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Thank you for the opportunity to comment on the NSW Implementation of the National Energy Customer Framework – Policy Paper for Consultation.

The Energy & Water Ombudsman NSW investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers.

EWON considers that overall the NECF provides equivalent or stronger consumer protection measures and therefore we welcome its introduction in NSW. However there are some key areas where we believe the introduction of the NECF will see significant consumer detriment. These concerns are discussed more fully in the attached submission.

If you would like to discuss this matter further, please contact me on 82185250.

Yours sincerely

A handwritten signature in blue ink that reads 'Clare Petre'.

Clare Petre
Energy & Water Ombudsman NSW



Energy & Water
Ombudsman NSW

Response to

NSW Implementation of the National Energy
Customer Framework – Policy Paper for
Consultation

Submitted by

Energy & Water Ombudsman NSW

5 October 2010

Introduction

Established in 1998, EWON is the approved independent dispute resolution mechanism for customers of electricity and gas providers in NSW, and some water providers. Our aim is to provide fair, equitable and independent investigation and resolution of customer complaints. We work with all the key stakeholders – providers, community, government, regulators – to improve the standard of service delivery for the benefit of NSW consumers.

EWON has consistently contributed to the National Energy Customer Framework (NECF) process from 2005. In our various submissions we have attempted to draw from our direct experience on the problems that arise between customers, retailers, and distributors. Over this period we have been pleased to see a number of our views incorporated into the national approach. Towards the end of the national process we have communicated both formally and informally to the NSW Minister for Energy and Department our concerns over a few key NSW protections that were not included in the NECF.

The difficulty in fully responding to the questions posed in this consultation paper is that EWON has not as yet been able to review the final version of the National Energy Retail Law or Rules that we understand is to be presented to the South Australian Parliament in the near future. We note from the Ministerial Council on Energy's recently issued publication¹ responding to stakeholders, that there have been changes made to a number of sections from the Second Exposure Draft, however the wording of such changes is currently unavailable.

EWON has provided comment on this consultation paper on the basis that our final views will depend on the final version of the National Energy Retail Law and Rules. For ease of reference we have adopted the same numbering as the *NSW Implementation of the National Energy Customer Framework – Policy Paper for Consultation*.

¹ *Ministerial Council on Energy Standing Committee of Officials Responses to Key Issues Raised by Stakeholders on the Second Exposure Draft of the National Energy Customer Framework*

2.1 Retail price regulation in NSW

2.2 *Small customer threshold*

It is proposed that NSW retain the current definition of a small retail customer for electricity and gas, and not implement the NECF concept of a small market offer customer, until at least 30 June 2013.

What are stakeholders' views on the proposal not to implement the NECF definition of a small customer and small market offer customer in NSW until at least 30 June 2013?

Throughout the process of establishing the NECF, EWON has consistently raised concerns about the removal of protections for small business customers. We have provided a number of case studies in our submissions. We have pointed to the Utility Regulators Forum's concerns about the need for protections for small business², and to the ABS definitions of small business³.

We remain concerned about the proposal to change the consumption thresholds for a business customer, so that those using over 40 MWh of electricity per year, or 400 GJ of gas per year will be defined as a 'small market offer customer'. We believe that this will leave many small businesses without the protections available in NSW, where they are classed as a 'small retail customer' so long as their consumption remained under the threshold of 160 MWh or 1000 GJ.

We are also concerned about the position of residential customers who are covered by Strata Title. The electricity costs associated with common areas are borne by the residents without the protections afforded by access to standard contract arrangements. EWON has dealt with a number of cases where the Body Corporate has received a very large backbill, often tens of thousands of dollars, as the result of undercharging. Although the individuals are small residential customers, they are considered a large customer because of their collective consumption.

EWON would welcome the current proposal to retain the NSW definitions until June 2013 and would call on the NSW Government to continue this policy position beyond 2013 and thus provide a framework that maintains the current protections for small business.

