ESSENTIAL SERVICES COMMISSION

HARMONISATION OF THE ENERGY RETAIL CODE AND GUIDELINES WITH THE NATIONAL ENERGY CUSTOMER FRAMEWORK

FINAL DECISION PAPER

JULY 2014

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PREFACE

The Essential Services Commission (**the Commission**) was requested by the Victorian Government to harmonise Victorian energy regulations to the extent possible with the National Energy Customer Framework (**NECF**).

The Commission adopted, as the objective of this harmonisation exercise, the policy position represented by the NECF plus the Victorian-specific derogations as provided in the National Energy Retail Law (Victoria) Bill 2012 (**NERLVA**). The Commission drafted a new version of the Energy Retail Code based on the National Energy Retail Rules, entitled the Energy Retail Code version 11 (**ERC v11**). This Final Decision Paper responds to the submissions received by the Commission from stakeholders on the draft version of the ERC v11.

Consistent with the Commission's charter and practice, the Commission released for public consultation an issues paper and the draft ERC v11 in December 2012. Following consideration of the first round of submissions received from stakeholders, the Commission released a Draft Decision Paper and an updated draft ERC v11 for public consultation in July 2013.

The Commission received submissions from 14 stakeholders (with the Consumer Groups joint submission being from eight individual organisations) in relation to the Draft Decision Paper.

A number of issues raised by stakeholders in the submissions to the Draft Decision Paper had been previously addressed by the Commission. Where the issue raised was one that had been discussed in the Draft Decision Paper and the stakeholder did not present any new evidence, we confirmed our draft decision.

The Commission also received new submissions from stakeholders and some stakeholders provided further evidence to support their original submission. The Commission has considered all of these issues and our reasoning for our final decision is detailed in this paper.

The main amendments made to the ERC v11 since the release of the Draft Decision Paper relate to amendments made to the Energy Retail Code version 10a following the introduction of flexible pricing in Victoria and to guidelines 19 and 21 following the commencement of the *Energy Legislation Amendment (General) Act 2014* that have been incorporated into the ERC v11. Schedule 1 Model Terms and Conditions has also been modified to reinstate the National Energy Retail Rules drafting with the Victorian derogations shown in boxes below the relevant clause.

The Commission originally intended to release a final version of the ERC v11 by October 2013 with a three month implementation period prior to the commencement

date to allow retailers adequate time to become compliant. However, the Commission became aware that the draft ERC v11 may be a legislative instrument under the *Subordinate Legislation Act 1994* (**SLA**) and therefore subject to the requirements of that Act. The Commission was unable to release this Final Decision Paper or the final version of the ERC v11 until we had either prepared a regulatory impact statement (**RIS**) as required under section 12E of the SLA or were granted an exemption from the requirement to prepare a RIS.

The Commission sought an exemption from the Minister for Energy and Resources from the requirement to prepare a RIS. The Minister granted the exemption, which has allowed the Commission to release the final ERC v11 without having to prepare a RIS.

The Commission would like to thank retailers, distributors, consumer groups, the Energy and Water Ombudsman (Victoria) Limited, and other stakeholders for their contribution to the harmonisation project.

Dr Ron Ben-David
Chairperson

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1 INTRODUCTION

1.1 Background

The *National Energy Customer Framework* (**NECF**) is a regulatory regime applying, on adoption by individual State and Territory governments, to the sale and supply of energy to retail customers. The NECF was established to provide a single framework for regulating retailers across Australia. It was anticipated that Victoria would transition to the NECF in July 2012.

On 13 June 2012 the Victorian Government announced that it would defer Victoria's transition. In July 2012, the former Minister for Energy and Resources, wrote to the Essential Services Commission (the **Commission**) noting that the current Victorian regulatory regime and the proposed framework under the *National Energy Retail Law (Victoria) Bill* 2012 (**NERLVA**) were substantially equivalent in terms of protections to Victorian energy customers. The Minister requested that the Commission consider harmonising the regulations contained in its Codes and Guidelines to the extent possible with the NECF.

1.2 The Commission's approach

In response to the Minister's request, the Commission determined to proceed with the harmonisation of Victoria's regulatory instruments with the NECF. The large number of Victorian-specific derogations posed the challenge of merging the Victorian-specific derogations into the NECF framework without resulting in inconsistencies between the two regimes.

In addition, Victoria had a deregulated market, and has been the first state to roll out smart meters. These factors have meant that Victoria has unique issues with customer protection compared to other jurisdictions as customers familiarise themselves with the new pricing and service offerings, and retailers continue to work with smart meter regulatory requirements. The introduction of flexible pricing has been a further consideration in the design of Victoria's regulatory framework.

The Commission received substantial feedback from industry and consumer groups following the decision to defer Victoria's transition to NECF. Some retailers informed the Commission that they had already invested significant resources in preparing for the NECF, and that systems had been put in place to comply with the NECF from July 2012 onwards. Therefore, many retailers sought to continue to operate within the NECF where possible.

The Commission wanted to use the harmonisation process as an opportunity to update Codes and Guidelines that had become out of date. This was resulting in resource

intensive, and often expensive, negotiations to resolve issues. For example, the Commission has been regularly asked by retailers and Energy and Water Ombudsman (Victoria) Limited (**EWOV**) to help interpret the de-energisation provisions in the *Energy Retail Code version 10* (**ERC v10**). The Commission has also sought to update the *Code of Conduct for Marketing Retail Energy in Victoria – January 2009* (**Marketing Code**) for some time.

Further, with the introduction of flexible pricing, the Commission proposes to harmonise our Product and Price Information Statements with the Australian Energy Regulator's (**AER**) Energy Price Fact Sheets.

It was within this unique Victorian landscape that the Commission prepared the Energy Retail Code version 11 (**ERC v11**). In drafting the new instrument, the Commission decided to replace the structure of the ERC v10 with that of the *National Energy Retail Rules* (**NERR**), as we considered that the NERR provided a more modern drafting style to the ERC v10. The Commission has also included sections of the *National Energy Retail Law* (**NERL**) where we considered it appropriate to do so.

1.3 Regulatory Powers of the Commission

The Commission has responsibility for licensing electricity and gas retailers in Victoria. The Commission's powers are outlined in the *Electricity Industry Act 2000* (**EIA**), the *Gas Industry Act 2001* (**GIA**) and the *Essential Services Commission Act 2001* (**ESC Act**).

The ESC Act also outlines the objective of the Commission, which is to promote the long-term interests of Victorian customers with regard to the price, quality and reliability of essential services. In seeking to achieve this objective, the Commission must have regard to the following matters to the extent that they are relevant in any particular case:

- efficiency in regulated industries and provide the incentive for efficient long-term investment;
- the financial viability of regulated industries;
- the degree of, and scope for, competition within the industry, including countervailing market power and information asymmetries;
- the relevant health, safety, environmental and social legislation applying to the industry;
- the benefits and costs of regulation (including externalities and the gains from competition and efficiency) for:
    - consumers and users of products or services (including low income and vulnerable consumers);
    - regulated entities;
- consistency in regulation between States and on a national basis;

- any matters specified in the empowering instrument.

The Commission also has specific energy sector objectives under the EIA and GIA. These are:

- to promote a consistent regulatory approach between the electricity industry and the gas industry, to the extent that it is efficient and practicable to do so; and
- to promote the development of full retail competition.

1.4 The release of the draft Energy Retail Code version 11

On 7 December 2012, the Commission released three documents for public consultation. The first document was the '*Harmonisation of the Energy Retail Code and Guidelines with the NECF - Consultation Paper*' (**Initial Consultation Paper**), which set out the Commission's approach to this project. The second document was an annotated revised version of the draft ERC v11, which used the NERR as its base. The third document was a clean version of the draft ERC v11, with detailed explanatory footnotes setting out why provisions were included in, or excluded from, the instrument.

The following Guidelines and Codes were amalgamated into the draft ERC v11:[1]

- ERC v10;
- *Electricity Industry Guideline no. 13 – Greenhouse Gas Disclosure on Electricity Customers' Bills – February 2008* (**Guideline 13**);
- *Guideline no. 19 – Energy Price and Product Disclosure – June 2009* (**Guideline 19**); and
- *Guideline no. 21 – Energy Retailers' Financial Hardship Policies – January 2011* (**Guideline 21**).

The Marketing Code was not amalgamated into the draft ERC v11, as the Commission intends to repeal this Code. There are now appropriate protections in the Australian Competition and Consumer Commission (**ACCC**) approved *Energy Assured Limited Code* (**EAL Code**) – to which most Victorian energy retailers have become signatories – and the consumer protections enshrined in the Australian Consumer Law.

The Commission's approach in preparing the draft ERC v11 was to adopt the structure and wording of the NERR, except to the extent that the NERR provisions were precluded by Victorian legislation, or were inconsistent with the Victorian Government's stated policy intentions.

[1] Since the initial release of the draft ERC v11, the ERC v10 and guidelines have been updated and the final ERC v11 has incorporated the latest versions of these instruments.

The Victorian Government's stated policy intentions have been indicated through:

- the NERLVA and associated Explanatory Memoranda; and
- papers published by the Department of State Development, Business and Innovation (**DSDBI**)[2] identifying Victorian-specific consumer protections that are in addition to or different to the NECF.

1.5 Initial consultation

The Commission has undertaken extensive consultation throughout the initial stages of the harmonisation project. The Commission's approach to consultation and regulatory reviews is set out in our Charter of Consultation and Regulatory Practice which is available on the Commission's website at the following address: http://www.esc.vic.gov.au/getattachment/About-Us/Consultation-Policy/CharterofConsultationforWeb.pdf.aspx.

1.6 First round of stakeholder workshops

Following the release of the Initial Consultation Paper, the Commission held meetings with energy retailers (**retailers**) in December 2012, and the consumer advocacy groups (**Consumer Groups**) in January 2013.

During the meetings, the Commission explained the purpose of the harmonisation project, and the approach that the Commission had taken in responding to the former Minister's request to harmonise the Victorian arrangements with the NECF. The Commission also addressed stakeholders' initial questions about the proposed changes.

1.7 Submissions to the Initial Consultation Paper

In February 2013, the Commission received 13 submissions from stakeholders on the draft ERC v11, as well as a number of confidential responses from interested parties. The 12 submissions which were provided to the Commission for public viewing were from the following stakeholders:

- Alinta Energy Retail Sales Pty Ltd (**Alinta**);
- AGL Energy Limited (**AGL**);
- Australian Power & Gas Company Limited (**APG**);
- Clean Energy Council;
- Consumer Groups comprising:
  - Alternative Technology Association;

[2] As of 1 July 2013, the energy branch of the Department of Primary Industries became part of the Department of State Development, Business and Innovation.

- Brotherhood of St Laurence;
- Community Information and Support Victoria;
- Consumer Action Law Centre;
- Consumer Utilities Advocacy Centre;
- COTA Australia;
- Kildonan UnitingCare;
- National Seniors Australia;
- St Vincent de Paul Society; and
- Victorian Council of Social Service;

- EnergyAustralia Pty Ltd (**EnergyAustralia**);
- EWOV;
- Kevin McMahon;
- Momentum Energy Pty Ltd (**Momentum**);
- Northern Alliance for Greenhouse Action;
- Origin Energy Retail Ltd (**Origin**); and
- Simply Energy.

1.8 Second round of stakeholder workshops

Following our consideration of submissions, the Commission held a second round of workshops. The retailers' workshop was held on 29 April 2013 and the Consumer Groups' workshop was held on 2 May 2013.

At the workshops, the Commission provided an overview of the main issues that had been raised in the submissions, and explained the approach the Commission had taken in responding to submissions. The Commission also invited stakeholders to elaborate on their submissions, and discussed in detail their primary issues of concern.

The Commission also informed industry of the revised timeframes for implementation of the ERC v11.

1.9 Release of the Draft Decision Paper and updated draft ERC v11

On 18 July 2013, the Commission released the updated draft ERC v11, which incorporated the submissions received from stakeholders, along with the *'Harmonisation of the Energy Retail Code and Guidelines with the National Energy Customer Framework (NECF) – Draft Decision (Consultation Paper)'* (**Draft Decision Paper**). The Draft Decision Paper set out stakeholder submissions, the Commission's proposed decision and the reasoning supporting the proposed decision. The Commission also provided stakeholders with a clean copy of the updated draft ERC v11 with detailed footnotes and two track changed versions of the updated draft ERC v11 – one which highlighted the changes from the draft ERC v11 released in December 2012 and one which captured all the deviations from the NERR drafting.

The Commission invited stakeholders to provide submissions on the Commission's Draft Decision Paper and proposed amendments to the draft ERC v11.

1.10 Submissions to the Draft Decision Paper

In August 2013, the Commission received 11 submissions on the updated draft ERC v11 from the following stakeholders:

- AGL;
- Alinta;
- Consumer Groups comprising:
    - Alternative Technology Association;
    - Brotherhood of St Laurence;
    - Community Information and Support Victoria;
    - Consumer Action Law Centre;
    - Consumer Utilities Advocacy Centre;
    - Kildonan UnitingCare;
    - St Vincent de Paul Society; and
    - Victorian Council of Social Service;
- EnergyAustralia;
- ERM Power Retail Pty Ltd (**ERM**);
- Lumo Energy Australia Pty Ltd (**Lumo**);
- Momentum;
- Northern Alliance for Greenhouse Action;
- Origin;
- SP Australia Networks (Distribution) Pty Ltd (**SP AusNet**); and
- United Energy Distribution Pty Limited and Multinet Gas Distribution Partnership (**United Energy**).

1.11 Structure of this Paper

This paper is structured as follows:

- **Chapter 1**: **Introduction**
    - Background
    - The Commission's approach
    - Regulatory powers of the Commission
    - The release of the draft Energy Retail Code version 11
    - Initial consultation
    - First round of stakeholder workshops
    - Submissions to the Initial Consultation Paper
    - Second round of stakeholder workshops
    - Release of the Draft Decision Paper and updated draft ERC v11
    - Submissions to the Draft Decision Paper
    - Structure of this paper

- **Chapter 2: Victorian Energy Instruments Consultation**
  - This chapter outlines the Commission's approach to the Victorian Energy Instruments Consultation.

- **Chapter 3: Policy considerations**
  - This chapter sets out the Commission's approach to the consideration of policy issues with respect to submissions received.

- **Chapter 4**: **Flexible Pricing**
  - This chapter sets out the Commission's approach to reviewing the ERC v11 to ensure that adequate protections are in place during the introduction of flexible pricing in Victoria.

- **Chapter 5**: **Summary of Amendments**
  - This chapter lists the changes that the Commission has made to the ERC v11 since the release of the Draft Decision Paper and updated draft ERC v11 in July 2013.

- **Chapters 6**: **General concerns raised in submissions**
  - This chapter sets out the general issues raised by stakeholders on harmonisation, which do not relate to specific clauses in the ERC v11.

- **Chapters 7 to 25**:
  - These chapters set out the clauses of the ERC v11 that were the subject of submissions, the Commission's draft decision and the Commission's final decision.
  - The Commission has structured this part of the draft decision to reflect the structure of the ERC v11 for ease of use.

- **Appendix 1: Amended clean version of the ERC v11**

2 OTHER VICTORIAN ENERGY INSTRUMENTS

The Commission noted in the Initial Consultation Paper that the draft ERC v11 was limited to harmonising the Victorian regulatory instruments with the provisions of the NECF so far as they related to retailer requirements. It did not adopt the provisions of the NERR that related to distributor obligations. It was further noted that there are some retailer obligations which overlap with distributor obligations and therefore additional work would be undertaken by the Commission to identify any consequential amendments required to be made to other Victorian energy instruments as a result of the drafting adopted in the draft ERC v11.

Consequently, as part of the consultation on the draft ERC v11 the Commission released a second consultation paper entitled '*Harmonisation Project: Consequential Amendments to Victorian Energy Instruments'* (**Victorian Energy Instruments Consultation Paper**). This paper outlined the Commission's approach to reviewing certain Victorian energy instruments outside the scope of the harmonisation project but which may contain retailer obligations that were inconsistent with the drafting of draft ERC v11 and therefore should be amended (**the Victorian Energy Instruments**). The Commission sought comments on the proposed consequential amendments to the Victorian Energy Instruments as a result of the drafting adopted in the draft ERC v11.

The Commission received four submissions which we have responded to in the *Harmonisation Project: Consequential Amendments to Victorian Energy Instruments – Final Decision Paper* (**Victoria Energy Instruments Final Decision Paper**) dated July 2014. Victorian Energy Instruments Final Decision Paper can be found at: http://www.esc.vic.gov.au/Energy/Harmonisation-of-Energy-Retail-Codes-and-Guideline.

3 POLICY CONSIDERATIONS

In the Initial Consultation Paper, the Commission stated that we were not seeking submissions on matters of policy as part of this consultation. This was due to the policy positions represented in the NECF and the Victorian derogations having already undergone very extensive stakeholder consultation and the Victorian Government's position having been settled – as provided in the NERLVA.

The NECF itself was the subject of extensive consultation during its inception. In 2008, the Ministerial Council on Energy Standing Committee of Officials prepared a Regulatory Impact Statement (**RIS**) in relation to the *'National Framework for Regulating Electricity and Gas (Energy) Distribution and Retail Services to Customers*'. The RIS considered in detail the Council of Australian Governments' decision to harmonise regulatory arrangements in the energy sector.

At a state level, departmental officials consulted with stakeholders on the Victorian derogations during its consultation in 2011. The Victorian Government decided that on Victoria's transition to NECF, these derogations were required to ensure that there was no material reduction in protections for Victorian customers.

However, the Commission received many submissions which sought to re-open matters of Government policy.

While the Commission has considered each of these issues, and addressed them in the Draft Decision Paper and this paper, the Commission has not reopened policy debates.

Where the Commission has found that our drafting of the ERC v11 may have resulted in unintended changes to customer protections, or misrepresented current Victorian policy, we have amended these provisions accordingly. These changes have been set-out in this paper, and also in the final ERC v11 (**Appendix 1**).

In determining whether an amendment has been required to the ERC v11, the Commission has given consideration to the consequences of perpetuating Victorian provisions which are inconsistent with the national framework given the intention of the NECF is to harmonise State-based regulatory frameworks for the energy sector into a nationally consistent set of rules.

4 FLEXIBLE PRICING

The Victorian Government has introduced flexible pricing into the Victorian retail energy market. The *Advanced Metering Infrastructure (AMI Tariffs) Order in Council 2013* (the **Order**) allows electricity retailers to make available to customers flexible prices from 1 July 2013. The Order has been developed by DSDBI in consultation with industry and other stakeholders. The DSDBI has developed the Order to contain adequate consumer protections to protect Victorian customers during the introduction of flexible pricing. Some of the protections in the Order include an obligation on retailers to obtain a customer's explicit informed consent to enter into a new flexible tariff. It also allows a customer to revert to their previous tariff without incurring an early termination fee.

From the commencement of the harmonisation project in July 2012, the Commission has considered whether the adoption of the NECF provisions would be affected by the transition to this new flexible pricing environment. Where the Commission has considered that a current ERC v10 provision is required to ensure that customers have the same level of protection during the transition to flexible pricing, the Commission has retained the provision.

The Commission has given particular consideration to the impact the new flexible pricing environment may have on the following matters:

- Payment plans (section 7.11);
- Explicit informed consent requirements (section 7.12);
- Historical billing information (section 11.9);
- Undercharging (section 11.11);
- Shortened collection cycle (section 11.15);
- Termination of a market retail contract (section 14.3);
- Customer hardship (section 18); and
- De-energisation for not paying a bill (section 19.2).

The Commission's rationale for introducing non-NECF requirements into the ERC v11 in response to the introduction of flexible pricing is to ensure that there are adequate customer protections in place during the transition to the new flexible pricing environment.

The ERC v10 was amended in August 2013 to incorporate the changes required for flexible pricing as outlined in the Order. As such, the Commission will refer to the ERC v10a, which is currently in effect in Victoria, in our discussion sections below. However, for submissions we have kept the reference to the ERC v10, as that was the version that was in effect when the submissions were made.

The Commission has incorporated all of the amendments made to the ERC v10a into the ERC v11 to allow for the smooth introduction of flexible pricing.

The following amendments have been made to the ERC v11 to reflect the amendments made to ERC v10a in light of flexible pricing:

- Clause 3 (definitions of AMI retail tariff, flat AMI retail tariff and flexible AMI retail tariff);
- Subclause 15B(5)(a) (Relevant Published Offers – Price and Product Information Statements);
- Subclause 15B(6)(c) (Relevant Published Offers - Price and Product Information Statements);
- New clause 15D (Relevant Published Offers – Energy Price Fact Sheet);
- Subclause 46A(2) (Variations to Market Retail Contracts);
- Subclause 49(2) (Termination of Market Retail Contracts);
- Subclause 49A(6A)(ii) (Early Termination Charges and Agreed Damages Terms); and
- Schedule 4 (Residential Electricity Standing Offer).

Further details on the amendments made to the ERC v11 are outlined below under the discussion of each individual clause outlined above.

For more information regarding the flexible pricing amendments incorporated in the ERC v10a, please refer to our paper *'Changes to regulatory instruments relating to flexible pricing of electricity – Final Decision*, August 2013*'*, which is available at: http://www.esc.vic.gov.au/Energy/Proposed-changes-to-regulatory-instruments-relatin/Changes-to-regulatory-instruments-relating-to-flex.

5 SUMMARY OF AMENDMENTS

As a result of the consultation process following the release of the Draft Decision Paper and updated draft ERC v11 in July 2013, the Commission has made approximately 60 amendments to the ERC v11, with half of those amendments being made to re-instate the NERR drafting for the Schedule 1 Model Terms and Conditions and to insert boxes into the Schedule 1 Model Terms and Conditions outlining the Victorian derogations.

Detailed discussion of each amendment is given in chapters 6 to 25.

The list of amendments made to the ERC v11 since the release of the Draft Decision Paper (not including minor drafting corrections) are as follows:

PART 1 Preliminary

- Division 1 Introduction and definitions
  - **Clause 3 – Definitions**
    - Definitions for '*AMI retail tariff*', '*business day'*, '*flat AMI retail tariff*', '*flexible AMI retail tariff*', '*Functionality Specification*' have been provided. Definition for '*best endeavours*' has been deleted. Definitions for each of '*associate*', '*energy marketing activity*', *'index read*', '*life support equipment*' and '*smart meter'* have been amended.
  - **Clause 3B – Purpose and Application**
    - Subclause 1 has been amended to remove the reference to '*all'* and insert '*only*'.
  - **Clause 3C – Explicit Informed Consent**
    - Subclause 2(b) has been amended to remove the prohibition on verbal explicit informed consent for clause 20.

PART 2 Customer retail contracts

- Division 1 Standard retail contracts – terms and conditions generally
  - **Clause 12 – Model terms and conditions for standard retail contracts**
    - Amended to include new subclause 12(4)(d), which will allow retailers to add other NECF jurisdictions derogations to the Schedule 1 model terms and conditions.

  Division 2A Energy Price and Product disclosure
  - **Clause 15A – Internet publication of standing offer tariffs**
    - Amended to reflect the revised Guideline 19 Energy Price and Product Disclosure released in April 2014.
  - **Clause 15B – Relevant published offers (Price and Product Information Statements)**

- Amended to reflect the revised Guideline 19 Energy Price and Product Disclosure released in April 2014.
- Amended clause 15B(5)(a) to require retailers to present a flat AMI retail tariff as one of the potentially applicable tariffs where retailers are unable to determine which PPIS applies to customer.
- Amended clause 15B to include a new subclause 15B(6)(c) stating the information that must be included in a PPIS if the tariff is a flexible AMI retail tariff.

- **Clause 15C – Offer summary**
  - Amended to reflect the revised Guideline 19 Energy Price and Product Disclosure released in April 2014.
- **Clause 15D – Relevant published offers (Energy Price Fact Sheets)**
  - Introduced a new clause 15D – Relevant Published Offers (Energy Price Fact Sheets), which will provide retailers with the choice of using either a PPIS or an Energy Price Fact Sheet to fulfil their obligations under section 36A of the Electricity Industry Act and the ERC v11.
- **Clause 15E – Relevant offer summaries (Disclosure Statement)**
  - Introduced a new clause 15E – Relevant Offer Summaries (Disclosure Statements), which will allow retailers to provide a Disclosure Statement in lieu of an Offer Summary.
- **Clause 15F – Other requirements**
  - Subclause 15F(1) – removed reference to "*this guideline*" and replaced it with "*Division 2A of Part 2 of this Code*".

- Division 4 Customer retail contracts – billing
  - **Clause 21 – Estimation as basis for bills (SRC and MRC)**
    - Amended subclause 21(3) to clarify that the obligation to inform small customers when their bill is based on estimation is subject to clause 25(1)(i) (which, in the case of smart meters, does not require informing of estimation where estimation totals less than 48 hours of trading intervals).
  - **Clause 24 – Frequency of bills (SRC)**
    - Subclause 24(1)(b) – amended to allow for a six month transition period (until 31 December 2014) before gas billing is moved to a three monthly cycle.
  - **Clause 25 – Contents of bills**
    - Subclause 25(1)(i)(i) – amended to clarify that interval meters and smart meters will be treated the same with respect to clause 25(1)(i)(i) of the ERC v11.
    - Subclause 25(1)(i)(ii) – amended to remove the reference to '*smart meter*' and inserted the terms '*interval meter*', '*actual*' and '*metering*' into the subclause.

- Subclause 25(1)(n) – inserted "*and to the extent the data is available*".
- Note after subclause 25(1)(y) – inserted a reference to the Gas Distribution System Code.

- **Clause 29 – Billing disputes**
  - Note at end of subclause 29(5) – amended to include a reference to the Gas Distribution System Code.
- **Clause 35A – Additional retail charges**
  - Subclause 35A(3)(b) – amended subclause 35A(3)(b) to include a reference to '*alternative control service charge'*.
- **Clause 46 – Tariffs and charges**
  - Subclause 46(4) – Amended to remove the 20 business day notification requirement for smart meter customers.
- **Clause 46A – Variations to market retail contract**
  - Amended to reflect the NERR terminology.
  - Subclause 46A(2) - Amended to insert the following "*or in accordance with the Advanced Metering Infrastructure (AMI Tariffs) Order 2013*".
  - Subclause 46A(4) – inserted new subclause (4) to define the meaning of '*dual fuel contract*'.
- **Clause 49 – Termination of market retail contract**
  - Subclause 49(2) – amended to insert the following "*or if the termination is necessary for, or a direct consequence of, the customer exercising the customer's right to opt-out of a flexible AMI retail tariff in accordance with clause 8 of the Advanced Metering Infrastructure (AMI Tariffs) Order in Council 2013*".
- **Clause 49A – Early termination charges and agreed damages terms**
  - Subclause 49A(6A)(ii) – Amended to insert the following "*unless the early termination was a direct consequence of the customer exercising the customer's right to opt-out of a flexible AMI retail tariff in accordance with clause 8 of the Advanced Metering Infrastructure (AMI Tariffs) Order in Council 2013, $20*".
- **Clause 62 – Requirement for and timing of disclosure to small customers**
  - Inserted note at the end of the clause advising that clause 15C requires that a retail marketer to provide an offer summary to a small retail customer prior to the formation of a contract.
- **Clause 70B – Termination in the event of a last resort event**
  - Amended to reflect the NERR terminology.
  - Subclause 70B(4) – inserted new subclause (4) to define the meaning of '*dual fuel contract*'.

- **Clause 71A – Contents of a customer hardship policy**
  - Amended to replace the words '*residential customer in financial hardship*' with the term '*customer hardship*' to reflect the NERR terminology.
  - Amended to reflect the revised Guideline 21 Energy Retailers' Financial Hardship Policies released in April 2014.
- **Clause 71B – Contents of a customer hardship policy**
  - Amended to reflect the revised Guideline 21 Energy Retailers' Financial Hardship Policies released in April 2014.
- **Clause 71C – Changes to customer hardship policies**
  - Amended to reflect the revised Guideline 19 Energy Price and Product Disclosure released in April 2014.
- **Clause 76A – Supply capacity control product**
  - Amended to remove the following "*before a date to be determined by the Minister for Energy and Resources*".
  - Subclause 76A(2) – inserted new subclause (2) defining the meaning of '*supply capacity control*'.

PART 6 De-energisation (or disconnection) of premises – small customers

- Division 1 Preliminary
  - **Clause 107 – Application of this Part**
    - Deleted subclause (1).
- Division 2 Retailer-initiated de-energisation of premises
  - **Clause 111 – De-energisation for not paying bill**
    - Subclause 111(1) – Amended to insert the following "*including by de-energising the customer's supply remotely*".
    - Subclause 111(2) – Amended to insert the following "*or the retailer otherwise believes the customer is experiencing repeated difficulties in paying the customers' bill or requires payment assistance*".
  - **Clause 113 – De-energisation for denying access to meter**
    - Subclause 113(1)(c) – Amended to remove the text in brackets from subclauses 113(1)(c)(ii) and (iii).
    - Inserted a note at the end of clause 113 referring to the further guidance provided in the Operating Procedure Compensation for Wrongful Disconnection publication produced by the Commission.

Schedule 1 Model terms and conditions for standard retail contracts

- **Preamble**
  - Amended to re-introduce the NERR drafting.
  - Inserted a box beneath the 2nd paragraph of the preamble stating "*For Victorian customers, until the National Energy Retail Law and the*

National Energy Retail Rules are adopted in Victoria (referred to as 'NECF implementation in Victoria'), the energy laws applicable in Victoria are the Electricity Industry Act 2000, the Gas Industry Act 2001 and the Energy Retail Code made by the Essential Services Commission. For customers in Victoria, prior to NECF implementation in Victoria all references to the National Energy Retail Law and Rules in this contract should be read as references to the Energy Retail Code unless stated otherwise."

  - Inserted a box beneath the 3rd paragraph of the preamble stating "*There are no gas customer connection contracts in Victoria*."

- **Clause 2 – Definitions and interpretation**
  - Amended to re-introduce the NERR drafting.
- **Clause 3 – Do these terms and conditions apply to you?**
  - Subclause 3.1 – amended to re-introduce to NERR drafting.
  - Subclause 3.2 – amended to re-introduce the NERR drafting.
- **Clause 4 – What is the term of this contract?**
  - Subclause 4.1 – amended to re-introduce the NERR drafting.
  - Subclause 4.2 – amended to re-introduce the NERR drafting.
- **Clause 5 – Scope of this contract**
  - Subclause 5.2 – amended to insert a box beneath the clause stating that "*there are no gas customer connection contracts in Victoria*".
- **Clause 7 – Our Liability**
  - Subclause 7(c) – amended to re-introduce the NERR drafting.
  - Inserted a box beneath subclause 7(c) stating "*for Victorian customers and until the NERL has been adopted in Victoria, the reference to the NERL in cl.7(c) is a reference to, in the case of electricity, s.120 of the National Electricity Law as set out in the Schedule to the National Electricity (South Australia) Act 1996 or, in the case of gas, to s.232 of the Gas Industry Act or s.33 of the Gas Safety Act 1997*."
- **Clause 8 – Price for energy and other services**
  - Subclause 8.3(a) – amended to remove the language the Commission had proposed to add, which stated *"we notify you of the new tariff"* and re-introduce the NERR drafting.
  - Subclause 8.3(c) - amended to remove subclause 8.3(c), which stated "*this clause does not limit the obligations we have concerning variations to our standing offer prices contained in the energy laws*".
- **Clause 9 - Billing**
  - Subclause 9.3 – amended to remove the explicit informed consent requirement from clause 9.3(a) and Inserted a box below the clause stating that "*In Victoria, a retailer must obtain a customer's 'explicit inform consent' to base the customer's bill on an estimation, unless the meter cannot be read or the metering data is not obtained*".
- **Clause 10 – Paying you bill**

- Subclause 10.3(c) – amended to re-instate the NERR drafting by replacing reference to '*Code'* with '*National Energy Retail Law and the Rules*'*.*
- Subclause 10.4 – amended to re-instate the NERR drafting.

