

## Meter access and estimated billing – “best endeavours” April 2015

### Background

EWOV receives and investigates complaints about estimated billing resulting from meter access issues, particularly where the estimated billing has led to undercharging and a subsequent catch-up bill or backbill.

While energy companies are obliged to base bills on actual meter reads, sometimes backbilling is unavoidable. Generally, there are time limits on how far back an energy retailer can backbill a customer. However, sometimes energy retailers attempt to recover all amounts undercharged, because they have been unable to gain access to a property to read the meter. This statement outlines EWOV’s view of what is fair and reasonable in these situations.

### Considerations during an EWOV investigation

Each complaint is reviewed on its individual merits and its outcome will depend on the circumstances of the complaint. However, for meter access and estimated billing complaints EWOV will usually consider:

1. A timeline of events and the relevant facts
2. Laws and codes
3. Regulatory advice
4. Current good industry practice and past outcomes for similar investigated complaints
5. Retailer policies and their application
6. Special customer circumstances

#### **1. A timeline of events and the relevant facts**

For this type of complaint it is important for EWOV to establish:

- The reasons the meter was not read, including whether there was an actual access issue.
- Whether the energy retailer proactively attempted to gain access, and what attempts were made to obtain an actual meter read.
- Whether the customer has actively denied access or contributed to the issue, for example due to a locked gate, a dog or other obstacle.
- Any steps taken by the customer to provide access or give their energy retailer relevant information, including meter reads or access details, whether a Victoria Power Industry (VPI) or other lock has been installed, or whether a locked gate has been left open over scheduled read dates.
- Whether any actual meter reads were obtained, but rejected due to validation or other procedures, and any steps the energy retailer took to follow up or confirm readings, as well as the timeliness of any follow up.
- Whether historical consumption data is available and has been used as a basis for the estimations. EWOV expects usage estimates would be similar to actual historical data where this is available.
- The method used to inform the customer that billing was estimated and about the access issues, for example on the bill, by letters or by phone calls.



- Communication to, or education of, the customer about the consequences of estimated billing, especially estimates over an extended period.
- The types and frequency of communication between the energy retailer and customer about obtaining access, for example by attempted or actual telephone contact, by letters requesting access or by notices left upon failure to obtain access. Especially relevant will be whether there was only one attempted type or form of communication or whether the energy retailer tried various methods of communicating with the customer. The period of time over which communication between the parties took place may also be relevant.
- Whether there has been any communication with the customer about other issues which gave the energy retailer the opportunity to address any known access issues, for example payment plan, credit or account discussions.
- Whether communication was customer or retailer initiated.
- Whether there has been effective communication between the energy retailer and distributor regarding access notes or information, and what steps have been taken if a communication breakdown has occurred.
- If the customer has accounts for both electricity and gas with the same retailer, whether information pertaining to access is included on each account, or any explanation provided if the information is only included on one account.
- Any other relevant information depending on the facts of an individual complaint, as the above list is not exhaustive.

## 2. Laws and codes

EWOV expects customers and providers to meet their regulatory obligations. Obligations under laws and codes represent minimum standards.

The *Energy Retail Code*<sup>1</sup> places legal obligations and responsibilities on energy retailers and customers. The *Energy Retail Code* forms part of the legislative consumer protection framework relating to the energy industry, and any interpretation should be consistent with this purpose.

Version 10a of the *Energy Retail Code* was in force until 13 October 2014 when Version 11 was implemented, although there was a transitional period between 15 July 2014 and 12 October 2014 when energy retailers could be compliant with either version of the *Energy Retail Code*. EWOV will usually refer to the backbill issue date to establish the applicable version of the *Energy Retail Code*.<sup>2</sup>

### Energy Retail Code – Version 10a

There is an obligation on customers to allow “safe, convenient and unhindered access” to the meter<sup>3</sup> as well as a general obligation on retailers to base each bill sent to a customer on an actual meter read.<sup>4</sup> Energy retailers are permitted to send bills based on estimated meter reads, however they are required to use “best endeavours” to obtain an actual meter read at least once in any 12 months.<sup>5</sup>

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<sup>1</sup> Both Version 10a and Version 11.

<sup>2</sup> For backbills issued during the transitional period, EWOV will ask the energy retailer to specify whether they were complying with Version 10a or Version 11 of the *Energy Retail Code*.

<sup>3</sup> Clause 25 *Energy Retail Code* V10a

<sup>4</sup> Clause 5.1 *Energy Retail Code* V10a

<sup>5</sup> Clause 5.1(b) *Energy Retail Code* V10a



“Best endeavours” is defined by the *Energy Retail Code* to mean “act in good faith and do whatever is reasonably necessary in the circumstances”.<sup>6</sup> Where an energy retailer has used best endeavours to obtain an actual meter reading at least once in any 12 months, but cannot read the meter because the customer has denied access, the retailer will have met its regulatory obligation.