² *Regulation of Retail Service Standards in the National Market, Utility Regulators' Forum Position Paper September 2006*, p13

³ EWON Submission to MCE SCO Paper National Framework for Regulating Electricity and Gas (Energy) Distribution and Retail Services for Customers Policy Response 25 July 2008, p5-8

2.3 The financially responsible retailer model and standing offer

It is proposed that until at least 30 June 2013:

- the obligation to offer supply to small customers in NSW remain the responsibility of the standard retailer for the customer's supply district;
- consistent with NECF, all retailers in NSW be required to have a standing offer (for a standard retailer this will be the regulated retail price, for a non-standard retailer, the retail price will not be regulated).

What are stakeholders' views on the proposed NSW approach to the NECF financially responsible retailer model and standing offer at least until 30 June 2013?

EWON believes that this approach is a sensible way to introduce the financially responsible retailer model into the NSW market while at the same time maintaining the current structure provided by the retail price determination.

2.4 Regulated retail fees and charges

It is proposed that NSW retain the existing arrangements for regulated retail fees and charges applicable to customers supplied under a standard retail contract until at least 30 June 2013.

However, from 1 July 2013, the NECF provisions regarding when late payment fees, security deposits, account establishment fees and fees for dishonoured payments may be imposed.

What are stakeholders' views on the proposal to retain the arrangements for the regulation of non-tariff retail fees and charges applicable to customers supplied under a standard retail contract, until 30 June 2013?

What are stakeholders' views on the proposal to adopt the NECF provisions regarding late payment fees, security deposits, and fees for dishonoured payments from 1 July 2013?

The proposal to maintain current protections until 2013 is supported. EWON has serious concerns that the proposal to discontinue these protections after 30 June 2013 will disadvantage NSW customers.

The current protections around Late Payment Fees for customers on a standard contract include a list of situations when a late payment fee must not be levied, and a list of situations where a late payment fee must be waived. These are summarised below:

When a late fee must not be levied

A late payment fee must not be levied in relation to an electricity retail bill:

- during the period of an extension of time within which the customer may pay the electricity retail bill, agreed between the standard retail supplier and the customer; or
- where a customer has made a billing related complaint in relation to the electricity retail bill to the Ombudsman or another external dispute resolution body where that complaint is unresolved; or
- where the customer is receiving an Energy Rebate; or
- during the period of an instalment arrangement entered into between a customer and the standard retail supplier to pay the electricity retail bill.

Waiver of late payment fee

A late payment fee must be waived:

- where the standard retail supplier is aware that the customer has contacted a welfare agency or support service for assistance; or
- where payment or part payment is made by EAPA voucher; or
- on a case by case basis as considered appropriate by the Ombudsman.

The consultation paper argues that under the NECF, a late payment fee must be waived where a customer is identified as experiencing hardship. EWON notes that the proposed National Energy Retail Rule 303 indicates that the fee is to be waived where the customer is a 'hardship customer'.

The National Energy Retail Law defines a hardship customer as:

*a residential customer of a retailer who is identified as a customer experiencing financial payment difficulties due to hardship in accordance with the retailer's customer hardship policy;*⁴

EWON's view is that the NECF definition allows too much discretion for individual retailers and significantly dilutes the current NSW protections. EWON also notes that the charging of late fees is currently prohibited in Victoria, and we understand that this is likely to be maintained after the introduction of the NECF.

EWON recommends that the current NSW protections, especially the blanket exemption for recipients of the energy rebate, be maintained beyond 30 June 2013.

We are also concerned about the proposal concerning the introduction of account opening fees. EWON is of the view that the current prohibition on charging customers to open an electricity account should be maintained.

⁴ s 102 *National Energy Customer Framework Second Exposure Draft* 27 November 2009

EWON notes that the security deposit provisions of the NECF provide similar protections and that the issue of dishonoured payments is one that has been due for updating for many years.

2.5 Prohibition on charging a fee for a prescribed payment method

It is proposed to continue the existing prohibition on charging a fee for prescribed payment methods for customers on standard contracts until 30 June 2013, after which time the prohibition should be discontinued and the NECF should apply.

