicole Rich (Consumer Law Centre Victoria now called Consumer Action Law Centre), May Maseuth (Consumer Utilities Advocacy Centre), Access to energy and water in Victoria – A research report (November 2004), at 118. Available at <http://www.cuac.org.au/database-files/view-file/2323/>

⁵ Ofgem, Smart metering consumer protections package – statutory consultations (30 June 2011), at 2. Available at <http://www.ofgem.gov.uk/Sustainability/SocAction/Publications/Documents1/Smart%20Metering%20Consumer%20Protections%20Package%20-%20Statutory%20Consultation.pdf>

⁶ Ofgem, Smart metering consumer protections package – statutory consultations (30 June 2011), at 12-13 (proposed clause 27.9A(b)(i)) Available at <http://www.ofgem.gov.uk/Sustainability/SocAction/Publications/Documents1/Smart%20Metering%20Consumer%20Protections%20Package%20-%20Statutory%20Consultation.pdf> Clause 27.9A(b)(i),

We also have concerns that supply capacity control products may be inappropriately marketed to customers. These products add another layer of complexity to the difficulties customers experience in navigating the energy market and choosing an energy offer which is most appropriate for their circumstances. Currently there are Commonwealth, State and Territory legislative provisions, and rules regarding direct marketing. There are, nevertheless, significant compliance issues as indicated by complaints data recorded by energy ombudsman schemes. This needs to be addressed with stronger monitoring and enforcement of existing marketing obligations by the appropriate regulatory authorities to ensure industry remains compliant and consumers safeguarded.

CUAC believes that supply capacity control, as a credit control mechanism is punitive and unacceptable, and undermines universal access to an essential service. It is an extreme form of intervention. The ESC September 2010 final decision prohibited the use of supply capacity control for debt management purposes until 31 December 2013.⁷ Jurisdictions, including Victoria, are working towards implementation of the National Customer Framework (NECF) by July 2012. There are no smart meter provisions in the NECF yet. CUAC is concerned that after the sunset period of 31 December 2013, retailers may use supply capacity control as a debt management tool. We have in our submission to the DTF issues paper recommended that the use of supply capacity control as a debt management tool be prohibited indefinitely. We submit that the ESC should extend the ban indefinitely. Further, as Victoria transitions to the NECF, there is a need to ensure that Victorian consumers do not lose the customer protections that they currently enjoy.

CUAC agrees with the ESC June 2011 draft decision that “there are still too many uncertainties surrounding the full potential of smart meter technology and consumers’ response to the technology”.⁸ Therefore, all consumers potentially are at risk from the use of supply capacity control products even if they are used for non-debt management purposes.

In the United Kingdom, for example, Ofgem has acknowledged the need to understand more about how load limiting tariffs could work in practice before seeking to introduce further protections if they are needed. The six major energy suppliers in the United Kingdom have committed to discuss any plans to introduce load limiting tariffs with both Ofgem and Consumer Focus before they are launched. According to Ofgem, their proposed amendments to the licence conditions (that load limiting amounts to disconnection in certain circumstances) is to ensure that consumers’ interests remain well protected in advance of any load limiting functionality being introduced. Ofgem will be monitoring developments in this area closely and reviewing their position on load limiting issues in conjunction with suppliers, consumer groups and other interested parties in 12 months time.⁹

⁷ Essential Services Commission, Regulatory review – smart meters final decision (September 2010), at 6.

⁸ Essential Services Commission, Smart meters regulatory review – Capacity control and verifying bills draft decision (June 2011), at 5.

⁹ Ofgem, Smart metering consumer protections package – statutory consultations (30 June 2011), at 2. Available at <http://www.ofgem.gov.uk/Sustainability/SocAction/Publications/Documents1/Smart%20Metering%20Consumer%20Protections%20Package%20-%20Statutory%20Consultation.pdf>

We believe that a cautious approach needs to be taken in the Victorian context. Therefore, before any decision on the use of supply capacity control for non-debt management purposes can be made, there first needs to be:

- A comprehensive review and assessment of all the risks associated with their use;
- Pilot trials undertaken or commissioned so that the pros and cons of these products and their impacts can be assessed;
- Testing of consumer acceptability of supply capacity control products;
- An appropriate regulatory framework in place if these products are to be offered (This will be dependent on the outcome of the abovementioned proposed risk assessment, pilot trials and tests).

Verifying bills

Readings at meter changeover

Draft Decision

Given existing disclosure requirements, the Commission does not consider it necessary to require distributors to leave a reminder notice or a card with the final reading from a basic meter when it is replaced with a smart meter.

We note the existing disclosure requirements regarding final reads in the Metrology Procedure and the Energy Retail Code. That is, the requirement on distributors to take a meter reading prior to a meter exchange, as encapsulated in the Metrology Procedure; the requirement in the Energy Retail Code for the retailer to include that final reading in the customer's next bill.

The Draft Decision included an extract from a retailer's bill to illustrate how a final reading from a customer's accumulation meter would be reflected in the bill.¹⁰ It is not clear from the bill extract which is the final reading from the customer's accumulation meter and which is the new smart meter reading. Therefore, we believe that the existing disclosure requirements will not help *all* customers (particularly those with language or literacy difficulties) verify their bills or reduce the number of queries or complaints to the Energy and Water Ombudsman (Victoria) (EWOV).

CUAC's view is that if the existing disclosure requirements are to be relied upon to assist customers verify their bills at the meter change over, the bill needs to clearly and explicitly indicate which is the final reading from a customer's accumulation meter. Otherwise the intent, which is to allow customers to verify their final bill based on the accumulation meter, and to provide a starting point for verifying future bills from the smart meter will not be realised.

¹⁰ Essential Services Commission, Smart meters regulatory review – Capacity control and verifying bills draft decision (June 2011), at 12 (Box 3.1).

"Start" readings on smart meter bills

Draft Decision

The Energy Retail Code will be amended to ensure retailers continue to provide a start index read on customers' bills.

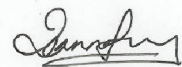
We support the inclusion of the "start" readings on smart meters bills for the reasons set out by the ESC in the Draft Decision.

Thank you for the opportunity to participate in the ESC's consultation. If there are any queries, please contact the undersigned at 03 9639 7600.

Yours sincerely,



Jo Benvenuti
Executive Officer



Deanna Foong
Senior Policy Officer