

25 May 2010

Regulatory Review – Smart Meters
Essential Services Commission
Level 2, 35 Spring Street
MELBOURNE VIC 3000

By email: smartmeters@esc.vic.gov.au

Dear ESC,

Issues Paper Regulatory Review – Smart Meters (April 2010)

The Consumer Utilities Advocacy Centre Ltd (CUAC) is an independent consumer advocacy organisation. It was established to ensure the representation of Victorian consumers in policy and regulatory debates on electricity, gas and water. In informing these debates, CUAC monitors grass roots consumer utilities issues with particular regard to low income, disadvantaged and rural consumers.

We welcome the opportunity to comment on the Essential Services Commission's (ESC)'s Issues Paper Regulatory Review – Smart Meters (April 2010) (Issues Paper). This submission consists of two parts. Part 1 has been prepared by CUAC and covers the following areas:

- Vulnerable customers (section 3.1 of the Issues Paper);
- Information and informed consent (section 3.2 of the Issues Paper, except for access to historical billing data and access to metering data on pages 23-25 of the Issues Paper)

In developing this submission, CUAC received funding from the Consumer Advocacy Panel to commission David Prins of Etrog Consulting to review portions of the Issues Paper. They are:

- Access to historical billing data and access to metering data (section 3.2.2 on pages 23-25 of the Issues Paper);
- Remote connection and disconnection (section 3.3 of the Issues Paper);
- Frequency of network billing of retailers by distributors (section 3.4 of the Issues Paper).

Etrog Consulting's report, which is attached to this paper, forms Part 2 of CUAC's submission.

We are pleased that the ESC has included in this Issues Paper many of the concerns which we had raised in our response to the ESC's Open Letter Regulatory Review – Smart Meters (Open Letter). We are also pleased to see that the ESC will be considering in its review, the St Vincent de Paul Society's report on smart meters¹ and the National Energy Customer Framework (NECF) developments including the paper Smart Meter Customer Protection and Safety Review, Draft Policy Paper One (August 2009). We believe that these documents should inform the ESC's regulatory review.

The Advanced Metering Infrastructure (AMI) rollout is mandated by the Victorian Government. We believe that the Government, ESC and industry have a responsibility for increasing consumer understanding about energy especially in the smart meter environment and with time of use (ToU) pricing. Education needs to be an ongoing process, especially if consumers are to be encouraged to change the way in which they use energy.

CUAC notes that many of the regulations being reviewed in this process relate to consumer access to information and the format for that information. A key to developing appropriate regulation in this area is an extensive understanding of consumer needs. In determining appropriate information provision it is important to test proposals with consumers through trials and focus groups. Stakeholder views on what information provision is in the interest of the consumer are important. However, it is even more important to understand the views of end consumers who are not engaged in energy regulatory issues day to day.

CUAC supports the review of the regulatory framework in Victoria to ensure that consumers are adequately protected in the rollout of smart meters. We believe, however, that the regulatory review should have commenced much earlier given the fact that the rollout of smart meters commenced late last year. This would have provided more time for informed stakeholder consultation and submissions, especially as the regulatory review is comprehensive and involves amendments to at least eight instruments. Currently, there is a very tight timeline given the scope of this regulatory review. The public forum on 13 May 2010 was one week before the deadline for submissions on the Issues Paper (21 May 2010) which has since been extended to 25 May 2010. We note that the ESC's draft decision and proposed regulatory amendments will be issued in mid June and the final decision and regulatory amendments issued on 31 July 2010. Further consultation is not indicated in the Issues Paper. However, we recommend that the ESC consult further between the issuance of the draft decision and its final decision.

CUAC has the following comments on the questions raised in the Issues Paper:

¹ May Maseuth Johnston, *New Meters, New Protections: A National Report on Customer Protections and Smart Meters* (February 2010).

Guiding Principles

Issue for comment

Are there other guiding principles to which the Commission should give consideration in this review?