What are stakeholders' views on the proposal to retain the prohibition on a standard retailer charging a fee for a prescribed payment method under a standard retail contract until 30 June 2013, after which time the prohibition would be discontinued?

EWON has in the past expressed concern⁵ that more retail and network costs are being removed from the general tariff and are being separated out as individual fees. It appears to follow a pattern set by other industries (e.g. banking, telecommunications, airlines), where even the methods of receiving bills and the methods of paying are subject to fees and charges. These fees and charges, additional to the tariff, are concerning for an essential service, and can adversely impact vulnerable customers.

EWON has the strong view that customers should be entitled to pay their bills in a way that suits their needs and that does not incur additional cost. The removal of this protection will particularly impact on disadvantaged customers who may not have the range of bill paying options open to them. This is especially so when the NECF has rejected a proposal requiring Centrepay to be available to all customers who request it, and limited the retailer obligation only to hardship customers (see previous definition).

EWON therefore recommends the retention of the current NSW prohibition on a standard retailer from charging a fee for a prescribed payment method for those customers on standard retail contracts.

2.6 Maximum charges for residential customers of exempt sellers

It is proposed that NSW retain the requirement that an exempt seller of electricity must not charge a residential small customer more than the applicable regulated price for the customer's supply district at least until 30 June 2013, but that all

⁵ EWON Submission to IPART's Draft Report: *Review of regulated retail tariffs and charges for gas 2010 - 2013*. May 2010

other provisions of the exempt selling regime under the NECF be implemented in NSW.

What are stakeholders' views on the proposal that individually-metered residential customers of exempt sellers continue to be charged no more for electricity than the applicable standard retailer's regulated price until at least 30 June 2013?

EWON supports this proposal to retain the requirement to charge no more than the regulated price until June 2013 and to otherwise implement the NECF regime for exempt retailers in NSW.

3. Maintaining Best Practice Consumer Protection

3.1 Obligation to offer supply - electricity

It is proposed that NSW retain the existing obligation on standard electricity retailers to offer supply to any connected electricity customer, regardless of the customer's estimated annual consumption of electricity.

What are stakeholders' views on the proposed NSW policy of retaining the obligation for a designated electricity retailer to offer supply to any connected electricity customer?

EWON raised this issue in our submissions to the NECF process, and we support the proposal. The relevant obligation also needs to ensure that such offers are 'fair and reasonable'. This requirement, while perhaps not necessary for the largest businesses, will be essential to protect 'large customers' as defined by consumption but which for all intents are still small businesses who are not necessarily in a position to negotiate on their own behalf.

3.2 Streamlined disconnection notification (aka shortened collection cycle)

It is proposed to:

- not implement the shortened collection cycle provisions under the NECF until at least 30 June 2013; and
- review the impact of this approach on retailers' operating costs and the impact of the shortened collection cycle under the NECF on small customers and the rate of disconnections for non-payment to determine whether the shortened collection cycle provisions should be implemented in NSW from 1 July 2013.

What are stakeholders' views on the proposal not to implement the NECF shortened collection cycle until at least 30 June 2013?

Are stakeholders aware of any data regarding the impact of shortened collection cycles on small customers and the rate of disconnections for non-payment?

EWON supports the proposal not to implement the Shortened Collection Cycle (SCC) until 30 June 2013.

EWON is greatly concerned with the proposed introduction of the SCC after 30 June 2013. This provides for earlier de-energisation and appears to run counter to the welcome emphasis on hardship adopted by the NSW Government and by the NECF.

EWON has direct experience of the application of the SCC. A 2nd tier retailer inappropriately applied this process to some NSW customers. Despite consistent assurances by the retailer that this process is not directed at hardship customers, it has been EWON's experience that almost without exception the customers affected by this provision have been in financial distress.

CASE STUDY

Mr S was disconnected for arrears of \$797 and his retailer then refused him a payment plan when he offered \$200 and regular payments for the balance. Mr S is Sudanese and has difficulty with English. The retailer informed EWON that Mr S was on a shortened collection cycle, although this is not currently permitted under the disconnection provisions in the NSW Regulation. With EWON's intervention reconnection and a payment plan was organised.

