Essential Services Commission
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Draft Compliance and Reporting Guidelines

The Australian Energy Council (the Energy Council) welcomes the opportunity to make a submission to the Essential Service Commission of Victoria's (the Commission) draft Compliance and Performance Reporting Guideline for Energy Retail Licence Holders.

The Energy Council is the industry body representing 22 electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. These businesses collectively generate the overwhelming majority of electricity in Australia and sell gas and electricity to over 10 million homes and businesses.

The Energy Council does not support the Commission's interim compliance and performance reporting guidelines. We believe the proposals are duplicative, impose unnecessary costs on retailers and move Victoria further away from harmonisation with the National Energy Customer Framework (NECF). We believe that the Commission should adopt a more cautious and considered approach. The submission that follows outlines in detail the Energy Council's concerns to the Commission's reporting guidelines.

Moving away from harmonisation

The Energy Council is concerned that the proposals move Victoria further away from harmonisation with the National Energy Customer Framework (NECF). This will impose an additional administrative burden and compliance risk on retailers for no discernible consumer benefit. The Commission's approach is not consistent with its new legislative objective of putting the consumers' long term interest in their decision making.

We consider that if harmonisation of the Energy Retail Code (ERC) worked well enough for the Commission to call for repeal of the Marketing Code of Conduct (MCOC) in 2014, then so too can the compliance and reporting requirements be aligned to same priorities the Australian Energy Regulator's (AER) compliance and reporting guidelines carry. As the Commission argued at the time, "the NECF contains significant protections for customers that preclude the need for maintaining the Code of Conduct for Marketing."[i]

The Commission fails to make a case in its draft decision as to why the MCOC should be reinstated. Given that the MCOC was last revised in 2009, it is out-of-date and no longer fit for purpose. It will result in higher costs to consumers as a result of additional compliance and enforcement costs. Furthermore, as many of the newly imposed compliance obligations relating to the MCOC are already in place through the ERC, the compliance program should not require reporting against both regulatory tools.

The Commission could argue that the MCOC is justified it provides protections which are not included in the ERC or NECF. However, the Commission's final decision paper on the harmonised energy retail code found that the NECF contained significant protections in relation to marketing and that did not consider that other Acts and instruments applied to retailers undertaking energy marketing. Moreover, the Commissions stated that it was clear that other instruments interacted with the ERC and that it was not intended to be an exhaustive list of energy regulations. The Energy Council believes the Commission has already clearly made the case against retaining the MCOC. There is therefore no justification for the renewed focus on it. Instead, the Commission should repeal the MCOC as originally intended.

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Duplicative obligations

The draft decision introduces new Type 1, 2, 3 breaches related to the reapplication of the MCOC. The Type 1 breaches relate to misleading customers, receiving explicit informed consent and abiding by the Privacy Act, all three of which are adequately protected by other means. The ACL prohibits misleading and deceptive conduct, failure to comply with the Privacy Act can attract penalties and the ERC requires energy retailers to receive explicit informed consent from customers. Given the protections that exist through other laws, there is no clear justification for duplicating these requirements through a renewed focus on the MCOC.

In addition, the new draft compliance obligations relating to the MCOC result in duplicative requirements which would, if breached, result in double penalties for the same action. Such a result represents poor regulatory practice. The proposed type 1 breaches relating to clauses 3.3, 3.5-3.6 of the MCOC duplicate the proposed type 1 breaches relating to clauses 61-64 of the ERC. It is entirely unnecessary to have breaches of both the ERC and Marketing Code of Conduct for the same provision. Similarly, a breach of clause 4.1 of the MCOC, which is proposed in the draft decision, is already an existing type 1 breach covered by clause 57 of the ERC.

The addition of clause 2.3 of the MCOC relating to no contact lists as a Type 2 breach duplicates Clause 65 of the ERC which is already a Type 2 breach. Finally, clauses 2.4 and 2.5 of the MCOC relating to visit and telephone records, which are proposed as Type 3 breaches, are already a Type 3 breach as part of clause 68 of the ERC.

There will be no benefits to consumers as a result of using the MCOC to impose double penalties on energy retailers. It will only penalise businesses over and above those penalties already imposed through other mechanisms rather than encourage improved compliance and performance by retail energy businesses. The Energy Council strongly urges the Commission to remove these duplicative requirements.

New performance indicators

The draft guidelines also introduce several new indicators on which retailers are required to report, including the number of bills, reminder notices and disconnections issued each month. According to the Draft Decision Paper this is to satisfy the Commission's new objective "to promote protections for customers, including in relation to assisting customers who are facing payment difficulties". The Energy Council contends that there is no clear rationale as to how reporting the number of bills, reminder notices and disconnection notices issued each month meet this objective.

Retailers must already report on the number of customers, so it is unclear what benefit there is from reporting the number of bills issued. There is no justification provided as to how these extra requirements will "promote protections" for consumers. In the Energy Council's opinion the Commission should clearly establish a case for why such information is necessary before imposing these requirements on retailers.

Any questions about our submission should be addressed to Panos Priftakis, Policy Adviser by email to panos.priftakis@energycouncil.com.au or by telephone on (03) 9205 3115.

Yours sincerely,

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[i] Essential Services Commission, 2014, Harmonised Energy Retail Code – Final Decision Paper, p 113.