



Listen Assist Resolve

25 March 2014

Australian Energy Market Commission
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Submitted online at: www.aemc.gov.au

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Re: Australian Energy Market Commission 2014, Retailer Price Variations in Market Retail Contracts, Consultation Paper, 13 February 2014, Sydney

Dear Sir/Madam

Thank you for the opportunity to comment on the Australian Energy Market Commission (AEMC)'s *National Energy Retail Amendment (Retailer Price Variations in Market Retail Contracts) Rule 2014 Consultation Paper* (the Consultation Paper).

As an industry-based external dispute resolution scheme, the Energy and Water Ombudsman (Victoria) (EWOV) provides alternative dispute resolution services to Victorian energy and water customers by receiving, investigating and facilitating the resolution of complaints. In making this submission, EWOV's comments are based on our extensive experience in dealing with complaints between customers and their energy companies. Although Victoria is not currently covered by the National Energy Customer Framework (NECF), EWOV makes this submission in anticipation of Victoria harmonising its energy laws with the NECF.

This submission provides details of EWOV's case handling experience in matters where customers may have been affected by an increase of tariffs during a fixed-term contract. Firstly, we provide some comments about our complaints about price changes during fixed-term contracts. Then we provide some EWOV contract-related case data, case analysis and insight into the impact that contract issues have on customers, along with case studies to illustrate customer experiences.

1. EWOV Complaints about Price Changes during Fixed-Term Contracts

EWOV does receive complaints from Victorian energy customers who enter a market, or fixed-term, contract under the belief that the tariffs and charges quoted during the marketing contact would be fixed for the period of the contract. These customers typically make a complaint after receiving notification from their energy company about an upcoming price increase or when their bill reflects higher tariffs and/or charges than what they contracted for.

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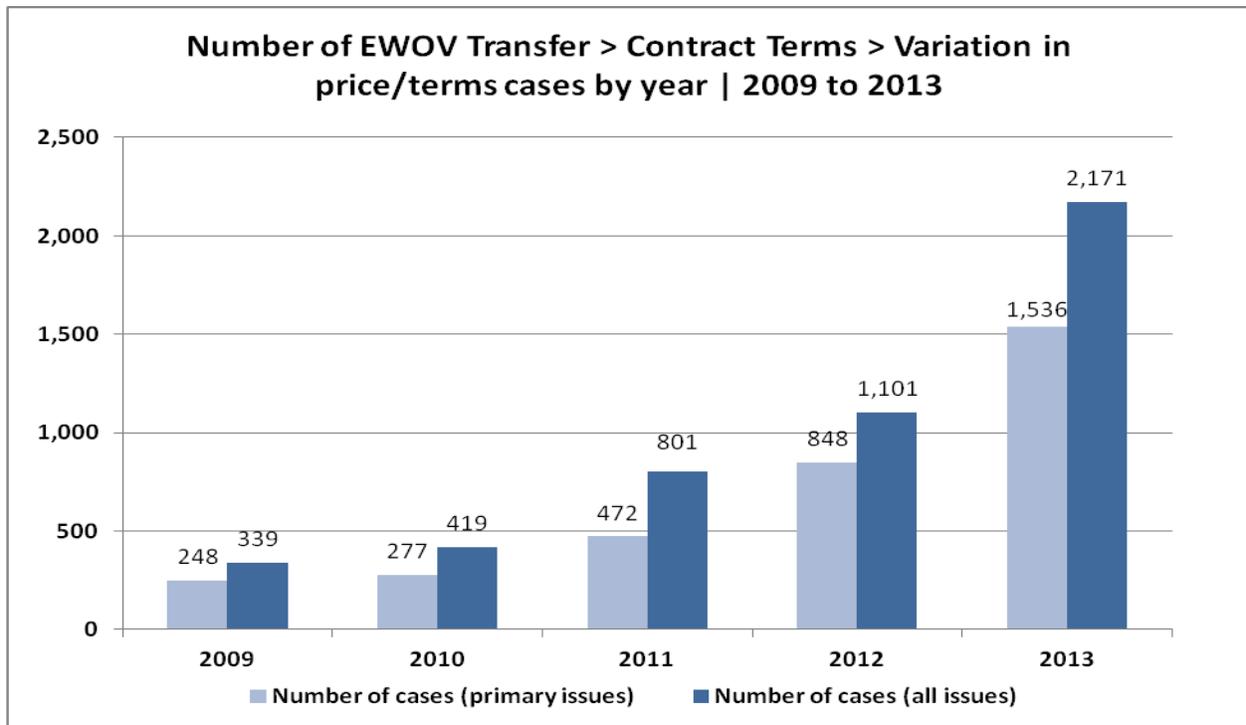
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Cases about price increases during fixed-term contracts fall into EWOV’s transfer-related contract variation in price/terms issue category. Cases about this issue and about termination fees do not always include a concern about companies increasing prices during fixed-term contracts. However, anecdotally, EWOV finds that most cases in these categories involve customers who are concerned that the tariff and/or discount had changed or was not the same as they believed when they entered the contract. Customer confusion often arises from misleading information, miscommunication or misunderstanding at the time of marketing. Furthermore, most cases about these issues are handled via EWOV’s Assisted Referral process. EWOV rarely needs to complete an Investigation into these issues as they are generally straightforward to resolve. Generally, customers who raise complaints about energy companies increasing tariffs during contracts are seeking the energy company to either honour the prices quoted at the time of marketing or waive the termination fee and allow a transfer or retrospective transfer to a different energy company.