As we understand it, the process by which retailers implement an SCC is automated. Given that at least one retailer has applied it inappropriately to NSW customers, EWON is not confident that retailers can always meet the requirements of Rule 222 (2) (a) which state that the SCC is only applied if the retailer is satisfied that the customer is not experiencing financial difficulty.

If this provision is retained then we anticipate an unfortunate increase in the numbers of disconnections occurring in NSW. The consultation paper points to other jurisdictions including Victoria to indicate that *'NSW is unaware of any evidence of the impact of the shortened collection cycle provisions in these States on customers experiencing payment difficulties and/or the number of disconnections for non-payment'*.⁶

EWON notes that Victoria has very low rates of disconnection, however they also have significant financial penalties through a wrongful disconnection payment regulation. Queensland however, which has an SCC regime, is a more comparable jurisdiction and it has a significantly higher rate of energy disconnections.

The introduction of an SCC in NSW is in EWON's view a significant erosion of consumer protection. It will have adverse consequences for customers and is in sharp contradiction to an overall policy which aims to limit the impact of rising prices and minimise disconnections of essential services.

3.3 Requirement to issue a notice to a customer after disconnection

It is therefore proposed that the requirement for a retailer to give a customer a notice after their premises has been disconnected be discontinued as part of the NSW implementation of the NECF.

⁶ P 16 NSW Implementation of the National Energy Customer Framework – Policy Paper for Consultation September 2010

What are stakeholders' views on the proposal to discontinue the current NSW requirement for a retailer to give a customer a notice after their premises has been disconnected from the distribution system?

This proposal is also a significant reduction of current protections in NSW which will impact on customers. The consultation paper argues that it would be a 'rare case' where a customer would not have a disconnection notice. The paper argues also that there are significant additional costs with the hand delivery of post disconnection notices. EWON rejects both of these propositions.

There is a range of circumstances where the post-disconnection notice is an essential tool in arranging reconnection. These circumstances include:

- where there has been a transfer in error and the customer has no information as to who has arranged the disconnection other than this notice
- where a retailer has sent a disconnection warning notice addressed to The Occupant under the 'New Occupant Supply' provisions in the *Electricity Supply (General) Regulation 2001*, but the customer may have discarded the notice without reading it, believing it to be marketing material
- where a customer has tried to open a gas account, but delays have occurred because it is an 'unclaimed gas supply point'
- where the retailer has the wrong mailing address for a customer in their billing system.

EWON deals with all these issues on a reasonably regular basis through customer complaints. These customers contact EWON on the basis of information provided by the post disconnection notice.

CASE STUDY

Ms P's electricity supply was disconnected. She had been paying her electricity account via Centrepay to her retailer, so did not understand how this could happen. The retailer named on the Notice was not her retailer. When she called them, she was told that there had been a mix-up between her address at Scenic Drive, and another customer's address at the same street number in Scenic Circuit in the same suburb. The retailer had transferred her NMI instead of the other customer's at the other similar sounding address. Without their details on the Notice, she would not have known who to call. #82200

CASE STUDY

The electricity supply to Ms C's shop was disconnected. She had been in the premises for about three months, and had received letters addressed to 'Dear Occupant' but did not understand what these were for so had ignored them. Once she found the post-disconnection notice, she was able to contact the relevant retailer, open an account and get her supply reconnected. # 91588

CASE STUDY

Ms N moved into her current address four months ago, but forgot to open a gas account. She has now had her gas supply disconnected, though she said she had not received any prior notification. There was no card left to advise her who she was supposed to contact. She contacted several gas retailers, but none of them took ownership of the site, so she has not yet opened a gas account. EWON's investigation found that this was an 'unclaimed gas site'. The gas network operator, Jemena, advised they had sent a letter to the unknown consumer to register the site and organise an account with a retailer, though Ms N did not recall receiving this. The site was disconnected because she did not take this action. The lack of a post-disconnection notice in this situation caused a lot of inconvenience for this customer. # 72048