We support the guiding principles set out in the Issues Paper. In undertaking this regulatory review, however, we ask the ESC to take into consideration the following matters:

- We note that under the proposed NECF, the Australian Energy Regulator (AER) will be assuming responsibility for enforcement of the proposed National Energy Retail Law (NERL) and National Energy Retail Rules (NERR). This would include responsibility for the regulation of electricity and gas markets (other than retail pricing) in most jurisdictions. We understand that at present, the AER will not undertake this role in Western Australia, the retail electricity market in the Northern Territory and some retail gas markets. During 2010, the AER is undertaking preliminary consultation on a number of key areas and some of the issues considered overlaps with the ESC's regulatory review. To this end, we recommend that both organisations work to ensure consistency of outcome for consumers.
- We also note that there is uncertainty about the scope of the ESC's regulatory jurisdiction as of July 2011, at which date the NECF is anticipated to be implemented in Victoria. We understand that there will be jurisdictional derogations while a number of transitional matters are being addressed. As there are no smart meter provisions in the proposed NECF, we understand that it is likely that the derogations in Victoria will include regulations for the AMI rollout.
- Earlier in March this year, the Victorian Government announced a moratorium on the introduction of ToU tariffs while a number of policy and regulatory issues are resolved. This includes work to be done on the distributional impacts of ToU tariffs on customers which is to be considered by the Victorian Minister for Energy and Resources. The issues which are being resolved at the policy level will impact upon the regulatory review of the ESC.

In view of the above, many of the questions posed by the ESC in the Issues Paper will not be resolved conclusively until the policy processes and pilot customer trials are concluded. CUAC anticipates the ESC's regulatory review will be informed by the policy process.

Vulnerable customers

Issue for comment

Are there enhancements to the current regulations which are necessary for vulnerable customers arising from the implementation of smart meters?

CUAC is very concerned about the impacts of monthly billing on disconnections, in particular, the number of times a customer can be disconnected in a year. This is further articulated at page 9 (Managing daily consumption and costs, customer billing cycle).

CUAC is currently engaged in four AMI committees which have been recently established. We note that the Customer Consultation Working Group (CCWG) is examining equity issues associated with the AMI rollout.

Information and informed consent

Reviewing the bill

Verifying the accuracy of the bill

Issues for comment

Will the proposed approach to including the consumption by tariff segment, total consumption and tariffs for the billing period ensure customers maintain their ability to confirm the accuracy of the bill?

What are the implications for cost, feasibility and information value to customers of the options for the meter's total accumulated consumption on the bill?

There is a need for a practical and inexpensive method to allow customers to reconcile their bills with the smart meter and tariff structures, including ToU tariffs.

We support the proposed approach to include the consumption tariff, total consumption and tariffs for the billing period so that customers are aware of how much they are consuming and paying for each tariff period and how much each kWh or mJ costs. This is especially important in the context of ToU tariffs. Customers also need to understand their consumption if they are to be encouraged to change their behaviour to less expensive tariff periods. An improvement to Figure 1 (Minimum Tariff and Consumption Requirements on the Bill) on page 14 of the Issues Paper, would be defining peak, off-peak and shoulder periods on the bill. We note, however, that for more complex ToU tariffs (for example, a five part ToU tariff), customers may have difficulties in understanding their bill. Every effort must be made to ensure that information on the bill is presented as simply as possible.

We also believe that total accumulated consumption is useful for customers as that will, to some extent, help customers reconcile what is registered on their meter, with what is recorded on their bill. We have a preference for option 2 on page 14 of the Issues Paper as this resembles the "current" and "previous" reading, and customers would, therefore, be more familiar with this option. We note the concerns raised by retailers, that is, the "total accumulation consumption reading on the meter may become increasingly remote from the cumulative consumption figure calculated by the retailer due to the effects of estimations

and substitutions.”² We are concerned with the extent to which customers’ bills would be impacted by estimations and substitutions. This is unacceptable as one of the consumer benefits with smart meters is that customers can expect more accurate billing information. We discuss this further below under the section on estimated and substituted data on bills.

Estimated and substituted data on bills

(a) Estimates

The ESC has stated in its Summary Review of Regulatory Instruments, Appendix A of the Issues Paper (Appendix A); “that the current estimation and substitution methodologies, that are AEMO’s responsibility in a NEM context, may need to be revised for small customers with smart meters.” CUAC believes that this *must* be revised in the context of smart meters.