- **Clause 12 – Undercharging and overcharging**
  - Subclause 12.3(b) – amended to re-introduce the NERR drafting and inserted a box beneath subclause 12.3(b) stating that "*Customers in Victoria are not required to pay for meter check or test in advance*".
- **Clause 13 – Security Deposits**
  - Subclause 13.1 – amended to re-instate the NERR drafting by replacing references to '*Code'* with '*Rules'*.
  - Subclause 13.2 – amended to re-instate the NERR drafting by replacing references to '*Code'* with '*Rules'*.
- **Clause 14 – Disconnection of supply**
  - Subclause 14.1 – amended to re-instate the NERR drafting by replacing reference to '*Code*' with '*Rules*' and remove the proposed language stating "*or acceptable identification*" from 14.1(b).
  - Subclause 14.2 – amended to re-instate the NERR drafting by replacing reference to '*Code*' with '*Rules*'.
  - Subclause 14.3 – amended subclauses 14.3(a)(i),14.3(a)(v) and 14.3(b)(iv) to re-introduce the NERR drafting.
  - Inserted a box beneath subclause 14.3(a)(i) stating that "*The protected period for a residential customer in Victoria is before 8:00am or after 2:00pm. The protected period for a business customer in Victoria is before 8:00am or after 3:00pm*."
  - Inserted a box beneath subclause 14.3(a)(v) stating that "*Paragraph (v) does not apply in Victoria*."
  - Insert a box beneath subclause 14.3(b)(iv) stating that "*Victorian customers may be disconnected if it is permitted under their connection contract or under the applicable energy laws*."
- **Clause 15 – Reconnection after disconnection**
  - Subclause 15.2 - removed the proposed addition of a new clause 15.2 to include the timeframes for re-energisation.
- **Clause 16 – Wrongful and Illegal use of energy**
  - Amended subclause 16.1(d) to re-instate the NERR drafting by replacing the reference to '*Code'* with '*Rules'*.
- **Clause 17 – Notices and bills**
  - Subclause 17(a) – amended to re-instate the NERR drafting by replacing the reference to '*Code'* with '*National Energy Retail Law and the Rules*'.
- **Clause 21 – Applicable law**
  - Amended to re-instate the NERR drafting by removing the reference to 'Victoria' and inserting *[required alteration: insert the name of the*

relevant participating jurisdiction where the customer's premises are located].

- **Clause 22 – Retailer of last resort**
  - Amended to re-introduce the NERR drafting by removing the reference to '*energy laws*' and replacing with '*National Energy Retail Law* and *the Rules'*.
- **Clause 23 - General**
  - Subclause 23.2(a) – amended to re-instate the NERR drafting by removing the reference to '*Electricity Industry Act and Gas Industry Act*' and replacing with '*National Energy Retail Law*'.
  - Inserted a box beneath subclause 23.2(a) stating that '*For Victorian customers the procedures are set out in section 40A of the Electricity Industry Act and section 48 of the Gas Industry Act*'.
- **Simplified explanation of terms**
  - Amended to re-introduce the NERR drafting.
  - Inserted a box beneath the definition of customer connection contract stating that '*There are no gas customer connection contracts in Victoria*'.
  - Inserted boxes into the simplified explanation of terms defining the EIA, ERC v11, GIA and small customer.

Schedule 4 Residential Electricity Standing Offer

- Template for Residential electricity standing offer has been amended as a result of the introduction of flexible pricing and reflects the changes made to Schedule A of Guideline 19.

Schedule 5 Price and Product Information Statement

- Amended to reflect the revised Guideline 19 Energy Price and Product Disclosure released in April 2014.

6 GENERAL CONCERNS

This chapter discusses submissions received which raised general concerns regarding the drafting of the ERC v11 and its implementation.

6.1 Timing of the NECF and the ERC v11

The Commission stated in our Initial Consultation Paper that the anticipated implementation date for the ERC v11 was 1 July 2013.

Draft Decision

The Commission proposed to delay the full implementation of the ERC v11 until January 2014 with the release of the Final Decision expected to occur in late September/early October 2013, which would allow retailers three months to become fully compliant.

Submissions

Momentum,[3] Alinta,[4] EnergyAustralia,[5] Origin,[6] and AGL[7] submitted that if there was a delay in the release of the Final Decision then the commencement date should be changed to ensure retailers are provided with a three month transitional period to become compliant. AGL also stated that the proposed introduction date of the ERC v11 was critical to NECF compliant retailers.[8]

Discussion

The Commission will provide retailers with a three month period following the release of this Final Decision Paper and the ERC v 11 to allow retailers to become fully compliant.

FINAL DECISION

The Commission will allow a commencement date of the ERC v11 that is three months following the release of the Final Decision Paper to allow retailers to become fully compliant with the ERC v11.

[3] Momentum submission, p. 3.
[4] Alinta submission, p. 2.
[5] EnergyAustralia submission, p. 3.
[6] Origin submission, p. 1.
[7] AGL submission, p. 1.
[8] AGL submission, p 1.

6.2 Smart meter provisions

The ERC v10a contains several provisions which relate to smart meters.

Draft Decision

The Commission proposed to include the Victorian-specific smart meter provisions in the draft ERC v11.

Submissions

United Energy submitted that the definition of *'smart meter'* should be amended to apply to a meter that meets the hardware requirements and the remote service requirements. United Energy submitted that, as drafted, the definition places remote read or remote service obligations on the meters that may be manually read basic or interval meters.[9] United Energy also stated that the functionality requirements were set out in a Ministerial document which was referred to in the Order, not in the Specifications Order.[10]

SP AusNet submitted that the definition of *'smart meter'* should only refer to remotely read meters, as AMI meters could be read manually which would not provide the functionality and service levels to which the ERC v11 referred to when using the term.[11]

Discussion

The definition of smart meter in the draft ERC v11 is as follows:

> ***smart meter*** means an interval *meter* designed to transmit data to a remote locality that meets the functionality requirements for advanced metering infrastructure set out in any relevant Order made under section 46D of the *Electricity Industry Act.*

Retailers are required to provide interval reads in customers' bills that are derived from smart meter interval data (clause 25(1)(y), ERC v11). Smart meters may not have full functionality in the early stages of the smart meter roll-out, and may continue to be manually read until the supporting telecommunications network and systems are fully operational.

The ERC v11 imposes other specific obligations on retailers in relation to smart meters, including in respect of:

[9] United Energy submission, p. 2.
[10] United Energy submission, p. 2.
[11] SP AusNet submission, p. 3.

- the content of bills (clause 25(1)(i), (k), (n) and (y));
- historical billing information (clause 28(2A));
- notice periods for tariff variations (clause 46(4));
- particulars in warning notices of disconnection (i.e. that disconnection can occur remotely) (clause110(2)(h)).

The Order provides that each relevant licensee that is required to install a smart meter must use its best endeavours to ensure it complies with the minimum functionality requirements set out in sections 3 and 4 of the document entitled 'Minimum AMI Functionality Specification (Victoria)' (section 3(a), EIA Order in Council dated 12 November 2007).

The Commission agrees that the current definition does not distinguish between smart meters actually operating as smart meters and being read remotely, and those that are not. As such, we agree that it seems logical to limit the definition of 'smart meters' to those which meet the functionality requirements and which are being read remotely.

Therefore, the Commission will amend the definition of ‘smart meter’ as follows:

> ***smart meter*** *means an interval meter that meets the functionality requirements set out in the Functionality Specification and:*
>
> *(a) is designed to transmit metering data to a remote location for data collection; and*
>
> *(b) does not, at any time, require the presence of a person at, or near, the meter for the purposes of data collection or data verification (whether this occurs manually as a walk-by reading or through the use of a vehicle as a close proximity drive-by reading), including, but not limited to, an interval meter that transmits metering data via direct dial-up, satellite, the internet, general packet radio service, power line carrier, or any other equivalent technology;*

The Commission notes that this new definition is consistent with the definition of ‘*remotely read interval meter*’ used in the Order in Council dated 12 November 2007.

Given the new definition, the Commission will also insert the following definition of ‘Functionality Specification’:

> ***Functionality Specification*** *has the meaning given to it in the Order in Council dated 12 November 2007, made under section 46D of the Electricity Industry Act*;

The Commission notes that Standing Council on Energy and Resources released its 'National Smart Meter Consumer Protection and Safety Review Consultation Paper – National Energy Retail Rules Amendment Rule 2013' in September 2013, which

included an exposure draft of the NERR Amendment Rule 2013. Once this consultation has been finalised, the Commission will consider amending the ERC v11 to reflect the changes made to the NERR.

FINAL DECISION

The Commission will amend the definition of 'smart meter' as follows:

> ***smart meter*** *means an interval meter that meets the functionality requirements set out in the Functionality Specification and:*
>
> *(a) is designed to transmit metering data to a remote location for data collection; and*
>
> *(b) does not, at any time, require the presence of a person at, or near, the meter for the purposes of data collection or data verification (whether this occurs manually as a walk-by reading or through the use of a vehicle as a close proximity drive-by reading), including, but not limited to, an interval meter that transmits metering data via direct dial-up, satellite, the internet, general packet radio service, power line carrier, or any other equivalent technology.*

The Commission will insert the following definition of 'Functionality Specification' into the ERC v11:

> ***Functionality Specification*** *has the meaning given to it in the Order in Council dated 12 November 2007, made under section 46D of the Electricity Industry Act*.

6.3 Retention of the wrongful disconnection scheme

The Commission has the power to determine the eligibility of an energy customer to receive a payment for wrongful disconnection, following a referral from EWOV.

Draft Decision

The NERLVA would have maintained the wrongful disconnection scheme in Victoria, and the Commission found no reason to change the current scheme.

Discussion

The Commission received no further submissions from stakeholders on this issue. The Commission confirms our draft decision.

FINAL DECISION

The Commission will retain the wrongful disconnection scheme.

6.4 Prohibition on late payment fees

Retailers are not permitted to charge customers late payment fees if they do not pay their bill on time.

Draft Decision

The Commission stated that concerns about the prohibition of late payment fees is a matter of policy and outside the scope of this consultation.

Discussion

The Commission received no further submissions from stakeholders on this issue. The Commission will not allow retailers to charge late payment fees.

FINAL DECISION

The Commission will not remove the prohibition on late payment fees.

6.5 Reference in Electricity Industry Act 2000 and Gas Industry Act 2001 to the Energy Retail Code

Compliance with the ERC v11 is a condition of electricity and gas retail licenses.

Draft Decision

The Commission would not amend the ERC v11 to apply in its entirety to both standard and market retail contracts.

Submission

Origin agreed with the Commission's view that the ERC v11 made it clear when a provision applied to a standard or market retail contract.[12]

Discussion

No new issues have been raised in response to our draft decision. The Commission confirms our draft decision.

[12] Origin submission, p. 3.

FINAL DECISION

The Commission will not amend the ERC v11 to apply in its entirety to both standard and market retail contracts.

6.6 Impact of ERC v11 on other legislative instruments

The ERC v11 is one of several regulatory instruments in Victoria governing energy retailers.

Draft Decision

The proposed changes to some of the other Victorian energy instruments were set out in the '*Harmonisation Project: Consequential Amendments to Victorian Energy Instruments – Consequential Paper*, July 2013'.

Discussion

The changes to some of the other Victorian energy instruments are set out in the Victorian Energy Instruments Final Decision, which is available on the Commission's website at: http://www.esc.vic.gov.au/Energy/Harmonisation-of-Energy-Retail-Codes-and-Guideline.

FINAL DECISION

The Victorian Energy Instruments Final Decision sets out the changes the Commission will make to the other Victorian Energy Instruments as a result of implementing the ERC v11.

6.7 Costs of complying with the ERC v11

The costs of implementing the ERC v11 have not been quantified.

Draft Decision

The Commission sought submissions from retailers to quantify the costs of implementing the ERC v11.

Submissions

Momentum submitted that it preferred to transition directly to the NECF at a date to be determined by the Victorian Government, as it believed the approach taken by the

Commission was not a harmonisation process but the establishment of a new framework which would require re-mapping of compliance obligations, with the costs outweighing any potential benefit.[13]

ERM submitted that the harmonisation project provided an opportunity to replace dated and ambiguous sections of the ERC v10, and it supported the Commission's decision to harmonise the ERC v10 with the NECF.[14]

Origin also supported the Commission's proposed approach of harmonisation, as opposed to incremental changes being made to the ERC v10, which it believed would lead to uncertainty and significant costs.[15]

Discussion

The Commission has considered the submissions on the costs and benefits of harmonising the ERC v11 with the NECF. The Commission acknowledges Momentum's concern that when Victoria transitions to the NECF there may be further changes from the ERC v11. However, the Commission's opinion (which is supported by ERM and Origin) is that there is merit in harmonising the ERC with the NECF as harmonisation will capture (instead of lose) the benefit of work done prior to the Victorian Government's decision to delay implementation of the NECF in this State. This will assist Victorian retailers who also operate in other states, as it will be working with consistent rules with New South Wales, South Australia, Tasmania and the Australian Capital Territory.

This process also has the added benefit of providing the Commission with an opportunity to ensure that the Commission's Codes and Guidelines are clear and current.

The Commission has ensured that the ERC v11 only contains the derogations which were to be maintained in the NERLVA or that the Commission considers necessary given the introduction of flexible pricing in Victoria. This approach should limit the changes required to the Victorian regulatory regime if Victorian transitions to NECF.

FINAL DECISION

The Commission has considered the costs and benefits of the ERC v11 and will implement the ERC v11.

[13] Momentum submission, p. 1-2.
[14] ERM submission, p. 2.
[15] Origin submission, p. 1.

6.8 Standing offer provisions

Under the ERC v11, there are standard retail contracts and market retail contracts, previously referred to by industry as standing offer contracts and market contracts. These differ in tariff price and consumer protections.

Draft Decision

The Commission would not amend the ERC v11 to require retailers to offer standard and market retail contracts to customers and explain the differences in the price and protections between the contracts.

Submission

Origin agreed with the Commission that retailers should not be required offer customers both standard and market retail contracts, and explain the differences of each, as this would extend the obligations under the ERC v10.[16]

Discussion

No new issues have been raised in response to our draft decision. The Commission confirms our draft decision.

FINAL DECISION

The Commission will not amend the ERC v11 to require retailers to explain to customers the price and protections relating to different contracts.

6.9 Proactively informing consumers about their rights

Both retailers and consumers have a responsibility to be proactive in providing and obtaining information under the ERC v11.

Draft Decision

The Commission will not change the provisions relating to EWOV in the ERC v11, as they are consistent with the NERR. The Commission proposes to include a new subclause 12(3A), which will have the same effect as section 29 of the NERL, and provide that the terms and conditions of a retailer's standard retail contract must not be inconsistent with the provisions of the model terms.

[16] Origin second round submission, p 3.

Submission

Origin submitted that the Commission's approach maintains consistency with the NERR, which it supported.[17]

Discussion

No new issues have been raised in response to our draft decision. The Commission confirms our draft decision.

FINAL DECISION

The Commission will not change the provisions relating to EWOV in the ERC v11.

The Commission will include a new subclause 12(3A) which will have the same effect as section 29 of the NERL.

6.10 Applicability of the ERC v11

The ERC v11 applies only to small customers and retailers.

Submission

SP AusNet submitted that the ERC v10 made it clear that it applied only to small customers, but it stated that the ERC v11 did not have this clarity. Specifically, it noted that the ERC v11 stated that Part 6 only applied to small customers which implied that other parts potentially applied to more than only small customers.[18]

Discussion

The ERC v11 applies only to small customers. The definition of 'small customer' and 'small retail customer' in the ERC v11 has the same meaning given to domestic or small business customer under section 3 of the EIA and the GIA.

Under the EIA and the GIA, the term 'domestic and small business customer' is defined by Orders in Council. As at the date of this Paper, the relevant Orders define a domestic or small business customer as (paraphrasing):

(a) a person who purchases energy principally for personal, household or domestic use at the relevant supply point; or

[17] Origin submission, p. 3.
[18] SP AusNet submission, p. 2.

(b) in the case of electricity, a person whose aggregate consumption of electricity taken from the relevant supply point has not been, or in the case of a new supply point, is not likely to be, more than 40MWh per year; or

(c) in the case of gas, a person whose aggregate consumption of gas taken from the relevant supply point has not been, or, in the case of a new supply point, is not likely to be, more than 1000 GJ per year.

Subclause 3B(1) of the ERC v11 expressly provides that the Code applies to small customers. We acknowledge that the language in clause 107(1) of the ERC v11 stating that "this Part applies to small customers only" could imply that the ERC v11 applies to customers other than small customers. The reason for its inclusion in the NERR is because some provisions of the NERR apply to business customers that are not small customers (for example sections 4, 5 and 9 of the NERR which are not used in the ERC v11).

As such, the Commission will remove subclause 107(1) from the ERC v11 to avoid any confusion. We will also amend subclause 3B(1) to state: *"This Code applies to small ~~all~~ customers only".*

FINAL DECISION

The Commission will amend subclause 3B(1) to state: *"This Code applies to ~~all~~ small customers only"*.

The Commission will amend the ERC v11 to remove subclause 107(1).

7 INTRODUCTION AND DEFINITIONS – PART 1

This chapter discusses submissions received on PART 1 Preliminary, Division 2 Introduction and Definitions of the ERC v11. It also provides a glossary of terms and key acronyms.

Table A – Glossary of terms used in the ERC v11 and their equivalent in the ERC v10a

ERC v11 term	ERC v10a term
Carry-over Customer	No Equivalent
Customer Connection Service	No Equivalent
Customer's Premises	Supply Address
Customer Retail Contract	Energy Contract, Electricity Contract and Gas Contract
Customer Retail Services	No Equivalent
Deemed Customer Retail Arrangement	Deemed Energy Contract
De-Energisation	Disconnection
Disconnection Warning Notice	Disconnection Warning
Energisation	Connect
Life Support Equipment	Life Support Machine
Market Retail Contract	Market Contract
Not Used	Dual Fuel Contract
Not Used	Evergreen Contract
Not Used	Fixed Term Contract
Payment Plan	Instalment Plan
Protected Period	Period referred to in clause 14(d) of ERC v10a

ERC v11 term	ERC v10a term
Small Customer	Domestic Customer
Specified Retailer	No Equivalent
Standard Retail Contract	Energy Contract
Re-Energisation	Reconnection

Table B – key acronyms used in Final Decision

Acronym	Meaning
DSDBI	Department of State Development, Business and Innovation
EIA	*Electricity Industry Act 2000*
GIA	*Gas Industry Act 2001*
MRC	Market Retail Contract
NECF	National Energy Customer Framework
NERL	National Energy Retail Law
NERLVA	*National Energy Retail Law (Victoria) Bill* 2012
NERR	National Energy Retail Rules
SRC	Standard Retail Contract

7.1 AMI retail tariff – Clause 3

AMI retail tariff is defined in ERC v10a.

Discussion

As discussed above in Chapter 4, the ERC v10 was amended in August 2013 to incorporate the changes required for flexible pricing as outlined in the Order. One of the amendments made to the ERC v10a was to insert a definition of '*AMI retail tariff*'.

The Commission will insert a definition of '*AMI retail tariff*' to reflect the amendments made to ERC v10a following the introduction of flexible pricing.

FINAL DECISION

The Commission will define *'AMI retail tariff'* in the ERC v11.

7.2 Best endeavours – Clause 3

"*Best endeavours*" is defined in the ERC v10a.

Draft Decision

The Commission considered that there would be greater customer benefit by not including a definition of *'best endeavours'* in the draft ERC v11. The Commission also noted that no definition had been included in the NECF. It was the Commission's opinion that the ERC v10 definition did not provide the same standard one would find in a common law definition of *'best endeavours'*. Rather the ERC v10 definition provided what was effectively a test of "reasonable" endeavours.

Despite our misgivings regarding the adequacy of the definition, the Commission proposed to include the ERC v10 definition of *'best endeavours'* in light of EWOV's submission that it was useful in conducting investigations. The Commission also considered that it may be useful to maintain the current definition to minimise change in the new flexible pricing environment.

The Commission invited stakeholders to provide further submissions on this issue.

Submissions

Alinta submitted that the definition of *'best endeavours'* had to be practicable, understood and appropriately enforceable with clarity regarding the requirements a retailer would need to meet ensure compliance.[19]

EnergyAustralia submitted that a definition of *'best endeavours'* was not required as it was not included in the NECF, which invoked common law definitions and resulted in *'best endeavours'* being applied more consistently in different states.[20]

ERM submitted that the Commission should publish its position on what it considers would constitute retailer *'best endeavours'* under a range of circumstances, which should ideally be consistent with AER's interpretation.[21]

[19] Alinta submission, p. 1-2.
[20] EnergyAustralia submission. p. 1.
[21] ERM submission, p. 3.

SP AusNet stated that the Commission's decision to include a definition of *'best endeavours'* provided a more realistic basis for service expectations, which it preferred over the term being undefined.[22]

Origin did not support the inclusion of a definition of *'best endeavours'*, as it did not align with the NECF and failed to provide any additional benefit.[23]

The Consumer Groups submitted that the definition of *'best endeavours'* provided clarity to retailers regarding their obligations.[24]

Lumo raised two potential drafting errors – *'best endeavours'* should be italised in the ERC v11 if it was defined, and clause 3F had two subclauses labelled (a).[25]

Discussion

Following consideration of submissions and further deliberation of this issue, the Commission has decided that defining *'best endeavours'* in the ERC v11 will not provide additional consumer protections, and may lower consumer protections. The Commission considers the current definition to be inadequate and considers that any benefit in maintaining the status quo in order to minimise changes in the new flexible pricing environment is outweighed by keeping a definition that does not capture *'best endeavours'*.

The Commission's view is that a better approach is that taken by the NECF which invokes the common law definition. The Commission notes that not defining *'best endeavours'* is also consistent with our approach of harmonising to the extent possible.

The Commission will not publish a position paper on what constitutes *'best endeavours'* as it is a situational test best determined on an individual basis.

FINAL DECISION

The Commission will not define *'best endeavours'* in the ERC v11.

7.3 Customer definitions – Clause 3

Clause 3 of the ERC v11 provides definitions for different types of customers.

[22] SP AusNet submission, p. 2.
[23] Origin submission, p. 3.
[24] Consumer Groups submission, p. 2.
[25] Lumo submission, p. 3.

Draft Decision

The Commission considered that the definition of *'domestic or small business customer*' should be merged into the definition of *'small customer*'. The Commission proposed to amend the definition of small customer to state:

> *"small customer has the same meaning given to domestic or small business customer under section 3 of the Electricity Industry Act or section 3 of the Gas Industry Act"*.

The note under the definition of *'domestic or small business customer*' was moved to immediately below the proposed new definition of '*small customer*'.

The Commission proposed to retain the definition of *'relevant customer'*. This category was referred to in the body of the draft ERC v11 to explain the interaction of the EIA and GIA with the Code, and to ensure it was clear that the minimum requirements in relation to standard retail contracts set by the Code were those set for the purposes of section 36 under the EIA and section 43 under the GIA.

In addition, while the definition of *'relevant customer'* and *'small customer'* were currently the same, the definition of relevant customer could be varied in the future. If the definition was varied, retaining the definition of relevant customer would avoid the need for future amendments to the draft ERC v11.

The Commission also modified the definition of *'business customer'* to mean "*a small customer who is not a residential customer*".

Submission

Alinta submitted that the definition of *'small customer'* should reflect the definition contemplated by the NERLVA, as opposed to be being defined as *"[having] the same meaning given to domestic or small business customer under section 3 of the Electricity Industry Act or section 3 of the Gas Industry Act."* Specifically, Alinta was concerned as *'domestic or small business customer'* was not defined in the draft ERC v11.[26]

Discussion

The Commission does not have the power to define *'small customer'* as it was intended to be defined in the NERLVA, which would have repealed sections of the EIA and GIA that enabled thresholds to be determined via Orders in Council. The Commission is bound by the EIA and GIA, and we consider the definition of *'small customer'* to be appropriate in light of our constraints.

[26] Alinta submission, p. 2.

The Commission further notes that while the ERC v11 does not directly define '*domestic or small business customer'*, it does provide a note which outlines the current definition provided for by Orders in Council.

FINAL DECISION

The Commission will merge the definition of *'domestic or small business customer'* into the definition of *'small customer'*, move the note under the definition of '*domestic or small business customer*' to below the new definition of '*small customer*', and amend the definition of *'business customer'*.

7.4 Designated retailer – Clause 3

Clause 3 of the ERC v11 defines a *'designated retailer'* with reference to section 35 of the EIA and section 42 of the GIA.

Draft Decision

The Commission had no discretion in deciding which retailers should be *'designated retailers'* for the purposes of the draft ERC v11, because the Victorian Government was responsible for determining which retailers fulfilled the functions assigned to designated retailers by Orders in Council made under the EIA and GIA.

Discussion

The Commission received no further submissions from stakeholders on this issue. The Commission will not amend the definition of *'designated retailers'*.

FINAL DECISION

The Commission will not amend the definition of *'designated retailers'*.

7.5 Energy marketing activity – Clause 3

Clause 3 of the ERC v11 provides a definition for energy marketing activity.

Submission

SP AusNet submitted that the marketing clauses of the ERC v11 only applied to retailer marketing, and the marketing of customer connection services should not be part of the definition of energy marketing activity.[27]

Discussion

Clause 60 of the ERC v11 provides that the obligations in relation to energy marketing located in Division 10 of the ERC v11 apply only to *'retail marketers carrying out energy marketing activities'.* However, the definition of *'energy marketing activity'*, which is taken from the NERL, includes the marketing of customer connection services. Customer connection services are provided by distributors, not retailers.

While retailers do not directly provide connection services to customers, retailers are generally responsible for arranging with the distributor the supply / delivery of energy to a customer's address. Retailers may market this specific service to customers.

Therefore to remove customer connection services from the definition of *'energy marketing activity'* would reduce the types of marketing activities for which retailers will be liable under the ERC v11. As such, the Commission does not think that it is appropriate to remove customer connection services from the definition of energy marketing activity. Furthermore, clause 60 of the ERC v11 makes it very clear that the energy marketing rules apply only to retailers, and not to distributors.

FINAL DECISION

The Commission will not amend the definition of *'energy marketing activity'*.

7.6 EWOV and the Commission – Clause 3

Clause 3 of the ERC v11 provides definitions of the Energy Ombudsman and the Commission.

Draft Decision

The Commission proposed to amend the definition of Energy Ombudsman to mean the Energy and Water Ombudsman (Victoria) Limited and defined the Commission as the Essential Services Commission under the *Essential Services Commission Act 2001*.

[27] SP AusNet submission, p. 2.

Discussion

The Commission received no further submissions from stakeholders on this issue. The Commission confirms our draft decision.

FINAL DECISION

The Commission will amend the definition of the *'Energy Ombudsman'* and provide a definition of *'Commission'*.

7.7 Flat AMI retail tariff – Clause 3

Flat AMI retail tariff is defined in ERC v10a.

Discussion

As discussed above in Chapter 4, the ERC v10 was amended in August 2013 to incorporate the changes required for flexible pricing as outlined in the Order. One of the amendments made to the ERC v10a was to insert a definition of '*Flat AMI retail tariff*'.

The Commission will insert a definition of '*Flat AMI retail tariff*' to reflect the amendments made to ERC v10a following the introduction of flexible pricing.

FINAL DECISION

The Commission will define *'Flat AMI retail tariff'* in the ERC v11.

7.8 Flexible AMI retail tariff – Clause 3

Flexible AMI retail tariff is defined in ERC v10a.

Discussion

As discussed above in Chapter 4, the ERC v10 was amended in August 2013 to incorporate the changes required for flexible pricing as outlined in the Order. One of the amendments made to the ERC v10a was to insert a definition of '*Flexible AMI retail tariff*'.

The Commission will insert a definition of '*Flexible AMI retail tariff*' to reflect the amendments made to ERC v10a following the introduction of flexible pricing.

FINAL DECISION

The Commission will define *'Flexible AMI retail tariff'* in the ERC v11.

7.9 Index read – Clause 3

The ERC v10a definition of 'index read' has been included in the ERC v11.

Discussion

AEMO conducted a consultation on the Meter Data File Format Specification NEM12 and NEM13 to amend the procedure. As AEMO may update this procedure again in the future, the Commission has decided to remove the reference to section 3.3.4 in the definition.

FINAL DECISION

The Commission will remove the reference to 'section 3.3.4' from the definition of 'index read'.

7.10 Life support equipment – Clause 3

The ERC v11 adopts the NERR definition of life support.

Submission

SP AusNet submitted that it was concerned that the NERR definition of life support equipment was included in the draft ERC v11. It stated that there was the potential that the type of equipment that qualifies as life support equipment would be significantly broadened in light of subclause (g) of the definition, which stated that life support equipment included any equipment that a registered medical practitioner certified, was required for life support. SP AusNet was concerned that the NERR definition extended life support equipment to potentially include non-medical equipment such as gas heating or electrical cooling, which could lead to a substantial increase in the number of life support customers.[28]

Discussion

Consistent with the Commission's stated approach, life support equipment is defined in accordance with the NERR, and the Commission considers the NERR definition to be appropriate. In the Commission's opinion there is adequate protection against non-life

[28] SP AusNet second round submission, p. 3.

support equipment being defined as such, as the ERC v11 requires the certification of a registered medical practitioner stating that the equipment is life support equipment.

In our view, although there is no definition of 'life support equipment' in the ERC v10a, the term is already quite broad by virtue of the fact that a registered medical practitioner or hospital can confirm that a customer 'otherwise has a medical condition that requires continued supply', and a retailer must include this customer on the register of life support machine supply addresses that it provides to distributors (see clause 26.7(a), ERC v10a). The Commission disagrees with SP AusNet that subclause (g) should be removed from the definition.

In fact, following the release of the Draft Decision Paper, the Commission realised that clause 14C (dot point 2) of the ERC v10a (which relate to gas life support equipment) was intended to be carried over when Victoria transitioned to the NECF. The Commission considers it appropriate that clause 14C (dot point 2) be included in the ERC v11 and will amend clause 3 to include the requirements set out in clause 14C (dot point 2).

