



28 April 2011

Attn: Ms Khayen Prentice
Regulatory Analyst
Essential Services Commission
Level 2, 35 Spring Street
Melbourne VIC 3000

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

Dear Ms Prentice

Re: Retailers' Obligations to Customers, Energy Retail Code Amendments

Thank you for the opportunity to comment on the Essential Services Commission (ESC)'s Consultation Paper - Retailers' Obligations to Customers, Energy Retail Code Amendments.

The Energy and Water Ombudsman (Victoria) (EWOV) supports 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.

EWOV actual energy disconnection investigations

EWOV undertakes two separate investigations after receiving an actual energy disconnection complaint. This is to review:

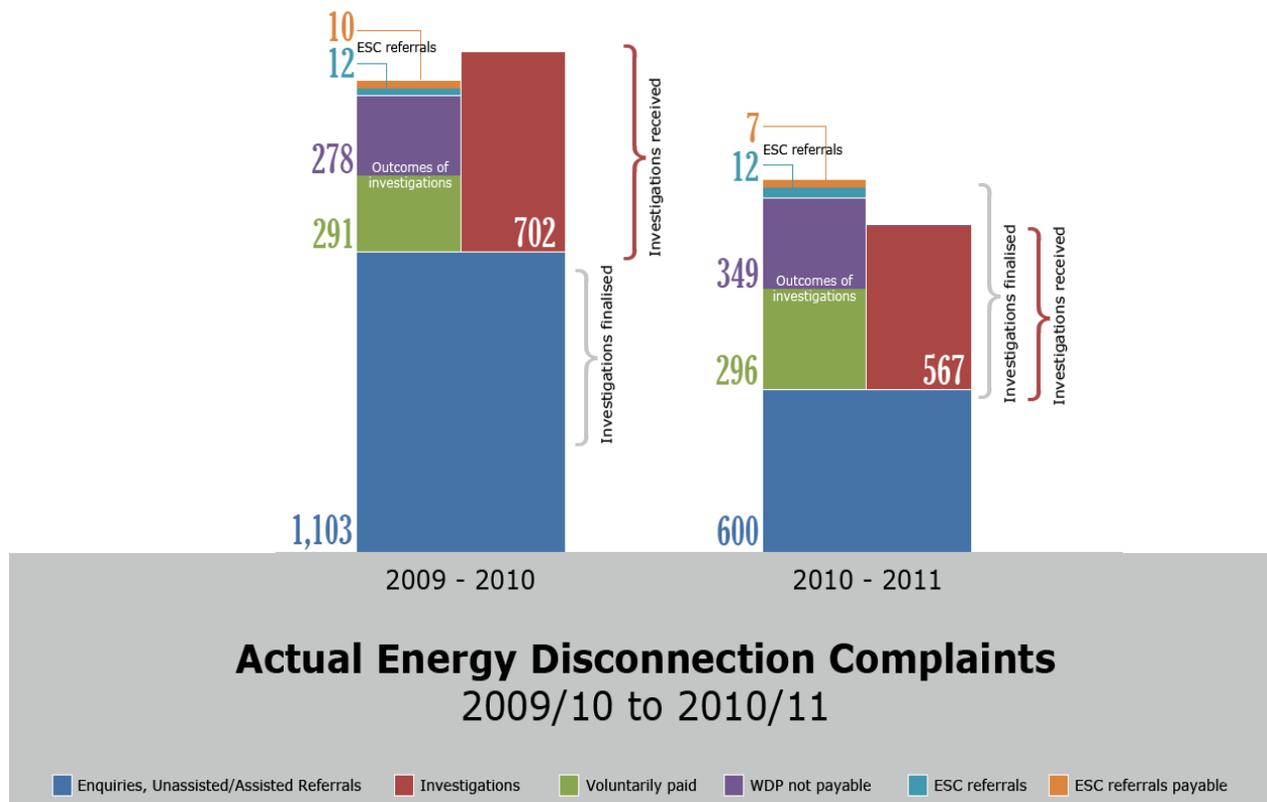
- if the disconnection complied with the terms and conditions of the customer's contract
- the 'non-compliance' aspects of the complaint, for example organising a suitable instalment plan to resolve the issue

The assessment of the actual energy disconnection involves EWOV reviewing the circumstances surrounding the disconnection of a customer’s electricity or gas supply. EWOV seeks information from the retailer about its compliance procedure to determine if the retailer has complied with the terms and conditions of the customer’s contract.