Issue for comment

Comments are sought on when customers should be advised that their bill is estimated. Comments are also sought on whether there should be some default tariff arrangements impacting distributors, retailers and customers when bills are estimated.

CUAC had in its submission to the Open Letter stated that the review should consider the appropriateness of customer protections for substituted data and estimated data. We note that on page 16 of the Issues Paper, the ESC stated that “it is too early to decide that estimates should not be allowed at all in billing because the capability of the meters and systems are not yet fully understood or implemented.” CUAC has serious concerns about this issue. The performance standards must be able to deliver the benefits of smart meters. Consumers are paying upfront for their smart meters, including the infrastructure to support the communications system. We also note that the Issues Paper has stated that with remote readings, there may still be “circumstances” where all or part of customers’ bills will be estimated. The Issues Paper does not explain what these circumstances are or who is responsible for these “circumstances” arising or how often these “circumstances” would arise. In light of this uncertainty, we submit that this “issue for comment” must remain alive and open for further discussion.

We note that the Victorian Government has confirmed that remote readings will put an end to estimated billing. Minister Batchelor has stated that:

So smart meters will enable electricity companies to connect and disconnect remotely so they won't have to send out a team of technicians to do it, and that will reduce costs. They'll be able to read your electricity bills remotely. *That will put an end to estimated readings.*³ (*emphasis ours*)

² Essential Services Commission (ESC), Regulatory Review, Smart Meters, Issues Paper (April 2010), at 14.

³ Discussion about the rollout of electricity smart meters and the present moratorium on time of use pricing, Interviewee: Peter Batchelor, Victorian Minister for Energy, Resources and the Arts; Compere: Derryn Hinch; 5 May 2010, 3AW Station.

We believe that estimated billing should be prohibited in the long term. But, in the interim period, since estimates will continue, customers have a right to be informed when their bill is estimated and what component. In this regard, we have a preference for option 3 on page 16 of the Issues Paper, that is, a materiality threshold before a customer is informed that his/her bill is estimated. We question where the 2% materiality threshold mentioned in the Issues Paper is derived from and why the materiality threshold should not be less. We believe that there should be a minimum number of estimates in any bill and any materiality threshold must be as low as possible so that customers are confident that they are being billed accurately. Otherwise, consumers will develop a lack of confidence in the accuracy of smart meters in determining their bills which would further undermine the AMI rollout. A low materiality threshold also ensures that industry has an incentive to ensure that estimates in billing are kept at a minimum. With time, as the capability of meters and systems become more fully understood and implemented, we believe that the materiality threshold should be reduced accordingly.

In the interim period, we also support a default tariff when bills are estimated. Where there are estimates, customers should be charged at the lowest possible rate as this is only fair. For example, a customer who is billed on a peak, off-peak and shoulder rate should be charged at an off-peak rate when the bill is estimated.

In the interim period, we support the ESC's proposed amendment to Clause 5.1 of the Energy Retail Code (ERC)⁴, as set out in Appendix A, provided that customers are informed about when their bill is estimated, there is a low materiality threshold and a default tariff (as mentioned above). We also support the ESC's proposed technical amendment to Clause 5.2 of the ERC as set out in Appendix A, in the interim period.⁵

We also submit that the use of estimated billing should be included in the performance reporting regime of retailers.

⁴ ESC's proposed amendment to Clause 5.1 of the ERC: in any event, use its *best endeavours* to ensure that the *customer's* bill is based on a reading of the *customer's meter* at least once every 12 months and if the *customer's meter* is a *smart meter* use its *best endeavours* to ensure that every *customer's bill* is based on a reading of the *customer's meter*.

⁵ ESC's proposed amendment to Clause 5.2 of the ERC:

(a) Despite clause 5.1, if a *retailer* is not able to reasonably or reliably base a bill on a reading of the *meter* at a *customer's supply address*, the *retailer* may provide the *customer* with an estimated bill prepared in accordance with the relevant estimation procedure in the *applicable regulatory instruments*.