Clause 3 will be amended as follows:

> *(g) in relation to a particular customer—any other equipment (whether fuelled by electricity or gas) that a registered medical practitioner certifies is required for a person residing at the customer's premises for life support or otherwise where the customer provides a current medical certificate certifying that a person residing at the customer's premises has a medical condition which requires continued supply of gas.*

FINAL DECISION

The Commission will amend the definition of life support equipment as follows:

> *(g) in relation to a particular customer—any other equipment (whether fuelled by electricity or gas) that a registered medical practitioner certifies is required for a person residing at the customer's premises for life support or otherwise where the customer provides a current medical certificate certifying that a person residing at the customer's premises has a medical condition which requires continued supply of gas.*

7.11 '*Payment plan'* – Clause 3 and discussion of main issues

In this section the Commission will discuss the definition of '*payment plan'* in the ERC v11. The Commission will also discuss the general concerns raised about payment plans.

Draft Decision

The term *'payment plan'* was adopted in the ERC v11, instead of the term '*instalment plan'* (which was used under the ERC v10), as this is the term used under the NERL. While the ERC v10 and ERC v11 referred to them by different names, it was the Commission's view that they were substantially equivalent concepts.

Access to payment plans

In the Commission's opinion, access to payment plans under Part 3 of the ERC v10 is intended to protect people experiencing payment difficulties. As such, access to payment plans under the draft ERC v11 was similar to the access provided under the ERC v10, save for people who had been convicted of an offence involving the illegal use of energy.

The Commission considered that a broad interpretation of *"experiencing payment difficulties"* was appropriate and would not be limited to difficulties that have been realised. It would extend to customers who were trying to manage their bills in anticipation of future payment difficulties. However, retailers would not be obligated to provide payment plans merely for customer budgeting purposes, as that could be achieved through a selection of different payment options under the contract.

Assessment of customer's situation in establishing a payment plan

Clause 72 of the ERC v11 requires a retailer to consider a customer's capacity to pay, arrears and expected consumption needs over the next 12 months in establishing a payment plan. While the Commission acknowledged that subclause 72(1) stated that the section applied to hardship customers, it must be read in light of subclause 33(4) of the ERC v11 which provided that clause 72 applied to a residential customer experiencing payment difficulties in the same way as it applied to a hardship customer. To assist with the interpretation of the draft ERC v11, the Commission proposed to insert a note at the end of clause 72 advising that the clause must be read in light of subclause 33(4).

As such, a retailer was required to consider capacity to pay, arrears and energy consumption needs for both hardship customers and domestic customers experiencing payment difficulties under the draft ERC v11 (as similarly required in clause 12.2 of the ERC v10).

Informing customers of the availability of payment plans

The Commission considered it reasonable that it was up to the customer to indicate if they were experiencing payment difficulties, without relying on the retailer inviting the customer to do so.

The Commission also noted that it proposed to amend subclause 33(1)(b) to include the requirement previously outlined in subclause 72(1A)(b) that a retailer must offer a payment plan to a customer that it believed was experiencing repeated difficulties in paying their bill, or required payment assistance.

The Commission noted that there were further requirements included in clause 111 of the draft ERC v11 which restricted a retailer from disconnecting a residential customer's energy supply until it ensured the required notice was provided and the customer was given opportunities to pay by instalment.

The Commission also added to subclause 111(2) the requirement previously outlined in subclause 72(1A)(b) that a retailer must offer a payment plan to a customer that it believed was experiencing repeated difficulties in paying their bill.

In addition, clause 10.3 of the model terms and conditions provided that if a residential customer advised a retailer that they had difficulty paying their energy bill, the retailer must offer the customer the option to pay their bill under a payment plan.

Persons convicted of an offence involving the illegal use of energy

The Commission acknowledged that subclause 33(2)(b) of the draft ERC v11 was a change to the position under the ERC v10 as retailers were no longer required to offer a payment plan to people who had been convicted of an offence involving the illegal use of energy. The Commission considered this change to be in accordance with the government policy of harmonisation, and also noted that a retailer could still offer a payment plan to a customer who had been convicted of an offence involving the illegal use of energy, but there was no mandatory requirement for them to do so.

The Commission noted that there were other protections available in the draft ERC v11 which could be accessed by people excluded from payment plans. These protections included the safety net of:

- a residential customer being able to lodge a complaint with EWOV; and
- the requirements relating to customer hardship outlined in Guideline 21 which were carried over into the draft ERC v11 (please see Chapter 18 of this Paper).

Submissions

Origin submitted that it supported the Commission's view that there was no need to amend the definition of payment plan, and that the protections set out in the ERC v11 were appropriate. Additionally, Origin stated that it agreed with the Commission that retailers were obligated to consider the customer's capacity to pay, arrears and the customer's expected energy consumption over the next 12 months when establishing a payment plan.[29]

The Consumer Groups restated their earlier position that payment plans should be available to customers for budgeting purposes. The Consumer Groups also disagreed with the Commission's view that customers could rely on payment options to achieve the same result as a payment plan, because payment options were dependent on the contract the customer had signed and not all market retail contracts offered the same payment options.[30] The Consumer Groups again submitted that there should be universal access to payment plans that is independent of the financial need for one.[31]

Discussion

The Commission acknowledges that customers on market retail contracts may have different payment options. Customers can decide whether the payment options under a particular market retail contract are sufficient for their needs. In the Commission's opinion, it would not be appropriate to require retailers to offer payment plans to everyone, as that would be introducing regulation that is beyond the requirements under the ERC v10a and the NECF.

The Commission's view is that there are sufficient consumer protections in the ERC v11 to protect customers who need a payment plan, which is distinct from those individuals who may want one.

The Commission also notes the recent shift by some retailers, following the advert of smart meter based billing, to monthly billing cycles.

[29] Origin submission, p. 4.
[30] Consumer Groups submission, p. 3.
[31] Consumer Groups submission, p. 7.

FINAL DECISION

The Commission will not amend the definition of *'payment plan'*, and considers that the ERC v11 provides for substantially equivalent rights to customers requiring access to a payment plan as the ERC v10a.

The Commission will amend subclauses 33(1)(b) and 111(2) to include the requirements previously set out in subclause 72(1A)(b).

The Commission will insert a note at the end of clause 72 advising that clause 72 must be read in conjunction with clause 33(4).

7.12 Explicit informed consent – discussion of Clause 3C and general concerns

Clause 3C of the ERC v11 specifies the circumstances in which a customer is considered to have given explicit informed consent to a transaction.

Draft Decision

The Commission proposed to include a requirement for explicit informed consent in the following clauses:

- clause 16 – pre-contractual duty of retailers;
- clause 20 – basis for bills;
- clause 21 – estimation as basis of bills;
- new clause 46A – variations to market retail contracts; and
- clause 9.3 of Schedule 1 – estimating the energy usage.

The Commission also proposed to amend the definition of explicit informed consent to include the additional requirements that were in the ERC v10. The additional requirements were:

- that the person was competent to give explicit informed consent;
- all matters relevant to the consent were explained in plain English; and
- there was a prohibition on explicit informed consent being provided verbally for clause 20 (relating to a customer's bill not being based on an actual meter read).

Further NERL requirements included in draft ERC v11

The Commission proposed to include further NERL requirements regarding explicit informed consent in the ERC v11. These requirements were:

- that a customer provided explicit informed consent prior to entry by the customer into a market retail contract with the retailer (section 38 of the NERL);
- assessment of when there was considered to be no or defective explicit informed consent and the implications of there being no or defective explicit informed consent (section 41 of the NERL); and
- if notices and other documents were sent under the draft ERC v11 electronically to a small customer, the small customer must have given explicit informed consent to receiving electronically the notice or other document (section 319 of the NERL).

Submissions

Momentum supported the Commission's proposed decision to retain the NECF provisions at clauses 3C and 24, but stated that verbal explicit informed consent should also be permitted in relation to clause 20 (basis for bills). Momentum also commented that the harmonisation approach taken by the Commission appeared to involve incorporating the NECF regulation when it was additional regulation but not substituting the NECF regulation for existing Victorian regulation, as it has done with the definition of the explicit informed consent.[32]

Alinta submitted that verbal explicit informed consent has sufficient requirements, namely the provision of information and record keeping requirements, and there is no evidence of any additional risk in relation to allowing verbal explicit informed consent for clause 20 (basis for bills).[33]

EnergyAustralia submitted that a requirement to explain all matters in *'plain English'* could introduce a barrier in using interpreters for non-English speaking customers and restrict marketing in languages other than English. EnergyAustralia also stated that as verbal explicit informed consent was considered appropriate with regard to a customer entering the contract then verbal explicit informed consent should be sufficient to negotiate a term of that contract.[34]

AGL stated that the Commission's proposed decision to allow customers to provide their explicit informed consent verbally to enter or exit a shortened billing cycle was aligned with the NECF, and AGL supported the decision. AGL highlighted that monthly billing was highly complementary to the introduction of flexible pricing in Victoria, and it allowed customers who entered a new tariff structure to observe the impact on their electricity bills sooner. AGL gave the example of Utility Relief Grant Scheme

[32] Momentum submission, p. 2.
[33] Alinta submission, p 2. Please note that Alinta refers to clause 20 as relating to shortened billing cycles, but the Commission assumes that this is a typographical error and they intended to refer to clause 20 (basis for bills).
[34] EnergyAustralia submission, p. 2.

applications (which cannot be made verbally over the phone), where AGL advised that although it generally filled out the applications on the customers behalf and sent them to the customers for verification, approval and signing, only approximately half of the applications sent out were returned to AGL by customers. AGL submitted that it believed that the same deterrence could potentially be seen with monthly billing options if the prohibition on verbal explicit informed consent was not lifted.[35]

Origin submitted that by restricting the method by which a customer could provide explicit informed consent limited customer choice and increased transaction costs for both retailers and customers. Origin stated that it was supportive of retaining verbal explicit informed consent, but it did not support the Commission's proposed decision to incorporate into the definition of explicit informed consent the plain English and competency requirements from the ERC v10 definition. Specifically, Origin submitted that the change in the definition departs from the NERR and reflects an effort to re-litigate previously settled issues.[36]

The Consumer Groups submitted that the role of explicit informed consent is to ensure customers are informed when they are engaging in the energy market, and they supported the changes to the definition of explicit informed consent.[37]

Lumo sought clarification on the intent and operation of clause 3E – No or defective explicit informed consent, which was taken from section 41 of the NERL. Specifically, how a customer would be treated outside the retrospective transfer window where the void transaction involved the transfer of a customer, as the transfer window for both electricity and gas is less than 12 months (and 3E applies for 12 months from the date of transaction).[38]

Discussion

The Commission does not agree with EnergyAustralia's interpretation of the *'plain English'* requirement added to the definition of *'explicit informed consent'*. Requiring information to be provided in *'plain English'* is a requirement that the retailer use clear, non-legal language. This would not limit the use of an interpreter. The Commission also notes that this is a requirement under the ERC v10a. The Commission considers the addition of both the *'plain English'* and the competency requirements to the definition of *'explicit informed consent'* to be appropriate and confirms its draft decision.

The Commission agrees with the submissions by retailers that the robust nature of verbal explicit informed consent ensures adequate consumer protections. In particular,

[35] AGL submission, p. 2.
[36] Origin submission, p. 4.
[37] Consumer Groups submission, p. 2.
[38] Lumo second submission, p. 2.

if verbal explicit informed consent is sufficient to enter into the contract, then it does not seem appropriate that it would be insufficient to alter a term of that contract. Therefore, the Commission will not prohibit the use of verbal explicit informed consent in relation to clause 20 – Basis for bills.

Lumo has expressed concern that a customer's right, under section 3E of the ERC v11, to raise an issue that it has not given explicit informed consent to be transferred to a new retailer within 12 months after the transfer (which, if true, renders the transfer void), does not align with the maximum period for which the new retailer can apply to AEMO to retrospectively transfer that customer to the customer's original, previous retailer.

Retailers can only apply to AEMO for retrospective transfer changes, in the case of electricity, for a maximum 130 business days in the past (clause 3.10.1(c), MSATS) and, in the case of gas, 118 business days (clause 4.1.2(b), Retail Market Procedures (Victoria) version 6).

Clause 3E adopts section 41 of the NERL drafting and is not an issue that arises from the drafting of the ERC v11. As such, we cannot comment on why the period during which a customer has the right to raise the issue of consent, and have the transfer voided, is inconsistent with the maximum number of days in the past for any role change request under MSATS Procedures or the Retail Market Procedures (Victoria) version 6. We note however, that this issue was raised by the Energy & Water Ombudsman NSW (***EWON***) following the second exposure draft of the National Energy Customer Framework. The Ministerial Council on Energy did not directly respond to EWON's issue, but in relation to other issues directed at the clause stated as follows:

> *The approach reflects an appropriate balance between the interests of the original retailer and the new retailer and their customer. The retail market procedures allow for off market resolution of such disputes directly between retailers. This provision therefore allows such disputes to continue to be handled bilaterally under those procedures*.[39]

Lumo Energy has asked the Commission to clarify how the customer will be treated outside of the retrospective transfer window. MSATS Procedures and Retail Market Procedures (Victoria) govern how information is to be exchanged between AEMO and retailers. As clause 3E does not rely upon an independent retrospective transfer taking place, the payment obligations in clause 3E would still apply outside of the permitted maximum retrospective transfer window. The original retailer has a direct right of recovery against the new retailer for amounts paid to that retailer during the period of

[39] 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'', Attachment 1: Tables of Responses, page 2.

the void transaction (clause 3E(5)(b)(iii) of the ERC v11). This view is consistent with the response of the Ministerial Council on Energy referred to above.

The Commission received no further submissions from stakeholders in relation to adding the additional NERL provisions, and the Commission confirms our draft decision regarding adding the additional NERL provisions.

FINAL DECISION

The Commission will amend the definition of *'explicit informed consent'* to:

- include a reference to *"plain English"* in subclause (1)(a); and
- insert a new subclause 1(c) that states *"the person is competent to do so"*.

As a result of the amendments, subclause (1)(c) will become subclause 1(d).

The Commission will allow verbal explicit informed consent for clauses 20 and 24.

The Commission will also add the following requirements:

- a new clause 3E outlining the requirements for when there is no or defective explicit informed consent;
- a new clause 3F stating that explicit informed consent is required from a small customer prior to a retailer being able to send notices and other documents required under the ERC v11 to the customer electronically; and
- a new subclause (4) to clause 16 stating that a small customer's explicit informed consent is required prior the customer entering into a market retail contract.

7.13 Aggregation of business customer site consumption – Clause 5

Rule 5 of the NERR was not included in the ERC v11.

Draft Decision

As customer definitions in Victoria were dealt with in Orders in Council, and not in Commission instruments, the Commission considered it appropriate to delete clause 5 from the draft ERC v11.

Submissions

Momentum submitted that the harmonisation process is called into question by the fact that the Commission cannot address such a fundamental issue as the ability of a customer to aggregate its sites' consumption to be treated as a larger customer.[40]

EnergyAustralia submitted that in drafting the NERLVA the Victorian Government clarified its policy intent regarding aggregation, and it saw no reason why specific policy points outlined in the NERLVA should not be within the scope of the harmonisation process, even though the NERLVA is not current law.[41]

AGL submitted that it believed the Commission had sufficient flexibility in its objectives to enable a customer to aggregate its sites' consumption.[42]

Discussion

Rule 5 of the NERR allows a business customer, who is or would be a small customer, to enter into an agreement in writing with the retailer to the effect that at least two or more of its business premises are to be aggregated.

As the Commission stated in the Draft Decision Paper, customer definitions in Victoria are dealt with in Orders in Council and not in Commission instruments, and it would be a decision for Government rather than the Commission to adopt the NERR position. The Commission has re-considered the issue and we continue to hold this view.

First, the Orders define a *'relevant customer'*[43] on the basis of an individual supply point, and not on the basis of the aggregate of each supply point from which the customer consumes electricity or gas (section 1(b), EIA Order in Council dated 25 November 2008; section 1(b), GIA Order in Council dated 25 November 2008). It is not possible for the Commission to effectively override that definition by incorporating clause 5 of the NERR when the Orders do not specifically permit aggregation to occur.

Secondly, there are statutory provisions in Victoria which have the effect of stopping business customers and retailers from contracting out of the customer definitions set in the Orders in Council. For example, under section 36(1) of the EIA and section 43(1) of the GIA, a term of a contract for the supply of electricity or gas to a *'relevant customer'* is void to the extent that it is inconsistent with terms set by the Commission relating to specific matters. These matters include de-energisation, requirements to

[40] Momentum submission, p. 3.
[41] EnergyAustralia submission, p. 2.
[42] AGL submission, p. 1.
[43] A relevant customer is a customer who purchases electricity or gas principally for domestic use, or a customer who purchases no more than 40Mwh per year of electricity for a site or less than 1,000 gigajoules per year of gas.

provide information about the rights and entitlements of customers, access to the customer's premises and confidentiality of the customer's information. If business customers and retailers are not permitted to contract out of the relevant customer definitions in relation to particular matters, then it is not possible for the Commission to override this.

Third, the Government has not conferred on the Commission any specific power, under either section 36(5) of the EIA or section 42(7) of the GIA, to alter the customer definitions.

As such, the Commission considers that Momentum, EnergyAustralia and AGL's submissions are a matter for Government policy and are outside the scope of the Commission's consultation.

The Commission will not incorporate Rule 5 of the NERR into the ERC v11 as we do not have the power to do so.

FINAL DECISION

The Commission will not include clause 5 of the NERR in the ERC v11.

8 CUSTOMER RETAIL CONTRACTS – PART 2

This chapter discusses the submissions received on Part 2 – Customer Retail Contracts.

8.1 Terms and conditions of Market Retail Contracts – Clause 14

Clause 14 of the ERC v11 provides that the terms and conditions of market retail contracts are those agreed to by the retailer and the customer, except as provided by the ERC v11.

Draft Decision

Clause 14 was drafted in accordance with the NERR, and the Commission considered this to be appropriate and clear drafting.

Submissions

The Consumer Groups restated their earlier position that the absence of an appendix was a loss of clarity, as compared to the ERC v10, which sets out in Appendix 1 the terms and conditions in ERC v10a which are allowed to be varied by agreement between customers and retailers in the formation of market retail contracts.[44]

Origin submitted that clause 14 was drafted consistently with the NERR, and an appendix was not required.[45]

Discussion

No new issues have been raised in response to our draft decision. Therefore, the Commission will not amend clause 14 or attach an appendix.

FINAL DECISION

The Commission will not amend clause 14, or attach an appendix to the final ERC v11.

[44] Consumer Groups submission, p. 8.
[45] Origin submission, p. 4.

9 ENERGY PRICE AND PRODUCT DISCLOSURE – DIVISION 2A

This chapter discusses the submissions received in relation to Division 2A – Energy Price and Product disclosure of the ERC v11.

9.1 Energy Price and Product Disclosure - Division 2A

Division 2A of the ERC v11 sets out the retailers' obligations regarding the publication of standing offer and market contract tariffs and other associated energy price and product disclosure.

Draft Decision

The Commission proposed to not amend Division 2A, which incorporated the Commission's Guideline 19 – Energy Price and Product Disclosure. However, the Commission noted that there was a current consultation on foot regarding proposed amendments to Guideline 19, and if any changes were made then those would be carried over to the draft ERC v11.

Submission

Origin submitted that it supported the Commission's proposed decision to not amend Division 2A.

Discussion

In August 2013, the Commission released a paper entitled *'Changes to regulatory instruments relating to flexible pricing of electricity - Final Decision*, August 2013*'* (**Flexible Pricing Final Decision Paper**), which stated the amendments required to the ERC v10, Guideline 19 – Energy Price and Product Disclosure, and Retail Licences in light of the introduction of flexible pricing.

The Commission will amend Division 2A to reflect the changes made to Guideline 19 following the introduction of flexible pricing. Please see our discussion below on clause 15B of the ERC v11 for more detailed discussion of the particular changes that have been made.

The commencement of the *Energy Legislation Amendment (General) Act 2014* necessitated that Guideline 19 be amended again, and an updated Guideline 19 was released in April 2014. Those amendments have been incorporated into the ERC v11. Please see our discussion below at clauses 15A and 15B for the particular changes that have been made.

FINAL DECISION

The Commission will amend Division 2A to reflect the changes made to Guideline 19 following the introduction of flexible pricing and the commencement of the *Energy Legislation Amendment (General) Act 2014*.

9.2 Internet publication of standing offer tariffs – Clause 15A

Clause 15A of the ERC v11 requires a retailer to publish its standing offers on its website and provide the Commission with the details of its standing offer.

Draft Decision

The Commission proposed to maintain the original drafting clause 15A. The Commission noted that the obligation that retailers publish their standing offer tariffs in the Government Gazette was a legislative requirement, rather than a requirement determined by the Commission. The Commission did not include statutory obligations which applied to retailers on the basis that these obligations were set out in separate statutory instruments and therefore it was not necessary to replicate these in the draft ERC v11. The Commission noted that ERC v10 similarly did not include this statutory obligation.

The Commission proposed to include a template for residential electricity standing offer in Schedule 4 of the draft ERC v11.

Discussion

The Commission received no further submissions from stakeholders on this issue. As discussed above in section 9.1, issue 5 of Guideline 19 was released in April 2014, which necessitated amendments to Division 2A of the ERC v11.

Clause 15A will be amended as follows:

15A Internet publication of standing offer tariffs

(1) A *retailer* must:

(a) publish on its internet site details of its *standing offers* in the manner set out in Schedule 4 or Schedule 5; and

(b) input onto the internet site nominated by the Minister each of its electricity *standing offers* including all details as required by the internet site; and

(c) input onto the Commission's YourChoice website each of its gas *standing offers* including all details as required by that internet site. ~~provide to the *Commission* details of its *standing offer* tariffs in the manner set out in Schedule 4.~~

The Commission will also insert the template for residential electricity standing offer in Schedule 4 of the ERC v11.

FINAL DECISION

The Commission will amend clause 15A to incorporate the changes made to Guideline 19 since the release of the Draft Decision.

The Commission will amend Schedule 4 of the ERC v11 to include the template for residential electricity standing offer.

9.3 Relevant published offers (Price and Product Information Statements) – Clause 15B

Clause 15B of the ERC v11 specifies in detail the retailer's obligations regarding a Price and Product Information Statement (**PPIS**).

Draft Decision

The Commission agreed with stakeholder submissions that our PPIS should be aligned with the AER's Energy Price Fact Sheets, and noted that the issue was currently being consulted on.

Submission

Alinta submitted that the Commission should review the requirements and provision of an Offer Summary, PPIS, and Disclosure Statement, as there could be overlap and additional requirements that are repetitious.[46]

Discussion

As discussed above in section 9.1, the Commission will incorporate the changes made to Guideline 19 in light of flexible pricing and the commencement of the *Energy Legislation Amendment (General) Act* 2014 into the ERC v11. This will result in the following amendments:

> *"15B(4) A specified retailer must co-operate with the relevant parties ~~the Commission~~ in implementing a system to create and sustain reliable links from the internet site yourchoice.vic.gov.au or the ~~Commission's~~ internet site nominated by the Minister so that . . ."*
>
> "15*B(5)(a) present a Price and Product Information Statement for one of the potentially applicable tariffs, which must be a flat AMI retail tariff;"*
>
> *"15B(6)(f) the following statement:*
> ***About this document***

[46] Alinta second round submission, p. 2.

This Price and Product Information Statement is presented in accordance with the requirements of the Essential Services Commission (ESC) – the independent regulator of the retail energy industry in Victoria. For information about choosing an energy retailer, visit yourchoice.vic.gov.au. To compare electricity retailer offers available to you, go to mpp.switchon.vic.gov.au; to compare gas retailer offers available to you, go to yourchoice.vic.gov.au." ~~www.esc.vic.gov.au/yourchoice.~~"

"15C(2)(c) the following statement:
For information about choosing an energy retailer visit: yourchoice.vic.gov.au." ~~www.esc.vic.gov.au/yourchoice~~"

Schedule 5 Price and Product Information Statement will also be amended to reflect the new "About this document" provision (as reflected above in clause 15B(6)(f).

In the Flexible Pricing Final Decision Paper, the Commission stated that the flat AMI retail tariff must be presented in the first instance, not the flexible AMI tariff, and if more than one tariff was applicable the retailer should provide the customer with the relevant PPIS which is reflected in the amendments to clause 15B(5)(a).

The Commission will also introduce a new subclause to clause 15B – Relevant published offers (Price and Product Information Statements) and a new clause 15D – Relevant Published Offers (Energy Price Fact Sheets) to Division 2A of Part 2 of the ERC v11, as follows:

Subclause 15B(6)(c) will state:

"(c) without limiting paragraph (d), if the tariff is a flexible AMI retail tariff,
(i) a clear and simple explanation of:
- *whether the right to revert exists;*
- *the rights of a customer to opt-out of the tariff and revert to the previously applying AMI retail tariff;*
- *where the customer can obtain further information about its rights under the Advanced Metering Infrastructure (AMI Tariffs) Order in Council 2013 (made under section 46D of the Electricity Industry Act); and*

(ii) a website address for the relevant part of the Department of State Development, Business and Innovation website;"

Clause 15D will state:

"(1) In lieu of the requirements in clause 15B(6) and clause 15B(7)(a), an Energy Price Fact Sheet may be prepared in accordance with the

content and format requirements set out in sections 2.2, 2.3 and 2.4 of the Australian Energy Regulator's "AER Retail Pricing Information Guideline Version 3.0" except that the retailer must omit item 6 in section 2.3.3 and instead include the statement:

"This Energy Price Fact Sheet is presented in accordance with requirements of the Essential Services Commission (ESC) – the independent regulator of the retail energy industry in Victoria. For information about choosing an energy retailer, visit yourchoice.vic.gov.au. To compare electricity retailer offers available to you, go to mpp.switchon.vic.gov.au; to compare gas retailer offers available to you, go to yourchoice.vic.gov.au." ~~www.esc.vic.gov.au/yourchoice.~~"

and must nonetheless include the explanations required by clause 15B(6)(c) of this Code.

(2) An Energy Price Fact Sheet complying with the requirements of clause 15D(1) may be published by a retailer on its internet site in satisfaction of the requirement set out in clause 15A(1)(a)."

These amendments provide an appropriate amount of information to be presented in the PPIS format for flexible AMI retail tariffs and provide retailers with a choice between providing either a PPIS or Energy Price Fact Sheet format to meet their obligations under section 36A of the EIA and the ERC v11.

For further information on these issues, please refer to the Flexible Pricing Final Decision Paper, which is available on our website at: http://www.esc.vic.gov.au/Energy/Proposed-changes-to-regulatory-instruments-relatin.

With regard to Alinta's submission, the Commission included the drafting on Offer Summaries (clause 15C) and PPIS (clause 15B) to replicate provisions in the Commission's existing Guideline 19 – Energy Price and Product Disclosure. The Disclosure Statement (clauses 63 and 64) is a requirement of the NERR.

We agree that there is a degree of overlap in the range of information required to be given to customers in an Offer Summary, PPIS and Disclosure Statement. However, the Commission has included the Offer Summary and PPIS because it considers these documents serve different purposes to that of the Disclosure Statement.

For example, an Offer Summary must be provided in writing to a small retail customer on request by the customer and when providing the customer information about the

terms of any new retail contract,[47] including when the retailer engages in any marketing activity. An Offer Summary is therefore given prior to the formation of a standard retail contract or market retail contract, as one of its express purposes is for use in marketing activities.

By contrast, a Disclosure Statement must be given to all small customers *after* the formation of a market retail contract, unless the information required to be in a Disclosure Statement has already been provided to the customer in writing before the formation of the contract (clauses 62 and 63 of the ERC v11). The Disclosure Statement, whenever given, must also be accompanied by the market retail contract (clause 64(2) of the ERC v11).

There is some different information provided in an Offer Summary when compared to a Disclosure Statement. For example, the Offer Summary must refer the customer to the Commission's website for information about choosing an energy retailer (clause 15C(2)(c) of the ERC v11). A Disclosure Statement does not require this information to be included.

A PPIS must be published on a specified retailer's internet site and be available to customers without the need for them to provide information in order to proceed through the online process to obtain this document (clause 15B(2) of the ERC v11).

It is the Commission's view that it is appropriate to give retailers the option of providing either a Disclosure Statement or an Offer Summary in relation to a market retail contract, provided the document covers the information (and the accompanying documents) required by the relevant provisions of the ERC v11.

As such, the Commission will insert a new clause 15E into the ERC v11 which will allow retailers to provide a Disclosure Statement in lieu of an Offer Summary.

Clause 15E will state:

> *(1) In lieu of the requirements in clause 15C(2), a disclosure statement may be prepared in writing in accordance with the content requirements set out in clause 64 of this Code, provided the disclosure statement complies with clause 15C(4) and includes:*
>
> *(a) the details required by clause 15C(2)(b) and (c);*
>
> *(b) the termination notification required by clause 15B(6)(b); and*
>
> *(c) the details required by clause 15B(6)(g)(ii),(iii), (iv) and (v);*

[47] The reference to *'any new retail contract'* would seem to cover both standard retail contracts and market retail contracts.

(2) A disclosure statement complying with the requirements of clause 15E(1) may be provided to a small retail customer in satisfaction of the requirements of clause 15C(1).

The Commission will also include a note at the end of clause 62 advising that clause 15C requires that retail marketers provide an Offer Summary to 'small retail customers' before the formation of the contract.

FINAL DECISION

The Commission will amend clauses 15A, 15B, 15C, 15D, and Schedule 5 to incorporate the changes made to Guideline 19 Energy Price and Product Disclosure.

The Commission will amend clause 15B to include a new subclause 15B(6)(c) stating the information that must be included in a PPIS if the tariff is a flexible AMI retail tariff.

The Commission will introduce a new clause 15D – Relevant Published Offers (Energy Price Fact Sheets), which will provide retailers with the choice of using either a PPIS or an Energy Price Fact Sheet to fulfil their obligations under section 36A of the *Electricity Industry Act* and the ERC v11.

The Commission will introduce a new clause 15E – Relevant Offer Summaries (Disclosure Statements), which will allow retailers to provide a Disclosure Statement in lieu of an Offer Summary.

10 PRE-CONTRACTUAL PROCEDURES – DIVISION 3

This chapter discusses the submissions received in relation to PART 2, Division 3 – Customer retail contracts – pre-contractual procedures.

10.1 Pre-contractual duty of retailers – Clause 16

Clause 16 of the ERC v11 requires the designated retailer for the premises to advise the customer of the availability of the retailer's standing offer and may offer a customer a market retail contract.

Draft Decision

The Commission proposed to amend clause 16 to insert a new subclause (4) to state:

> *A retailer must obtain the explicit informed consent of a small customer for the entry by the customer into a market retail contract with the retailer.*

The new subclause would incorporate section 38(b) of the NERL.

Submissions

The Consumer Groups restated their earlier position that retailers needed to be required to inform customers of the different contracts to prevent customer detriment, as customers would not be aware of what contracts were available to be able to decide what contract was most appropriate.[48]

Origin submitted that it agreed with the Commission's draft decision.[49]

Discussion

No new issues have been raised in response to our draft decision. The Commission will insert a new subclause 16(4), but will not otherwise amend clause 16 of the ERC v11.