If EWOV assesses that the retailer has failed to uphold its obligations then the customer is entitled to the Wrongful Disconnection Payment (WDP). If the energy retailer contests EWOV's findings, the matter is then referred to the ESC to consider whether non-payment of the WDP amounts to a breach of licence conditions.

Originally EWOV expected the new WDP legislation to reduce complaints involving actual disconnection cases. While initially this occurred, there has been a significant increase in actual energy disconnection complaints since July 2008. Additionally, EWOV investigations have prompted energy companies to agree to a considerable number of WDP payments during this time.

EWOV investigated in total 1,269 actual disconnection cases during the 2009/10 and 2010/11¹ financial years. For almost half - or 623 customers - a WDP was applicable (as noted in the graph below). The results reveal almost one in every two disconnections subject to EWOV investigations breached the terms and conditions of the customer’s contract.



¹ As at 28 February 2011

The same results demonstrate that 11 per cent² of WDP investigations were payable as a result of non-compliance to clauses 11.2(3), 12.2(a) and/or 13.1(a) of the Energy Retail Code. This means the customer was disconnected even though they had failed to pay their bill because they were experiencing financial difficulty, and this was known to the retailer.³ The breach arose because the retailer disconnected the service before offering a second instalment plan that was compliant with its requirements. Generally the retailer had only provided a reference on billing and collection notices advising instalment plans were available.

The ESC has ruled that retailers must go beyond simply providing a reference on billing and collection notices that advise of instalment plans, by writing directly to any customer exhibiting financial hardship about alternative payment options.

Retailers' obligation to offer more than one instalment plan

EWOV agrees both the customer and retailer bear shared responsibilities prior to disconnection as outlined in the Energy Retail Code as shown below:

Retailer Responsibilities:

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). The retailer must provide specific information when offering an instalment plan as outlined in clause 12.2.

Customer Responsibilities:

A customer must agree to a new payment plan within five business days of the offer being made or risk the service being disconnected as outlined in clause 11.1.

EWOV notes that clause 13.1 (1) of the Energy Retail Code allows for disconnections if a customer fails to provide reasonable assurance to the retailer of their willingness to pay the bill. However, EWOV also notes that clause 11.2(3) states an offer of an instalment plan is required unless a customer has failed two previous payment plans within a 12-month period.

EWOV's firmly believes that the retailer's obligation to offer a second instalment plan is not negated if a customer fails to contact the retailer. Specifically, EWOV makes the following comments about the issue.

² 62 assessments out of 587 payable complaints found that clauses 11.2 (3), 12.2(a) and/or 13.1(a) of the Energy Retail Code were in breach

³ These assessments may have also found other clauses in breach

1. What could be reasonably expected of retailers in communicating to customers after a failed first and second instalment plan?

EWOV acknowledges the difficulties companies may encounter contacting customers who fail to maintain the first or second instalment plan, but believes a retailer should take further steps to contact customers with an offer of a further payment plan or assistance.

Current regulations require energy companies to contact customers experiencing financial difficulty either in person or by phone one month before disconnecting any service (clause 13.2 of the Energy Retail Code). Following on from this minimum standard of contact, EWOV believes that retailers should be required to attempt to contact their customers who are experiencing financial difficulty and have failed a first payment plan (in the last 12 months) using other means if telephone contact fails.

2. How could the regulation be drafted to provide for minimum, but flexible, communications while allowing for industry best practice?

EWOV agrees that flexible communication is required to encourage customers (experiencing financial difficulty) to re-engage with their energy retailer after an initial payment plan has failed. However, a best practice must also be outlined so energy retailers do not provide varying efforts to contact customers in these circumstances.