CASE STUDY

One retailer changed the mailing address for all its customers who lived in The Boulevard in Suburb X, to The Boulevard, Suburb Y. The service address remained the same for meter reading purposes, but their mail, including all invoices and notices, went to Suburb Y. This resulted in disconnections, overdue fees and other complications. # 93974

The notice also provides the customer with information that the lack of power is not due to a power outage but something that they need to rectify themselves. EWON's experience of customers who contact our office after finding this post-disconnection notice suggests that this notice is especially relevant to some groups with specific needs. These include people with literacy problems, young people in share households who might not see the warning notices addressed to just one household member, and Indigenous households where some members might be away from home for periods of time.

Finally, for people in financial difficulty, disconnection often arises in a time of personal crisis (eg health issues, loss of employment, family breakdown). The assumption that people maintain an orderly life where they have all correspondence readily available does not match EWON's experience with many customers whose energy supply has been disconnected.

The current process of disconnection requires a distributor's field officer to attend the premises and physically disconnect supply. Given that a retailer has to raise a service order to request a disconnection and assure the distributor that they have this right means that relevant information is already provided to the distributor. The distributor leaving a standard card advising the retailer, the contact number for the retailer and EWON and the reason for disconnection does not appear to EWON to incur an unreasonable additional cost when balanced against the benefit of this communication to the affected customers. Given that distributors operate within the geographic area of the NSW jurisdiction, a jurisdictional requirement on NSW networks to retain this post-disconnection notice would not impose compliance costs on retailers who operate across jurisdictions.

The benefits of this NSW requirement significantly outweigh the costs.
In EWON's view the removal of this protection will substantially erode consumer protection in NSW

3.4 Advance notification of variation of prices under market retail contracts

It is proposed that the requirement for energy retailers to individually notify customers supplied under a market retail contract in advance of any price variation coming into effect, be discontinued in the NSW implementation of the NECF.

What are stakeholders' views of the proposal to discontinue the NSW requirement for energy retailers to notify customers supplied under a market retail contract in advance of any price variation coming into effect?

EWON notes that currently IPART treats a notification in the first bill after a price rise as compliant so the proposal does not reduce the current level of consumer protection.

3.6 Prices for 'deemed customers'

It is proposed that the NECF arrangements for prices for deemed customers be implemented, recognising that for deemed customers supplied by a NSW standard retailer, the deemed customer price will be that retailer's regulated retail tariff.

What are stakeholders' views of the proposal that NSW discontinue the pricing requirements for deemed customers and implement the NECF arrangements?

EWON supports this proposal..

3.7 Termination of a standard retail contract

It is proposed that NSW implement the NECF policy regarding the termination of standard retail contracts 10 business days after disconnection where the requirements for re-connection have not been met.

What are stakeholders' views of the proposal that NSW implement the 10 business day standard retail contract termination rule?

What are stakeholders' experiences with the existing NSW arrangements for open-ended standard retail contracts, particularly with respect to customers experiencing financial difficulties?

EWON opposed this provision in the NECF consultation, and, pending clarification of what is in final version of NECF, we oppose this as a significant withdrawal of current protections.

In EWON's experience, many customers are unable to pay their outstanding arrears in full within 10 days of de-energisation, however most will try to make contact with their retailer during this period and attempt to negotiate a realistic payment plan so that supply can be restored. This is in accordance with their entitlement to a payment plan in accordance with Rule 221 (1) (b).

As part of the negotiation, customers may be required to make an appointment with a community welfare organisation or a financial counsellor. EWON has been advised that the current waiting time for an appointment with a financial counsellor in parts of New South Wales can be up to 6 weeks.

If the contract is terminated while a customer is still trying to obtain assistance as part of the negotiation for a payment arrangement, this can have negative consequences for the customer. This may have been unintended in the drafting of this section. Closure of the account at this stage means that when the customer is eventually in a position to meet the requirements for re-energisation, they have to open a new account. This can involve them in the payment of an additional security deposit, and re-establishing a range of other procedures such as their pensioner rebate, and Centrelink or direct debit arrangements.