FINAL DECISION

The Commission will insert a new subclause 16(4) incorporating the requirements of section 38(b) of the NERL, but will otherwise not amend clause 16 of the ERC v11.

[48] Consumer Groups submission, p. 9.
[49] Origin submission, p. 5.

10.2 Pre-contractual request to designated retailer for sale of energy (SRC) – Clause 18

Clause 18 sets out the information a customer must provide to a retailer prior to entering into a standard retail contract, and retailer obligations.

Draft Decision

The Commission did not propose to include subclause 18(4) in the draft ERC v11, which stated that a pre-condition to the formation of a standard retail contract was that the customer provided the information listed in subclause 18(3). Subclause 18(4) relied on section 26 of the NERL for effectiveness, and the NERL was not applicable in Victoria.

The Commission also proposed to maintain the drafting of subclause 18(5), which permitted a retailer to include charges under the standard retail contract for outstanding amounts owed by the customer for unpaid accounts.

Submissions

SP AusNet submitted that the ERC v11 should require a retailer to request and provide customer contact details and other information to distributors, as outlined in the industry B2B Procedure Customer and Site Details (such as access hazards, contact details for outage notifications and the customer's telephone number). SP AusNet also submitted that customers should be required to provide this information to retailers under the draft ERC v11. [50]

The Consumer Groups restated their earlier position that, under clause 18, a retailer could make a pre-contractual request from a customer for outstanding amounts owed by the customer from an unpaid account, and, without universal access to payment plans, the customer may not be offered a payment plan.[51]

Discussion

Clause 18 replicates the NERR drafting and is not a new issue that arises from the drafting of the ERC v11. The Commission considers that in the interests of maintaining consistency with the NERR, it is undesirable to make amendments to the NERR. If SP AusNet considers that clause 18 should be amended, SP AusNet has the option to seek an amendment to the NERR.

The Commission also notes that under the B2B Procedure Customer and Site Details Notification Process, retailers are already required to "use reasonable endeavours to

[50] SP AusNet submission, p. 3.
[51] Consumer Groups submission, p. 10.

transmit the appropriate telephone number for the purpose of contacting the customer for supply related issues".

The Commission will not amend clause 18 to require retailers to request from customers, and provide to distributors, the customer information that is outlined in the industry B2B Procedure Customer and Site Details.

With regard to the Consumer Groups submission, the Commission notes that, under clause 33(1) of the ERC v11, a retailer must offer and apply payment plans for hardship customers or other residential customers experiencing payment difficulties, or who the retailer otherwise believe are experiencing repeated difficulties in paying their bills or require payment assistance. The definition of *'customer'* refers to a person who *'proposes to purchase energy for premises from a retailer'*. As such, we consider that the retailer would be required to offer and apply the payment plan in favour of the customer from the outset, or alternatively decide not to enter into a contract with that customer.

A designated retailer is not entitled to refuse to sell energy to a small customer who is a residential customer on the ground that the customer owes the retailer any outstanding amounts (clause 18(6) of the ERC v11). Therefore, designated retailers must enter into a contract with the customer, and if that customer is experiencing payment difficulties, or the retailer believes the customer is experiencing repeated difficulties in paying their bills, then the retailer would have to offer and apply a payment plan for the customer.

The Commission does acknowledge that if the customer is not experiencing payment difficulties then there is no obligation for the retailer to offer the customer a payment plan, but the Commission considers this an appropriate outcome in light of discussion in section 7.11 of this Paper.

The Commission will not amend subclause 18(5) of the ERC v11.

FINAL DECISION

The Commission will not amend clause 18 of the ERC v11.

The Commission will not include subclause 18(4) of the NERR in the ERC v11.

10.3 Responsibilities of designated retailer in response to request for sale of energy (SRC) – Clause 19

Clause 19 of the ERC v11 states information that a designated retailer must provide to a customer regarding the sale of energy.

Draft Decision

Clause 19 was drafted in accordance with the NERR, and the Commission considered the drafting to be appropriate and found no convincing reason to amend the clause.

Submissions

The Consumer Groups restated their earlier position that clause 19 be redrafted to require designated retailers to provide a copy of the ERC v11 to customers. They submitted that many customers would be unaware of the ERC's existence and those without internet access would be unable to obtain a copy of the ERC.[52]

Origin submitted that it agreed with the Commission's proposed decision to maintain the drafting of clause 19, as it was drafted to be consistent with the NERR.[53]

Discussion

While the Commission acknowledges that many customers would be unaware of the ERC, we note that specific reference to the ERC is included in every contract. Also, under clause 56 of the ERC v11, a retailer is required to provide customers with a copy of the summary of the rights, entitlements and obligations of small customers that it publishes on its website, if the customer requests a copy. The Commission considers these measures to be sufficient to ensure that customers are, or can become, aware of their rights and obligations.

FINAL DECISION

The Commission will not amend clause 19.

[52] Consumer Groups submission, p. 10.
[53] Origin submission, p. 5.

11 BILLING – DIVISION 4

This chapter discusses the submissions received in relation to Part 2, Division 4 – Customer retail contracts – billing.

11.1 Basis for bills (SRC and MRC) – Clause 20

Clause 20 of the ERC v11 sets out the basis for bills, which can be based on metering data or another method.

Draft Decision

The Commission proposed to amend subclauses 20(1)(a)(ii) and 20(1)(b)(iv) to require a customer's explicit informed consent if a customer's bill was based on a method other than metering data.

The Commission also clarified that subclause 20(3) was intended to apply to circumstances where there was an unmetered supply of energy to a customer's premises. Premises where there was one meter and multiple dwellings were regulated separately through a general exemption order made under section 17 of the EIA.

Submissions

SP Ausnet submitted that the clauses in the ERC v11 which deal with metrology should use terms consistent with the metrology instruments to ensure clarity, and stated that subclause 20(b)(2) should be redrafted to state:

> (2) The retailer must use its best endeavours to ensure that actual readings of the meter are carried out, consistently with the metering rules, as frequently as is required to prepare its bills ~~consistently with the metering rules~~ and in any event at least once every 12 months.[54]

Origin submitted that it did not agree with the Commission's proposed decision to include the requirement of obtaining the customer's explicit informed consent for subclauses 20(1)(a)(ii) and 20(1)(b)(iv). Origin stated that the definition of meter data in the National Electricity Rules (**NER**) included standard metrology procedures for reading meters, including estimates, and estimated reads for electricity were unavoidable and generally beyond a retailer's control. Additionally, retailers had obligations to ensure meters were read at least once every 12 months, despite the fact that the retailer was not generally the responsible person for small customer metering installations. Origin stated that the need to gain explicit informed consent for estimated

[54] SP AusNet submission, p. 4.

reads was redundant in the context of clause 20(1) in light of the definition of metering data.[55]

The Consumer Groups submitted that there appeared to be a drafting error, as the discussion section of the Draft Decision Paper stated that the Commission proposed to amend subclauses 20(1)(a) and 20(1)(b) to require a customer's explicit informed consent to base a bill on a method other than an actual meter read but the draft decision box stated that the customer's explicit informed consent would be required prior to entering into a market retail contract with the retailer.[56]

Discussion

Consistent with the Commission's stated approach, subclause 20(b)(2) was drafted in accordance with the NERR. The Commission considers the current drafting of subclause 20(b)(2) to be appropriate and is not persuaded by SP AusNet's submission that the subclause requires amendment.

Clause 20(1) of the ERC v11 requires a retailer to base a small customer's bill for the customer's consumption of electricity or gas on either metering data (which must be determined in accordance with the metering rules and clause 21 of the ERC v11) or any other method for which the retailer has obtained the customer's explicit informed consent. Clause 21 of the ERC v11 allows the retailer to base a small customer's bill on estimation of consumption of energy only where:

- the customer has given their explicit informed consent; or
- the retailer is not able to reasonably or reliably base the bill on an actual meter reading; or
- metering data is not provided to the retailer.

Origin considers the need to gain explicit informed consent for estimated reads redundant and as departing from the NERR. Origin also stated that *'actual meter reading'* is not defined in the ERC v11.

The requirement for explicit informed consent does depart from the NERR. However, the Commission considers that the departure is not inconsistent with the NERR. Under the NERR, the customer is still required to consent to the use of estimation by the retailer if the retailer is unable to rely on subclauses 21(1)(b) or (c) of the ERC v11. Only the nature of the consent departs from the NERR. The Commission decided to make this change following the consideration of submissions from Consumer Groups to maintain consistency with the ERC v10a.

[55] Origin submission, p. 5.
[56] Consumer Groups submission, p. 11.

In relation to Origin's submission that *'estimated metering data'* is within the definition of *'metering data'* in the NER, we do not see how this fact makes the need to gain explicit informed consent in the context of clause 20(1) of the ERC v11 redundant.

The reference to *'actual meter reading'* is NERR drafting and is not an issue that arises from the drafting of the ERC v11. As such, if Origin considers that the plain English meaning of *'actual meter reading'* is unclear and should be defined, it has the option to seek an amendment to the NERR.

The Commission acknowledges the drafting error in the draft decision box of the Draft Decision Paper for clause 20, which should have stated that the draft decision is that the customer's explicit informed consent is required prior to basing a bill on a method other than an actual meter read.

The Commission confirms our draft decision, and will amend subclauses 20(1)(a)(ii) and 20(1)(b)(iv) to require the customer's explicit informed consent.

FINAL DECISION

The Commission will amend subclauses 20(1)(a)(ii) and 20(1)(b)(iv) to require a customer's explicit informed consent if a customer's bill was based on a method other than metering data.

11.2 Bulk hot water charging – Clause 20A

Clause 20A of the ERC v11 requires retailers to charge customers for the delivery of gas or electric bulk hot water according to a detailed formula specified in Schedule 6 of the ERC v11, and to include certain information on the customer's bill.

Draft Decision

The Commission included bulk hot water charging in clause 20A consistent with Government policy, and the Commission proposed to not amend clause 20A.

Discussion

The Commission received no further submissions from stakeholders on this issue. The Commission will not amend clause 20A.

FINAL DECISION

The Commission will not amend clause 20A.

11.3 Estimation as basis for bills (SRC and MRC) – Clause 21

Clause 21 sets out the circumstances in which a retailer may base a customer's bill on an estimation.

Draft Decision

Following the Commission's consideration of the submissions and the introduction of flexible pricing, the Commission decided to amend subclause 21(1)(a) to require retailers to obtain a customer's explicit informed consent prior to basing their bill on estimation where the retailer was unable to rely on subclauses 21(1)(b) or (c). The Commission also noted that, under the draft ERC v11, retailers were required to use their best endeavours to ensure that meter readings were carried out in a way that allowed bills to be prepared in accordance with the metering rules.

The Commission acknowledged that certain customers who were at fault and had been undercharged for a period longer than 12 months would have a reduced amount of time to pay their debt under clause 21. The Commission considered that as clause 30 allowed customers who were not at fault to have at least equal time to pay any undercharged amount, there was no basis for amending subclause 21(4) of the draft ERC v11. The Commission also noted that retailers were required to offer a customer equal time to pay any undercharged amount under subclause 30(2)(d) of the ERC v11.

Submissions

SP AusNet submitted that, to ensure clarity, provisions dealing with metrology in the ERC v11 should be consistent with the metrology instruments. Specifically, SP AusNet stated that as the metering data referred to in subclause 21(1)(c) could include metering data other than actual data, such as estimated data, the retailer should be permitted to base a bill on an estimation if the metering data provided by the responsible person included estimations. SP AusNet suggested that subclause 21(1)(c) be redrafted to state:

> (c) actual metering data is not provided to the retailer by the responsible person.

SP AusNet also submitted that clause 21(2A)(a) should be amended to state:

> (a) prepared using ~~estimated and/or substituted metering data~~ metering data based on estimation in accordance with applicable ~~energy~~ metering laws.[57]

Origin submitted that it did not agree with the Commission's proposed decision to amend subclause 21(1)(a) stating that in normal electricity and gas market practice

[57] SP AusNet submission, p. 4.

subclauses 21(1)(b) and (c) make the requirement to obtain the customer's explicit informed consent redundant, as meter data includes estimates. Origin also stated that it believed there was a long-standing effort by some stakeholders to invalidate the routine industry practice of billing customer's on the basis of estimates, and the proposed amendment was not consistent with the NECF, nor effective. Origin added that the introduction of the advanced metering infrastructure would result in a decline of estimated metering data, and the consumer protections afforded by the introduction of explicit informed consent were minimal.[58]

The Consumer Groups noted a drafting error in that the draft decision box of the Draft Decision Paper did not reflect the discussion section for clause 21.[59]

Discussion

Clause 21(2A)(a) is equivalent to clause 5.2(c) of the ERC v10a. As such, the issue that SP AusNet raises is one that exists under the ERC v10a, and is not a new issue that arises from the drafting of the ERC v11.

The specific regulations included in ERC v10a in relation to advanced meter infrastructure (**AMI**) were intended to be preserved when Victoria transitioned to the NECF. The Commission has incorporated into the ERC v11 the provisions contained in the Victoria Codes and Guidelines in relation to AMI. While the change that SP AusNet recommends may be a preferable form of drafting, in the absence of it being clear that the clause does not give effect to the policy intent of the clause, we consider the appropriate approach to be to adopt the ERC v10a drafting of the smart meter provisions with no changes. Therefore, the Commission will maintain the current drafting of subclause 21(2A)(a).

With regard to Origin's submission, please refer to our reasoning above in section 11.1 of this Paper for why we do not consider the decision to require the customer's explicit informed consent in clause 21 to be redundant.

The Commission acknowledges the drafting error in draft decision box of the Draft Decision Paper, which should have stated that the proposed decision was to require the customer's explicit informed consent to the use of estimation by the retailer.

FINAL DECISION

The Commission will amend subclause 21(1)(a) to require a customer's explicit informed consent prior to basing the customer's bill on estimation.

[58] Origin submission, p. 5.
[59] Consumer Groups submission, p. 11-12.

11.4 Frequency of bills (SRC) – Clause 24

Clause 24 sets out when a retailer must issue bills to a customer.

Draft Decision

The Commission proposed to maintain the drafting of clause 24. The Commission noted that DSDBI confirmed that separate provisions for dual fuel customers were not intended be retained once Victoria transitioned to the NECF. Therefore, the draft ERC v11 adopted the NERR position of not maintaining separate dual fuel provisions (aside from clause 117).

Submissions

SP AusNet submitted that DSDBI provided an assurance that the potential change to 3 monthly retailer billing would not be seen as an expectation that the distributor meter read frequency would also move to 3 monthly, and stated that the Commission should recognise this in its decision.[60]

Origin supported the Commission's proposed decision to maintain the drafting of clause 24, as it was consistent with the NERR.[61]

The Consumer Groups noted that approximately 65 per cent of Victorian consumers were dual fuel customers. Consumer Groups submitted that by not maintaining specific provisions for dual fuel customers, specifically in relation to billing frequency, security deposits, early termination charges, and timing of disconnection, there was a detriment in consumer protections.[62]

Discussion

The ERC v11 requires retailers to bill customers at least every three months, and two months for gas customers. However, there is no requirement in the ERC v11 that a meter must be read on a three monthly basis. The ERC v11 does not capture the provisions of the NERR that relate to distributor obligations, as these obligations are dealt with in other Victorian instruments. As such, the Commission does not consider it appropriate to include in the ERC v11 any reference to distributor obligations regarding meter reading frequency.

[60] SP AusNet submission, p. 5.
[61] Origin submission, p. 6.
[62] Consumer Groups submission, pp. 4 and 12.

The Commission will, however, amend clause 24(1)(b) to update the date for when gas billing will be moved to a three monthly cycle to allow for a six month transition period. Clause 24(1)(b) will be amended as follows:

(b) in the case of gas, at least once every 2 months in relation to the period up to ~~31 December 2013~~ 31 December2014.

In response to the Consumer Groups submission, it is the Commission's opinion that the ERC v11 adequately protects the interests of all customers, including dual fuel customers, and there is no need to amend clause 24.

FINAL DECISION

The Commission will amend clause 24 as follows:

(a) in the case of gas, at least once every 2 months in relation to the period up to ~~31 December 2013~~ 31 December 2014.

11.5 Contents of bills – Clause 25

Clause 25 of the ERC v11 specifies the information that must be included in a customer's bill.

Draft Decision

In light of the practical consequences which arose from including the reference to reminder notices in subclause 25(1)(o), the Commission proposed to delete the words *'reminder notices and*' from the beginning of subclause 25(1)(o) under the draft ERC v11.

The Commission proposed to define *'index read'* in the ERC v11.

The Commission did not consider it necessary for subclause 4.2(i) of the ERC v10 to be included in the ERC v11, as the matters covered by that subclause were adequately addressed by subclause 25(1)(h) of the ERC v11.

The Commission proposed to remove the words *"or gas (in MJ) or of both"* from subclause 25(1)(y)(iv), as smart meter functionality did not include the reading of gas meters.

The Commission also made the following amendments:

- subclause 25(1)(j) – the Commission clarified that subclause 25(1)(j) was subject to subclause 25(1)(y);
- subclause 25(1)(y) – the Commission deleted the words *"from 1 July 2012"* in sub-paragraph (y)(ii); and
- added a note after clause 25 stating that additional obligations in relation to the provision of metering information to customers were contained in the Electricity Metering Code.

Submissions

United Energy stated that it believed its procedures met the intent of clause 25(y), but submitted that the definition of a smart meter should be clarified. United Energy stated that, with regard clause 25(1)(y), its procedures were to provide index reads to retailers in the NEM file format for an AMI meter (functionality and service levels), and where the meter was a manually read interval meter data was forwarded from its legacy systems and index reads were not captured or provided.[63]

Origin submitted that it supported the Commission's proposed amendments to clause 25.[64]

SP AusNet submitted that the ERC v11 should use terms consistent with the metrology instruments. SP AusNet stated that, as smart metering data could include data developed by estimation, clause 25(1)(i)(ii) should be amended to state:

> "*in the case of a smart meter, an accumulated total of at least 48 hours of trading intervals are not billed on the basis of actual ~~smart meter~~ interval metering data . . .".*[65]

SP AusNet also sought clarity concerning whether the estimation notification rules regarding interval meters were the same as for smart meters and what date should be put on a bill under the "date of the meter reading" for a smart meter that is read every day.[66]

Lumo submitted that the note under clause 25(1)(y) should have included a reference to the Gas Distribution System Code, which contained obligations regarding meter testing.[67]

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[63] United Energy submission, p. 3.
[64] Origin submission, p. 6.
[65] SP AusNet submission, p. 4.
[66] SP AusNet submission, p. 4.
[67] Lumo submission to *'Harmonisation Project: Consequential Amendments to Victorian Energy Instruments'*, p. 3.

Consumer Groups restated their earlier position that the information required under clause 25 is not sufficient. In particular, customers may not have sufficient information regarding: total consumption, payment arrangement options and accessing concessions and rebates.[68]

Discussion

In relation to SP AusNet's first submission, clause 25(1)(i)(ii) replicates the drafting of clause 4.2(e), bullet point 2 of the ERC v10a. Furthermore, the definition of *'metering data'* for smart meters contained in the ERC v10a also includes estimated data:

> ***metering data*** *for* ***smart meters*** *means the half hourly data collected from the meter, including any substituted and estimated data that was used in the preparation of customers' bills.*

As such, the concern raised by SP AusNet is one that exists under the ERC v10a, and is not a new issue that arises from the harmonisation of the NERR with the ERC v10a. That said, SP AusNet's proposed amendments to include the word *'actual'* and *'metering data'* seem to be consistent with the policy intent of the clause and terminology used in the NERR. As such, because it is arguable that current drafting of the clause does not give effect to the policy position underlying the clause, the Commission will amend the clause in light of SP AusNet's submission.

The Commission will amend clause 25(1)(i)(ii) as follows:

> *in the case of a smart meter, an accumulated total of at least 48 hours of trading intervals are not billed on the basis of actual interval metering data…*

We note that this amendment is consistent with the policy position in the exposure draft of the NERR Amendment Rule 2013. The policy position stated in the accompanying consultation paper to the exposure draft, is that retailers should be required to inform customers that their bill is estimated and the extent of any estimation or substitution if the total number exceeds the threshold.[69]

In relation to SP AusNet's second submission, the Commission has interpreted SP AusNet's reference to *'estimation notification rules'* as a reference to subclause 25(1)(i) of the ERC v11, which covers when retailers must include in a small customer's bill details of meter readings based on estimation.

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[68] Consumer Groups submission, pp. 12-13.

[69] Standing Council on Energy and Resources, 'National Smart Meter Consumer Protection and Safety Review Consultation Paper – National Energy Retail Rules Amendment Rule 2013', September 2013, page 8.

There are no separate regulatory obligations in either the NERR or the ERC v10a that are intended to apply to interval meters. If we had not made the Victorian-specific change to subclause 25(i), then estimation notification for interval meters would have been required in accordance with the NERR drafting. As such, the Commission considers that clause 25(1)(i)(i) of the ERC v11 applies to interval meters, rather than subclause 25(1)(i)(ii).

Subclause 25(1)(i)(i) requires a small customer's bill to include details of whether the bill was issued as a result of an estimation. In other words, a retailer, in the case of an interval meter, would need to state that the bill was issued as a result of an estimation if *any* trading intervals are estimated (i.e. not only if more than 48 hours of trading intervals were estimated). As such our view is that the *'estimation notification rules'* are not the same for interval meters and smart meters, unless the interval meter meets the definition of *'smart meter'*. In this respect, we note that the exposure draft of the National Energy Retail Rules Amendment Rule 2013 is *'technology neutral'* and does not define *'smart meter'*, nor does it apply specifically to *'smart meters'*. Rather, the exposure draft applies to *'interval meters'*.[70]

The Commission will treat interval meters and smart meters the same with respect to clause 25(1)(i)(i) of the ERC v11. As such, we will make the following amendments to clause 25(1)(i) of the ERC v11:

> *A retailer must prepare a bill so that a small customer can easily verify that the bill conforms to their customer retail contract and must include the following particulars in a bill for a small customer:*
>
> *…*
>
> *(i) whether the bill was issued as a result of a meter reading or:*
>
> *(i) in the case of a meter other than a smart meter <u>or an interval meter</u>, an estimation; or*
>
> *(ii) in the case of a smart meter <u>or an interval meter</u>, an accumulated total of at least 48 hours of trading intervals are not billed on the basis of actual metering data; and,*
>
> *if issued as a result of a meter reading, the date of the meter reading*

The Commission notes that '*whether the bill is based on a meter reading or*' is NERR drafting and will be retained to cover meters which are not smart meters or interval meters.

[70] Standing Council on Energy and Resources, 'National Smart Meter Consumer Protection and Safety Review Consultation Paper – National Energy Retail Rules Amendment Rule 2013', September 2013, page 4. See also clause 6 of the draft National Energy Retail Rules Amendment Rule 2013.

With regard to SP AusNet's query regarding what date should be put on a bill under the "date of the meter reading" for a smart meter, the Commission considers the appropriate date to be the last date the meter is read prior to the bill being issued.

We also note that there is another specific provision for smart meters in clause 25(1)(y), which is relevant to SP AusNet's query and which was taken from clause 4.2(h) of the ERC v10a. Clause 25(1)(y) provides that if a customer's bill is derived from smart meter interval data, the retailer must include in the customer's bill the 'index read' at the start of the billing period and at the end of the billing period.

The Commission agrees with Lumo's submission, and will amend the ERC v11 to include a reference to the Gas Distribution System Code in the note contained under subclause 25(1)(y). The reason is that the Gas Distribution System Code contains additional obligations in relation to the provision of metering information by gas distributors to customers and retailers (see, for example, clause 8 of the Gas Distribution System Code).

The Commission notes that the Consumer Groups' concerns were dealt with in the Draft Decision Paper, and they have not raised any new issues in response to our draft decision.

In addition to the amendments highlighted above, the Commission will also make the following amendments in line with our draft decision:

- deleting the words *'reminder notices and'* from the beginning of subclause 25(1)(o);
- amending subclause 25(1)(y)(ii) to delete the words *'from 1 July 2012'*;
- amending subclause 25(1)(y)(iv) to delete the words *'or gas (in MJ or of both)'*; and
- amending subclause 25(1)(j) to clarify that subclause 25(1)(j) is subject to subclause 25(1)(y).

FINAL DECISION

The Commission will:

- amend subclause 25(1)(i)(i) to insert the words '*or an interval meter*';
- amend subclause 25(1)(i)(ii) to insert the words '*or an interval meter*' and delete the words '*smart meter*' before interval metering data and insert '*actual'*;
- delete the words *'reminder notices and'* from the beginning of subclause 25(1)(o);
- add a definition of *'index read*' to the ERC v11;
- amend subclause 25(1)(y)(ii) to delete the words *'from 1 July 2012'*;
- amend subclause 25(1)(y)(iv) to delete the words *'or gas (in MJ or of both)'*;
- amend subclause 25(1)(j) to clarify that subclause 25(1)(j) is subject to subclause 25(1)(y); and
- insert a note regarding additional obligations in the Electricity Metering Code and the Gas Distribution System Code.

11.6 Greenhouse Gas Disclosure on customers' bills – Clause 25A

Clause 25A of the ERC v11 sets out the minimum information that must be included in a customer's bill regarding greenhouse gas disclosure.

Draft Decision

The Commission proposed to insert a new subclause 25A(2) in the draft ERC v11, and amend subclause 25A(3) to clearly state the option envisaged in section 40R of the EIA, which is to include either bill benchmarking or greenhouse gas emissions on customers' bills. The Commission acknowledged that clause 25A did not reflect the most updated Guideline 13 – Greenhouse Gas Disclosure on Electricity Customers' Bills, and the Commission proposed to remove all references to Sustainability Victoria (**SV**) and refer to www.switchon.vic.gov.au.

The Commission also proposed to move the definitions section to the beginning of the clause for reader ease, insert the word *'electricity'* under subclause (1) to clarify the clause, and add a note at the end of the clause acknowledging that neither the Commission nor the draft ERC v11 could bind DSDBI.

Submissions

Northern Alliance for Greenhouse Action submitted that the Commission did not respond to its concerns on this issue, and the ERC v11 should reflect what is currently

provided for under Guideline 13 regarding information on the greenhouse impacts of consumers' energy consumption.[71]

AGL and Origin supported the Commission's proposed decision to amend clause 25A to clarify retailer obligations.[72]

Discussion

The Commission acknowledges that, as drafted, Guideline 13 implies that a retailer must include both bill benchmarking and greenhouse gas information to customers. However, in practice the Commission has always allowed retailers to include either bill benchmarking *or* greenhouse gas emissions on customers' bills (as provided by section 40R of the EIA). As such, the drafting of clause 25A is in line with the current practice of requiring retailers to either provide greenhouse gas information or bill benchmarking.

The Commission confirms our draft decision.

FINAL DECISION

The Commission will amend clause 25A to reflect the current version of Guideline 13 dated January 2013, remove all references to SV, and move the definitions section to the beginning of this clause.

The Commission will insert a new subclause 25A(2) which clearly provides an option to include greenhouse gas information or bill benchmarking in a customer's electricity bill.

The Commission will amend subclause 25A(3) to state the information a retailer must include, if it decides to include greenhouse gas information.

The Commission will amend subclause 25A(8) to ensure the requirements of the subclause are clear.

The Commission will amend 25A(3)(d) to reference the website **www.switchon.vic.gov.au.**

The Commission will insert a note at the end of clause 25A clarifying that the Commission cannot bind the DSDBI.

[71] Northern Alliance for Greenhouse Action submission, p. 1.
[72] AGL submission, p. 1. Origin submission, p. 6.

11.7 Pay-by date (SRC) – Clause 26

Clause 26 of the ERC v11 states that the pay-by date for a bill cannot be earlier than 13 business days from the date the bill was issued.

Draft Decision

Clause 26 was drafted in accordance with the NERR, and the Commission considered the NERR drafting and timeframes to be appropriate.

Submission

Origin supported the Commission's proposed decision to not amend clause 26.[73]

Discussion

No new issues have been raised in response to our draft decision. The Commission will not amend clause 26.

FINAL DECISION

The Commission will not amend clause 26.

11.8 Apportionment (SRC) – Clause 27

Under clause 27 of the ERC v11, energy bill payments made by customers on standard retail contracts must first be applied to the sale of supply of energy with any remainder being applied to any goods and services, unless the customer otherwise agrees to a different arrangement.

Draft Decision

The Commission acknowledged that, under the draft ERC v11, the apportionment clause only applied to standard retail contracts and left retailers and customers to agree on an appropriate apportionment provision for market retail contracts. This was a change from the requirements of the ERC v10 where the apportionment clause applied to both standard retail contracts and market retail contracts. The Commission noted that clause 27 was drafted in accordance with the NERR, and did not find a convincing reason to deviate from the national provision.

[73] Origin submission, p. 6.

Submissions

The Consumer Groups submitted that customers on market retail contracts could have payments applied to other goods and services, which could lead to payment arrears and possible disconnection.[74]

Origin supported the Commission's proposed decision to not amend clause 27.[75]

Discussion

The Commission considers it appropriate that customers on market retail contracts can agree to an appropriate apportionment clause. The Commission will not amend clause 27 to apply to market retail contracts.

FINAL DECISION

The Commission will not amend clause 27.

11.9 Historical billing information (SRC and MRC) – Clause 28

Clause 28 sets out the obligations on retailers to provide customers with their historical billing and metering data.

Draft Decision

The Commission acknowledged that the requirements of subclauses 27(1) and 27(2)(b) and (d) of the ERC v10 were not reflected in the draft ERC v11. Clause 28 was drafted in accordance with the NERR provisions to the extent possible. The Commission considered the drafting to be appropriate and was not persuaded to deviate further from the national provision. The Commission also considered clause 28 in light of the introduction of flexible pricing in Victoria and determined that the clause would not be affected by the new flexible pricing environment.

The timeframe outlined in subclause 28(1) of the ERC v11 was amended to reflect the current timeframe provided for under subclause 27.2(c) of the ERC v10. In the Commission's opinion, this was appropriate given that retailers were currently working under this timeframe and should have processes in place to assist with meeting this timeframe.

[74] Consumer Groups submission, p. 15-16.
[75] Origin submission, p. 6.

The Commission amended the draft ERC v11 to refer to '*historical billing data'*, as opposed to *'historical billing information'*, for consistency with the related provisions. The Commission also amended subclause 28(2A) to include a reference to '*metering data',* in addition to the reference to '*historical billing data*'.

Submissions

The Consumer Groups restated their earlier position that clause 28 restricted customers' access to data and to pursue complaints, which placed customers at a disadvantage when a dispute arose.[76]

Origin supported the Commission's proposed amendments to clause 28 and its view that the current drafting was consistent with the NERR.[77]

Discussion

No new issues have been raised in response to our draft decision. The Commission will amend subclause 28(2A) in accordance with our draft decision, but will not otherwise amend clause 28.

FINAL DECISION

The Commission will amend subclause 28(2A) to refer to '*historical billing data or metering data*'.

11.10 Billing disputes – Clause 29

Retailers have an obligation under this clause to review a bill when requested by a customer.

Draft Decision

The Commission acknowledged drafting errors in subclauses 29(5)(b) and (c) of the draft ERC v11.