(b) Despite clause 5.1, if in the context of an electricity *customer transferring* from one *retailer* to another *retailer applicable regulatory instruments* permit an estimate of consumption rather than a *meter* reading, the *retailer* may provide the *customer* with an estimated bill prepared in accordance with the relevant estimation procedure in the *applicable regulatory instruments*.

(b) Substitutes

Issue for comment

The proposal is to retain the current requirement that customers be notified that any part of a bill is based on substituted data.

While the question on default tariff has been included in the context of estimated data, we do not understand why this has been omitted in the context of substituted data in the Issues Paper. We believe that customers have a right to be informed when their bill is based on substituted data. There should also be a low materiality threshold; again we question why this materiality threshold should be 2% as suggested in the Issues Paper, and not less. The same comments which we mentioned above in relation to estimates should apply here, including the application of a default tariff (lowest possible rate) when substituted data is used. This is particularly important in the context of substituted data as such data cannot be replaced at a later time in an adjusted bill. Customers should not be disadvantaged financially when data is unable to be collected or used in the event of meter or communications failure.

We support the ESC's proposed amendment to Clause 4.2(f) of the ERC, as set out in Appendix A.⁶ That is, the removal of references to the Electricity Customer Metering Code as that code was amended to align itself with the National Metrology requirements.

We also submit that the use of substituted billing should be included in the performance reporting regime of retailers.

Bill smoothing

In Appendix A, the ESC has asked for comments on whether retailers should be required to reassess the amount of energy a customer under a bill smoothing arrangement consumes over 12 months, every three months rather than the current six months, in the context of smart meters (St Vincent de Paul's proposal). As there are daily reads with a smart meter, we support St Vincent de Paul's proposal in principle, as it may provide customers under a bill smoothing arrangement with a more accurate estimate taking into account the daily meter reads and seasonal factors.

Billing information - Clause 9.1 Retail Licences

Regardless of the fact that the licence provision duplicates the billing information requirements in the ERC, CUAC believes that the minimum information required in a customers' bill must be included as a licence condition. It is too important a condition to omit from the licence. Further, the ERC does not cover large businesses as it applies only to domestic customers and small businesses consuming less than 40MWh/per annum.

⁶ ESC's proposed amendment to Clause 4.2(f) of the ERC: whether the bill is based on any substituted data prepared in accordance with the relevant substitution procedure in the *applicable regulatory instruments*.

Undercharging

We disagree with the ESC's views on Clause 6.2 of the ERC that, the ESC does not consider it necessary to review this regulation which allows nine months recovery of monies from the customer if the retailer has undercharged or not charged a customer. We believe that in a smart meter environment, particularly with daily reads, retailers should be well placed to avoid undercharging. One of the advertised benefits of smart meters is more accurate billing for customers. There is no incentive for industry to reduce undercharging scenarios if they are still allowed to back-bill a customer for nine months. We believe that the ESC should review Clause 6.2 of the ERC in the light of the smart meter rollout. As previously stated, we believe that estimated billing should be prohibited in the long term. But, in the interim period, since estimates will continue, if there is to be back-billing, we believe that customers should only pay a default tariff, that is, the lowest possible rate.

Managing daily consumption and costs

Customer billing cycle

Issues for comment

The current regulations for explicit informed consent may be seen to be acting as a barrier to customers accessing more timely information upon which they could better manage their costs. Views are sought on:

- Whether an 'opt-out' approach to monthly billing for deemed or standing offer customers is appropriate?
- What are the implications for the costs and timing of the current collection cycle if customers move to monthly billing?
- How should any changes to the customers' current billing cycles be implemented?

We believe that all customers irrespective of whether they are on a deemed contract or standing offer should have the option of choosing whether they want to be billed quarterly or monthly. We acknowledge that there are some customers who would benefit from monthly billing because it would provide more timely information about their energy usage, assist in budgeting and allow earlier identification of customers with payment difficulties. However, it should also be recognised that there are other customers who may experience difficulties with monthly billing. For example: customers with limited mobility/disabilities who pay their bills at the Post Office (rather than online); some customer may find it easier to budget and pay their energy bills quarterly. The needs of customers vary.