EWON appreciates that retailers require a signal for closing an account and starting recovery action, but we argued in the NECF consultation process for the wording in 234 (1) (e) to refer to the customer making contact with the retailer to remedy the cause of the disconnection. If the customer does not make contact during this time, the retailer would have a right to terminate the contract. We note that from the Ministerial Council on Energy's recent document⁷, that an additional sub-clause is to be added to section 615 in the *National Energy Retail Rules*, to provide discretion for a retailer to arrange re-energisation if the customer has "made arrangements" to the satisfaction of the retailer. This may in some ways address our concerns, though being at the discretion of the retailer does not provide any certainty for the customer trying to keep their existing account open while they seek assistance.

⁷ Ministerial Council on Energy Standing Committee of Officials Responses to Key Issues Raised by Stakeholders on the Second Exposure Draft of the National Energy Customer Framework

3.9 Meter accuracy

It is therefore proposed not to explicitly state the benchmark for meter accuracy as part of the NSW implementation of the NECF bill estimation rules, as this is adequately provided for in the AEMO metrology procedures.

What are stakeholders' views of the proposal that NSW not retain an explicit reference to the standard of metering equipment accuracy as part of the NECF bill estimation rules?

EWON agrees that issues of metrology can be appropriately covered by AEMO. .

3.10 Guaranteed customer service standards

It is therefore proposed to:

- discontinue the retailer and distributor service standards requiring a retailer/distributor to pay a customer \$25 compensation if the retailer/distributor is more than 15 minutes late for an appointment; and
- retain the distributor service standard regarding timeframes for new connections and reconnections.

What are stakeholders views on the proposed approach to retailer and distributor service standards?

EWON supports this proposal. However, we note that EWON has received many complaints from customers who are required to be at home for a service call, or to provide access to meter readers for an actual read. This applies particularly to the many NSW customers whose gas meter is located inside high rise units, as well as to customers whose electricity meter is behind locked gates or otherwise enclosed. Customers advise that they have made an appointment with their retailer or distributor for a meter reader to attend, and taken a day off work to wait at home for them. Many customers have complained that the meter reader has failed to attend and that they have had to take a further day or days off work to ensure an actual meter read occurs. The inconvenience in these cases is significantly greater than a retailer/distributor being more than 15 minutes late for an appointment.

Case Study

Mr D noticed that his meter was faulty as the meter reading this quarter was the same as for the previous quarter. He contacted his retailer to request that someone attend to fix the meter. He was advised that if he booked ahead he would be advised of a 24 hr window. Mr D made a booking and arranged to take the day off work. He called several times during the day to get assurances that the technician was still coming, but in fact nobody came that day.

Mr D contacted his retailer after hours, and was advised the technician would definitely be there the following day. He therefore arranged to take the following day off work, but again the technician failed to turn up. When Mr D again contacted his retailer, he was informed that the distributor had a 4 week backlog on service calls. Mr D has complained that this issue has so far cost him two days of annual leave and about \$30 in call credits. # 92913

We suggest that this issue may need further review.

3.11 Notice requirements – availability of interpreter services for community languages

It is proposed that NSW retain the requirement

What are stakeholders' views of the proposal that NSW retain the obligation on retailers to include information in community languages about the availability of interpreter services and telephone numbers for the services in notices to customers in certain circumstances (e.g. when a small customer is reclassified as a large customer)?

EWON supports this proposal.

3.12 Providing reasons for decisions

It is proposed that NSW implement the NECF arrangements for dispute resolution and discontinue the explicit requirement in NSW regarding the communication of reasons for decisions, as this is adequately addressed in the NECF.

What are stakeholders' views of the proposal that NSW implement the NECF small customer dispute resolution framework and discontinue the explicit requirement in NSW regarding the communication of reasons for decisions?

EWON supports this proposal. The NECF requirement for complaint handling processes to be substantially compliant with the relevant Australian Standard should ensure that appropriate standards of communication with customers will be maintained. If customers are not satisfied the way their complaint has been handled, or the way the outcome was conveyed to them, they can bring their complaint to EWON, where they will be provided with a full written response if they require it.

