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26 September 2006

Mr Peter Leihn  
A/Senior Program Officer, Green Power  
Department of Energy, Utilities and Sustainability  
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Sydney NSW 2000  
[Peter.leihn@deus.nsw.gov.au](mailto:Peter.leihn@deus.nsw.gov.au)

Dear Mr Leihn,

Thank you for the opportunity to comment on the draft *Electricity Supply (General) Amendment (Renewable Energy Sources) Regulation 2006* (“*the Regulation*”).

The Energy & Water Ombudsman NSW investigates and resolves complaints from customers of all electricity and gas providers in NSW, and customers of some water providers. While we are not in a position to comment on all areas of *the Regulation* we have provided our comments from the perspective of EWON’s experience as an independent dispute resolution agency for electricity customers in NSW.

Please contact me or Brendan French, Deputy Ombudsman (8218 5251) if you would like to discuss this matter further.

Yours sincerely

A handwritten signature in cursive script that reads "Clare Petre".

Clare Petre  
Energy & Water Ombudsman NSW



Energy & Water  
Ombudsman NSW

*Response to*

*The Department of Energy, Utilities and Sustainability*

**Draft Renewable Energy Sources Regulation**

*September 2006*

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*Submitted by*

**Energy & Water Ombudsman NSW**

*26 September 2006*

*Energy & Water Ombudsman NSW:  
Response to DEUS re draft Renewable Energy Sources Regulation*

For ease of reference we have addressed sections of *the Regulation* sequentially, before making some general comments about EWON's observations about the operation of *the Regulation*.

**Clause 45B Licence condition regarding accredited renewable energy sources: the making of an offer to customers and the explanation of the scheme**

EWON receives large numbers of complaints from customers who have not had the terms of their energy offer – whether standard regulated or negotiated contracts – explained to them prior to accepting the offer. Given that *the Regulation* will introduce further complexity to the process of signing an electricity contract, we would support the requirement to ensure that suppliers must clearly explain the operation of the renewable sources energy scheme.

*The Regulation* does not appear to require suppliers to explain to customers considering renewable energy sources offers that acceptance will result in the customer paying a premium charge on top of their regular bill. We acknowledge that in accordance with the NSW Greenhouse Plan *the Regulation* focuses on offering renewable energy to residential customers. Nevertheless, while EWON agrees that it is important to increase consumer awareness of green power options, there are already many residential customers who are having difficulty managing their energy accounts – as is indicated by the unfortunately high number of disconnections in NSW. For this reason, we suggest that it should be made a licence condition that the supplier is to expressly advise the customer –verbally and/ or in writing – that acceptance of the renewable energy sources offer will lead to the customer paying more for their electricity. Further, we consider it is important that auditable records be maintained that this advice has been provided. When suppliers provide this advice, we suggest that the customer should be informed in precise dollar terms how much more they would be paying (either per bill or annually) by accepting the offer.

The encouragement of renewable energy is a proper and necessary objective. However, it will not assist this objective if customers who are already struggling to pay their electricity bills pay more than they can realistically afford. We suggest that the provision of clear information to customers (particularly in dollar terms) will provide protection for customers in financial hardship, while not discouraging the majority of customers from taking up the renewable energy sources offer.

We note that in the *Preliminary Issues Paper* on this subject, the Department indicated that special consideration would be given to customers of a non-English speaking background as well as those receiving financial assistance or rebates. It appears that *the*

*Regulation* has not prescribed any requirement on suppliers to give such special consideration to these customers. We would support the establishment of safety net provisions to ensure that vulnerable customers such as those listed above are identified and provided with adequate information to ensure they understand the operation of the scheme. One way to achieve this aim would be to make it a licence condition that suppliers must provide additional information and assistance to any customer who receives a pension rebate, pays or part-pays with EAPA vouchers, or is a member of the supplier's hardship program. We consider that there would be particular advantage in requiring suppliers to offer to return vulnerable customers without penalty to the usual tariffs (standard or negotiated) if/when their accounts enter into the debtor management cycle, ie the customer enters a payment plan, is listed for disconnection of supply or the arrears are sent to a mercantile/credit company. In addition to this, we would support the value of requiring suppliers to provide information on the scheme to customers in community languages in accordance with the terms of the *Electricity Supply (General) Regulation 2001*. Such information should also be available on suppliers' websites with links to a more detailed explanation on the DEUS and/ or IPART websites.