To ensure flexibility, EWOV believes that the Energy Retail Code should require a retailer to use additional efforts to contact a customer who has failed to maintain an instalment plan, when telephone contact has failed. These additional efforts could include:

- written contact separate to reminder and disconnection notices
- face-to-face contact (depending on the customer's address, as already outlined for clause 13.2)
- SMS contact (with the details of the second payment plan included)

3. How can retailers communicate and encourage further contact from customers who may be embarrassed because of their financial circumstances? Is regulation appropriate in these circumstances?

EWOV agrees with community group comments that identifying hardship and implementing 'right first time' instalment plans remains the best option when dealing with customers experiencing financial difficulty. However, EWOV believes further assistance is required even if customers avoid contact or refuse to pay the instalment plan offered by the retailer.

EWOV's investigations have revealed many reasons for a customer's failure to meet their obligations. In some cases major issues may have disrupted their lives or they may feel embarrassed by their financial circumstances. In other cases, the customers fear that their retailer will be unlikely to assist them.

For these reasons, EWOV supports further clarification of existing regulations to ensure retailers use non-threatening contact methods in order to encourage further engagement and avoid disputes with customers.

Some retailers advise that in order to meet the obligations set out in clause 12.2 and determine a payment plan that meets the customer's individual consumption needs and capacity to pay they need to speak directly with a customer before a second payment plan can be offered.

EWOV acknowledges retailers' concerns but believes making a second offer of a payment plan may at least re-start the dialogue with a customer who may be otherwise avoiding contact amid fears of any negative consequences. EWOV suggests that retailers send this second offer of a payment plan independent of any collection notice (reminder or disconnection warning) that reflect the customer's capacity to pay. This offer could be made based on:

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

EWOV believes that a positive strategy would encourage customers to take advantage of flexible payment options and resume contact with their energy provider.

4. Should there be an obligation placed on customers to respond to the retailers' communications or would this be simply symbolic regulation?

EWOV believes customer obligations are adequately outlined in clause 11.1 of the Energy Retail Code that advises customers contact the retailer if unable to pay an outstanding bill by the due date. EWOV sees the need for further information, to encourage a customer to advise their retailer if they cannot afford or maintain a payment plan that has been offered. However, any such information would not absolve retailers from assessing a customer's capacity to pay and offering an appropriate payment plan reflecting their capacity to pay.

5. Are there risks for small customers in excluding the retailer from having to comply with clauses 11.2(3) and 13.1 of the Code for customers who enter an instalment plan arrangement under clause 12.1(a) of the Code?

Please note that for the purpose of EWOV's response to this question, EWOV assumes the ESC is referring to domestic customers when it mentions 'small customers'. Currently customers establishing instalment plans for the ease of paying and who fail this instalment plan, only receive information about the availability of a further payment plan via the retailer's billing, reminder and disconnection notices. If the customer does not respond to the retailer's notices, then the retailer does not make an offer of a second instalment plan in writing, and if no payment occurs, that customer's supply is then disconnected.

EWOV believes that the current application of the Code is appropriate and does not need to be extended to the entire customer base. This ensures that customers experiencing financial difficulty receive targeted and additional contact from their retailer.

Retailers' obligation to reconnect

1. Should clause 15.2(b) be deleted from the Energy Retail Code? Alternatively, should clause 15.2(b) be retained, keeping the absolute obligation on retailers?

EWOV supports removing clause 15.2(b) which refers to a retailer's absolute obligation to reconnect a customer. Currently this obligation does not take into account the role of others, such as the distributor or the customer, in facilitating the reconnection of the supply.

EWOV refers to clause 35.1 when determining whether a retailer has used its best endeavours to organise the reconnection. It also considers whether the distributor has played any role in delaying any reconnection. At all times, EWOV expects both retailers and distributors to use best business-to-business arrangements to expedite unresolved cases to avoid customers being left unnecessarily without their energy supply.

In cases where the distributor has not complied with its obligation as outlined under the Electricity Distribution Code (Version 5), EWOV believes it is appropriate for distributors to provide a credit to the customer (via the retailer) to acknowledge its failure to satisfy clause 13.1.2 and for the resulting inconvenience arising from any delay.

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)