3.13 GreenPower obligations – electricity retailers

It is proposed to retain the existing NSW requirement that electricity retailers who operate in NSW must be a member of, and comply with the requirements of, an approved renewable energy sources accreditation scheme, and offer potential new or moving customers a ‘renewable energy sources offer’.

What are stakeholders’ views of the proposal that NSW continue the obligations on electricity retailers in relation to GreenPower?

EWON supports this proposal.

3.14 RoLR – prices for large customers

It is proposed to discontinue the current NSW price provision for large electricity customers in a RoLR event.

What are stakeholders’ views on the proposal to discontinue the current NSW price provision for large electricity customers in a RoLR event?

The NECF provisions around RoLR appear to EWON to be best practice and as such EWON supports their adoption in NSW.

3.15 Apportionment of bill payments

It is proposed to discontinue the explicit NSW requirement regarding the application of customer payments to electricity before gas, as it is considered the NECF will result in the same policy outcome (i.e. ensuring a customer’s electricity supply is not disconnected before their gas supply).

What are stakeholders’ views on the proposal to discontinue the explicit NSW requirement regarding the application of customer payments to electricity before gas?

This proposal is a variation of the current protection for customers on dual fuel contracts which aims to prioritise their access to the essential service of electricity in preference to gas. EWON supports it.

3.16 Distributor liability

It is proposed to continue the current arrangements whereby NSW electricity distributors are able to contractually limit their liability to customers for failure to supply due to negligence (and extend these arrangements to gas distributors

Stakeholder views are sought on the proposal to limit energy distributors' liability for failure to supply due to negligence or bad faith; and whether consistent monetary caps should be imposed on the amount of damages payable by energy distributors where negligence or bad faith has occurred.

EWON supported the inclusion of distributor responsibility for loss or damage where they have acted 'negligently or in bad faith' in the NECF process, as this clarified the protection for customers who may have complaints about loss suffered as a result of an event on the distribution network.

EWON notes the concern of distributors about the implications of uncapped liability in the current proposals. The weight of argument especially the potential cost of insurance coverage being passed through to customers leads EWON to support the proposal to maintain a limit on distributor liability for failure to supply due to negligence or bad faith.

EWON however believes that the limit should be one that is fair and reasonable and that such a limit should be consistent across NSW. We do not support a situation where different distributors have a right to determine their own limits of liability. See our comments on a small compensation claims regime at 4.2 below.

3.16 Interest on overcharged amounts

It is proposed to discontinue the requirement for a retailer to pay interest on an overcharged amount.

What are stakeholders' views on the proposal to discontinue the explicit NSW requirement regarding the payment of interest on overcharged amounts?

The obligation to pay interest on overcharged accounts provides a financial incentive for retailers to ensure billing accuracy. It also provides a penalty where such diligence fails.

Recently a retailer failed to provide a relevant discount for shoulder rates charged to customers with a time of use tariff. This failure affected 20,000 NSW customers. In the absence of the requirement to pay interest there would have been no penalty upon the retailer for this systemic billing error and equally there would have been no compensation to customers for the non application of the discount and their subsequent overpayment.

4. NSW 'Opt In' Arrangements under the NECF

4.1 Price comparison service

It is proposed that the decision as to whether NSW should opt in to the AER operated price comparison service and/or discontinue the existing price disclosure requirements be made following the Ministerial review, which is to occur as soon as possible after 1 July 2013.

What are stakeholders' views of the proposal that NSW retain the NSW-based online energy price comparison service and price disclosure requirements until the outcomes of the Ministerial review are known?

EWON supports this proposal.

4.2 Small compensation claims regime and consumer guarantees

It is not considered necessary for NSW to adopt a small compensation claims regime as part of the implementation of the NECF, subject to stakeholder feedback.

Stakeholder feedback is sought on whether there is a need for NSW to implement a small compensation claims regime for consumer guarantees under the NECF instead of the consumer guarantee provisions under the ACL.