We note that clause 45B of *the Regulation* places a number of obligations on suppliers regarding the making of offers to customers. For example, there are requirements in clause 45B(b) that the renewable energy sources offer is to be the first offer made, and clause 45E(2) prescribes requirements for the making of written offers. In order for suppliers to satisfy their compliance requirements, and to assist external dispute resolution agencies such as EWON, suppliers will need to keep detailed records of the offer to customers. If the offer is made and accepted over the phone - as appears to be supported by the Minister's recent announcement regarding the Move In / Move Out working group recommendations - it is likely that this call will need to be recorded. We would recommend that suppliers are given suitable time to ensure their systems are capable of meeting this requirement.

### **Clause 45E Ancillary provisions relating to renewable energy sources offers**

We have some concerns about the way *the Regulation* addresses the issues of default elections and revocation of elections. We also have some questions about the effect of clause 45E(3) regarding the making of simultaneous offers to supply electricity under standard and negotiated contracts.

#### *Default elections*

In the 2005-2006 financial year, EWON saw an increase by more than 300% in the number of complaint issues raised by customers regarding the marketing of, and confusion about, negotiated contracts. In particular, there has been a trend for elderly and frail customers, with very limited experience in dealing with contracts, to become party to electricity contracts that they either did not want or did not understand. Clause 45(4)(b) of *the Regulation* provides that for negotiated contracts under the renewable energy

sources scheme, if a customer does not make an election (or makes an election that does not comply with the offer) the customer is taken to have accepted the green tariff offer. We consider that it is possible that if this proposal were to be accepted retailers and EWON might well see further increases to complaint numbers.

It is difficult to see why *the Regulation* suggests that customers on negotiated contracts should be taken as having elected to be supplied under the scheme by default whereas customers on standard form contracts should be taken as having elected not to be so supplied. There is no accompanying reason provided in the *Preliminary Issues Paper* to explain the purpose of this differentiation. If the reason for this separate approach is based on an expectation that vulnerable customers are more likely to remain on a regulated tariff via a standard form contract, then this approach could be seen as a consumer protection mechanism. Nevertheless, EWON's experience is that many vulnerable consumers are now entering into market contracts, sometimes with little understanding of the contract terms and conditions, and would thus be considerably exposed to a default election (particularly those with access or equity issues). Further, as the NSW market develops and more customers sign to negotiated contracts – and with the possibility of regulated tariffs being phased out at some stage beyond 2010 – it is likely that more and more vulnerable customers will be paying the green premium by default and often without being aware fully that they are doing so. Consequently, if the default election provisions of *the Regulation* were to come into force as they stand, we would strongly recommend that there be some requirement to revisit this approach if/ when regulated tariffs cease being offered to NSW customers.

In our response to the *Preliminary Issues Paper*, we identified some questions about the application of the scheme to customers whose negotiated contracts were “rolled over” at the conclusion of the term. After reviewing *the Regulation*, it appears that if a customer does not respond to a renewal of contract letter, they will fail to make an election under the scheme, and therefore they will be taken to have accepted the renewable energy sources offer. The effect of this is that the customer will be paying more than they have to, and the supplier will not have the authority of the customer regarding this situation. This may create further customer dissatisfaction, and lead to increased complaints to the supplier and to EWON.

In our earlier response we also identified the importance of ensuring that those customers supplied under the New Occupant Supply Arrangements provided for in clause 68 of the *Electricity Supply (General) Regulation 2001* are not charged the green premium by default. *The Regulation* text suggests that the provisions of the projected renewable energy sources regulation will apply only to those supplied either by a standard form or negotiated contract so we assume the current tariffs applying to New Occupant Supply Arrangements will thus not be affected.

### *Revocation provisions*

We support the aim to increase customer awareness of green power options. However, given that *the Regulation* will affect residential customers only, we believe that it is crucial that there are no impediments to customers participating in the scheme freely.

In relation to negotiated contracts, clause 45E(6) of *the Regulation* prescribes that a customer who has elected to accept a renewable energy sources offer cannot revoke the election unless the terms of the contract provide for such revocation, and any terms regarding a termination fee are met. We believe that customers who have participated in the green power scheme should not be penalized for wishing to reduce the costs of their bills at a later date. To this extent, we recommend that there should be no differentiation between negotiated and standard contracts, and that all customers should be free to divert to the regular tariffs applicable under the contract without penalty.