We note that the ESC has stated on page 17 of the Issues Paper that, consumer advocates support monthly billing "subject to the current collection cycle timing remaining the same as the existing regulation. That is, customers have a minimum of 12 business days to pay the bill before debt recovery action is initiated." CUAC is not against monthly billing per se. However, merely ensuring customers have a minimum of 12 business days to pay their bill before debt recovery is insufficient protection. The implications of monthly billing on collection cycles and the disconnection process on customers from various socio-economic backgrounds must be examined in full.

With monthly billing, there is the potential for customers to be disconnected more frequently and be subject to increased charges such as reconnection fees. Generally, with monthly billing, there is the possibility that the day a customer is disconnected for non-payment of arrears for a current bill, would correspond approximately to the date he/she receives the next bill. Upon the customer paying the reconnection fee, the next bill arrives. This is particularly difficult for customers who are experiencing hardship. With quarterly billing, a customer who is disconnected and then reconnected will in the period before he/she receives the next bill, have time to assess his/her options which could include accessing the services of a financial counsellor, seeking payment plans or hardship assistance etc.

We agree with the ESC's view in Appendix A that Clauses 7.1-7.5 of the ERC (payment of a bill provisions) have to be reviewed if there is a move to monthly billing.

CUAC strongly believes that no one should be disconnected solely due to an inability to pay for their energy. If there is to be a move to monthly billing, as a minimum, we believe that there should be no disconnection until after a customer has received three consecutive monthly bills. The notification requirements for disconnection need to be aligned with a quarterly and not a monthly cycle. Clause 14(a) of the ERC stipulates a minimum amount, that is, \$120, below which a customer cannot be disconnected. We submit that this amount must not be reduced in the context of monthly billing.

We are also concerned about the cost pass through from retailers to customers with monthly billing. The ESC has stated on page 17 of the Issues Paper that there might be a three-fold increase in bill processing and associated service costs and that these costs are expected to be offset by the reduction in working capital and costs associated with managing bad debt driven by quarterly billing. CUAC notes that this is not conclusive. We suggest that the ESC ascertain the cost pass through implications for consumers. We submit that given the amount of information a bill for a smart meter is anticipated to contain, there is the potential for higher billing costs to be passed through to customers, especially if there is monthly billing.

We believe that any changes to a customers' current billing cycle must have the customers' explicit informed consent.

Graphical information on the bill

Issues for comment

The proposal is to require retailers to provide customers with a graph similar to that used by EnergyAustralia or Ontario Energy Board when time-of-use tariffs are introduced for customers with smart meters.

What are the implications for incremental costs or barriers to innovation of this approach?

Given the customer feedback from overseas pricing pilots, and the potential move to monthly billing, mandating daily periods may also be beneficial for customers. Comments are invited on this approach.

Information on a bill should be presented simply so that it is easily understood by customers. Usage charges should be distinguished from supply charges. We support the use of c/kWh or c/mJ; however, information and education need to be provided to assist consumers to understand this measure of consumption. As the time of day in which customers use energy is important in a ToU context, it is useful to have peak, off-peak and shoulder periods defined so that customers are aware of what these respective periods of the day mean. We generally support the use of a graph in presenting usage especially when ToU tariffs are introduced. However, we are concerned that the graph might not be easily understood by customers if there is a complex ToU tariff, for example, a five-part ToU tariff. As previously mentioned, there is also the cost involved in having all this information presented on a bill. Higher billing costs could be passed through to customers, especially if there is monthly billing and mandated daily periods for consumption graphs. We suggest that the ESC investigate innovative ways to present billing information in the presence of complex ToU tariffs. We also suggest pilots and trials in order to gauge customers' response as to which is the best way to present billing information, to them.

Unbundling tariffs and charges on the bills

Issues for comment

Greater transparency through information to customers is a prerequisite for customers to benefit from the introduction of smart metering and unbundling could be considered to deliver part of this information. However, some key questions are:

- Would customers gain any information from unbundling of the distribution charges if the retailer does not base its tariff on the distributor's tariff structure?
- Would it be helpful or not for customers to have some charges unbundled, but not others?
- Does unbundling of network charges and tariff alignment have the potential to reduce retailer flexibility in tariff offerings?
- What are the costs, benefits and feasibility of greater unbundling? Should regulation go beyond requiring the unbundling of retailer and distribution cost sub-components of wholesale and metering costs?