Subclause 29(5)(b) was amended to state:

> *"subject to paragraph (c), the customer must pay for the cost of the check or test (which the retailer may not request be paid in advance); and"*

[76] Origin submission, p. 6.
[77] Origin submission, p. 6.

Subclause 29(5)(c) was amended to state:

> *"if the meter or metering data proves to be faulty or incorrect, the customer must not be required to pay the cost of the check or test."*

Subclause 29(6)(b)(iii), which stated that the retailer must refund to the customer any amount paid in advance if the test shows the meter reading was incorrect, was deleted as the retailer was not able to request the payment in advance under the draft ERC v11.

The Commission also added a note after subclause 29(5) which stated that additional obligations in relation to the meter testing were contained in the *Electricity Metering Code*.

Submissions

The Consumer Groups submitted that retailer standards should be comparable to the Australian Standards on Complaints Handling.[78]

Lumo submitted that the note the Commission added at the end of subclause 29(5) should also reference the Gas Distribution System Code.[79]

Discussion

The Commission agrees with Lumo's submission that a reference to the Gas Distribution System Code should be included in the note at the end of subclause 29(5).

We will amend the note at the end of subclause 29(5) to state:

> ***Note***:
> *Additional obligations in relation to meter testing are contained in the Electricity Metering Code and the Gas Distribution System Code.*

With regard to the Consumer Groups' submission, the Commission notes that clause 59A – Standard complaints and dispute resolution procedures of the ERC v11 states that a retailer's procedures for handling small customer complaints and dispute resolution procedures must be substantially consistent with the Australian Standard AS ISO 10002-2006 (Customer satisfaction – Guidelines for complaints handling in organizations), which addresses the Consumer Groups' concern that a retailer's

[78] Consumer Groups submission, p. 17.
[79] Lumo submission on *'Harmonisation Project: Consequential Amendments to Victorian Energy Instruments'*, p. 3.

procedures should be comparable to the Australian Standards on Complaints Handling.

The Commission confirms our draft decision to:

- amend subclauses 29(5)(b) and (c) to not allow retailers to charge customers for the cost of the meter check or test if the meter is faulty or incorrect; and
- delete subclause 26(6)(b)(iii) (which deals with refunding money if the meter is faulty, as retailers cannot request payment in advance under the ERC v11).

The Commission will also add a note after subclause 29(5) regarding additional obligations relating to meter testing which will include references to the Electricity Metering Code and the Gas Distribution System Code.

FINAL DECISION

The Commission will:

- amend subclauses 29(5)(b) and (c) to not allow retailers to charge customers for the cost of the meter check or test if the meter is faulty or incorrect,
- delete subclause 29(6)(b)(iii) (which deals with refunding money if the meter is faulty, as retailers cannot request payment in advance under the ERC v11), and
- add a note after subclause 29(5) regarding additional obligations relating to meter testing.

11.11 Undercharging (SRC and MRC) – Clause 30

Clause 30 sets out when a retailer may recover from the customer any undercharged amounts.

Draft Decision

The Commission acknowledged that, under the draft ERC v11, where an undercharged amount was caused by the fault of the customer and the undercharging period was longer than 12 months, the customer would not be given equal time to repay the amount. This was a change from ERC v10. However, the Commission considered this change acceptable.

The Commission proposed to not amend clause 30.

Submissions

The Consumer Groups restated their earlier position that customers were at a potential disadvantage by having a limited time to repay undercharged amounts, having to pay a higher tariff if their tariff had changed during the undercharging period, and there could be customer detriment by not defining fault or omission.[80]

Origin supported the Commission's proposed decision to not amend clause 30.[81]

Discussion

No new issues have been raised in response to our draft decision. The Commission will not amend clause 30.

FINAL DECISION

The Commission will not amend clause 30.

11.12 Overcharging (SRC and MRC) – Clause 31

Clause 31 of the ERC v11 specifies the retailer's obligation if it overcharges a customer.

Draft Decision

The Commission did not see a basis to deviate from the NERR which does not require retailers to pay the overcharged customer interest on any overcharged amount, particularly given that this requirement was not included in the ERC v10.

The Commission proposed to not amend clause 31.

Submissions

The Consumer Groups restated their earlier position that, for some customers, having to pay above what was owed was a significant strain, and the Commission should recognise this strain by making interest payable on overcharged amounts.[82]

Origin supported the Commission's proposed decision to not amend clause 31.[83]

[80] Consumer Groups submission, p. 18.
[81] Origin submission, p. 6.
[82] Consumer Groups second round submission, p. 19.
[83] Origin second round submission, p. 6.

Discussion

No new issues have been raised in response to our draft decision. The Commission will not amend clause 31.

FINAL DECISION

The Commission will not amend clause 31.

11.13 Payment methods (SRC and MRC) – Clause 32

The payment methods, including via direct debit and Centrepay, available to customers are set out under clause 32 of the ERC v11.

Draft Decision

The Commission proposed to not amend clause 32. However, the Commission did propose to amend the draft ERC v11 to include a definition of *'last resort event'*, which was defined as:

> "*last resort event in respect of a retailer means when:*
> *(a) the retailer's retail license is suspended or revoked; or*
> *(b) the right of the retailer to acquire:*
> - *for electricity, electricity from the wholesale electricity market; and*
> - *for gas, gas from a wholesale gas market or a producer,*
>
> *is suspended or terminated,* whichever first occurs".

Submissions

Lumo submitted that '*last resort event*' should be defined in accordance with the NERL for consistency.[84]

The Consumer Groups submitted that there was no guarantee that all retailers would be willing to allow a customer to pay by Centrepay unless there was a requirement to do so, and customers on market retail contracts could potentially lose payment options.[85]

Origin supported the Commission's proposed decision to not amend clause 32.[86]

[84] Lumo second round submission, p. 3.
[85] Consumer Groups submission, p. 20.
[86] Origin submission, p. 7.

Discussion

The definition of *'last resort event'* was taken from the ERC v10a, and is based on the definition of *'trigger event'* in each of the EIA and GIA (sections 49A and 51A, respectively). A *'last resort event'* is defined in the ERC v10a as follows:

> ***last resort event*** in respect of a retailer means when:
>
> (a) the retailer's retail licence is suspended or revoked; or
>
> (b) the right of the retailer to acquire:
>
> - for electricity, electricity from the wholesale electricity market; and
> - for gas, gas from a wholesale gas market or a producer,
>
> is suspended or terminated, whichever first occurs.

The *'retailer of last resort'* scheme in Part 6 of the NERL does not apply in Victoria because Victoria has not adopted the NERL. The *'retailer of last resort'* scheme that applies in Victoria is the scheme contained in Division 8, Part 2 of the EIA and Division 6, Part 3 of the GIA, and related provisions under the ERC v10a and a retailer's licence.

The definition of *'last resort event'* in the NERL links with the scheme under the NERL. Whereas the definition of *'last resort event'* under the ERC v10a links with the scheme that applies in Victoria. For example, under the NERL definition, a *'retailer of last resort event'* is triggered by the revocation of the retailer's retailer *authorisation*. Whereas, under the ERC v10a definition, a *'last resort event'* is triggered by a revocation of a retailer's *licence*. For these reasons, the Commission will not define *'last resort event'* as it is defined in the NERL.

The Consumer Groups' submission is outside the scope of this consultation, as it seeks to include additional requirements that are not currently provided for under the ERC v10a or the NERR.

The Commission adopts its draft decision as our final decision.

FINAL DECISION

The Commission will not amend clause 32.

The Commission will include a definition of *'last resort event'* in the ERC v11, which reflects the definition in the ERC v10a.

11.14 Payment difficulties (SRC and MRC) – Clause 33

Retailers' obligations to customers experiencing difficulties paying their energy bills are set out in clause 33 of the ERC v11, including when a retailer is required to offer a customer a payment plan.

Draft Decision

The Commission acknowledged that the drafting of subclauses 33(1) and 72(1A) of the draft ERC v11 was inconsistent. The Commission considered it appropriate to delete subclause 72(1A) from the draft ERC v11 and subclause 33(1) was amended to include the additional text in subclause 72(1A)(b).

Submissions

ERM submitted that it was concerned with the inclusion of an obligation on a retailer to offer a payment plan to a customer that it believed was experiencing repeated difficulties. ERM stated this obligation was not consistent with the Commission's stated intent of harmonisation with the NECF.[87]

The Consumer Groups stated that they supported the inclusion of the additional text in clause 33, and noted that the Commission would need to monitor the retailers' performance to ensure customers were given appropriate payment assistance.[88]

The Consumer Groups restated their earlier position that this clause reduced the requirement for retailers to pro-actively identify payment difficulties and there was a significant loss of protection for vulnerable consumers who are unaware of the need to actively request referral to hardship supports.[89] The Consumer Groups also restated that customers were potentially denied information, such as the availability of an independent financial counsellor and energy efficiency advice, since retailers were not required to provide this information.[90]

Lumo noted a drafting error in that clauses 33(1)(b) and 33(2) are not separated.[91]

Discussion

The Commission does not agree with ERM's submission, as the requirement to offer a payment plan to a customer a retailer believes to be experiencing repeated payment difficulties is an obligation under rule 50 of the NERL. The Commission considers it

[87] ERM submission, p. 3.
[88] Consumer Groups submission, pp. 2-3.
[89] Consumer Groups submission, pp. 20-21.
[90] Consumer Groups submission, pp. 23-24.
[91] Lumo submission, p. 3.

appropriate to incorporate this obligation in the ERC v11, especially in light of the fact that this is a current requirement under the ERC v10a.

The Commission notes that the Consumer Groups' concerns regarding clause 33 have already been addressed in our draft decision.

The Commission acknowledges the drafting error in clause 33, and will amend this accordingly.

The Commission will amend the ERC v11 in accordance with our draft decision.

FINAL DECISION

The Commission will delete subclause 72(1A) from the ERC v11, and amend subclause 33(1) to include the text in subclause 72(1A)(b) to require a retailer to offer a payment plan if the retailer believed the customer was experiencing repeated payment difficulties or required payment assistance. The Commission will correct the drafting error in clause 33.

11.15 Shortened collection cycles (SRC and MRC) – Clause 34

Clause 34 of the ERC v11 permits retailers to place a customer on a shortened collection cycle and specifies the conditions and procedures of placing a customer on a shortened collection cycle.

Draft Decision

Clause 34 was drafted in accordance with the NERR, and the Commission stated that we would not challenge the policy behind the drafting of this section. Furthermore, in the Commission's opinion the requirements outlined in clause 34 were substantially equivalent to the requirements in clause 9.1 of the ERC v10.

The Commission acknowledged that the requirement to assess and assist customers experiencing payment difficulties had not been carried over in the draft ERC v11. However, subclause 34(2)(a) prevented a customer who was experiencing payment difficulties from being placed on a shortened collection cycle. In the Commission's opinion this achieved a similar outcome.

The Commission acknowledged that there had been a reduction in the number of reminder notices that a customer would be sent prior to a retailer being able to place the customer on a shortened collection cycle. However, the Commission considered that the NERR drafting was appropriate and noted that subclause 34(3) of the draft ERC v11 required a retailer to give certain notice requirements to a customer who had been placed on a shortened collection cycle.

The Commission also noted that we did not consider the definition of *'reminder or warning notice'* to be vague because the definition:

- accurately referred customers to the relevant defined terms in clause 3 of the draft ERC v11; and
- was only applied in clause 34 where the clause referred to *'reminder or warning notice'* and not where it only referred to a *'reminder notice'*.

Submissions

The Consumer Groups restated their earlier position that without requiring a customer's explicit informed consent, the customer may not know they were placed on a shorter collection cycle, and the reduction in the number of reminder notices (along with being placed on a shorter collection cycle) could lead to a higher risk of disconnection.[92]

Origin supported the Commission's proposed decision to not amend clause 34.[93]

Discussion

The Consumer Groups' submission regarding the necessity of explicit informed consent under this clause is outside the scope of this consultation, as it is not currently provided for under the ERC v10a or the NERR.

The Commission will not amend clause 34.

FINAL DECISION

The Commission will not amend clause 34.

11.16 Request for final bill (SRC) – Clause 35

Clause 35 requires that a retailer use its best endeavours to arrange for a meter reading and prepare a final bill, when requested to do so by the customer.

Submission

Lumo submitted that the Commission may not achieve its objective to obtain actual reads for a final bill, as the clause does not require customers to provide access to the meter or the distributor to read the meter on the date specified.[94]

[92] Consumer Groups submission, p. 24.
[93] Origin second round submission, p. 7.

Discussion

The Commission acknowledges that there are outside factors which can influence whether a retailer is able to prepare the final bill. The focus, from a compliance point of view, is on whether the retailer used its best endeavours to arrange for a meter reading to prepare a final bill.

Clause 35 has been drafted in accordance with the NERR, and the Commission does not see a reason to deviate from the NERR drafting.

The Commission adopts our draft decision as our final decision.

FINAL DECISION

The Commission will not amend clause 35.

11.17 Additional retail charges (SRC and MRC) – Clause 35A

Retailers may charge customers additional retail charges under the circumstances specified in clause 35A of the ERC v11.

Draft Decision

The Commission corrected drafting errors in subclause 35A(1)(a) to refer to *'market retail contract'* and in subclause 35A(3) to refer to clause 35A, not clause 30.

The Commission proposed to move subclause 35A(4) to a new clause 35C to reflect the current drafting of clause 7.5 of the ERC v10, as the application of these clauses differ depending on whether the customer is on a market retail contract or a standard retail contract.

Submission

United Energy submitted that alternate control services should be included in the list provided for in subclause 35A(3)(b), and the subclause should be amended to state: "alternate control charge or excluded service charge for electricity."[95]

Discussion

Clause 35A was included to reflect clause 30 of the ERC v10a. Subclause 35A(3)(b) simply replicates the definition of *'additional charge'* used in the ERC v10a. As such,

[94] Lumo second round submission, p. 2.
[95] United Energy submission, p. 3.

the concern raised by United Energy is one that exists under the ERC v10a, and is not a new issue that arises from the harmonisation of the NERR with the ERC v10a.

We note that the list in clause subclause 35A(3)(b) is not exhaustive and does not limit the general exclusionary provision in subclause 35A(3)(a). '*Excluded service charge*' is a reference to old terminology used in the distribution price determination that applied in Victoria until 31 December 2010. That term has now been superseded by *'alternative control service charge*' (please see chapter 6 of the National Electricity Rules).

The Commission considers that the services covered by subclause 35A(3)(b) as 'excluded service charge[s] for electricity' would include those services considered to be 'alternative control service charge[s]'. In any event, if alternative control service charges were found to be something different, the services would be covered by the general exclusion in subclause 35A(3)(a) as 'network charge[s] relating to the supply, but not sale, of *energy* to a *customer's* supply address'.

Despite this, the Commission considers that there is a benefit in updating the terminology used in subclause 35A(3)(b), particularly given that 'standard control or alternative control service charge' is the terminology used in the NER.

As such, the Commission will amend subclause 35A(3)(b) as follows:

> "*standard control or alternative control service charge for electricity* ~~*or excluded service charge for electricity*~~"

FINAL DECISION

The Commission will amend clause 35A as follows:

- subclause 35(1)(a) will refer to *'market retail contract'*;
- subclause 35A(3) will refer to clause 35A;
- subclause 35A(3)(b) will refer to "*alternative control service charge or excluded service charge for electricity*"; and
- subclause 35A(4), dealing with dishonoured payments, will be incorporated into a new clause 35C to reflect the current drafting of clause 7.5 of the ERC v10a.

11.18 Merchant service fees (SRC and MRC) – Clause 35B

Under clause 35B of the ERC v11, a retailer may recover from the customer the merchant service fees it incurs due to the customer's payment method.

Draft Decision

The Commission amended subclause 35B(2) to state that the clause would not apply to standard retail contracts.

The Commission noted that the prohibition on being able to recover merchant service fees from standing offer customers is a Victorian-specific derogation.

The Commission did not agree that *'merchant service fee'* should be defined in the draft ERC v11 as the term was not defined under the ERC v10, and clause 35B was included to reflect the requirements of subclause 7.5(b) of the ERC v10 . As such, a definition for *'merchant service fee'* would not be included in the draft ERC v11.

Submission

The Consumer Groups restated their earlier position that customers on market retail contracts could be charged fees beyond those defined in the reserve bank of Australia's definition of a *'merchant service fee'*.[96]

Discussion

No new issues were raised in response to our draft decision. The Commission will amend clause 35B to not apply to standard retail contracts.

FINAL DECISION

The Commission will amend clause 35B to not apply to standard retail contracts.

[96] Consumer Groups submission, p. 27.

12 TARIFF CHANGES – DIVISION 5

This chapter discusses the submissions received in relation to Part 2, Division 5 – Tariff changes.

12.1 Obligations on retailers (SRC) – Clause 36

Clause 36 of the ERC v11 sets out what a retailer must do if, during a billing cycle, its customer changes from one type of tariff to another type of tariff.

Draft Decision

Clause 36 was drafted in accordance with the NERR provisions as no Victorian derogation was indicated. The Commission considered that the drafting was appropriate and did not consider that there was a reason to deviate from the NERR.

The Commission noted that under clause 24 of the ERC v10, retailers were able to charge a fee in relation to a customer exiting a contract, even if the reason was due to a price change, and that there was no obligation in the ERC v10 to obtain a customer's explicit informed consent prior to any tariff change on a fixed term contract.

Submissions

The Consumer Groups restated their earlier position that it was unfair to permit a retailer to vary the price in a fixed term contract without the explicit informed consent of the customer and without permitting the customer to exit the contract without penalty.[97]

Origin supported the Commission's proposed decision to not amend clause 36.[98]

Discussion

The Consumer Groups' submission is outside the scope of this consultation, as it seeks to introduce new obligations that are not currently found in the ERC v10a or the NERR.

The Commission will not amend clause 36.

FINAL DECISION

The Commission will not amend clause 36.

[97] Consumer Groups submission, p. 28.
[98] Origin submission, p. 7.

12.2 Change in use (SRC) – Clause 38

Clause 38 sets out what is required when there is a change in use of the premises.

Draft Decision

The reference to *'reclassification'* in clause 38 of the draft ERC v11 was a drafting error. The Commission did not include provisions relating to classification and reclassification of customers set out in Rules 7 to 11 of the NERR because in Victoria these matters were dealt with in Orders in Council. As such, subclause 38(5) was deleted from the draft ERC v11.

The term *'change of use'* was not defined in the NERR or the NERL and therefore a definition was not included the ERC v11. In the Commission's view, it was clear from the remainder of the clause that a change in use related to a change in the use of a customer's premises that would give rise to a change in the tariff applicable to the customer. Therefore, the Commission did not consider it necessary to introduce a new definition of '*change in use'*.

Submission

Lumo noted a drafting error in that clause 38(5) and 38(6) were not separated.[99]

Discussion

The Commission will amend the drafting error in clause 38 and adopts our draft decision as our final decision.

FINAL DECISION

The Commission will delete subclause 38(5) from the ERC v11, as the classification and reclassification of customers are dealt with in Orders in Council, and correct the drafting error in not separating subclauses 38(5) and 38(6).

[99] Lumo submission, p. 3.

13 SECURITY DEPOSITS – DIVISION 6

This chapter discusses the submissions received in relation to Part 2, Division 6 – Customer retail contracts – security deposits.

13.1 Consideration of credit history – Clause 39

Clause 39 of the ERC v11 sets out the information retailers must request from a customer, and the factors retailers must consider, when deciding whether to require a customer to provide a security deposit.

Draft Decision

Clause 39 was drafted in accordance with the NERR and no Victorian derogation was indicated for this provision. The Commission considered the NERR drafting to be appropriate and was not convinced that there was a basis for deviating from the national provisions.

Submissions

The Consumer Groups restated their earlier position that allowing retailers to consider a customer's entire credit history was a detriment to customers. The Consumer Groups had concerns regarding the accuracy and relevance of information held by credit rating agencies, and stated the ERC v11 should retain the requirement that only energy and water debts could be considered by a retailer when reviewing a customer's credit history.[100] The Consumer Groups stated that they believed customers prioritised utility bills above other expenses, and therefore only relevant debts should be considered.[101]

Origin supported the Commission's proposed decision to not amend clause 39.[102]

Discussion

No new issues have been raised in response to our draft decision. The Commission will not amend clause 39.

FINAL DECISION

The Commission will not amend clause 39.

[100] Consumer Groups submission, p. 4.
[101] Consumer Groups submission, p. 30.
[102] Origin submission, p. 7.

13.2 Requirement for security deposit (SRC and MRC) – Clause 40

Clause 40 outlines when a security deposit can be requested from a customer, including a provision that a retailer must not refuse to sell energy to a customer who does not pay the security deposit.

Draft Decision

The Commission acknowledged that there was an overlap between subclauses 40(3)(c) and 40(4) of the draft ERC v11. The Commission noted that the requirements under subclause 40(4) were not as extensive as those under subclause 8.1(b) bullet point three of the ERC v10, which required the retailer to comply with subclause 11.3 of ERC v 10 (which was covered in clause 33 of the draft ERC v11).

The Commission considered it appropriate to add the requirement to comply with clause 33 to clause 40(4) and delete clause 40(3)(c). Subclause 40(4) was amended to state:

> *"(4) A retailer cannot require a residential customer to provide a security deposit unless the retailer has offered the customer the option of a payment plan and the customer has either declined the offer or failed to pay an instalment having accepted the offer and the retailer has otherwise complied with clause 33."*

The Commission considered that there was no inconsistency between subclauses 40(7) and (8), as they served the separate purposes of:

(a) subclause 40(7) – made it clear that payment or partial payment of a security deposit was not a precondition to a standard retail contract; and
(b) subclause 40(8) – made it clear that clause 40 applied to a standard retail contract.

Discussion

As the Commission received no further submissions from stakeholders on this issue, the Commission confirms our draft decision.

FINAL DECISION

The Commission will amend clause 40 to delete subclause 40(3)(c).

The Commission will add the following to subclause 40(4) *"and the retailer has otherwise complied with clause 33"*.

13.3 Payment of security deposit (SRC) – Clause 41

Clause 41 of the ERC v11 specifies when security deposits must be paid by the customer and how security deposits are to be maintained by the retailer.

Draft Decision

Clause 41 was drafted in accordance with the NERR as no Victorian derogation was indicated for this provision. The Commission considered the drafting to be appropriate and there was no reason to deviate from the national provisions.

Submissions

The Consumer Groups restated their earlier position that customers were not necessarily provided with sufficient time to pay the deposit or to enter into a payment plan to pay the deposit.[103]

Origin supported the Commission's proposed decision to not amend clause 41.[104]

Discussion

No new issues have been raised in response to our draft decision. The Commission will not amend clause 41.

FINAL DECISION

The Commission will not amend clause 41.

13.4 Amount of security deposit (SRC) – Clause 42

Clause 42 of the ERC v11 sets out how the amount of the security deposit is determined.

Draft Decision

Clause 42 was drafted in accordance with the NERR and no Victorian derogation was indicated for this provision. The Commission considered the drafting to be appropriate and there was no reason to deviate from the national provisions.

[103] Consumer Groups submission, p. 32.
[104] Origin submission, p. 7.

Submissions

Origin supported the Commission's proposed decision to not amend clause 42.[105]

The Consumer Groups restated their earlier position that clause 42 should apply to market retail contracts or there would be no fair and reasonable way to calculate the amount of a security deposit.[106]

Discussion

No new issues have been raised in response to our draft decision. The Commission will not amend clause 42.

FINAL DECISION

The Commission will not amend clause 42.

13.5 Use of security deposit (SRC) – Clause 44

Clause 44 of the ERC v11 sets out how a retailer may apply a security deposit.

Draft Decision

Clause 44 was drafted in accordance with the NERR and no Victorian-specific derogation was indicated for this provision. The Commission considered the drafting to be appropriate and was not persuaded that there was a reason for deviating from the national provisions.

The Commission noted that subclause 44(1) of the ERC v11 and the equivalent subclause 8.3(c) of the ERC v10 achieved the same outcome, despite the differences in drafting.

Submissions

The Consumer Groups restated their earlier position that this clause should apply to market retail contracts to ensure that security deposits for customers on market retail contracts were not allowed to be apportioned to amounts owing for services and goods prior to costs for the sale of energy.[107]

[105] Origin submission, p. 7.
[106] Consumer Groups submission, pp. 32-33.
[107] Consumer Groups submission, p. 33.

Origin supported the Commission's proposed decision to not amend clause 44.[108]

Discussion

No new issues have been raised in response to our draft decision. The Commission will not amend clause 44.

FINAL DECISION

The Commission will not amend clause 44.

13.6 Obligation to return security deposit (SRC) – Clause 45

Clause 45 of the ERC v11 outlines the retailer's obligation to return a customer's security deposit, including when and how the security deposit must be returned.

Draft Decision

Clause 45 was drafted in accordance with the NERR and no Victorian derogation was indicated for this provision. The Commission considered that the drafting was appropriate and there was no reason to deviate from the national provision.

Submissions

Origin supported the Commission's proposed decision not to amend clause 45.[109]

The Consumer Groups restated their earlier position that this clause should apply to market retail contracts to ensure that retailers did not unreasonably withhold security deposits for customers on market retail contracts.[110]

Discussion

No new issues have been raised in response to our draft decision. The Commission will not amend clause 45.

FINAL DECISION

The Commission will not amend clause 45.

[108] Consumer Groups submission, p. 7.
[109] Origin submission, p. 7.
[110] Consumer Groups submission, p. 33.

14 PARTICULAR REQUIREMENTS OF MARKET RETAIL CONTRACTS – DIVISION 7

This chapter discusses the submissions received in relation to Part 2, Division 7 – Market retail contracts – particular requirements.

14.1 Tariffs and charges – Clause 46

Clause 46 of the ERC v11 sets out the minimum requirements for the terms and conditions of market retail contracts.

Draft Decision

The Commission stated that retailers should not be prohibited from charging exit fees, if the customer was exiting the contract due to a tariff change, as this prohibition was not contained in the ERC v10.

In the Commission's opinion, the requirement to provide 20 business days advanced notification for smart meter customers was not only introduced because mandatory reassignment of network tariffs was previously contemplated.

The Commission understood that the requirements of clause 20 of ERC v10 were to be retained when NECF was introduced in Victoria. As such, the Commission considered that those relevant provisions of clause 20 should be included in the draft ERC v11. In the Commission's view, requiring the customer's *'explicit informed consent'* to increases in tariffs and charges in the draft ERC v11 was directly inconsistent with clause 20. Instead, the Commission considered it more appropriate to incorporate the customer's *'explicit informed consent'* to variations to the structure and nature of tariff and charges. Therefore, the Commission included a new clause 46A in the draft ERC v11, which had the same effect as clause 20 of the ERC v10.

Submissions

The Consumer Groups supported the Commission's proposed introduction of clause 46A to the ERC v11, but restated their earlier position that customers should be given the right to exit a contract if they reject the variation without having to pay an exit fee.[111]

EnergyAustralia submitted that granting distributors the right to reassign customers to time of use network tariffs was a key principle of the AMI rollout, and the Commission previously acknowledged this principle in its decisions. For example, in the Electricity

[111] Consumer Groups submission. pp 33-34.

Distribution Price Review 2006-2010 Final Decision, which stated that *"[t]o facilitate the rollout of interval meters, the Commission had also permitted mandatory reassignment of customers to an interval meter tariffs. Arrangements had been set in place to ensure that customers were informed on the changes prior to any reassignment occurring."* EnergyAustralia submitted that now that flexible pricing is being rolled out on a purely opt in basis, the 20 day notification of price changes should be removed from the ERC v11.[112]

Origin agreed with EnergyAustralia's submission that the advanced notification requirement was motivated by the potential that mandatory network tariff reassignment was likely to take place and that subclause 46(4) of the draft ERC v11 departed unnecessarily from the NERR.[113]

Discussion

Clause 46(4) replicates the wording of clause 26.4(b) of the ERC v10a. Clause 26.4(b) requires a retailer to give a customer notice of variations to tariffs, in the case of smart meters, 20 business days prior to the variation, and otherwise no later than the customer's next bill. As such, the issue is one that exists under the ERC v10a and is not a new issue that arises from harmonising the ERC v10a with the NERR.

The NERR does not provide for a 20 business day notification period. Rather, the NERR provides that "notice must be given as soon as practicable, and in any event no later than the customer's next bill".

The Commission notes that the exposure draft of the National Energy Retail Rules Amendment Rule 2013 does not introduce a different notice requirement in relation to tariff changes for market retail contracts. The Commission also notes that in our 'Regulatory Review – Smart Meters Final Decision' (**Smart Meter Final Decision**), the Commission did not expressly refer to whether mandatory network tariff reassignment to 'time of use tariffs' was the sole basis for its policy position to introduce the 20 business day notice requirement. The Smart Meter Final Decision did state that the Commission thought it was appropriate to review this requirement in 2013.

Furthermore, the recent amendments introduced to ERC as a result of the introduction of flexible pricing have excluded the requirement for 20 business day notification prior to a variation of the amount or structure of a tariff where the variation is in accordance with the AMI Tariffs Order 2013. This supports the retailers' submissions that the notification period may no longer be required in the new flexible pricing environment.

The Commission's general approach has been to adopt the ERC v10a drafting of the smart-meter provisions, except where it is clear that the clause does not give effect to

[112] EnergyAustralia submission, pp. 3-4.
[113] Origin submission, p. 7.

the policy intent behind the clause.

Upon its review of its draft decisions, based on the submissions received from retailers and the introduction of flexible pricing, the Commission has decided that the policy position to require retailers to inform customers of time-of-use tariff changes no longer seems relevant because customers will not be mandatorily reassigned a time-of-use tariff as they will be able to 'opt-in' to changes to tariffs.

As such, the Commission will amend clause 46(4) to state:

> *(4) The notice must be given as soon as practicable, and otherwise no later than the customer's next bill.*

The Commission will also add a new clause 46A to the ERC v11.

FINAL DECISION

The Commission will add a new clause 46A to the ERC v11, which will include the wording of clause 20 of the ERC v10a, which deals with variations to market retail contracts.

The Commission will amend clause 46(4) as follows:

> *(4) The notice must be given as soon as practicable, and otherwise no later than the customer's next bill.*

14.2 Variations to market retail contracts – Clause 46A(1)

Clause 46A of the ERC v11 states how market retail contracts may be varied.

Submission

Lumo submitted that the words *"in writing"* should be removed from subclause 46A(1), so as not to limit the method of agreement between the customer and the retailer. Specifically, Lumo stated that requiring the agreement in writing may impact parts of the community, such as visually impaired individuals.[114]

Discussion

As discussed above at section 14.1 of this Paper, the Commission introduced clause 46A(1) to the ERC v11 (which has the same effect as clause 20 of the ERC v10a) as it is a Victorian derogation.

[114] Lumo second round submission, pp. 3-4.

The Commission does not consider it appropriate to remove the words *"in writing"* from subclause 46A(1), and does not agree with Lumo's submission that using the language would impact certain customers. The Commission notes that *"in writing"* includes electronic writing, which could be utilised by visually impaired individuals. Additionally, the ERC v10a requires agreement '*in writing*', and to the Commission's knowledge, the writing requirement is not unduly impacting any particular sub-set of customers.

