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Review of Energy Customer Contract Regulations

The Australian Energy Council (AEC) welcomes the opportunity to make a submission to the Public Utilities Office (PUO) on the Review of Energy Customer Contract Regulations Draft Recommendations Report (Review) as part of its review of energy customer contract provisions within the Energy Coordination (Customer Contracts) Regulations 2004 (Gas Regulations) and the Electricity Industry (Customer Contracts) Regulations 2005 (Electricity Regulations).

The AEC 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 AEC understand the purpose of the Review is to provide a streamlined and consistent framework for delivering customer protections by removing outdated references to the AGA Code¹ and remove duplication with other regulatory instruments. The majority of draft recommendations are supported by the AEC, however specific comments are made in relation to the following recommendations:

Draft Recommendation 4: That the Public Utilities Office request that the ERA consider inserting a requirement into gas distribution licences for distributors, in so far as is practicable, to:

- minimise interruptions for planned maintenance or augmentation of the distribution system; and
- following an interruption, restore supply as soon as practicable.

The AEC encourages removal of all unnecessary regulation to avoid higher compliance costs being passed onto consumers. Therefore we encourage clauses 5.1.4 and 5.1.5 in the AGA Code be removed irrespective of proposed gas distribution licence amendments.

¹ Australian Gas Association Natural Gas Customer Service Code AG 755-1998

Draft Recommendation 7:

For gas: Delete sub-regulations 14(3) and (4) of the Gas Regulations and replace with a requirement that a customer contract must describe how the retailer will publish its tariffs and how it will give notice of any variations to those tariffs.

For electricity: Amend regulation 13 of the Electricity Regulations to include a requirement that the customer contract describes how the retailer will publish its tariffs and how it will give notice of any variations to those tariffs.

The AEC considers draft recommendation 7 to be an unnecessary in that Clause 10.1 of the Code of Conduct adequately provides tariff information disclosure. This would create an unnecessary regulatory burden on retailers to amend a standard form contract, if the method to publish and to notify of tariff variations is specified in the contract, and those mechanisms subsequently change. The AEC questions whether there is evidence that current regulations are unsatisfactory. Regulation 13 of the Electricity Regulations also safeguards customers' interests regarding tariff information and publication.

Draft Recommendation 8: Include a requirement in the Gas Regulations and Electricity Regulations, similar to Rule 48A of the National Energy Retail Rules, whereby retailers are to notify customers, in writing, no earlier than 40 business days and no later than 20 business days before the end of benefits provided under the initial portion of an ongoing contract, that the benefits are due to expire and include detail of the options for supply that are available to the customer after the expiry of the benefit.

The time and cost to make these changes must be considered against the needs of the WA market in terms of the compliance costs for the relatively small number of customers this would apply to. The AEC is concerned that this recommendation will require retailers to implement costly changes to their billing systems, which may therefore lead to a dis-incentive for Retailers to make voluntary offers. Also, the AEC believes Retailers are best placed to decide the most appropriate means to inform individual customers of changes to benefits in line with specific customer arrangements.

Draft Recommendation 17: Amend the cooling off period in sub-regulation 40(2) of the Gas Regulations and sub-regulation 32(2) of the Electricity Regulations to 10 'business' days. This aligns with the cooling-off period for unsolicited consumer agreements under the Australian Consumer Law.

The AEC encourages removal of all unnecessary regulation to avoid higher compliance costs being passed onto consumers. We therefore raise the question as to whether there is a case for customer protections provided in Australian Consumer Law to be replicated in energy regulations, and is there a need for cooling off periods to apply to solicited contracts?

Draft Recommendation 18: Amend sub-regulation 17(1) of the Gas Regulations and sub-regulation 16(1) of the Electricity Regulations to require that:

- a standard form contract informs the customer that the provisions of the contract may be amended without the customer's consent, and
- a non-standard contract informs the customer that the provisions of the contract may be amended without the customer's consent to the extent that the amendment is required to maintain consistency with applicable legislation or regulation.

The AEC supports the recommendation in relation to standard form contracts.

The AEC does not support the recommendation in relation to non-standard contracts, and proposes that the current sub-regulation 17(1) of the Gas Regulations and sub-regulation 16(1) of the Electricity Regulations provide adequate safe guards for customers entering into market contracts. Compliance with the proposed recommendation may become a burden to Retailers.

The AEC observes that the proposed recommendation doesn't consider the impact of a change in favour of the customer, or inconsequential changes to a contract that don't require customer consent. Some examples of inconsequential changes would be:

- Retailer change of address
- Typographical error (e.g. Incorrect phone number in contract)

Furthermore, we foresee difficulties for Retailers to comply with the recommendation when varying rates, fees and charges over the term of the contract, if such changes were considered a change to contract in the final drafting.

Therefore, the AEC supports maintaining sub-regulation 17(1) of the Gas Regulations and sub-regulation 16(1) of the Electricity Regulations.

Draft Recommendation 21: Extend the requirement in regulation 40 of the Electricity Regulations to supply electricity under a standard form contract to a customer who requests supply from retailers other than Synergy and Horizon Power.

- For existing connections, the obligation would fall on the default supplier identified under regulation 36 of the Electricity Regulations.
- For new connections, the obligation would continue to fall on Synergy for areas within the South West Interconnected System and on Horizon Power for other areas of the State.

The AEC recommends that retailers should be given sufficient time to review, develop or amend their standard form contracts and to obtain ERA approval prior to the introduction of this recommendation.

Draft Recommendation 22: Amend regulation 40 of the Electricity Regulations to permit a retailer to require a customer to provide acceptable identification as a pre-condition of forming a standard form contract with the retailer.

The AEC proposes that rules defining 'acceptable identification' in relation to a residential customer be broadened to allow the retailer to accept other forms of identification to those listed in the Retail Rules, as deemed adequate by the retailer. The AEC also proposes that the recommendation be similarly applied to the Gas Regulations.

Matters where no recommendation has been made

Matter - Electricity supply under a deemed standard form contract: Regulation 37 of the Electricity Regulations that deal with when electricity supply is deemed to be taken under a standard form contract.

The current regulation does not allow for retailers to recover the network operator supply charge in the circumstance where a live connection point exists but no electricity consumption occurs and no supply contract exists. This typically occurs in vacant premises. Whilst retailers may theoretically be able to recover these costs via incorporating the cost into their tariffs, this creates a cross-subsidy between other electricity consumers and landlords. The AEC suggests that such a cross-subsidy is inappropriate, and following a causer pays principle, the network operator supply charge is better attributed to the owner of the premises. We also note the owner of the premises is also best positioned to manage the risk in relation to the premises being vacant.

The AEC therefore request that the regulation be changed to allow a standard form contract to be deemed in the case where a live connection point exists, but consumption does not occur.

Any questions about our submission should be addressed to Scott Davis, Policy Adviser Western Australia by email to scott.davis@energycouncil.com.au by telephone on 0457 784 119.

Yours sincerely,



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