In principle, and even in the absence of smart metering, CUAC supports the unbundling of network tariffs from retail tariffs on customers' bills. It is appropriate that the regulated network

charge is clearly delineated from the unregulated retail charges. This approach is the most transparent method of informing consumers of what they are paying for particular energy services. In practice, CUAC is concerned that such an approach may lead to confusion among consumers. If charges are unbundled, consumers will have to process more information to understand the total charges on their bills. This may become even more onerous in the presence of ToU pricing. Given that customer bills are already crowded with information this may not be the best outcome.

In order to adequately assess whether unbundling is feasible and desirable, it is necessary to test consumer responses to different bill formats featuring unbundled tariff information. CUAC would urge the ESC to conduct consumer trials and focus groups in order to determine customers' views on unbundling on bills. It is important that regulated changes to the information provided to customers should be fully tested to assess efficacy and appropriateness. CUAC does not believe that the unbundling of network tariffs will significantly reduce the flexibility of retailers to provide a range of tariff offering. There are all sorts of ways that a retailer can pass on their charges to consumers, even in the presence of unbundling, that should maintain consumer choice and retailer flexibility.

It is impossible to determine fully the costs, benefits and feasibility of unbundling without a comprehensive study that examines individual consumer views, required changes to business systems, and the whole array of issues that may result from such a regulatory reform. CUAC recommends the ESC to undertake such a study to determine the appropriate approach to transparency in billing and customer information.

From a consumer perspective, greater transparency in pricing is always desirable. In principle, CUAC supports the separation of charges including wholesale, retail, distribution and metering on a customer's bill.

Notification of variations to tariffs

Issue for comment

The Commission considers that any changes to the regulation on the notification of tariff variations should wait for the outcomes of the Victorian Government's deliberations, so that there is consistency between customers on market contracts and those on standing contracts. Nevertheless, interested parties may wish to submit their comments in regard to this matter.

We support the ESC's views on page 23 of the Issues Paper; "the Commission does not consider that the Energy Retail Code should require customers to shift from standing contract single-rate or two-rate tariffs to a TOU tariff immediately and without consent." Customer's explicit informed consent must be sought for this.

We also support the ESC's view that "[c]ustomers should not receive notification that their tariff has increased at the same time that the increase is applied to their bill." We agree that there should be consistency between customers on market contracts and those on standing contracts. CUAC will, in its participation in the various AMI working groups, actively participate in these deliberations on tariff variations.

Shopping around for a better offer

Issues for comment

Comments are sought on these, or alternative, options for ensuring customers are able to compare competing retail offers when time-of-use tariffs and more complex tariffs are introduced.

The AER is currently informally consulting with stakeholders in the development of its retail pricing information guidelines. We recommend that the ESC, work closely with the AER in the development of options, for ensuring consumers are able to compare retail offers when ToU tariffs and more complex tariffs are introduced.

Anecdotal evidence suggests that, while consumers have taken the opportunity to seek cheaper offers in the competitive market, they are overwhelmed by the extent of choice and complexity. From a small consumer's perspective, energy is a homogenous product. The energy they receive from one retailer is indistinguishable from the next. Through CUAC's interaction with consumers and their representatives, it has become clear that consumers are frustrated that in order to find a better deal for this homogenous product they need to compare an amazing array of complex offers that are accompanied with incomprehensible fine print detailing terms and conditions. Not only is this an information asymmetry that limits consumers' ability to make the right choice, it also imposes significant search costs (a transaction cost) that reduces the attractiveness of switching. CUAC strongly supports the development of options that reduce both the information asymmetries and transaction costs that are a feature of the current energy retail market. CUAC notes that transaction costs and information asymmetries are a threat to the competitiveness of markets. Appropriate regulation, including price disclosure guidelines, can lead to the more competitive functioning of markets. For consumers to fully realise the benefits of retail market competition, they need free access to pricing information which must be presented in a manner which allows easy comparison across energy retail offers.