To reflect the changes incorporated in the ERC v10a, which were introduced by the *'Changes to regulatory instruments relating to flexible pricing of electricity – Final Decision*, August 2013', the Commission will amend subclause 46A(2) to state:

> (2) If the structure or nature of the tariff changes in accordance with a term or condition of an *energy contract* previously agreed between the *customer* and the *retailer* or in accordance with the Advanced Metering Infrastructure (AMI Tariffs) Order 2013, no further agreement is required, between the *retailer* and the *customer* to effect such tariff change, provided that, where the contract is a *market retail contract*, the customer had given its *explicit informed consent* to the inclusion of the relevant term or condition in the *energy contract*.

FINAL DECISION

The Commission will amend subclause 46A(2) to add the language *"or in accordance with the Advanced Metering Infrastructure (AMI Tariffs) Order 2013"* as a result of the introduction of flexible pricing.

14.3 Termination of market retail contract – Clause 49

Clause 49 of the ERC v11 sets out situations where a market retail contract terminates.

Draft Decision

Clause 49 was substantially drafted in accordance with the NERR, aside from the removal of subclause 49(b) which referred to prepayment meters. No specific Victorian derogation was indicated for this provision. The Commission considered the drafting to be appropriate and was not persuaded that there was a reason to deviate from the national provision.

Submissions

The Consumer Groups restated their earlier position that clause 24.5 of the ERC v10 should be retained to ensure that there would be clear guidance to customers and retailers in relation to the rights and obligations around the termination of a contract.[115]

Origin supported the Commission's proposed decision to not amend clause 49.[116]

Discussion

To reflect the changes incorporated in the ERC v10a, which were introduced by the *'Changes to regulatory instruments relating to flexible pricing of electricity – Final Decision*, August 2013', the Commission will amend 49(2) to state:

> (2) A term or condition of a *market retail contract* has no effect to the extent that it requires a *customer* to give more than 20 business days notice to terminate the contract, and to the extent that it requires the customer to give notice of a termination that is necessary for, or a direct consequence of, the customer exercising the customer's right to opt-out of a flexible AMI retail tariff in accordance with clause 8 of the Advanced Metering Infrastructure (AMI Tariffs) Order in Council 2013.

No new issues have been raised in submissions in response to our draft decision. The Commission will not amend clause 49, except to capture the changes due to the introduction of flexible pricing described above.

FINAL DECISION

The Commission will amend subclause 49(2) to add the language *",and to the extent that it requires the customer to give notice of a termination that is necessary for, or a direct consequence of, the customer exercising the customer's right to opt-out of a flexible AMI retail tariff in accordance with clause 8 of the Advanced Metering Infrastructure (AMI Tariffs) Order in Council 2013"* as a result of the introduction of flexible pricing.

14.4 Early termination charges and agreed damages terms – Clause 49A

Clause 49A of the ERC v11 describes when an early termination charge or agreed damages term will be honoured in a fixed term retail contract.

[115] Consumer Groups second round submission, p. 35.
[116] Origin second round submission, p. 8.

Draft Decision

Calculation of agreed damages term

The Commission drafted clause 49A of the draft ERC v11 to reflect the wording adopted in clause 31 of ERC v10. The ERC v10 did not provide a method for determining an agreed damages term beyond the requirement that it *"must be a fair and reasonable pre-estimate of the damage*". Accordingly, as the draft ERC v11 was consistent with the existing Victorian provisions, the Commission did not consider it necessary to amend subclauses 49A(3)-(6A) to include references to agreed damages terms.

Retailer of Last Resort Event

The Commission amended the draft ERC v11 to include a new clause 70B to incorporate subclause 24.6(a) of the ERC v10. Clause 70B stated:

> *"Where a retailer and a customer have entered into an energy contract, other than a dual fuel contract, and a last resort event occurs in relation to the retailer, that energy contract will automatically terminate and the customer will not be liable for any termination fee or other penalty."*

The termination of retail contracts on the occurrence of a RoLR event is dealt with in section 141 of the NERL. Therefore, the omission of subclause 24.6(a) of ERC v10 had left a gap in the draft ERC v11 compared to the NECF.

Definition of '*agreed damages clause*'

Clause 49A of the draft ERC v11 was drafted to include references to an agreed damages term in order to incorporate clause 31 of the ERC v10, which was not otherwise provided for in the NERR. The approach by the Commission was that in light of the overlap between clause 31 of the ERC v10 and the existing rule 49A of the NERR, these two provisions should be combined in the ERC v11.

A definition of *'agreed damages term'* was provided for in ERC v10 and the Commission considered that the definition of *'agreed damages term'* outlined in the ERC v10 should be included in the draft ERC v11 to provide clarity.

Drafting error

The Commission acknowledged that there was a drafting error in subclause 49A(6A), which was amended to refer to *"an early termination charge"* rather than *"an early termination change*".

Discussion

As the Commission received no further submissions from stakeholders on this issue, the Commission will be amending clause 49A in accordance with our draft decision, and as described below.

To reflect the changes incorporated in the ERC v10a, which were introduced by the *'Changes to regulatory instruments relating to flexible pricing of electricity – Final Decision*, August 2013', the Commission will amend subclause 49A(6A)(ii) to state:

> (ii) unless the early termination was a direct consequence of the *customer* exercising the *customer's* right to opt-out of a flexible AMI retail tariff in accordance with clause 8 of the Advanced Metering Infrastructure (AMI Tariffs) Order in Council 2013, $20:

FINAL DECISION

The Commission will amend subclause 49A(6A) to refer to *"an early termination charge"* rather than *"an early termination change"*.

The Commission will add a new clause 70B which will incorporate subclause 24.6(a) of the ERC v10, which addresses termination in the event of a last resort event.

The Commission will define '*agreed damages term*' as it is defined in the ERC v10a.

The Commission will amend subclause 49A(6A)(ii) to add the language *"unless the early termination was a direct consequence of the customer exercising the customer's right to opt-out of a flexible AMI retail tariff in accordance with clause 8 of the Advanced Metering Infrastructure (AMI Tariffs) Order in Council 2013"*, as a result of the introduction of flexible pricing.

14.5 Small customer complaints and dispute resolution information – Clause 50

Clause 50 of the ERC v11 requires retailers to provide, in the terms and conditions of market retail contracts, information for customer complaints.

Draft Decision

Clause 50 was drafted in accordance with the NERR. The Commission considered the drafting to be appropriate. The Commission noted that clause 50 was intentionally limited to market retail contracts. The equivalent provision for customer complaints in relation to standard retail contracts was set out in the model terms and conditions in clause 19.2 of Schedule 1 of the draft ERC v11.

However, the Commission added a new clause 59A which stated:

> *"A retailer or responsible person must develop, make and publish on its website a set of procedures detailing the retailer's or responsible person's procedures for handling small customer complaints and dispute resolution procedures. The procedures must be regularly reviewed and kept up to date. The procedures must be substantially consistent with the Australian Standard AS ISO 10002-2006 (Customer satisfaction – Guidelines for complaints handling in organizations) as amended and updated from time to time."*

This addition incorporated clause 81 of the NERL, and was inserted to address inconsistencies between the Electricity Metering Code, the NERL, and the draft ERC v11.

Submissions

Origin supported the Commission's proposed decision to not amend clause 50.[117]

The Consumer Groups restated their earlier position that this was another example of where access to information for customers was limited by only requiring it to be provided on the internet.[118]

Discussion

No new issues have been raised in response to our draft decision. The Commission will not amend clause 50, but the Commission will introduce a new clause 59A to incorporate clause 81 of the NERL.

FINAL DECISION

The Commission will not amend clause 50. The Commission will add a new clause 59A to the ERC v11 incorporating clause 81 of the NERL, which refers to standard complaints and dispute resolution procedures.

14.6 Liabilities and immunities – Clauses 51 and 52

Clause 51 of the ERC v11 states that a retailer cannot include a term in the contract that limits the liability of the retailer for breach of the contract or negligence.

[117] Origin submission, p. 8.
[118] Consumer Groups submission, p. 36.

Clause 52 of the ERC v11 states that a retailer cannot include a term in the contract which indemnifies the retailer.

Draft Decision

Under the NERR, the application of clauses 51 and 52 were limited to market retail contracts intentionally. In relation to standard retail contracts, retailers were required to adopt the model terms which were consistent with the requirements under clauses 51 and 52, despite not being set out directly.

The Commission noted that under section 29 of the NERL a term or condition of a standard retail contract had no effect to the extent of any inconsistency with the model terms and conditions. The Commission considered it appropriate to include a provision to the same effect as section 29 of the NERL in the draft ERC v11. This had the effect that if a retailer included provisions that were inconsistent with the model terms and conditions in its standard retail contract, the provisions had no effect.

It was not possible to precisely replicate the drafting of section 29 of the NERL. The NERL is a statute, and so can directly invalidate contractual provisions that were inconsistent with the model terms. The draft ERC v11 is a Commission instrument and cannot directly invalidate contractual provisions. However, the same substantive outcome was achieved in the draft ERC v11 by providing that the model terms and conditions in Schedule 1 were terms and conditions decided by the Commission for the purposes of section 36(1) of the EIA and section 43(1) of the GIA. This called into effect the invalidating provisions of those sections of the EIA and GIA.

Accordingly, the Commission inserted a new subclause in clause 12 of the draft ERC v11 which stated:

> *"(3A) Each provision of the model terms and conditions set out in Schedule 1, as varied to incorporate any permitted alterations or required alterations:*
>
> *(a) is a term or condition decided by the Commission for the purpose of section 36(1) of the Electricity Industry Act and section 43(1) of the Gas Industry Act in relation to relevant customers who purchase energy under a standard retail contract; and*
>
> *(b) the terms and conditions of the contract must not be inconsistent with the provision; and*
>
> *(c) the terms and conditions of the contract may supplement or augment the operation of the provision; and*

(d) the terms and conditions of the contract must not diminish the operation of the provision; and

(e) the provision prevails to the extent of any inconsistency with any other term or condition of the contract."

The Consumer Groups also submitted that clause 51 should incorporate the subclauses in clause 16 of the ERC v10 that refer to the Voltage Variations Guideline.[119] The Commission did not find it necessary to include a reference to the Voltage Variations Guideline, as the draft ERC v11 was not intended to be an all-inclusive instrument. The Commission acknowledged in our Draft Decision Paper that the Voltage Variation Guideline was still in force in Victoria.

Submission

The Consumer Groups restated their earlier position that it would provide more protection if the Voltage Variation Guideline was referenced in the ERC v11.[120]

Discussion

No new issues have been raised in response to our draft decision. The Commission will not amend clauses 51 and 52. The Commission will insert a new subclause 12(3A) in the ERC v11, which will have the same effect as section 29 of the NERL.

FINAL DECISION

The Commission will not amend clauses 51 and 52.

The Commission will insert a new subclause into clause 12 of the ERC v11, which will have the same effect as section 29 of the NERL.

[119] Consumer Groups submission, pp. 28-29.
[120] Consumer Groups submission, p. 37.

15 OTHER RETAILER OBLIGATIONS – DIVISION 9

This chapter discusses the submissions received in relation to Part 2, Division 9 – Other retailer obligations.

15.1 Referral to interpreter services – Clause 55

Under clause 55 of the ERC v11, a retailer is required to refer customers to a relevant interpreter service if a referral is necessary or appropriate.

Draft Decision

Clause 55 of the draft ERC v11 was consistent with the NERR, and an equivalent provision was not included in the ERC v10.

The Commission considered that it was clear from the context of clause 55 that the decision to refer a customer to an interpreter service based on their *'reasonable needs'* referred to an assessment of the customer's language needs. In the Commission's view, it would have been difficult to develop a prescriptive definition of *'reasonable needs'*, and the NERR drafting was appropriate.

Submissions

The Consumer Groups restated their earlier position that not defining *'reasonable needs'* resulted in the retailer having discretion and the customer being at a disadvantage as the customer had the burden of demonstrating *'reasonable need'*.[121]

Origin supported the Commission's proposed decision to not amend clause 55.[122]

Discussion

No new issues have been raised in response to our draft decision. The Commission will not amend clause 55.

FINAL DECISION

The Commission will not amend clause 55.

[121] Consumer Groups submission, p. 39.
[122] Origin submission, p. 8.

15.2 Provision of information to customers – Clause 56

Clause 56 of the ERC v11 defines the information a retailer must publish on its website and other information a retailer must provide to a customer.

Draft Decision

Clause 56 was drafted in accordance with the NERR and the Commission was not persuaded that there was a reason to deviate from the national provision. The Commission did not see the necessity of requiring retailers to provide a copy of the ERC to customers, as this was a publicly available document. The Commission also did not see the need for retailers to provide a copy of their charter to customers, as the draft ERC v11 provided adequate obligations on retailers in relation to complaints handling and informing customers of their rights and obligations.

Submissions

The Consumer Groups restated their earlier position that many customers do not have access to the internet, and it was inadequate to direct customers to a retailer's website for information.[123]

Origin supported the Commission's proposed decision to not amend clause 56.[124]

Discussion

No new issues have been raised in response to our draft decision. The Commission will not amend clause 56.

FINAL DECISION

The Commission will not amend clause 56.

[123] Consumer Groups submission, pp. 3-4.
[124] Origin submission, p. 8.

15.3 Retailer obligation in relation to customer transfer – Clause 57

Clause 57 of the ERC v11 sets out the retailer obligations in relation to customer transfers, and permits retailers to complete the transfer prior to the expiration of the cooling off period provided the customer can still withdraw from the contract under clause 47.

Draft Decision

Clause 57 was drafted in accordance with the NERR and no Victorian derogation was indicated for this provision. The Commission considered the drafting to be appropriate and was not persuaded to deviate from the NERR.

Submissions

The Consumer Groups restated their earlier position that allowing retailers to transfer customers within the cooling off period could result in customers being limited in enacting their cooling off rights.[125]

Origin supported the Commission's proposed decision to not amend clause 57.[126]

Discussion

No new issues have been raised in response to our draft decision. The Commission will not amend clause 57.

FINAL DECISION

The Commission will not amend clause 57.

15.4 Notice to small customers where transfer delayed – Clause 59

Clause 59 of the ERC v11 requires a retailer to notify a customer when an expected transfer does not occur.

Draft Decision

The Commission decided it would be useful to include a note after clause 59 that drew attention to the fact that additional requirements in relation to customer transfers were contained in the Electricity Customer Transfer Code.

[125] Consumer Groups submission, p. 4.
[126] Origin submission, p. 8.

Discussion

As the Commission received no further submissions from stakeholders on this issue, the Commission confirms our draft decision.

FINAL DECISION

The Commission will include a note after clause 59 that draws attention to the fact that additional requirements in relation to customer transfers are contained in the Electricity Customer Transfer Code.

16 ENERGY MARKETING – DIVISION 10

This chapter discusses the submissions received in relation to Part 2, Division 10 – Energy marketing.

16.1 Overview of this Subdivision – Clause 61

Clause 61 of the ERC v11 states that this subdivision requires a retail marketer to provide specific information to customers regarding market retail contracts.

Draft Decision

The Commission did not include sections of the Code of Conduct for Marketing that were not covered in the NERR in the draft ERC v11, as we considered that the NECF contains significant protections in relation to marketing which obviate the need for the Code of Conduct for Marketing.

Further, the Commission did not consider that there was a need to specifically state that other Acts and instruments applied to retailers undertaking energy marketing activities, as the draft ERC v11 was not intended to be an exhaustive list of energy regulations. It was clear in the draft ERC v11 that other instruments interacted with it.

Submissions

The Consumer Groups restated their earlier position that the ERC v11 should contain a reference to marketing to minors or authorised customers.[127]

Origin support the Commission's proposed decision to not amend clause 61.[128]

Discussion

No new issues have been raised in response to our draft decision. The Commission will not amend clause 61.

FINAL DECISION

The Commission will not amend clause 61.

[127] Consumer Groups submission, p. 41.
[128] Origin submission, p. 8.

16.2 Requirement for and timing of disclosure to small customers – Clause 62

Clause 62 of the ERC v11 requires retailers to provide required information before the formation of the market retail contract, or as soon as practicable after the contract has been formed.

Draft Decision

The Commission acknowledged that there was a change in the arrangements for timing and disclosure to small customers, particularly the requirements for standard retail contracts. However, clause 62 was drafted in accordance with the NERR and no Victorian derogation was indicated for this provision. The Commission considered the NERR drafting to be appropriate.

Submissions

The Consumer Groups restated their earlier position that if retailers were not required to provide information to customers regarding standard retail offers prior to entering contracts, then customers would not know what rights they did not have under a market retail contract.[129]

Origin supported the Commission's proposed decision to not amend clause 62.[130]

Discussion

No new issues have been raised in response to our draft decision. The Commission will not amend clause 62, except to include a note advising retailers of their obligations to provide Offer Summaries to 'small retail customers' under clause 15C (see discussion above at section 9.3 of this Paper).

FINAL DECISION

The Commission will not amend clause 62.

The Commission will include the following note, "*If the small customer is a 'small retail customer', clause 15C of this Code requires that a retail marketer must provide an offer summary to the small retail customer in writing before the formation of the contract*".

[129] Consumer Groups submission, p. 42.
[130] Origin submission, p. 8.

16.3 Form of disclosure to small customers – Clause 63

Under clause 63 of the ERC v11, retailers can provide the required information electronically, verbally or in writing.

Draft Decision

Clause 63 was drafted in accordance with the NERR and no Victorian derogation was indicated for this provision. The Commission considered the NERR drafting to be appropriate.

Submissions

The Consumer Groups restated their earlier position that standing offers would have to be requested by the customer, who would only know of their existence by using the internet.[131]

Origin supported the Commission's proposed decision to not amend clause 63.[132]

Discussion

No new issues have been raised in response to our draft decision. The Commission will not amend clause 63.

FINAL DECISION

The Commission will not amend clause 63.

16.4 Required information – Clause 64

Clause 64 of the ERC v11 sets out the required information retailers must provide to customers.

Draft Decision

Clause 64 was drafted in accordance with the NERR. In the Commission's opinion, the drafting and current layout of Division 10, Subdivision 2 was appropriate and clear to the reader. Therefore, the Commission did not agree that this provision should be amended.

[131] Consumer Groups submission, p. 42.
[132] Origin submission, p. 8.

Submissions

The Consumer Groups restated their earlier position that information on standing offers was not readily available, and retailers were not required to provide it, which was a diminution of consumer protections.[133]

Origin supported the Commission's proposed decision to not amend clause 64.[134]

Discussion

No new issues have been raised in response to our draft decision. The Commission will not amend clause 64.

FINAL DECISION

The Commission will not to amend clause 64.

16.5 No contact lists – Clause 65

Clause 65 of the ERC v11 requires a retailer to create and maintain a *"no contact list"* and publish a statement on its website with the procedures for being placed on the list.

Draft Decision

Clause 65 was drafted in accordance with the NERR. In the Commission's opinion the NERR drafting was appropriate. The Commission also noted that the ERC v10 did not currently require retailers to inform customers of the "*no contact list*" at the time of marketing.

Submissions

The Consumer Groups submitted that clause 65 did not align with the Code of Conduct for Marketing, as it did not include telephone or email marketing and renewal obligations were placed on the customer.[135]

Origin supported the Commission's proposed decision to not to amend clause 65.[136]

[133] Consumer Groups submission, p. 43.
[134] Origin submission, p. 8.
[135] Consumer Groups submission, pp. 44-45.
[136] Origin submission, p. 8.

Discussion

As discussed above in section 16.1 of this Paper, in the Commission's opinion NECF contains significant protections for customers that preclude the need for maintaining the Code of Conduct for Marketing, and the sections of the Code of Conduct for Marketing that were not covered in the NERR have not been included in the ERC v11. Clause 65 has been drafted in accordance with the NERR, and the Commission has not been convinced that there is a reason to deviate from the national provision on this issue.

The Commission will not amend clause 65.

FINAL DECISION

The Commission will not amend clause 65.

16.6 Record keeping – Clause 68

Clause 68 of the ERC v11 requires a retailer to keep records of all the energy marketing activities it carries out, directly or indirectly, for a period of at least 12 months.

Draft Decision

Clause 68 was drafted in accordance with the NERR and no Victorian derogation was indicated for this provision. It was the Commission's opinion that the NERR drafting was appropriate.

Submissions

The Consumer Groups restated their earlier position that there was a reduction in the amount of information retailers must keep.[137]

Origin supported the Commission's proposed decision to not amend clause 68.[138]

Discussion

No new issues have been raised in response to our draft decision. The Commission will not amend clause 68.

[137] Consumer Groups submission, p. 45.
[138] Origin submission, p. 8.

FINAL DECISION

The Commission will not amend clause 68.

17 TERMINATION – DIVISION 11

This chapter discusses the submission received in relation to Part 2, Division 11 – Miscellaneous.

17.1 Termination of a deemed contract – Clause 70A

Clause 70A of the ERC v11 states that a deemed contract ends at the end of the period covered by the second bill issued to the customer.

Draft Decision

The Commission proposed to amend clause 70A to state *"… a deemed contract under that section comes to an end at the end of the period covered by the second bill issued by the retailer to the customer or if any of the events listed in section 39(7) of the Electricity Industry Act and section 46(7) of the Gas Industry Act occur, whichever occurs first."*

Submission

Origin supported the Commission's proposed decision to amend clause 70A to provide additional clarity.[139]

Discussion

As no new issues have been raised regarding the Commission's proposed decision, our draft decision is confirmed.

FINAL DECISION

The Commission will amend clause 70A to clarify what happens to a deemed contract if the customer continues to take supply after being issued a second bill.

[139] Origin submission, p. 8.

18 CUSTOMER HARDSHIP – PART 3

This chapter discusses the submissions received in relation to Part 3 – Customer Hardship.

18.1 Approval process for hardship policies

Guideline 21, which sets out the Commission's approval process for hardship policies, has been included in the ERC v11.

Draft Decision

As the Commission has a mandatory obligation under the EIA and GIA to review and approve hardship policies of retail licence holders, retailers would have a continuing obligation to obtain approval from the Commission with respect to their hardship policies under the draft ERC v11. This meant that the inclusion of Guideline 21 in the draft ERC v11 was required in order for the Commission to perform its role.

Submissions

Momentum submitted that requiring AER approved hardship policies to be approved by the Commission was another example of the lack of benefit in harmonisation.[140]

AGL submitted that it understood that the Commission had obligations under the EIA and GIA that required the Commission to approve hardship policies, but it stated that the Commission should not unreasonably withhold approval where AER has approved the policies.[141]

Discussion

The Commission will continue to efficiently handle requests from retailers for approval of their hardship policies. The Commission is required, under the EIA and GIA, to form an independent opinion, and will not approve a hardship policy until it is satisfied that the policy meets the requirements set out in the ERC v11.

FINAL DECISION

The Commission will continue to require retailers to obtain the approval of the Commission for their hardship policies.

[140] Momentum submission, p. 3.
[141] AGL submission, p. 2.

18.2 Obligation of retailer to communicate customer hardship policy – Clause 71

Clause 71 of the ERC v11 states the retailer obligations regarding informing customers of its hardship policy.

Draft Decision

The Commission determined that clause 71 of the draft ERC v11 was consistent with the position under Guideline 21, which required a retailer to publish details of the hardship policy on its website in a way that was easy for a customer to access, and no additional amendments were required.

Submissions

Origin supported the Commission's proposed decision to not amend clause 71.[142]

Discussion

As no new issues were raised regarding this issue, the Commission confirms our draft decision.

FINAL DECISION

The Commission will not amend clause 71.

18.3 Minimum requirements for customer hardship policy – Clause 71A

Clause 71A of the ERC v11 sets out the minimum requirements for a hardship policy, including the matters set out in the relevant sections of the EIA and GIA.

Draft Decision

The Commission noted our drafting omission in not incorporating the entirety of clauses 2.1 - 2.4 of Guideline 21 in the draft ERC v11. Given this omission, the Commission proposed to incorporate all the provisions of clause 2.2 of Guideline 21 into the draft ERC v11 and not include any of the provisions of the NERL. This approach ensured that the Commission met its obligations under the EIA and GIA and created less confusion for customers and industry, by not combining some aspects of the NERL with some aspects of Guideline 21.

[142] Origin submission, p. 8.

Accordingly, the Commission proposed to remove clause 71A of the draft ERC v11 and incorporate the provisions set out in clause 2.2 of Guideline 21 into a new clause 71B.

Discussion

As the Commission received no further submissions from stakeholders on this issue, the Commission confirms our draft decision. However the Commission will adopt the NECF terminology of '*hardship customer*' and, where appropriate, it will replace the words '*residential customers in financial hardship*' (Guideline 21 drafting) with this term.

FINAL DECISION

The Commission will remove clause 71A of the ERC v11.

The Commission will insert a new 71B which incorporates the provisions of clause 2.2 of Guideline 21. The Commission will replace the words '*residential customers in financial hardship*' with the term '*hardship customer*', for consistency with NERR terminology.

18.4 Approval and variation of customer hardship policy – Clause 71B

Clause 71B of the ERC v11 sets out when the Commission must approve a hardship policy.

Draft Decision

For the reasons stated above in section 18.3, the Commission considered that the provisions of clauses 2.1 and 2.4 of Guideline 21, which related to the approval and variation of a financial hardship policy, should have been incorporated into the draft ERC v11 instead of the provisions in the NERL.

Accordingly, the Commission removed clause 71B of the draft ERC v11 and incorporated the provisions set out in clause 2.1 of Guideline 21 into a new clause 71A, and the provisions set out in clause 2.4 of Guideline 21 into a new clause 71C.

Discussion

As the Commission received no further submissions from stakeholders on this issue, the Commission confirms our draft decision.

The Commission will also amend clauses 71A, 71B and 71C to refer to revised sections of the EIA and GIA to reflect the changes made to Guideline 21.

FINAL DECISION

The Commission will remove clause 71B of the ERC v11.

The Commission will insert a new clause 71A which incorporates the provisions set out in clause 2.1 of Guideline 21.

The Commission will insert a new clause 71C which incorporates the provisions of clause 2.4 of Guideline 21.

The Commission will also amend clauses 71A, 71B and 71C to refer to revised sections of the EIA and GIA to reflect the changes made to Guideline 21.

18.5 Payment plans – Clause 72

Clause 72 of the ERC v11 sets out the requirements of when a retailer is obligated to offer a customer a payment plan.

Draft Decision

The Commission proposed to amend the definition of '*business customer'* in clause 3 to a *"small customer who is not a residential customer".* This amendment would provide clear guidance that the payment plan and security deposit provisions only applied to small business customers.

The Commission acknowledged that not all customers on a payment plan were in hardship, but considered it appropriate to keep the payment plans clause under Part 3 Customer hardship, as this was consistent with the NERR drafting.

As discussed above at section 11.14 of this Paper, the Commission deleted subclause 72(1A) from the draft ERC v11 and subclause 33(1) was amended to include the additional text in subclause 72(1A)(b). The Commission also renumbered subclause 72(2A) to 72(3) to address a drafting error.

Lastly, the Commission proposed to introduce a note at the end of clause 72 which stated that the clause must be read in light of subclause 33(4) of the ERC v11, which is discussed above at section 7.11 of this Paper.

Submissions

Origin supported the Commission's proposed decision to amend the definition of a *'business customer'* to clarify that it only applied to small business customers.[143]

The Consumer Groups supported the Commission's proposed decision to add a note at the end of clause 72,[144] but they restated their earlier position that the payment plans section should not be included under Section 3 – Hardship.[145]

Discussion

No new issues have been raised in response to our draft decision. The Commission confirms our draft decision.

FINAL DECISION

The Commission will amend the definition of *'business customer'* in clause 3 to *"a small customer who is not a residential customer"* and replace the reference to instalment plan with payment plan, and introduce a note at the end of clause 72 stating that the clause must be read in light of subclause 33(4).

The Commission will delete clause 72(1A) and renumber subclause 72(2A) to 72(3).

18.6 Debt recovery – Clause 72A

Clause 72A of the ERC v11 sets out when a retailer cannot commence debt recovery proceedings.

Draft Decision

The Commission noted that the drafting of clause 72A was not intended to completely mirror clauses 11.2 or 11.4 of the ERC v10. Rather, it was intended to incorporate some of its requirements and those outlined in section 51 of the NERL. The Commission considered the drafting of clause 72A appropriate and did not consider that there was a convincing reason to amend the clause.

The Commission proposed to amend subclause 72(b)(ii) to address a drafting error – the correct reference should be *"the Electricity Industry Act"*.

[143] Origin submission, p. 9.
[144] Consumer Groups submission, p. 2.
[145] Consumer Groups submission, p. 52.

Submissions

The Consumer Groups restated their earlier position that there was no provision limiting when the retailer could commence debt recovery proceedings.[146]

Origin supported the Commission's proposed decision to only make minor drafting corrections to clause 72A.[147]

Discussion

No new issues have been raised in response to our draft decision. The Commission will not amend clause 72A, except to address the drafting error regarding the reference to the EIA.

FINAL DECISION

The Commission will amend clause 72A to refer to *'the Electricity Industry Act'* instead of *'this Electricity Industry Act'*.

18.7 Payment by Centrepay (SRC and MRC) – Clause 74

Clause 74 of the ERC v11 requires retailers to allow a hardship customer on a standard retail contract to use Centrepay as a payment option.

Draft Decision

Clause 74 was drafted in accordance with the NERR and no Victorian derogation was indicated for this provision. The Commission also noted that the ERC v10 did not require retailers to accept payment by Centrepay for non-hardship customers.

Submission

Origin supported the Commission's proposed decision not to amend clause 74.[148]

Discussion

As no new issues were raised by stakeholders on this issue, the Commission will not amend clause 74.

[146] Consumer Groups submission, p. 53.
[147] Origin submission, p. 9.
[148] Origin submission, p. 9.

FINAL DECISION

The Commission will not amend clause 74.

18.8 Supply capacity control product – Clause 76A

Clause 76A of the ERC v11 states the timeframe for when a retailer may not offer a supply capacity control product to a customer.

Draft Decision

The Commission proposed to amend clause 76A to state that the prohibition on retailers offering a supply capacity control product to a customer was extended to a date to be determined by the Minister, as opposed to 1 January 2014.

Discussion

The Commission has decided to continue the prohibition on offering supply capacity control products to customers for any credit management purpose until Victoria transitions to the NECF or a more detailed review is undertaken. Clause 76A will be amended to state:

> *"A retailer must not offer a supply capacity control product to a customer for any credit management purpose ~~before a date to be determined by the Minister for Energy and Resources~~."*.

FINAL DECISION

The Commission will amend clause 76A to continue the prohibition on retailers offering supply capacity control products to customers for credit management purposes until Victoria transitions to the NECF or a more detailed review is undertaken.

19 DE-ENERGISATION (OR DISCONNECTION) OF PREMISES, SMALL CUSTOMERS – PART 6

This chapter discusses the submissions received in relation to Part 6 – De-energisation (or disconnection) of premises – small customers.

Please note that in its discussion in this section, the Commission has adopted the NECF terminology for consistency even when discussing the provisions under the ERC v10a. The terms used in NECF include de-energisation (compared to disconnection under the ERC v10a) and re-energisation (compared to reconnection under the ERC v10a).