2. EWOV Case Data

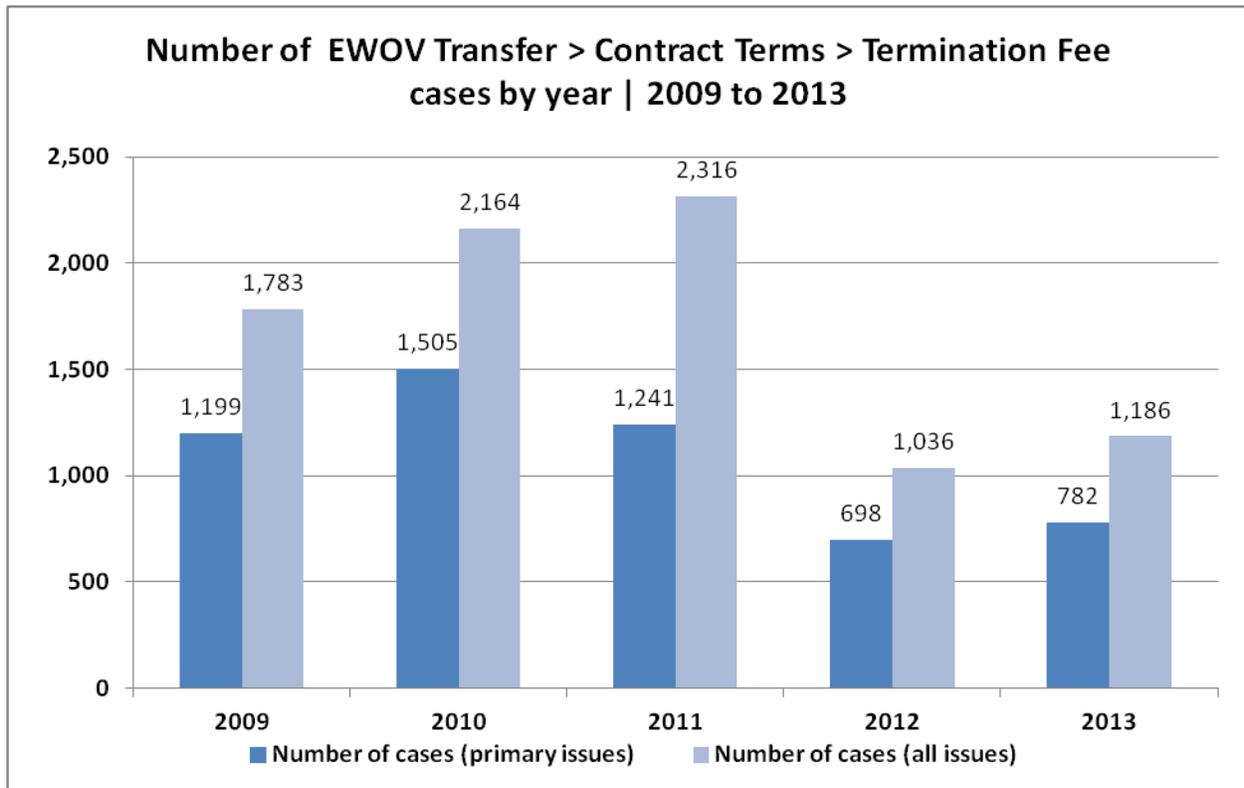
Between 1 January 2009 and 31 December 2013, 3,381 customers raised variation in price/contract terms as their primary issue and a further 1,450 customers raised it as a secondary issue in their case. As the graph below illustrates, EWOV has seen an increasing number of cases received about variation in price/contract terms. However, as already stated, these may be driven by misleading information, miscommunication or misunderstanding at the time of marketing.



Between 1 January 2009 and 31 December 2013, variation in price/contract terms cases increased as follows:

- primary issues: 540%
- all issues: 519%.

As an associated issue, EWOV receives cases from customers who complain about being charged a termination fee due to them leaving a fixed-term contract, often after they realise the tariffs are not the same as what they initially agreed to. Between 1 January 2009 and 31 December 2013, 5,425 customers raised termination fees as their primary issue and a further 3,060 customers raised it as a secondary issue in their case. As the graph below shows, EWOV has seen a fluctuating number of termination fee cases over the last five years.



