



29 August 2011

Attn: Mr Phil Waren  
Senior Regulatory Manager (Energy)  
Essential Services Commission  
Level 2, 35 Spring Street  
Melbourne VIC 3000

**By email:** phil.waren@esc.vic.gov.au

Dear Mr Waren

**Re: The Essential Services Commission's Obligations to Customer: Disconnection and Reconnection (Draft Decision).**

Thank you for the opportunity to provide further comment on this topic via the Essential Services Commission (ESC)'s Obligations to Customer: Disconnection and Reconnection.

The Energy and Water Ombudsman (Victoria) (EWOV) continues to support the ESC's proposal for further guidance and potential changes to ensure both customers and retailers clearly understand their respective obligations when disconnecting and reconnecting a customer's energy supply.

As an industry-based external dispute resolution scheme, EWOV provides alternative dispute resolution services to Victorian energy and water consumers by receiving, investigating and facilitating the resolution of complaints. In making this submission, EWOV's comments are based on our experience in dealing with actual disconnection complaints that come to us after they have not been resolved between the customer and the retailer.

As previously stated, EWOV acknowledges:

- both the customer and retailer have shared responsibilities prior to disconnection<sup>1</sup>
- 'right first time' instalment plans are the best option when dealing with customers experiencing financial difficulty
- companies may encounter difficulties when contacting customers who fail to maintain their instalment plans
- adaptable communication is required to encourage customers (experiencing financial difficulty) to re-engage with their energy retailer after an initial payment plan has failed.

---

<sup>1</sup> As outlined under the Energy Retail Code, sections 11.2(3), 13.1(a), 12.2, 11.1 and 13.1(1).

## Retailers' obligation to offer more than one instalment plan

EWOV notes that in the Draft Decision the ESC advises that *'where contact with a customer has not been established despite a retailer's best endeavours to visit the customer's premises, the retailer must make one final effort via registered mail (or similar). This final letter must contain a statement confirming the retailer's intentions to negotiate a new instalment plan and providing the customer with a final opportunity to contact it to discuss the matter further and avoid possible disconnection'*<sup>2</sup>. The Draft Decision also advises that it is reasonable that a retailer can make an offer of an instalment plan without additional information from the customer, based on:

- the customer's previous instalment plans
- current usage
- history of payments
- any arrears accumulated
- any information known to the retailer, previously provided by the customer or a financial counsellor<sup>3</sup>.

Currently if a customer has failed one instalment plan and is experiencing financial hardship prior to disconnection, then the retailer must offer a second instalment plan as outlined in clauses 11.2(3) and 13.1(a) of the Energy Retail Code. The specific information a retailer must provide in that offer, of an instalment plan, is outlined in clause 12.2. Some retailers advise that in order to meet the obligations set out in clause 12.2 as currently drafted, they need to speak directly with a customer before a second payment plan can be offered.

EWOV acknowledges some retailers' concerns that in order to meet the obligations set out in clause 12.2 when offering a further payment plan they need to speak directly with that customer. As EWOV previously suggested retailers should make a further offer of a payment plan, even if the customer has ceased participating in the process, as this may re-engage the customer. Retailers should send this second offer of a payment plan independent of any reminder or disconnection notice. In order to ensure that this further offer of an installment plan is compliant with clause 12.2, the offer of a further payment plan could be based on:

- previous instalment plans
- current fortnightly usage
- history of the customer's payments on the account
- arrears accumulated on the account.

In previous ESC decisions regarding this issue, the ESC has decided that retailers must go beyond simply providing a reference to available payment plan on billing, reminder and disconnection notices. The ESC ruled the retailer must write directly to any customer exhibiting financial hardship about alternative payment options.

---

<sup>2</sup> ESC 's Draft Decision Obligations to customers: Disconnection and Reconnection, page five.

<sup>3</sup> ESC 's Draft Decision Obligations to customers: Disconnection and Reconnection, page 25.

However, EWOV is unclear from the information outlined in the Draft Decision, if the ESC requires the retailer's offer of a further payment plan, in writing, to contain the specific information outlined under 12.2 (a):

- the period of the plan
- the amount of the instalments
- the number of instalments and how it has been calculated
- the amount of the instalments which will pay the customer's arrears (if any)
- estimated consumption during the period of the plan.

EWOV recommends retailers' offers of a second payment plan reflect the previous ESC decision and the current regulatory requirements. This requires the offer to include specific information such as the amount of instalments, the period of the plan, estimated consumption and how the instalments will be allocated to account arrears.

### **Promoting industry best practice**

In the Draft Decision the ESC requested stakeholder feedback about establishing payment plans, for customers who are experiencing financial difficulty based on the financial counsellor's recommendation of the customer's capacity to pay. EWOV agrees that a payment plan which does not reflect the customer's capacity to pay is counter intuitive and likely to fail. EWOV believes that a financial counsellor's recommendation must represent a suitable balance between arrears and ongoing consumption needs and a customer's capacity to pay.

### **Reconnection of supply**

AGL's submission advises that EWOV should liaise directly with distributors to organise reconnection of supply, because a retailer is unable to influence the outcome and therefore should not be held liable to pay complaint fees. At all times, EWOV expects both retailers and distributors to use business-to-business arrangements to expedite reconnection, in line with the requirements under the Energy Retail Code. If a retailer has requested a disconnection of supply, and/or the customer has had contact with their retailer to arrange the reconnection then the onus should be on the retailer to fulfill its obligation and organise reconnection.

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,



**Fiona McLeod**  
**Energy and Water Ombudsman (Victoria)**