The *Energy Retail Code* enables an energy retailer to recover an undercharged amount subject to timeframe limitations (nine months if the undercharge resulted from a failure of its billing system or otherwise 12 months).<sup>7</sup> Customers must be offered at least equal time to pay any undercharged amount.<sup>8</sup>

The timeframe limitation on recovery of undercharged amounts applies where a retailer has not used its best endeavours to obtain an actual meter reading. However, where the energy retailer has used best endeavours to obtain an actual meter read and the customer has denied access to their meter, the timeframe limitation will not apply,<sup>9</sup> and the retailer may be entitled to recover the full amount undercharged.

EWOV interprets the obligation to use best endeavours (under Version 10a) as requiring more than a statement on the customer’s bill to the effect that meter access is required, even if the statement is on numerous bills sent to the customer.

#### Energy Retail Code – Version 11

Version 11 of the *Energy Retail Code* does not have the same explicit requirement as Version 10a for all customers to provide safe, convenient and unhindered access.<sup>10</sup> However, as there are also access obligations contained in the *Electricity Distribution Code*<sup>11</sup> and the *Gas Distribution System Code*,<sup>12</sup> EWOV considers that customers are still required to allow safe, convenient and unhindered access to the distributor’s metering equipment.

Energy retailers still have a general obligation to base each bill on metering data<sup>13</sup> and are still allowed to issue bills based on estimated reads to customers.<sup>14</sup> A retailer must use its best endeavours to ensure that actual readings of the meter are carried out as frequently as required to prepare the customer’s bills and at least once every 12 months.<sup>15</sup>

Because Version 11 of the *Energy Retail Code* no longer includes a specific definition of “best endeavours”, the ordinary meaning of the words will apply. EWOV interprets the obligation to use “best endeavours” as requiring a retailer to ‘try its best’ to obtain an actual reading of the meter as often as needed to bill a customer, but at least once in a 12 month period. Where an energy retailer has tried its

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<sup>6</sup> Clause 34 *Energy Retail Code* V10a

<sup>7</sup> Clause 6.2(a) *Energy Retail Code* V10a

<sup>8</sup> Clause 6.2(d) *Energy Retail Code* V10a

<sup>9</sup> Clause 6.2(b) *Energy Retail Code* V10a

<sup>10</sup> The clauses requiring customers to allow access (clause 18 of the *Energy Retail Code* V11 and clause 11 of the Model Terms and Conditions) apply only to Standard Retail Contract customers. Access obligations for Market Retail Contract customers may be included in their contract with the energy retailer.

<sup>11</sup> Clause 3.3.2 *Electricity Distribution Code*

<sup>12</sup> Clause 11.1(b)(i) *Gas Distribution System Code*

<sup>13</sup> Clause 20 *Energy Retail Code* V11

<sup>14</sup> Clause 21 *Energy Retail Code* V11

<sup>15</sup> Clause 20 *Energy Retail Code* V11



best to obtain an actual meter reading at least once in any 12 months, but cannot read the meter because the customer has denied access, EWOV considers that the retailer will have met its regulatory obligation.

Version 11 of the *Energy Retail Code* also allows an energy retailer to recover an undercharged amount,<sup>16</sup> but restricts recovery to nine months unless the undercharge resulted from a customer's fault or unlawful act/omission.<sup>17</sup> Customers must be offered time to pay equal to the undercharge period or up to a maximum of 12 months.<sup>18</sup>

The timeframe limitation on recovery of undercharged amounts applies where a retailer has not used best endeavours to obtain an actual meter reading. However, where the energy retailer has used best endeavours to obtain an actual meter read and it is the customer's fault the meter is not able to be read (for example, the customer has continued to deny access to the meter after appropriate requests from the retailer), the timeframe limitation will not apply, and the retailer may be entitled to recover the full amount undercharged.<sup>19</sup>

EWOV interprets the obligation to use best endeavours (under Version 11) as still requiring more than a statement on a customer's bill to the effect that meter access is required, even if the statement is on numerous bills to the customer.

EWOV considers that the regulatory obligations for both customers and energy retailers are effectively the same under both versions of the *Energy Retail Code*.

### **3. Regulatory advice**

#### Essential Services Commission (ESC) advice

Regulatory advice from the ESC about estimated billing and meter access issues has indicated:<sup>20</sup>

- Retailer use of estimated billing should be minimised because it is a relatively inaccurate method of billing.
- Data accuracy for estimated accounts is important in order to minimise the likelihood of customers potentially being placed in hardship due to accounts being based on significantly under or over estimated consumption.
- Customers should not be faced with unexpectedly high bills when the estimated bills are reconciled with an actual meter read, nor should such bills put customers into financial hardship.
- Retailers have significant responsibilities to inform and educate customers about the benefits of providing access to meters.

