



19 May 2011

Attn: Mr Raif Sarcich
Principal Policy Officer
Energy Sector Development Division
Department of Primary Industries
GPO Box 4440
Melbourne VIC 3001

By email: raif.sarcich@dpi.vic.gov.au

Dear Mr Sarcich

Re: Energy Customer Contracts (Victoria) Transition Issues - Discussion Paper

Thank you for the opportunity to comment on the Department of Primary Industries (DPI)'s Discussion Paper - Energy Customer Contracts (Victoria) Transition Issues.

In moving from state-based regulation of contracts to a national framework, the Energy and Water Ombudsman (Victoria) (EWOV) supports an approach that provides customers with:

- minimal interruptions
- minimal confusion
- the same level of protection.

EWOV is an industry-based external dispute resolution scheme providing alternative dispute resolution services to Victorian energy and water consumers by receiving, investigating and facilitating the resolution of complaints. In making this submission, we provide comments based on our experience of customer issues.

Standing offers and deemed contracts

Questions one, two and eight:

- *Is it appropriate to transfer customers on existing standing offers to the corresponding standing offer under the NECF?*
- *Are there potential accrued rights and obligations of parties that should be specifically dealt with in the transition?*
- *How can customers receiving supply under deemed supply arrangements best be handled in the transfer?*

EWOV believes that the most suitable transition means to the National Energy Customer Framework (NECF) for standing offers and deemed contracts is to have a strict cut-off date, whereby:

- the terms and conditions applicable prior to 1 July 2012 still apply for the period prior to the NECF introduction
- the terms and conditions as stipulated in the NECF apply from 1 July 2012 onwards.

EWOV suggests that this approach be applied to retailer standing offer and deemed contracts, and distributor deemed distribution contracts. EWOV also suggests clarification be provided with respect to former franchise customers. There is no equivalent to the provisions of section 37 of the EIA (section 44 GIA) in the NECF. EWOV supports moving these customers to standing offer contracts, but suggests that the mechanism should be spelt out in the enabling legislation in order to protect any existing rights once the NECF takes effect.

Market contracts and negotiated contracts

Question three:

- *How should market retail contracts be handled as the Victorian Energy Retail Code is replaced by the NERR minimum terms regime?*

As market and negotiated contract terms and conditions are set out according to the negotiations between the relevant parties (customer and retailer or customer and distributor), EWOV believes that these terms and conditions should continue until such time as the pre-NECF contract ends. However, it is important to ensure that no customers suffer any detriment as a result. Where the NECF provides a higher level of customer benefit, the NECF standard should apply.

Energy only contracts

Question six:

- *What particular issues do energy only contracts present for the transition and how best can they be resolved?*

EWOV agrees that currently there are no uniform conditions applicable to retailers regarding use of system arrangements with embedded networks, and consequently, with respect to energy only contracts, for retail customers supplied through such networks. Discrepancies can cause confusion and unfairness for both customers and retailers. EWOV believes a uniform approach to embedded networks and energy-only contracts would deliver greater fairness and ensure that bundled billing does not occur without a use of system agreement being in place.

Retailer of Last Resort (RoLR) Events

Question seven:

- *If a RoLR event happens immediately prior to the commencement of the NECF, how should the failed retailer's customers be treated?*

Current procedures outlined in the *Essential Services Commission's RoLR Manual*¹ should be activated if a RoLR event occurs close to introducing the NECF. To resolve any complaints registered with EWOV at the time of a RoLR event, EWOV notes the issues which arose with respect to the Jackgreen RoLR event, particularly in NSW, where there were significant customer numbers.

EWOV seeks formal obligations be imposed on external administrators to engage in EWOV's processes. This will enable EWOV to effectively resolve the complaints of affected customers.

Negotiation of new contracts

Question 13:

- *How should customers who are in the process of procuring new connections to premises be treated in the transition?*

EWOV believes effective customer communication during the NECF transition phase would minimise dispute resolution problems. EWOV believes businesses should be obliged to inform customers (in particular ones organising new connections which may 'straddle' the introduction of the NECF) about:

- any changes that may affect them
- their obligations arising from the changes
- relevant 'cut-off' dates before mandatory changes are introduced.

¹ <http://www.esc.vic.gov.au/NR/rdonlyres/E41FDFEB-C3D2-4A0F-8B0C-BEE757A01E5C/0/RoLRManualforStage1event2009.pdf>

The education process should commence well in advance of introducing the NECF on 1 July 2012, and should include customers already in negotiations with retailers.

We trust the above comments are helpful. If you require further information or have any queries, please contact Belinda Crivelli, Senior Research and Communications Officer on 03 8672 4460.

Yours sincerely

A handwritten signature in cursive script that reads "Fiona McLeod".

Fiona McLeod
Energy and Water Ombudsman (Victoria)