As the data shows, termination fee cases peaked in 2011. However, over the reporting period of 1 January 2009 and 31 December 2013, cases decreased – particularly in 2012 and 2013 – as follows:

- primary issues: 33%
- all issues: 35%.

3. Current Victorian Law

Put simply, an energy company may change a tariff under a market contract if a customer has explicitly agreed to this, as a term of the contract. Accordingly, when entering a new contract, energy companies sometimes ask customers if they provide their explicit informed consent¹ for the energy company to vary energy tariffs. However, a clause in the company’s welcome pack is also sufficient for it to vary the contract terms in line with the *Energy Retail Code*². Price increases typically occur on 1 January and/or 1 July each year, dependent on the energy company³.

¹ Clause 34 of the *Energy Retail Code (version 10a)*

² Clause 20(b) of the *Energy Retail Code (version 10a)*

³ Retail energy prices are not regulated in Victoria

4. EWOV Case Studies

The following case studies demonstrate the types of contract issues that customers contact EWOV about and aim to provide an insight into the Victorian energy customer's experience over the last five years. The case studies cover the period from 1 January 2009 to 31 December 2013 to show that these issues have been ongoing over the reporting period. The following three case studies demonstrate that some customers believe that the price they agree to at the time of entering the contract is then fixed for the life of the fixed-term or fixed-benefit contract.

G/2009/174: Investigation received on 6 January 2009 and closed on 3 February 2009

The customer received door-to-door marketing from an energy company representative who advised that for the duration of the three-year contract the tariff would be locked in and would not increase. The customer believed this to be a good offer so he decided to transfer. However, he then received a letter from the company which advised that the tariffs would be increasing. He contacted the company to discuss the matter directly and was not satisfied with its response. He felt like the company had misled him in order to secure a sale. On 6 January 2009, he contacted EWOV and an Assisted Referral was raised. The customer was again not satisfied with the company's response so an Investigation was raised on 7 January 2009.

The Investigation and Outcome

The energy company apologised for any misleading information that was provided by its door-to-door sales representative and provided a \$50.00 credit in recognition of the inconvenience experienced and misleading marketing. The company confirmed that clause 3.4 of the contract specified that the tariffs were subject to increase during the contract. In light of the misleading marketing, the company increased a discount from 3% to 6% for both his gas and electricity accounts to help lessen the impact of the higher tariffs. The customer was satisfied with the outcome.

C/2011/3064: Investigation received on 2 February 2011 and closed on 7 February 2011

In November 2010, the customer was door-to-door marketed by an electricity company and she agreed to transfer to it as the tariff quoted was cheaper than her current pricing. She understood that it would be fixed for the length of the contract and the new company said that her old company would not charge a termination fee for switching.

However, the previous company did apply an early termination fee and then the customer received a bill from the new company which did not reflect the agreed tariff. The customer contacted the new company on 18 January 2011 about these issues. The company could not explain the termination fee and advised that the tariffs quoted could not be honoured as prices had increased on 1 January 2011. It also said that the customer had to stay with the company for three months otherwise it would also apply an early termination fee. Dissatisfied with the company's response, the customer contacted EWOV on 2 February 2011 and an Investigation commenced.

The Investigation and Outcome

In responding to the complaint, the company said it would allow the customer to retrospectively transfer back to her old company. It waived the bill for \$68.80, refunded this amount to the customer (as she had already paid it in full), waived the termination fee and closed the account. The customer was satisfied with this outcome.

2013/62558: Real Time Resolution received on 22 October 2013 and closed on 24 October 2013

The customer was dissatisfied that his energy company had increased its electricity tariff during a 12-month fixed term contract. He entered the contract on 3 June 2013, and in early July 2013 he received his first bill and a letter advising of the price increase. When he spoke to the company, he was advised that he would be charged a termination fee if he broke the contract. On 10 October 2013, the customer contacted EWOV for assistance and an Assisted Referral was raised. He did not receive a call from the company, so the complaint was handled via EWOV's Real Time Resolution process on 22 October 2013.

The Investigation and Outcome

The company advised that under the terms of the contract it was able to increase its prices anytime during the term of the customer's contract. It referred to the welcome pack it sent to the customer which stated that it can vary the contract terms by notifying the customer in writing: *"We may vary your rates, charges and the terms of this Energy Plan at any time by writing to you."* The company offered to waive the contract early termination fee so that the customer could transfer to another energy company. This was accepted by the customer.

We trust the above comments are helpful. Should you require further information or have any queries, please contact Chris Stuart-Walker, Research and Communications Officer, on (03) 8672 4252 or at Chris.Stuart-Walker@ewov.com.au.

Yours sincerely



Cynthia Gebert
Energy and Water Ombudsman (Victoria)