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<sup>16</sup>Clause 30 (1) *Energy Retail Code* V11

<sup>17</sup> Clause 30 (2)(a) *Energy Retail Code* V11

<sup>18</sup> Clause 30 (2)(d) *Energy Retail Code* V11

<sup>19</sup> Clause 30(2) *Energy Retail Code* V11

<sup>20</sup> ESC special report – Use of estimated accounts by Energy Retail Businesses (December 2008)



#### Australian Energy Regulator (AER) advice

Regulatory advice from the AER about this issue has indicated:<sup>21</sup>

- It is good practice for retailers to proactively take steps to request data from distributors and to notify customers of the reasons for estimated bills being sent, as this may help avoid subsequent estimations.
- It is good practice to explain the estimated billing (including under- or over-charging), including by phone contact.
- The law clearly allows for retailers to estimate consumption based on historical data or comparable customers.
- Retailers are required to “use best endeavours to ensure actual meter readings are carried out as frequently as required to prepare bills. In any event, retailers must ensure that meter readings occur at least once every 12 months.”<sup>22</sup>
- Some retailers send a letter at the second estimated meter reading requesting access and giving options. Some retailers will also call customers who have not had an actual reading for three or more consecutive meter reads. Following up ‘no access’ letter with a phone call is good practice as it provides an opportunity for the retailer to discover issues around meter access and possibly help the customer ensure an actual read in future. The AER considers this to be the approach most consistent with the legal obligation.
- Poor practice included sending a letter to a customer requesting access only after a customer has not had a meter read in 300 days, even though this was compliant with the regulatory obligation.

Regulatory advice suggests that in order to meet best endeavours requirements, energy retailers should be proactively attempting to obtain access from customers. Best practice included sending ‘no access’ letters followed up by a phone call. Sending of a ‘no access’ letter was the minimum requirement to meet regulatory obligations.

#### **4. Current good industry practice and past outcomes for similar investigated complaints**

When assessing what is fair and reasonable in an individual complaint, EWOV expects the actions of an energy retailer will be consistent with or exceed current good industry practice, as well as being consistent with appropriate past complaint outcomes. Other industry practice may also be relevant.

EWOV’s extensive experience in dealing with these types of complaints indicates:

- In the absence of accurate historical data as the basis for estimations, some water providers try to slightly over estimate rather than under estimate bills, as customers are more likely to contact their provider if they consider the bill too high. This may also be a sensible approach for energy retailers.
- Access issues should be raised appropriately with customers. Energy retailers should not just rely on a statement on a bill, but should escalate or differentiate the method used to advise a customer about access issues, for example commence with a statement on the back of the bill, then a notification letter, then phone contact. Retailers should also take advantage of contact opportunities with customer, for example raising access issues where a collection discussion occurs with a customer.
- Where retailers have not escalated or differentiated the method of notification to customers regarding meter access issues, past complaints have regularly been resolved on the basis that

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<sup>21</sup> National Energy Retail Law: Small Customer Billing Review (February 2014) (AER report)

<sup>22</sup> AER Report p12



any backbilled amount is limited to nine months where this was a fair and reasonable outcome in the circumstances of the complaints.

- Retailers should be proactively educating customers about estimations and access issues, particularly around the consequences of receiving inaccurate estimations over a long period.

### **5. Energy retailer policies and application**

Where retailer policies or Customer Charters make statements or representations as to how an energy retailer will deal with meter readings and meter access issues, EWOV will consider the application of those policies. EWOV expects that energy retailers will adhere to any statements or representations made in their policies and charters.

### **6. Special customer circumstances**

EWOV considers any relevant special customer circumstances, including the impact on the individual customer of the lost opportunity to control or amend usage patterns due to inaccurate representations of their consumption and whether the inaccurate billing has caused financial hardship.

Individual customer circumstances may be especially relevant where estimations are not based on historical consumption, where meter readings have been estimated over a long period of time or when establishing an appropriate payment arrangement.

Equally, if a customer is aware of their obligation to provide access to the meter and has continued to actively deny access, this will be relevant when assessing a fair and reasonable outcome.

### **Complaint resolution and outcomes**

Based on EWOV's interpretation of the applicable law, industry codes, good industry practice and fairness, EWOV considers that in order to demonstrate compliance with best endeavours, the indicative steps an energy retailer would need to show are:

- That an actual attempt to read the meter was made on each occasion, for example it is not acceptable to assume a gate is locked because it was previously.
- That a clearly visible and obvious statement seeking access was included on the bill following the first occasion a retailer is unable to obtain access.
- That a letter requesting access was sent to the customer on the second consecutive occasion the retailer is unable to obtain access. A statement could also be included on the bill.
- That attempts to contact the customer personally (or by telephone) were made on the third consecutive attempt to obtain access. A further access letter and statement on the bill could also be included in communications to the customer.

Notices could also be left at the site. In addition, it would be beneficial for the provider to show how and when it had advised the customer about the consequences of long-term estimations and access issues.

In situations where EWOV is satisfied that an energy retailer did make best endeavours to obtain access and an actual reading, and access was denied by a customer, the timeframe limitation for recovery of an undercharged amount will not apply and the customer may be required to pay the full amount undercharged. However, depending on the circumstances, EWOV may determine that a fair and reasonable outcome includes a reduction in the charges a customer is billed, or an extended payment plan in line with a customer's capacity to pay.



In situations where an energy retailer is not able to demonstrate that it has met the requirements for best endeavours, EWOV will:

- Ask the retailer to limit any undercharged amount to a period of nine months.
- Ask the retailer to offer at least equal time to pay, and to provide an appropriate payment plan which is in line with a customer's capacity to pay.
- Ask the retailer to make any additional appropriate offers to resolve the complaint, which could include further recognition for customer service issues.