19.1 Definitions – Clause 108

Clause 108 of the ERC v11 provides definitions for terms used in the de-energisation section.

Draft Decision

The Commission was informed that the inclusion of the optional extreme weather event provision under the NECF was not current DSDBI policy. The Commission proposed to remove the definition for extreme weather event from clause 108 and the reference to extreme weather event in subclause 116(1)(h).

The Commission considered it appropriate to adopt the NECF terminology of de-energisation and re-energisation in the draft ERC v11 for consistency.

Submissions

AGL[149] and Origin[150] supported the Commission's proposed decision to remove the references to *'extreme weather event'* in the draft ERC v11.

Discussion

No new issues have been raised in response to our draft decision.

The Commission will delete the definition of *'extreme weather event'* from clause 108 and the reference to *'extreme weather event'* under subclause 116(1)(h).

[149] AGL submission, p. 2.
[150] Origin submission, p. 9.

FINAL DECISION

The Commission will delete the definition of *'extreme weather event'* from clause 108 and the reference to *'extreme weather event'* under subclause 116(1)(h).

19.2 De-energisation for not paying bill – Clause 111

Clause 111 of the ERC v11 states the circumstances in which a retailer may arrange for de-energisation of a customer's premises for unpaid bills.

Draft Decision

As far as possible, and in accordance with the Commission's stated approach, clause 111 adopted the NERR drafting. There was no Victorian derogation for clause 111.

The Commission considered that there was potential for confusion in relation to the interpretation of the direction provided in subclauses 111(1)(e)(ii) and (iii) (that provided that a customer was taken to have been contacted when the customer acknowledged receipt of a message) and the requirement in subclauses 111(1)(e) and 111(3)(c) (that a retailer must use its *"best endeavours to contact the customer"*). In the Commission's opinion, this could have led to practical difficulties for retailers in satisfying the requirements of subclauses 111(1)(e) and 111(3)(c).

To avoid any confusion arising, the Commission amended subclauses 111(1)(e)(ii) and (iii) and 111(3)(c)(ii) and (iii) to remove the text in brackets. The Commission also included a note at the end of subclause 111(3) to highlight that guidance was provided regarding '*best endeavours'* and other issues associated with the de-energisation of a customer's premises in the Commission's Operating Procedure Compensation for Wrongful Disconnection.

The Commission also included a further note at the end of subclause 111(3) to clarify that "other electronic means" (referred to in subclause 111(3)(c)(iii)) included email.

The Commission acknowledged the drafting error in subclause 111(2)(a) which included the time limit from subclause 13.2(a)(iii) of the ERC v10 of five business days for a customer to accept a retailer's offer for a payment plan. The NERR did not provide a time limit of five business days for the customer to agree to a payment plan. Consistent with the Commission's stated approach of adopting the NERR drafting, subclause 111(2)(a) was amended to delete the following words "*within 5 business days of the retailer's offer*". The Commission noted that the NERR position provided greater consumer protection as customers were not limited to only five business days to accept a retailer's offer for a payment plan.

Submissions

The Consumer Groups submitted that additional text, mirroring the text added to clause 33 of the ERC v11, should be included in subclause 111(2) of the ERC v11, which would be amended to state:

> *"Where a customer is a hardship customer or a residential customer who has informed the retailer in writing or by telephone that the customer is experiencing payment difficulties, or the retailer otherwise believes the customer is experiencing repeated difficulties in paying the customers' bill or requires payment assistance, a retailer must not arrange for de-energisation of the customer's premises under subclause (1) . . ."*.[151]

The Consumer Groups also submitted that the Commission did not consider EWOV's and their request in relation to including the additional protections from the ERC v10 regarding payment plans in the draft ERC v11. Specifically, the obligation to offer two payment plans prior to disconnection. The Consumer Groups stated that not including this protection was a diminution of consumer protections.[152]

Origin supported the Commission's proposed amendments to clause 111.[153]

Discussion

The Commission agreed with the Consumer Groups submission that the additional text, mirroring the text added to clause 33 of the ERC v11 should be included in subclause 111(2) of the ERC v11.

The Commission will amend subclause 111(2) of the ERC v11 as follows:

> Where a customer is a hardship customer or a residential customer who has informed the retailer in writing or by telephone that the customer is experiencing payment difficulties, or the retailer otherwise believes the customer is experiencing repeated difficulties in paying the customers' bill or requires payment assistance, a retailer must not arrange for de-energisation of the customer's premises under subclause (1)…

The Commission did consider Consumer Groups and EWOV's previous submissions regarding including additional sections of the ERC v10a into the ERC v11 and the requirement that retailers offer two payment plans prior to de-energising a residential customer. As previously stated by the Commission in its Draft Decision Paper, the Commission disagrees with the need to clarify the requirement to offer two payment

[151] Consumer Groups submission, p. 3.
[152] Consumer Groups submission, p. 56.
[153] Origin submission, p. 9.

plans as the Commission considers that the current drafting of clause 111 clearly outlines that a retailer must have offered two payment plans within the last 12 months to a hardship customer or a residential customer experiencing payment difficulties prior to de-energising the premise.

FINAL DECISION

The Commission will remove the text in brackets from subclauses 111(1)(e)(ii) and (iii).

The Commission will remove the text in the brackets from subclauses 111(3)(c)(ii) and (iii).

The Commission will amend subclause 111(2) to insert the following "*or the retailer otherwise believes the customer is experiencing repeated difficulties in paying the customers' bill or requires payment assistance*".

The Commission will amend subclause 111(2)(a) to remove the words *"within 5 business days of the retailer's offer"*.

The Commission will add a note at the end of subclause 111(3) referring to the further guidance provided in the Operating Procedure Compensation for Wrongful Disconnection publication produced by the Commission, and that "other electronic means" includes email.

19.3 Not paying security deposit or refusal to provide acceptable identification – Clause 112

Clause 112 of the ERC v11 states that a retailer may arrange for de-energisation of a customer's premises if the customer fails to provide acceptable identification or pay a security deposit, provided that the retailer issues the required warning notices.

Draft Decision

The Commission understands that the timeframes that were intended to be preserved in the NERLVA were limited to timeframes with respect to protected periods and not timeframes more broadly. As such, the Commission amended subclause 112(b) to provide for a five business day notice period to ensure consistency with the NECF.

Submission

Origin supported the Commission's proposed decision to amend clause 112(1)(b).[154]

[154] Origin submission p. 9.

Discussion

No new issues have been raised in response to our draft decision. The Commission will amend clause 112 to provide a five business day notice period.

FINAL DECISION

The Commission will amend subclause 112(1)(b) to state that a five business day notice period applies, as opposed to 10 business days.

19.4 Denying access to meter – Clause 113

Clause 113 of the ERC v11 allows a retailer to arrange for de-energisation of a customer's premises if the customer does not allow access to its premises for three consecutive scheduled meter readings and the retailer has met certain requirements.

Draft Decision

As previously advised, it was the Commission's approach to adopt the NERR drafting unless it was inconsistent with Victorian legislation or policy. As this provision was not inconsistent, it was not amended.

Submissions

Origin supported the Commission's proposed decision to not amend clause 113.[155]

SP AusNet queried whether it was an oversight by the Commission to not remove the requirement for customer acknowledgment of receipt of a message, as it did in clause 111(e).[156]

Discussion

The Commission acknowledges that it was a drafting error to not remove the information in brackets in subclauses 113(1)(c)(ii) and (iii) in line with the amendments we made to clause 111 and insert a note at the end of subclause 113. Please refer to our discussion above at section 19.2 for our reasoning for these amendments.

[155] Origin submission, p. 9.
[156] SP AusNet submission, p. 5.

FINAL DECISION

The Commission will remove the text in brackets from subclauses 113(1)(c)(ii) and (iii).

The Commission will add a note at the end of clause 113 referring to the further guidance provided in the Operating Procedure Compensation for Wrongful Disconnection publication produced by the Commission.

19.5 Illegally using energy – Clause 114

Clause 114 of the ERC v11, permits retailers to take immediate action to de-energise a customer's premises if there has been fraudulent acquisition of energy at the premises or intentional consumption of energy in violation of energy laws.

Draft Decision

Clause 114 was drafted in accordance with the NERR. The Commission was not persuaded that it was necessary for retailers to be prohibited from de-energising for illegal use during an open EWOV investigation. The Commission did not find a valid reason to deviate from the NERR drafting as there were still protections in place for a customer who had been de-energised for using energy illegally or fraudulently. These included the customer being able to complain to EWOV to have the matter investigated. If it transpired that the customer was wrongfully disconnected by a retailer, the wrongful disconnection scheme could apply and the retailer may have to compensate the customer for de-energising their premises.

Submission

Origin supported the Commission's proposed decision to not amend clause 114.[157]

Discussion

No new issues have been raised in response to our draft decision. The Commission will not amend clause 114.

FINAL DECISION

The Commission will not amend clause 114.

[157] Origin submission, p. 9.

19.6 Non-notification by move-in or carry-over customers – Clause 115

Clause 115 of the ERC v11 states that the financially responsible retailer for a move-in customer's or carry-over customer's premises can arrange for the de-energisation of the premises, if the customer refuses or fails to enter into a customer retail contract as soon as practicable.

Draft Decision

The Commission acknowledged that there was a change in the timeframe for de-energisation from 12 business days to 11 business days for customers on deemed contracts. However, consistent with the Commission's stated approach, clause 115 was drafted in accordance with the NERR. The Commission considered that the NERR drafting and timeframe was appropriate, and was not persuaded that there was a reason to deviate from the national provision.

Submission

Origin supported the Commission's proposed decision to not amend clause 115.[158]

Discussion

No new issues have been raised in response to our draft decision. The Commission will not amend clause 115.

FINAL DECISION

The Commission will not amend clause 115.

19.7 When retailer must not arrange de-energisation – Clause 116

Clause 116 of the ERC v11 prohibits retailers from arranging for de-energisation in certain circumstances.

Draft Decision

The Commission understood that the current $120 threshold was intended to be retained when Victoria transitioned to NECF. Therefore, the Commission did not amend this clause to align with the NECF threshold.

[158] Origin submission, p. 9.

As advised above at section 19.1 of this Paper, the Commission decided not to include extreme weather event requirements in the draft ERC v11. As such, the Commission amended clause 116 to remove the reference to extreme weather events in subclause 116(h).

Submission

Origin supported the Commission's proposed decision to remove the references to extreme weather events in the draft ERC v11.[159]

Discussion

No new issues have been raised in response to our draft decision. The Commission will remove the reference to extreme weather events from the ERC v11.

FINAL DECISION

The Commission will amend clause 116 to remove reference to extreme weather events.

19.8 Timing of de-energisation where dual fuel contract – Clause 117

Clause 117 of the ERC v11 defines the de-energisation timing for dual fuel contracts.

Draft Decision

The Commission understood that a separate regime for dual fuel contracts was not intended to be maintained when Victoria transitioned to NECF, other than in relation to this provision. Therefore, other than in this clause, the draft ERC v11 did not distinguish between dual fuel customers and other customers.

The Commission noted that we had inadvertently increased the timeframe for when a retailer could arrange for de-energisation of a customer's gas supply for customers on dual fuel contracts. The Commission amended subclause 117(4) of the draft ERC v11 to provide that the retailer could de-energise a customer's electricity supply no earlier than 22 days after the date of de-energisation of the gas supply, whereas the NERR requirement was 15 days. The ERC v10 provided that the retailer could de-energise a customer's electricity supply no earlier than 22 days from the receipt of the disconnection warning rather than from the de-energisation of the gas supply.

[159] Origin submission, p. 10.

As the timing between the disconnection warning notice and the de-energisation of the gas supply was seven days, the period of time between the de-energisation of the gas supply and the de-energisation of the electricity supply should only be 15 days in order make up the equivalent 22 day period under the ERC v10. Accordingly, the Commission amended the drafting of subclause 117(4) to refer to 15 days instead of 22 days.

Submission

The Consumer Groups restated their earlier position that the Commission's proposed decision to not maintain a separate regime for dual fuel customers failed to recognise the number of dual fuel customers in Victoria.[160]

Discussion

No new issues have been raised to our draft decision. The Commission will amend subclause 117(4) to refer to 15 days.

FINAL DECISION

The Commission will amend subclause 117(4) to refer to 15 business days, instead of 22 business days.

19.9 Request for de-energisation – Clause 118

Clause 118 of the ERC v11 states the obligations on a retailer when a customer requests de-energisation.

Submission

SP AusNet submitted that the wording for retailer obligations needed to reflect the practical operational process, and with respect to clause 118, the wording from clause 15.2 of the model terms and condition better reflected a retailer's obligation by stating that a retailer must pass on the customer's request to the distributor within one hour of the request. SP AusNet also noted that the retailer would most likely not be in a position to know whether the distributor had the capability to carry out remote disconnection, and if maximum utilisation of the remote read capability was the objective, then retailers should be required to proceed with all disconnection requests as if it could be done remotely.[161]

[160] Consumer Groups submission, p. 57.
[161] SP AusNet submission, p. 5.

Discussion

Clause 118(d) replicates clause 13.5(b) of the ERC v10a. As such, the concern raised by SP AusNet is one that exists under the ERC v10a, and is not a new issue that arises from the drafting of the ERC v11.

The scope of this consultation does not extend to a general review of the NERR or the ERC v10a, and the Commission does not propose to change existing regulatory positions or existing drafting unless it is clearly necessary to address an error in or unintended consequence of the Code.

In this case, while the drafting of clause 118(d) may not precisely reflect the detailed industry processes described by SP AusNet, the drafting of the clause is not inconsistent with these processes. In particular, the clause envisages that the retailer will *'arrange for'* de-energisation of the customer's premises rather than do so directly.

This recognises that there will be business processes required between retailers and distributors. Further, the obligations imposed on the retailer are *'best endeavours'* obligations rather than absolute obligations, which also recognise that the retailer will rely to some extent on distributors in arranging de-energisation.

SP AusNet submitted a further issue with clause 118(d) in relation to a retailer knowing whether the distributor has the capability to carry out a remote disconnection. SP AusNet suggested clause 118(d) be amended to reflect this. Again, the concern raised by SP AusNet is one that exists under the ERC v10a, and is not a new issue that arises from the terms of the ERC v11. SP AusNet's suggestion that retailers should be obliged to proceed with all disconnection requests as if they can be done remotely would constitute a material regulatory change and is outside the scope of this consultation.

The Commission adopts our draft decision and will not amend clause 118. Except to replicate the NERR by using the word ‘premises’ instead of ‘supply address’, and to correct a drafting error in transposing subclause 13.5(b) of the ERC v10a into the ERC v11, as subclause 13.5(c) of the ERC v10a provides that subclause 13.5(b) does not apply to a request for de-energisation at as scheduled time.

FINAL DECISION

The Commission will not amend subclause 118(1)(d) other than to use terminology consistent with the NERR and to correct errors in transposing subclause 13.5(b) of ERC v10a into the new subclause 118(1)(d) of ERC v11 as follows: "*where a customer can be ~~remotely~~ disconnected by de-energising the customer's premises remotely and the retailer believes it can do so safely, the retailer must arrange for de-energisation of the customer's ~~supply address~~ premises within two hours of the customer's request., unless the customer has requested de-energisation at a scheduled time*."

19.10 Time for re-energisation – Clause 122A

Clause 122A of the ERC v11 states the timeframes for re-energisation after a customer's request.

Draft Decision

The Commission determined that there was a drafting inconsistency in clause 122A. The drafting of subclauses 122A(1)(a) and (b) of the draft ERC v11 was adopted from clause 15.2 of ERC v10. The requirement under the ERC v10 was for the retailer to reconnect the customer. In contrast, the requirement under the NERR was for the retailer to arrange for the distributor to re-energise the premises.

Upon review, the Commission considered that for consistency with the NERR, clause 122A should be amended to state that "*the retailer must arrange for re-energisation of the customer's premises"*.

Submission

Origin supported the Commission's decision to amend clause 122A to reflect the business-to-business processes that were in place.[162]

SP AusNet submitted that clause 122A(1)(b) did not reflect the operational process. Specifically, SP AusNet stated that the distributor obligation to complete the re-energisation manually on the same day was based on the request being received before 3pm, and a request received by the retailer immediately before 3pm might not be actioned by the distributor on the same day due to delays caused by retailer handling and the business-to-business process. SP AusNet submitted that consideration needed to be given to aligning the wording of the draft ERC v11 to ensure the retailer's obligation were consistent with the practical operation process.[163]

[162] Origin submission, p. 9.
[163] SP AusNet submission, p. 5.

SP AusNet also submitted that clause 122A(1)(c) did not reflect the operational process, as the distributor's processes for handling remote re-energisation requests would not generally be handled after 9pm and before early the next morning. SP AusNet stated that the wording of clause 122A needed to align with the practical operational process.[164]

SP AusNet queried whether there was a difference in intent between the wording in 122A(1)(c), which stated that *"the retailer must pass on the request to the relevant distributor within one hour after the conclusion of the interaction during which the customer made the request"*, and the wording of clause 118(1)(d), which stated that *"the retailer must arrange for de-energisation of the customer's supply address within two hours of the customer's request"*.[165]

Discussion

Clause 122A replicates clause 15.2 of the ERC v10a. Clause 15.2 provides specific timeframes within which a retailer must reconnect the customer. As such, the concern raised by SP AusNet is one that exists under the ERC v10a, and is not a new issue that arises from the drafting of the ERC v11.

With respect to SP AusNet's last point regarding the wording in clause 122A(1)(c)(ii) and clause 118(1)(d), our interpretation of the clause is that it governs the time within which a retailer must pass on to the distributor a customer's request for reconnection where the retailer is able to reconnect the customer remotely. By contrast, clause 118(1)(d), and clause 122A(1)(c)(i), deal with the timeframe within which the retailer must *arrange* for the disconnection or reconnection to occur, where the retailer is able to disconnect or reconnect the customer remotely. Reading the provisions together, a retailer who is able to reconnect the customer remotely would need to pass on the customer's request to a distributor within 1 hour and use its best endeavours to arrange for reconnection to occur within 2 hours.

As such, the Commission does not consider the different timeframes to be inconsistent, as they apply to different obligations of the retailer. This view also seems to be consistent with the previous wording in clause 15.2 of ERC v10a, which required the retailer to use best endeavours to *'reconnect'* the customer within 2 hours of a request by a smart meter customer.

The Commission confirms our draft decision to amend clause 122A to state:

> *"the retailer must arrange for re-energisation of the customer's premises"*
> instead of *"the retailer must re-energise the customer's premises"*.

[164] SP AusNet submission, p. 6.
[165] SP AusNet submission, p. 6.

FINAL DECISION

The Commission will amend clause 122A to state: *"the retailer must arrange for re-energisation of the customer's premises"* instead of *"the retailer must re-energise the customer's premises"*.

20 LIFE SUPPORT EQUIPMENT

This chapter discusses the submissions received in relation to Part 7 – Life support equipment.

20.1 Retailer obligations – Clause 124

Clause 124 of the ERC v11 sets out a retailer's obligations when it is informed that a person residing at the customer's premises requires life support equipment.

Draft Decision

Clause 124 was drafted in accordance with the NERR and no Victorian derogation was indicated for this provision. The Commission considered the NERR drafting to be appropriate and was not persuaded that there was a reason to deviate from the national provision.

Submissions

Origin supported the Commission's proposed decision to not amend clause 124.[166]

SP AusNet submitted that clause 124(1)(b) should be re-drafted to reflect the language of the B2B Procedure Customer and Site Details clause 2.2.4.2, which requires a retailer must immediately inform the distributor by telephone when it becomes aware of a life support situation. SP AusNet also submitted that clause 124(2) should reflect 3.2.3(b) of the B2B Procedure Customer and Site Details, which requires a retailer to inform the distributor within one business day of the notification of a change in relevant customer data.[167]

Discussion

Clause 124 adopts NERR drafting and is not an issue that arises from the drafting of the ERC v11. As the goal is harmonisation, the Commission does not consider it appropriate to make amendments to the NERR drafting. We also note that the B2B Procedures and ERC v11 are independent obligations, and the fact that ERC v11 may impose a less stringent obligation on retailers would not relieve retailers from complying with the more stringent standard in the B2B Procedures. If SP AusNet considers that clause 124 should be amended in order to align with the B2B Procedure Customer and Site Details Notification Process version 2, it has the option to seek an amendment to the NERR.

[166] Origin submission, p. 10.
[167] SP AusNet submission, p. 6.

The Commission confirms our draft decision as our final decision.

FINAL DECISION

The Commission will not amend clause 124.

21 SCHEDULE 1 MODEL TERMS AND CONDITIONS FOR STANDARD RETAIL CONTRACTS

This chapter discusses the submissions received in relation to Schedule 1 – Model terms and conditions for standard retail contracts.

21.1 General comments on the model terms

Draft Decision

The NERR was drafted so that the model terms provided the information that retailers must disclose to customers in a standard retail contract. The NERR prescribed further obligations on retailers beyond those that were set out in the model terms. Under the NERR drafting, the model terms were not intended to be a comprehensive repository of all retailer obligations. Schedule 1 also used language that was simplified so that customers could understand their rights.

Submissions

Momentum submitted that retailers should be able to have the option of adopting the NECF modified model terms for consistent application across jurisdictions (modified to allow for Victoria's derogations), as this would reduce the scope of retailers needing to seek approval requests from the Commission and it would deliver on the promise of consistency and efficiency.[168]

AGL submitted that in its opinion the Commission's proposed decision regarding the model terms would permit a retailer who had already adopted the NECF model terms to use them in Victoria.[169]

Origin supported the Commission's interpretation of the intent of the model terms under the NERR.[170]

The Consumer Groups submitted that they believed the model terms and conditions were inadequate and stated that the model terms needed to articulate key consumer rights and responsibilities since that was the document customers would rely upon. Specifically, the Consumer Groups submitted that the model terms and conditions failed to include: smart meter consumer protections, disconnection provisions, and prohibition of late payment fees.[171]

[168] Momentum submission, p. 3.
[169] AGL submission, p. 3.
[170] Origin submission, p. 10.
[171] Consumer Groups submission, p. 5.

The Consumer Groups also submitted that it was important that customers on a standard retail contract be provided with a copy of the contract, as many customers do not have access to the internet.[172]

Discussion

NECF compliant Model Terms and Conditions

Retailers have raised with the Commission a concern that the ERC v11 will not enable retailers to adopt a form of the model terms and conditions for standard retail contracts that includes reference to jurisdictional derogations - that is, provisions that apply only in individual jurisdictions as a result of derogations from the NECF standard model terms in those jurisdictions. The practical result of this being that retailers would be unable to adopt in Victoria a single set of national NECF compliant model terms, unless the retailer sought and obtained the Commission's approval.

The reason for this is that subclause 12(3) of the ERC v11 provides that:

> *The model terms and conditions set out in Schedule 1, as varied to incorporate any permitted alterations or required alterations, are approved by the Commission for the purpose of section 35(1)(b) of the Electricity Industry Act and to section 42(1)(b) of the Gas Industry Act.*

Accordingly, if there are any variations to the form of the model terms set out in Schedule 1 (other than permitted or required alterations), then the model terms will not be deemed approved by the Commission and a specific approval of the changes will be necessary.

In order to overcome this issue the Commission has decided that the appropriate approach is to amend the ERC v11 to permit variations to the model terms and conditions set out in Schedule 1 that relate only to the operation of the model terms in jurisdictions other than Victoria. From the Commission's perspective, this approach appears reasonable and appropriate, given that the Commission's responsibility is limited to the application of the model terms in Victoria. However, the change will facilitate the adoption by retailers of a standard set of model terms and conditions that apply in all NECF jurisdictions.

This approach will be implemented by amending clause 12(4) of the ERC v11 to read as follows:

> *(4) Permitted alterations are:*

[172] Consumer Groups submission, p. 5.

(a) alterations specifying details relating to identity and contact details of the retailer; and

(b) minor alterations that do not change the substantive effect of the model terms and conditions; and

(c) alterations of a kind specified or referred to in this Code; and

(d) alterations that are expressed to apply only to the operation of the model terms and conditions in jurisdictions other than Victoria.

Our understanding is that AER would allow the model terms and conditions for standard retail contracts to set out in boxes the state-based derogations.

Victorian derogations in the Model Terms and Conditions

In the Draft Decision Paper, the Commission proposed amendments to the Schedule 1 model terms and conditions based on Victorian derogations and also to provide additional clarity. After considering the submissions on this issue, the Commission has determined that there is considerable merit in creating model terms and conditions which can be utilised in various jurisdictions, as this will provide the uniformity and efficiency that is the desired outcome of the harmonisation project.

The Commission has determined that the most appropriate method of creating a version of the model terms and conditions for a standard retail contact that can be used in various jurisdictions is to re-introduce the NERR drafting and include the specific Victorian derogations which are relevant to a particular clause of the model terms and conditions in a box beneath that clause. As stated above, the state specific boxes would be a permitted alteration under the ERC v11.

Specific changes to the Schedule 1 model terms and conditions are discussed in further detail below under the relevant clauses.

21.2 Preamble

The preamble states, among other things, the other laws which are applicable in addition to the contract.

Discussion

The Commission proposed in our Draft Decision Paper to replace the references to the National Energy Retail Law and the National Energy Retail Rules with a reference to the Energy Retail Code. As discussed above in section 21.1, the Commission will re-introduce the NERR drafting, but will add a box beneath the preamble stating:

"For Victorian customers, until the National Energy Retail Law and the National Energy Retail Rules are adopted in Victoria (referred to as 'NECF implementation in Victoria'), the energy laws applicable in Victoria are the Electricity Industry Act 2000, the Gas Industry Act 2001 and the Energy Retail Code made by the Essential Services Commission. For customers in Victoria, prior to NECF implementation in Victoria all references to the National Energy Retail Law and Rules in this contract should be read as references to the Energy Retail Code unless stated otherwise."

FINAL DECISION

The Commission will re-introduce the references to the National Energy Retail Law and the National Energy Retail Rules in the model terms, and add a box clarifying that for Victorian customers the references to the National Energy Retail Law and the National Energy Retail Rules refer to the Energy Retail Code unless stated otherwise.

21.3 Application of these terms and conditions

Clause 3.2 of Schedule 1 sets out what customers are covered under the terms and conditions of the standard retail contract.

Draft Decision

The Commission proposed in our Draft Decision Paper to replace residential customer with small customer in subclause 3.2(a) and delete the reference to business customer in subclause 3.2(b).

Discussion

As discussed above in section 21.1, the Commission will re-introduce the NERR drafting.

FINAL DECISION

The Commission will re-introduce the NERR drafting for clause 3.2.

21.4 When does this contract start – Clause 4.1

Clause 4.2 of Schedule 1 states when the contract will start.

Draft Decision

Clause 4.2 of Schedule 1 was amended by the Commission to refer to the Code rather than the National Energy Retail Law and Rules.

Discussion

As discussed above in section 21.1, the Commission will re-introduce the NERR drafting.

FINAL DECISION

The Commission will re-introduce the NERR drafting for clause 4.1.

21.5 When does this contract end? – Clause 4.2

Clause 4.2 of Schedule 1 states when the contract will end.

Draft Decision

Clause 4.2 was drafted in accordance with the NERR. It was the Commission's opinion that the NERR drafting was appropriate and did not consider that there was a reason to deviate from the national provision, save changing the reference in subclause 4.2(a)(vi) from Rules to Code.

Submission

Origin supported the Commission's proposed decision to not amend clause 4.2 of Schedule 1.[173]

Discussion

No new issues have been raised in response to our draft decision. The Commission will not amend clause 4.2, except to re-introduce the pure NERR drafting (replacing Code with Rules) as discussed above in section 21.1.

FINAL DECISION

The Commission will re-introduce the pure NERR drafting for clause 4.2 by replacing the reference to Code with Rules in subclause 4.2(a)(vi).

[173] Origin submission, p. 10.

21.6 Vacating your premises – Clause 4.3

Clause 4.3 of Schedule 1 requires a customer to provide their forwarding address if they vacate their premises and provide a notice stating their wish to end the contract. The retailer is then obliged to use its best endeavours to arrange for the reading of the meter on the date specified by the customer.

Draft Decision

Clause 4.3 was drafted in accordance with the NERR. The Commission acknowledged that clause 35 of the draft ERC v11 did not reference the customer's obligation to provide a forwarding address, but the focus of the draft ERC v11 was on retailer obligations whereas the terms and conditions contained in Schedule 1 focused on both customer and retailer obligations. As such, in the Commission's opinion, it was not necessary to include the reference to the customer's obligation in clause 35.

Submission

Origin supported the Commission's proposed decision to not amend clause 4.3 of Schedule 1.[174]

Discussion

No new issues have been raised in response to our draft decision. The Commission will not amend clause 4.3.

FINAL DECISION

The Commission will not amend clause 4.3.

21.7 What is not covered by this contract? – Clause 5.2

Clause 5.2 of Schedule 1 outlines what is not covered by the contract.

Discussion

As discussed above in section 21.1, the Commission will insert a box beneath clause 5.2 that states the following:

> *There are no gas customer connection contracts in Victoria.*

[174] Origin submission, p. 10.

FINAL DECISION

The Commission will amend clause 5.2 to insert a box beneath the clause stating:

There are no gas customer connection contracts in Victoria.

21.8 Full information – Clause 6.1

Clause 6.1 of Schedule 1 requires customers to provide the retailer with any information the retailer reasonably requires.

Draft Decision

Clause 6.1 was drafted in accordance with the NERR. In the Commission's opinion, the NERR drafting was appropriate.

Submission

Origin supported the Commission's proposed decision to not amend clause 6.1.[175]

Discussion

No new issues have been raised in response to our draft decision. The Commission will not amend clause 6.1

FINAL DECISION

The Commission will not amend clause 6.1.

21.9 Our Liability – Clause 7

Clause 7 of Schedule 1 states that other than the warranties or undertakings set out in the contract, the retailer gives no other warranties or undertakings regarding the energy provided.

Draft Decision

Clause 7 was drafted in accordance with the NERR, save for subclause 7(c). Subclause 7(c) was omitted as it referred to the limitation of liability contained in the NERL, which was not in effect in Victoria.

[175] Origin submission, p. 10.

In light of the goal of harmonisation and the fact that DSDBI decided that retailers' liability did not require Victorian-specific requirements, the Commission did not find it necessary to include equivalent provisions to clauses 16 and 17 of the ERC v10 in the draft ERC v11 and the model terms.

Submissions

The Consumer Groups requested clarification from the Commission that the omission of clauses 16 and 17 of the ERC v10 in the draft ERC v11 did not mean that retailers were able to limit their liability to their customers or seek an indemnity from their customers.[176]

Origin supported the Commission's proposed decision to not amend clause 7 of Schedule 1.[177]

Discussion

Subclause 7(c) refers to the limitation of liability contained in the NERL. The Commission had omitted subclause 7(c) from operation in Victoria because subclause 7(c) refers to the NERL, which is not operative in Victoria. As such, the ERC v11 model terms and conditions included a footnote at subclause 7(c) which stated that 'subclause 7(c) does not apply to customers in Victoria until the National Energy Retail Law has been adopted in Victoria'.