EWON also notes the Victorian experience where the introduction of the *Electricity Industry Guideline No. 11 Voltage Variation Compensation* significantly reduced disputes around compensation and provided assurance to both customers and distributors. It would appear that a national approach along these lines could address the needs of small customers.

This would assist in ensuring equitable outcomes for customers in NSW. It would reduce the need for customers to approach EWON or alternatively undertake legal proceedings. This simple solution reduces transaction costs for both consumers and distributors.

Particularly in the context of the NSW proposal to continue the current situation by which distributors can contractually limit their liability, rather than adopt the liability provisions in the NECF, EWON believes that NSW should opt in to a small compensation claims regime under the NECF.

4.3 Prepayment meter systems

It is proposed that NSW does not opt in to the NECF provisions regarding prepayment meter systems.

What are stakeholders' views on NSW not opting in to the NECF provisions regarding prepayment meter systems?

EWON has consistently argued that with appropriate consumer protections the option of prepayment meters would meet the needs of some consumers. It is EWON's view that the NECF provisions provide the relevant consumer protections. The NSW adoption of these provisions would enable retailers at some future stage to offer prepayment meters to relevant customers.

5. NSW Energy Marketing Code of Conduct

It is proposed that:

- in the interim period between the commencement of the price comparison service and the implementation of the NECF, the Code and regulations be amended to require retailers to advise customers of the energy price comparison service, instead of being required to compare the market offer to the regulated offer; and
- when the NECF is implemented, discontinue a NSW-specific Code.

Stakeholder feedback is sought on the proposed amendments to the NSW Energy Marketing Code of Conduct and regulations.

EWON supports the proposed amendments to the NSW Energy Marketing Code of Conduct and regulations.

We reserve our view on the proposal to discontinue the NSW Code upon introduction of the NECF until we are satisfied that the NECF provisions do not diminish consumer protections provided under the NSW Code. This level of protection is critical, in that the most vulnerable consumers are often the targets of misleading or deceptive marketing and deserve the highest possible level of protection.

6. Implementation Timing

It is considered that NSW should implement the bulk of the NECF from July 2011, subject to stakeholder feedback and the dependencies noted above.

What are stakeholders' views on implementing the NECF from 1 July 2011, if this would be consistent with implementation timeframes in other jurisdictions?
Are there any key factors (e.g. lead times for business system changes) that would pose issues for implementation from 1 July 2011?
What are stakeholders' views on delaying the implementation of the NECF until July 2013, to minimise the need for transitional arrangements?

Clearly a range of matters is to be held over until 30 June 2013 as a result of the existing price regulations in NSW. This could lead to a view that the whole implementation could be held till that date to ensure consistency in transition. Equally an early introduction of aspects of the NECF may well minimise costs for retailers in making a national transition.

Given the proposed sale of the NSW state owned retailers, as well as the NSW election in March 2011, it seems likely that a 1 July 2011 implementation date would pose difficulties in achieving a satisfactory and speedy resolution of transitional issues. If it was felt that early implementation of parts of the NECF would be of benefit, particularly licensing and ROLR, then an early implementation date may be worth aiming for.

Conclusion

EWON's concern throughout the NECF process has been to ensure that the final legislation is based on best practice consumer protection. Central to this has been a concern that in the move to a national framework key NSW consumer protections are maintained.

It is EWON's view that on the whole the NECF provides equivalent or stronger consumer protection measures and therefore we welcome its introduction in NSW.

However we consider that there are four areas where the introduction of the NECF will see significant consumer detriment and will be at odds with the hardship provisions of the NECF:

1. the removal of current protections applying to the imposition of late payment fees
2. the introduction of a Shortened Collection Cycle
3. the removal of the post-disconnection notice
4. the limit of ten days to rectify a disconnection which if introduced will further compound the effect of the SCC and the lack of a disconnection notice.

In EWON's view the introduction of any of these measures will compromise the NSW Government's commitment to ensure there is no erosion in the integrity of the existing consumer protection arrangements in NSW.