### *The effect of clause 45E(3) – simultaneous offers to supply electricity under standard and negotiated contracts*

Clause 45E(3) prescribes that if a supplier makes offers both under standard and negotiated contracts, the renewable energy sources offer only needs to be included in one of the offers. We do not object to any attempt to simplify the matter for customers, however we are concerned that if a customer is offered a standard contract with a green tariff component, and a negotiated contract without the green tariff component, the customer may not be aware that they could accept the standard contract *without* the green tariff component. This may lead to complaints from customers that they were misled, inadvertently or otherwise, by suppliers. We suggest that this could be addressed by either ensuring that the customer is aware of the option to choose the standard contract without the green power tariff, or by requiring that all contracts offers – even when made simultaneously – are to include the renewable energy sources offer.

If the provisions of the Regulation stand as drafted and a supplier is only required to offer the green tariff component on either the standard or the negotiated contract, we consider that it is highly likely that retailers will elect to place the green tariff on the standard form contract – thus making the negotiated contract offer more appealing. (This is entirely understandable as retailers are seeking the financial security that comes from customers committing to term-based market contracts.) An outcome of this approach would be that customers would likely sign negotiated contracts *without the green tariff* because they appear to be less expensive than the regulated tariff rate of the standard form contract *with the green tariff*. This would appear to be an outcome at odds with the intent of *the Regulation*.

## General comments

We commend the Department and the NSW Government for taking the initiative to attempt to encourage investment in renewable energy sources and thus reduce greenhouse gas emissions. The intentions underlying the amendments to the *Electricity Supply (General) Regulation 2001* are positive. However, based on our experience as the primary consumer dispute resolution mechanism for the industry, we believe there are some important issues to address.

Since the introduction of competition to the electricity market in NSW, we have witnessed a steady increase in the number of complaints regarding the terms and conditions for electricity contracts. The process of analysing and comparing contract offers can be a difficult one for many customers, and the introduction of further complexity by way of the renewable energy sources scheme is likely to increase this difficulty for customers. For this reason, we believe it is essential that suppliers be proactive in explaining the operation of the scheme to customers. It appears that *the Regulation* does not require suppliers to explain the basic fact that acceptance of the renewable energy sources offer will mean that customers pay a premium price for their electricity. We suggest that, as a minimum, this should be made clear in every offer.

Given that the aim of *the Regulation* and the NSW Greenhouse Plan is to increase investment in renewable energy sources, we query why the scheme is limited only to residential customers. There are great numbers of small businesses within the “small retail customer” bracket, and we believe that many of these businesses would wish to contribute by participating in a green power scheme without having to enter a negotiated contract.

We also have questions about the way in which the percentage that is the subject of the offer is to be calculated in practice. There is an ever-expanding array of tariffs on the market at the moment, particularly in relation to time-of-day and inclining-block pricing, and this trend is likely to continue into the future. We feel that there is potential for customer confusion and complaint if, as appears from clause 45F(b), there is a ‘broad brush’ approach allowing suppliers to elect from more than one model how they will structure the calculations.

We believe that the application of the percentage is an issue that should be regulated to maintain equity between customers and that there should be clarity about what elements of a bill can attract the renewable energy sources premium. For instance, we presume that the intent of *the Regulation* is not for the premium to be charged on regulated retail charges (late fees, bank dishonour fees etc) and network pass-through charges (disconnection/reconnection fees, special meter reading fees etc)? Nevertheless, we consider that there would be value in stating this, particularly for the benefit of new market entrants in NSW who may not have the back-end billing systems in place to ensure that the premium is charged on consumption only.

We also wonder if customers will be aware that the premium will also attract a higher GST levy? We consider that there may be value for customers and for suppliers (reduced compliance costs, reduced likelihood of customer complaints and switching costs) in having *the Regulation* identify a single means by which the percentage is to be calculated and applied. Such an approach would ensure consistency across suppliers and lead to less likelihood for customer confusion, particularly when a customer moves between retailers.

Finally, we note that *the Regulation* does not appear to have implemented the “special consideration” ideas contained in the *Preliminary Issues Paper*. As noted above, we endorse the importance of special consideration being given to vulnerable consumers, including those identified (NESB and those receiving assistance), and in particular the necessity for suppliers to inform customers experiencing hardship that they can cease paying the green premium without penalty (or notice?). For the reasons previously outlined, we feel that the same option should be available without penalty to customers on both standard form and negotiated contracts.

EWON has experience in communication to key groups about energy issues and we would be pleased to contribute feedback concerning the communication strategy based on that experience.