Omitting subclause 7(c) is not inconsistent with the requirements of clauses 16 and 17 of the ERC v10. However, subclause 7(c) does expressly refer to the retailer's liability not being limited in respect of bad faith conduct or negligence by the retailer, and also refers to when a retailer will not be liable to a customer. There is no requirement in clauses 16 or 17 to inform the customer that the retailer's liability cannot be limited in respect of bad faith or negligence by the retailer. That said, the Commission can see a valid argument for including subclause 7(c) into Schedule 1 of the ERC v11, as it does inform customers of this fact.

As such, the Commission will re-instate clause 7(c) of Schedule 1, which provides that:

> *Unless we have acted in bad faith or negligently, the National Energy Retail Law excludes our liability for any loss or damage you suffer as a result of the total or partial failure to supply energy to your premises, which includes any loss or damage you suffer as a result of the defective supply of energy*

[176] Consumer Groups submission, pp. 5 and 60.
[177] Origin submission, p. 10.

The Commission will also include a box under subclause 7(c) of Schedule 1 linking subclause 7(c) to the Victorian regime. The box will provide that:

> *Prior to NECF implementation in Victoria, the reference to the NERL in clause 7(c) is a reference to, in the case of electricity, s.120 of the National Electricity Law as set out in the Schedule to the National Electricity (South Australia) Act 1996 or, in the case of gas, to s.232 of the Gas Industry Act or s.33 of the Gas Safety Act 1997*.

FINAL DECISION

The Commission will amend clause 7 to re-introduce subclause 7(c) and include a box below clause 7 stating that subclause 7(c) is not applicable in Victoria until the NERL is adopted in Victoria.

21.10 Variation of tariff due to change of use – Clause 8.3

Clause 8.3 of Schedule 1 states that a retailer may transfer the customer to a new tariff under the retailer's standing offer prices on the date the customer notifies the retailer that there has been a change of use or retrospectively from the date the change of use occurred (if the customer does not notify the retailer).

Draft Decision

In the Commission's opinion, the reference to notice in subclause 8.3(a) was likely to be construed as a reference to the notice from the customer which would be inconsistent with the requirement under subclause 38(2) of the draft ERC v11. As such, the Commission considered it appropriate to amend clause 8.3(a) to make its intent clearer as follows:

> "*(a) if you notify us there has been a change of use – from the date ~~of notification~~ we notify you of the new tariff;*"

Notification of variations to tariffs

Subclause 8.3(c) provided that the retailer's obligations under Victorian energy laws to vary standing offers were not affected by clause 8.3. Subclause 8.3(c) was introduced to the draft ERC v11 to clarify that retailers remain bound to their obligations under the EIA and GIA to notify customers of any tariff changes to their standing offers at least by the next bill after the tariff change took effect.

The Commission also noticed a typographical error in subclause 8.3(c) and amended subclause 8.3(c) to change the reference from '*provides*' to '*prices*'.

Submissions

Lumo submitted that introducing amendments into the model terms that did not relate to matters of policy resulted in additional costs without adding value, as retailers would be required to have different model terms for individual jurisdictions which contradict the objective of harmonisation.[178]

Origin submitted that it noted the apparent inconsistency between subclause 38(2) of the draft ERC v11 and clause 8.3 of the model terms and conditions and the Commission's proposed amendment. Origin also stated that there may be technical issues affecting tariff application (for example, the distributor may reassign a customer to a demand tariff if the customer becomes very large) and the capacity of the retailer to generate a bill (since it is likely to know about the change after it takes place) may be impacted.[179]

Discussion

As discussed above at section 21.1, the Commission will remove subclause 8(c), which we had proposed to add to the model terms. This subclause states that the clause does not limit obligations retailers have concerning variations to standing offers which are contained in other energy laws. The Commission notes that retailers continue to be bound by the statutory requirements for variation contained in the EIA and GIA.

The Commission will also remove the language we proposed to add to subclause 8.3(a), which states *"we notify you of the new tariff"*. We note that the Consumer Groups supported additional language being added to subclause 8.3(a) to provide clarity regarding when the new tariff would take effect. However, upon consideration and consistent with our stated approach of harmonisation, the Commission determined that the benefits of creating model terms that are able to be utilised in other jurisdictions exceeds any potential clarity which the proposed language may provide. The Commission notes that retailer obligations remain the same (i.e. the new tariff can only take effect from the date on which the retailer notifies the customer of the new tariff in accordance with clause 38(2) of the ERC v11).

FINAL DECISION

The Commission will amend clause 8.3 to remove subclause 8.3(c) and the language the Commission had proposed to add to subclause 8.3(a), which stated *"we notify you of the new tariff"*.

[178] Lumo second round submission, p. 1.
[179] Origin second round submission, p. 10.

21.11 GST – Clause 8.6

Clause 8.6 of Schedule 1 states that standing offer prices and amounts payable under this contract may be stated to be exclusive or inclusive of GST.

Draft Decision

A key difference between subclause 15B(7)(c) and subclause 8.6(a) of Schedule 1 was that subclause 15B(7)(c) related to information which must be included in a Price and Product Information Statement, while subclause 8.6(a) applied more generally to the specification of amounts and not necessarily to amounts specified in a Price and Product Information Statement.

The Commission considered that the drafting in subclause 8.6(a) was adequate and not inconsistent with subclause 15B(7)(c) of the ERC v11. Clause 8.6 was not intended to reflect subclause 15B(7)(c), and Schedule 1 was not intended to be an exhaustive statement of all the provisions of the draft ERC v11.

The Commission proposed not to amend clause 8.6.

Submission

Origin supported the Commission's proposed decision to not amend clause 8.6 of Schedule 1.[180]

Discussion

No new issues have been raised in response to our draft decision. The Commission will not amend clause 8.6.

FINAL DECISION

The Commission will not amend clause 8.6.

21.12 Estimating the energy usage – Clause 9.3

Clause 9.3 of Schedule 1 sets out when the retailer may estimate the customer's energy usage. It also states the obligations a retailer has to inform the customer of the estimation and how the retailer must handle any overcharging or undercharging resulting from the estimation.

[180] Origin second round submission, p. 11.

Draft Decision

As previously stated above, under the NERR drafting, the model terms were not intended to be a comprehensive repository of all retailers' obligations. For example, subclause 21(2) which set out the basis for a customer's bill (for non-smart meters) was not replicated in the model terms. Similarly, the Commission did not replicate subclause 21(2A) in the model terms.

Explicit informed consent

The Commission proposed to amend subclause 9.3(a) to require that retailers obtain a customer's '*explicit informed consent'*, which would be in line with our proposed amendment to subclause 21(1)(a).

Smart meter

Subclause 21(2A) of the draft ERC v11 related to the retailer's ability, in the case of a smart meter, to prepare a bill using estimated and/or substituted metering data in accordance with applicable energy laws, when the retailer was unable to reasonably base a bill on an actual meter reading collected from the customer's smart meter.

In the Commission's opinion, the omission from clause 9.3 to Schedule 1 of the smart meter specific provision in subclause 21(2A) did not affect a customer's rights. The Commission noted that Schedule 1 was not intended to be an exhaustive statement of all the provisions of the draft ERC v11. The preamble used in Schedule 1 also directed customers to the draft ERC v11 for further details on specific rights and obligations of retailers and customers.

The Commission considered that the language used in clause 9.3 was not inconsistent with clause 21 of the draft ERC v11, as it was not giving the retailer additional rights that it did not have under the draft ERC v11. Further, as the clause was not omitting references to important rights that customers have, the Commission considered that clause 9.3 was adequately drafted.

Submissions

Lumo submitted that introducing amendments into the model terms that did not relate to matters of policy resulted in additional costs without adding value, as retailers would be required to have different model terms for individual jurisdictions which contradict the objective of harmonisation.[181]

[181] Lumo submission, p. 1.

Origin submitted that it did not support the addition of *'explicit informed consent'* to this clause because it is not necessary as metering data can include estimates.[182]

Discussion

As discussed above in section 21.1, the Commission will re-instate the NERR drafting for the model terms and conditions and will include the Victorian-specific derogations in boxes beneath the relevant clauses.

With regard to Origin's submission, this matter has been addressed in relation to clause 21 of the ERC v11. Please refer to section 11.3 of this Paper for our reasoning for the decision that explicit informed consent is necessary.

FINAL DECISION

The Commission will amend clause 9.3 to remove the explicit informed consent requirement from clause 9.3(a) and add a box below the clause stating that:

> *In Victoria, a retailer must obtain a customer's explicit inform consent to base the customer's bill on an estimation, unless the meter cannot be read or the metering data is not obtained.*

21.13 Your historical billing information – Clause 9.4

Clause 9.4 of Schedule 1 states that a retailer must provide a customer with their billing history for the previous 2 years, when requested to do so by the customer, and can only charge the customer if the customer had previously requested similar information in the last 12 months.

Draft Decision

Clause 9.4 was drafted in accordance with the NERR. In the Commission's opinion the drafting was appropriate and it was not persuaded that there was a reason to deviate from the national provision.

Submission

Origin supported the Commission's proposed decision to not amend clause 9.4 of Schedule 1.[183]

[182] Origin submission, p. 11.
[183] Origin submission, p. 11.

Discussion

No new issues have been raised in response to our draft decision. The Commission will not amend clause 9.4.

FINAL DECISION

The Commission will not amend clause 9.4.

21.14 Bill smoothing – Clause 9.5

Clause 9.5 of Schedule 1 states that the retailer can, if the customer agrees, arrange for the customer to pay their bills under a bill smoothing arrangement.

Draft Decision

The Commission noted that under subclause 23(2) retailers were required to obtain a customer's explicit informed consent to bill on the basis of a bill smoothing arrangement. Clause 9.5 to Schedule 1 stated that the retailer could only provide a bill smoothing arrangement where the customer agreed. This was consistent with the customer's rights in subclause 23(2) of the draft ERC v11.

The more restrictive requirement to obtain explicit informed consent contained in clause 23 of the draft ERC v11 was the obligation that applied to retailers. The preamble to the model terms stated that in addition to the contract, the energy laws and other customer laws (for example, the draft ERC v11) set out specific rights and obligations. Therefore, the Commission did not consider there to be an inconsistency.

Submission

Origin supported the Commission's proposed decision to not amend clause 9.5 of Schedule 1.[184]

Discussion

No new issues have been raised regarding our draft decision. The Commission will not amend clause 9.5.

[184] Origin submission, p. 11.

FINAL DECISION

The Commission will not amend clause 9.5.

21.15 Late payment fees – Clause 10.4

Clause 10.4 of Schedule 1 states that a retailer may require a late payment fee if a bill is not paid by the pay-by date.

Draft Decision

In Victoria, section 40C of the EIA and section 48B of the GIA prohibited a retailer from including a term or condition in a customer's retail contract in relation to fees for late payment of bills.

In the Commission's opinion, the requirements outlined in the EIA and GIA and the deletion of clause 10.4 of Schedule 1 of the draft ERC v11 made it very clear that retailers were not entitled to charge late payment fees in Victoria. Also, the model terms set out in Schedule 1 were not intended to contain a comprehensive list of all of the requirements outlined in the draft ERC v11 and other energy laws. Further, the new subclause 12(3A) of the draft ERC v11 provided that the terms and conditions of a standard retail contract could not be inconsistent with the model terms.

Submission

Origin supported the Commission's proposed decision to not amend clause 10.4 of Schedule 1.[185]

Discussion

As discussed above at section 21.1, the Commission will re-introduce clause 10.4 to the model terms, but notes that the clause is a 'required alternation', which means that retailers must delete this clause in states that do not permit late payment fees, such as Victoria. In the Commission's opinion, this will achieve the same practical outcome as deleting clause 10.4, but will provide more consistency with the NERR model terms and conditions.

FINAL DECISION

The Commission will re-introduce the NERR provision for clause 10.4.

[185] Origin submission, p. 11.

21.16 Undercharging – Clause 12.1

Clause 12.1 of Schedule 1 permits a retailer to recover undercharged amounts from the customer.

Draft Decision

Clause 12.1 of Schedule 1 was drafted in accordance with the NERR. The Commission considered the NERR drafting to be appropriate.

Submission

Origin supported the Commission's proposed decision not to amend clause 12.1 of Schedule 1.[186]

Discussion

No new issues have been raised in response to our draft decision. The Commission will not amend clause 12.1.

FINAL DECISION

The Commission will not amend clause 12.1.

21.17 Overcharging – Clause 12.2

Clause 12.2 of Schedule 1 requires retailers to credit the amount overcharged to the customer to the customer's next bill, or within 10 business days for non-customers.

Draft Decision

In the Commission's opinion, there was no inconsistency between this clause and subclause 31(2)(b) of the draft ERC v11, which stated that the overcharged amount was credited to the next bill if there was no reasonable direction from the customer.[187] Subclause 31(2)(a) required a retailer to repay an amount overcharged as reasonably directed by the customer. Subclause 12.2(b) provided that if a retailer overcharged a customer they must credit the amount to the customer's bill unless the customer requested otherwise.

The Commission proposed to not amend clause 12.2.

[186] Origin submission, p. 11.
[187] Consumer Groups submission, p. 48.

Submission

Origin supported the Commission's proposed decision to not amend clause 12.2 of Schedule 1.[188]

Discussion

No new issues have been raised in response to our draft decision. The Commission will not amend clause 12.2.

FINAL DECISION

The Commission will not amend clause 12.2.

21.18 Reviewing your bill – Clause 12.3

Clause 12.3 of Schedule 1 requires a retailer to review the customer's bill and check the meter reading when requested to do so by the customer.

Draft Decision

The Commission proposed to amend subclause 12.3(b) to Schedule 1 of the draft ERC v11 to reflect the amendments made to subclauses 29(5)(b) and (c). The proposed amendment would state that a customer may be liable for the cost of the check or test, but the retailer could not request the payment in advance.

Submission

The Consumer Groups noted a drafting error in the draft decision box of the Draft Decision Paper in that it did not state that retailers could not request payment in advance for a meter check or test.[189]

Discussion

As discussed above at section 21.1, the Commission will re-introduce the NERR drafting for clause 12.3. The proposed amendments articulated in the Draft Decision Paper will be removed from the body of subclause 12.3(b) and incorporated into a box beneath clause 12.3. The box will state:

[188] Origin submission, p. 11.
[189] Consumer Groups submission, p. 67.

"Customers in Victoria are not required to pay for a meter check or test in advance."

In the Commission's opinion, the Consumer Groups' concern regarding retailers requesting payment in advance is adequately addressed by the box added to subclause 12.3(b).

FINAL DECISION

The Commission will amend clause 12.3 to re-introduce the NERR drafting and the Commission will add a box to subclause 12.3(b) stating that:

Customers in Victoria are not required to pay for meter check or test in advance.

21.19 Security Deposits – Clause 13

Clause 13 of Schedule 1 states that retailers may request a security deposit from a customer, and sets out retailer obligations regarding security deposits.

Draft Decision

The Commission considered the drafting of the clause 13 to be appropriate and was not persuaded that there was any reason to deviate from the NERR drafting, other than replacing the references to '*Rules'* with '*Code*'.

Submission

Origin supported the Commission's proposed decision not to amend clause 13 of Schedule 1.[190]

Discussion

No new issues have been raised in response to our draft decision. The Commission will not amend clause 13, save for re-introducing the pure NERR drafting, as discussed in section 21.1 above, by replacing '*Code'* with '*Rules'*.

FINAL DECISION

The Commission will not amend clause 13, save for re-introducing the pure NERR drafting by replacing '*Code'* with '*Rules'*.

[190] Origin submission, p. 11.

21.20 Disconnection of supply – Clause 14

Clause 14 of Schedule 1 sets out when a retailer may de-energise a premises.

Draft Decision

The Commission proposed to make several amendments to clause 14 as stated below:

- include the refusal to provide acceptable identification as a circumstance which could result in a customer being disconnected in subclause 14(b);
- include the Victorian timeframes for de-energisation in subclause 14.3(a)(i); and
- delete the reference to extreme weather events in subclause 14.3(a)(v).

Submissions

The Consumer Groups submitted that the rights of retailers was emphasised in the model terms and conditions, while customer rights were unstated or overlooked.[191]

Origin supported the Commission's proposed amendments to clause 14 of Schedule 1.[192]

Discussion

The Commission does not agree with the Consumer Groups' submission that the rights of customers have been understated or overlooked. As previously stated, the model terms and conditions are not intended to include all of the retailers' obligations. However, retailers are bound by the requirements stated in the ERC v11 and other Victorian energy laws, even if those requirements are not explicitly stated in the model terms, as reflected in the preamble to the model terms.

As discussed above in section 21.1, the Commission will remove the proposed drafting change to subclause 14.1(b), which stated *"or acceptable identification"*, as it is not a Victorian derogation. The Commission notes that the Consumer Groups and Origin supported the addition of *"or acceptable identification"*. However, the efficiencies that are achievable by creating model terms that are applicable in various jurisdictions outweigh the potential benefit in providing additional clarity to clause 14. Retailers will still be able to de-energise customers who fail to provide acceptable identification under the ERC v11, and customers will be adequately informed and provided with time

[191] Consumer Groups submission, pp. 69-70.
[192] Origin submission, p. 11.

to provide acceptable identification as retailers will have to follow the notification procedures outlined in the ERC v11 prior to de-energisation.

The Commission will re-introduce the NERR drafting for subclause 14.3(a)(i) regarding the protected period, and add a box beneath subclause 14.3(a)(i) stating that:

> *The protected period for a residential customer in Victoria is before 8:00am or after 2:00pm. The protected period for a business customer in Victoria is before 8:00am or after 3:00pm.*

The Commission will also re-introduce the NERR drafting for subclause 14.3(a)(v) regarding extreme weather event, and add a box beneath subclause 14.3(a)(v) stating that:

> *Paragraph (v) does not apply in Victoria*.

Finally, the Commission will re-introduce the NERR drafting for subclause 14.3(b)(iv), and add a box beneath subclause 14.3(b)(iv) stating that:

> *Victorian customers may be disconnected if it is permitted under their connection contract or under the applicable energy laws.*

FINAL DECISION

The Commission will re-introduce the NERR drafting for subclauses 14.3(a)(i), 14.3(a)(v), and 14.3(b)(iv).

The Commission will add a box beneath subclause 14.3(a)(i) stating that:

> *The protected period for a residential customer in Victoria is before 8:00am or after 2:00pm. The protected period for business customers is before 8:00am and after 3:00pm.*

The Commission will add a box beneath subclause 14.3(a)(v) stating that:

> *Paragraph (v) does not apply in Victoria*.

The Commission will add a box beneath subclause 14.3(b)(iv) stating that:

> *Victorian customers may be disconnected if it is permitted under their connection contract or under the applicable energy laws.*

The Commission will remove the proposed language stating *"or acceptable identification"* from subclause 14.1(b).

21.21 Reconnection after disconnection – Clause 15

Clause 15 of Schedule 1 sets out when a retailer must request the customer's distributor to reconnect the premises.

Draft Decision

Clause 15 of Schedule 1 was drafted in accordance with the NERR. However, the Commission proposed to introduce a new clause 15.2, which would provide the timeframes for re-energisation.

Submission

SP AusNet submitted that the wording for clause 15.2 should be better aligned with the practical operational process, as it had submitted in relation to clauses 118 and 122A.[193]

Discussion

As discussed above in section 21.1, the Commission will remove clause 15.2, as the Commission has decided to only include in the model terms and condition Victorian derogations that relate to specific clauses of the model terms. The model terms do not address re-energisation timeframes, as such the Commission will remove clause 15.2.

In the Commission's opinion, the benefits of advising customers of the re-energisation timeframes are outweighed by the benefits of having model terms and conditions that can be used in various jurisdictions.

The Commission notes that retailers are still obliged to re-energise a customer's premises according to the timeframes outlined in clause 122A of the ERC v11.

FINAL DECISION

The Commission will amend Schedule 1 to remove the proposed addition of a new clause 15.2 to include the timeframes for re-energisation, and renumber clause 15.1 to clause 15.

21.22 Wrongful and illegal use of energy – clause 16

Clause 16 sets out what a customer must not do when using energy.

[193] SP AusNet submission, p. 6.

Discussion

As discussed in section 21.1 above, the Commission will amend subclause 16.1(d) to re-instate the NERR drafting by replacing the reference to '*Code'* with '*Rules'*.

FINAL DECISION

The Commission will amend subclause 16.1(d) to re-instate the NERR drafting by replacing the reference to '*Code'* with '*Rules'*.

21.23 Notices and bills – Clause 17

Clause 17 of Schedule 1 states that notices and bills must be sent in writing, unless otherwise stated in the contract or the ERC v11, and sets out when a notice or bill is taken to be received.

Draft Decision

The Commission did not consider it necessary or appropriate for the wording of clause 17 to incorporate the more detailed wording of section 319 of the NERL, and to do so would be inconsistent with the approach adopted in the NECF instruments. However, in order to better align the Victorian instruments with the NECF, the Commission included a provision equivalent to section 319 of the NERL in a new clause 3F of the ERC v11 (please see section 7.12 of this Paper).

Discussion

The Commission received no further submissions from stakeholders on this issue. The Commission will not amend clause 17, save for re-introducing the NERR drafting for subclause 17(a) by replacing the reference to '*Code*' with '*National Energy Retail Law and the Rules*'.

FINAL DECISION

The Commission will amend subclause 17(a) to re-instate the NERR drafting by replacing the reference to 'Code' with 'National Energy Retail Law and the Rules'.

The Commission will amend the ERC v11 to include clause 3F, which is equivalent to section 319 of the NERL.

21.24 Privacy Act notice – Clause 18

Clause 18 of Schedule 1 states that the retailer will comply with all relevant privacy legislation regarding the customer's personal information, and will provide information on its policy on its website.

Draft Decision

Clause 18 has been drafted in accordance with the NERR. The Commission considered the NERR drafting to be appropriate.

Discussion

The Commission received no further submissions from stakeholders on this issue. The Commission will not amend clause 18.

FINAL DECISION

The Commission will not amend clause 18.

21.25 Complaints and dispute resolution – Clause 19

Clause 19 of Schedule 1 sets out how a customer lodges a complaint and the retailer's obligations for handling the complaint.

Draft Decision

Clause 19 was drafted in accordance with the NERR. The Commission considered the NERR drafting to be appropriate.

Discussion

The Commission received no further submissions from stakeholders on this issue. The Commission will not amend clause 19.

FINAL DECISION

The Commission will not amend clause 19.

21.26 Force Majeure – Clause 20

Clause 20 of Schedule 1 sets out the force majeure provisions.

Draft Decision

Clause 20 was drafted in accordance with the NERR. The Commission considered that it was appropriate that a force majeure provision only be included in the model terms as it outlined what happens to a customer's contract in the event of a force majeure event.

Discussion

The Commission received no further submissions from stakeholders on this issue. The Commission will not amend clause 20.

FINAL DECISION

The Commission will not amend clause 20.

21.27 Applicable law – Clause 21

Clause 21 outlines what laws are applicable to the contract.

Discussion

As discussed above in section 21.1, the Commission will amend clause 21 to re-instate the NERR drafting by removing the reference to '*Victoria*' and inserting the following:

> *[required alteration: insert name of the relevant participating jurisdiction where the customer's premises are located]*

FINAL DECISION

The Commission will amend clause 21 to re-instate the NERR drafting by removing the reference to '*Victoria*' and inserting the following:

> *[required alteration: insert name of the relevant participating jurisdiction where the customer's premises are located]*

21.28 Retailer of last resort event – Clause 22

Clause 22 of Schedule 1 sets out the procedures for when a RoLR event occurs.

Draft Decision

The Commission proposed to amend the draft ERC v11 to include a new clause 70B which incorporated the requirements of clause 24.6 of the ERC v10 regarding the termination of a contract following a RoLR event.

Discussion

The Commission received no further submissions from stakeholders on this issue. The Commission will introduce a new clause 70B.

The Commission will also not amend clause 22, other than re-introducing the NERR drafting (as discussed in section 21.1) by removing the reference to '*energy laws*' and replacing with '*National Energy Retail Law* and *the Rules'*.

FINAL DECISION

The Commission will not amend clause 22, other than re-introducing the NERR drafting (as discussed in section 21.1) by removing the reference to '*energy laws*' and replacing with '*National Energy Retail Law* and *the Rules'*.

The Commission will amend the ERC v11 to include a new clause 70B incorporating the requirements of clause 24.6 of the ERC v10a.

21.29 Simplified explanation of terms

Schedule 1 contains a section of defined terms.

Submission
SP AusNet submitted that the definition of *'customer connection contract'* provided for in the simplified explanation of terms and used in clause 5.2 of the model terms and conditions is not appropriate, because gas distributors do not have deemed contracts, as electricity distributors do, and the distributor's interactions with end use customers is through retailers and governed by the Gas Distribution System Code.[194]

Discussion

As discussed above at section 21.1, the Commission will re-introduce the NERR drafting for the simplified explanation of terms section. This will result in a change to

[194] SP AusNet submission, p. 6.

the definition of customer connection contract and the removal of the definitions for the following terms: Code, Electricity Industry Act, and Gas Industry Act. However, the Commission will insert boxes into the simplified explanation of terms section defining the EIA, Energy Retail Code and GIA as follows:

> *In Victoria,* ***Electricity Industry Act*** *means the Electricity Industry Act 2000*
>
> *In Victoria,* ***Energy Retail Code*** *means the Energy Retail Code Version 11 dated 13 October 2014 produced by the Essential Services Commission and as amended from time to time*
>
> *In Victoria,* ***Gas Industry Act*** *means the Gas Industry Act 2001*

The Commission will also insert a box outlining the definition in Victoria for a small customer. The box will state that:

> *In Victoria,* ***small customer*** *is a 'domestic or small business customer' as defined in the Electricity Industry Act or the Gas Industry Act*.

With regard to SP AusNet's submission, the definition of *'customer connection contract'* in the Simplified explanation of terms section of the ERC v11 adopts the NERR drafting, which is as follows:

> ***customer connection contract*** means a contract between you and your distributor for the provision of customer connection services.

SP AusNet submitted that this definition, as well as clause 5.2 of Schedule 1, does not reflect the position in Victoria in respect of gas distributors, as no deemed distribution contracts exist in Victoria.

Section 48(1) of the GIA provides that a gas distribution company may give notice of terms and conditions that apply to the supply of gas by the company to retail customers. These terms and conditions must be approved by the Commission (section 48(2) of the GIA). Once approved, the terms and conditions take effect on the day they are published in the Government Gazette (section 48(5) of the GIA). We can confirm that no deemed distribution contracts have been gazetted by gas distribution companies in Victoria.

The Commission considers there to be merit in including boxes in the preamble to Schedule 1, under clause 5.2 and the definition of *'customer connection contract'* to clarify that no deemed gas connection contracts currently apply in Victoria.

FINAL DECISION

The Commission will amend the simplified explanation of terms section to re-introduce the NERR drafting.

The Commission will insert boxes into the simplified explanation of terms defining the EIA, ERC v11, GIA and small customer.

The Commission will add a box to the preamble, clause 5.2 and the definition of *'customer connection contract'* to state that in Victoria there are no deemed gas connection contracts.

22 SCHEDULE 3 – TRANSITIONAL PROVISIONS

This chapter discusses the transitional provisions provided for in the ERC v11 in relation to standing offer contracts and market contracts.

Draft Decision

The Commission understood that stakeholders were concerned that upon the adoption of the draft ERC v11, the contracts that retailers had with customers would be terminated and new contracts would need to be entered into with each customer.

To address this issue, the Commission included transitional arrangements in Schedule 3 of the draft ERC v11.

Submissions

EnergyAustralia submitted that it underwent substantial work in 2012 in preparation for Victoria's anticipated transition to the NECF, and it will again be required to amend its Standing Offer Terms and Conditions. EnergyAustralia requested that the Commission be flexible and customer focused when implementing the ERC v11.[195]

Discussion

The Commission acknowledges the industry concerns regarding transitioning current customers and also implementing the changes reflected in the ERC v11. In order to lessen the burdens on industry we are allowing retailers a three month implementation timeframe, following the release of this Paper, to become compliant. We have also introduced reasonable transitional arrangements to assist retailers in transitioning current customers.

FINAL DECISION

The Commission will insert transitional arrangements into Schedule 3 for the transition of existing standing offer and market contracts.

[195] EnergyAustralia submission, p. 3.

23 SCHEDULE 4 – RESIDENTIAL ELECTRICITY STANDING OFFER

This chapter discusses the amendments to Schedule 4, which sets out the manner in which retailers must provide the Commission with details of their standing offers.

Discussion

Schedule 4 of the ERC v11 replicates Schedule A of Guideline 19. Guideline 19 was amended in light of flexible pricing, and a new template entitled Residential – flexible was added to Schedule A. The Commission will amend Schedule 4 of the ERC v11 to reflect the changes to Schedule A as follows:

Residential, flexible	Tariff	Unit	Ex GST	Inc GST
Domestic flexible	Peak time^ 3pm to 9pm weekdays	c/kWh		
	Shoulder time 7am to 3pm weekdays	c/kWh		
	Shoulder time 9pm to 10pm weekdays	c/kWh		
	Shoulder time 7am to 10pm weekends	c/kWh		
	Off-peak time 10pm to 7am all days	c/kWh		
	Supply charge	$/day		

^ All times are standard time except when summer time is in force in which case all times are summer time.

For more discussion on the reasons for the changes to Guideline 19, which have impacted the changes to the ERC v11, please refer to the Flexible Pricing Final Decision Paper, which is available on our website at: http://www.esc.vic.gov.au/Energy/Proposed-changes-to-regulatory-instruments-relatin.

FINAL DECISION

The Commission will amend Schedule 4 of the ERC v11 to include an additional template entitled Residential, flexible.

24 SCHEDULE 6 – BULK HOT WATER BILLING FORMULAE

This chapter discusses the Commission's amendments to the bulk hot water billing formulae.

Draft Decision

The Commission noted that Schedule 6 incorrectly referenced standing offer contracts and market contracts.

The Commission proposed to amend section A of the Electric Bulk Hot Water Billing Formulae to state:

> *"Where customers are charged for energy in delivering electric bulk hot water either by their retailer under a standard retail contract or pursuant to a market retail contract …"*

Discussion

The Commission received no further submissions from stakeholders on this issue. The Commission confirms our draft decision.

FINAL DECISION

The Commission will amend Schedule 6 of the ERC v11 to refer to standard retail contracts and market retail contracts.

25 SCHEDULE 7 – ACCEPTABLE FORMATS OF GREENHOUSE GAS DISCLOSURE ON CUSTOMER BILLS

This chapter discusses the Commission's amendments to the acceptable formats of greenhouse gas disclosure on customer bills.

Draft Decision

The Commission amended the greenhouse gas information graphs included in Schedule 7 to reflect the updated Guideline 13 to refer to www.switchon.vic.gov.au.

Discussion

The Commission received no further submissions from stakeholders on this issue. The Commission will update the greenhouse gas information graphs to reflect the new website.

FINAL DECISION

The Commission will amend Schedule 7 of the ERC v11 to refer to www.switchon.vic.gov.au.