We note that the ESC has stated on page 26 of the Issues Paper that "too prescriptive and standardised information may risk customers choosing a sub-optimal retail offer for them." CUAC believes that the ESC should continue to be prescriptive in the presentation of pricing information, which should be provided in a manner which allows easy comparison by customers to reduce complexity. Consumers need simple mechanisms to receive pricing information when they seek price savings, especially in a competitive market. We support retaining a template for the presentation of pricing information as this helps consumers to compare their current energy contract with other offers available.

We believe that there are some key principles which should be taken into account in the development of options as to how pricing information should be presented to consumers:

1. We support a "layered" approach to information provision. The basic pricing information tool should be easily understood by all consumers and allow informed choice to be made. Consumers who require more detailed information can be

directed to other resources such as additional information on a website or a contact point.

2. Pricing information should be transparent. Therefore, fixed charges and consumption charges should be distinguished.
3. CUAC suggests that the ESC undertake further research and the use of consumer focus groups to find out how information on rebates, discounts, product vouchers, loyalty schemes, fees (for example: exit fees, late payment fees, reconnection fees) should be listed so that consumers are best able to compare offers. CUAC is concerned about the complexity of this information and that consumers should not have to undertake a range of separate calculations in order to understand the offer and/or compare it with others. Information on concessions and rebates must identify the source so that customers are aware from whom they are receiving the concession or rebate.
4. There must be standardisation in any price disclosure regime which is adopted. For any price disclosure regime to be meaningful, customers must be able to compare like-for-like.
5. The Victorian Government and regulator have a responsibility for increasing consumer understanding of energy.

Options proposed by ESC on page 26 Issues Paper

It is difficult to comment at the present time because we do not yet have information on the shape of the ToU tariffs which will be offered by retailers. However, we believe that any method to determine how retail offers are to be presented should take into account the key principles which we have outlined above. With the potential introduction of ToU tariffs, the Victorian Government has indicated that it will be launching pilot trials including issues around consumer information and consumer response. We recommend that the ESC engages with the Victorian Government on this.

- (a) Requiring the energy retail businesses to offer retail market offers with tariff structures that are the same as the network tariff structures. That is, that if the network has a three part TOU tariff that applies to various time periods, then it would be a requirement that the retailers provide at least one market offer with the exact same tariff structures.

Requiring retailers to reflect network tariffs could result in simpler tariff structures that are easier for customers to understand. It will also result in customers in the same distribution area confronting peak prices at the same time. Customer information and education for customers in a single area will be easier for distributors, retailers and Government, alike.

There are, however, several disadvantages. One problem arises if the network tariffs offered by the distributors have many parameters and are, thus, difficult or even impossible, for consumers to comprehend. For effective tariff reflection to occur, the parts/profile of the network tariff will have to be sufficiently simple to allow consumer understanding and behavioural change. The

other disadvantage of the retail tariffs mirroring network tariff is that it may restrict the ability of retailers to offer a diverse range of tariffs to cater for different consumers and their consumption patterns. This could be overcome with a regulatory requirement that the standing offer and one market offer mirror the network tariff but that other market offers can have different parameters/shapes.

In light of the above, CUAC supports a regulatory requirement that a standing offer and a market offer from each retailer reflect the network tariff shape with the caveat that the network tariffs are constructed appropriately for consumer comprehension. Obviously, if the network tariff is an eight part tariff for example it is unlikely to be fit for the retail market. However, if it is a relatively simple two or three part tariff it would be appropriate to require a standing offer to mirror its shape.

- (b) Requiring retailers to provide indicative charges for a standard set of customer profiles to assist customers when choosing between two complex retail offers.

By itself, this approach of standardising the presentation of prices is merely indicative (rather than reflective) of each customer's individual consumption. The approach also relies on the ability of customers to place themselves on the appropriate consumption band.

On consumption bands, we note that the Commonwealth has undertaken significant work on the cost of the carbon reduction scheme on households.⁷ This provides a good starting point to analyse potential bands and classes of customers. However, we are concerned that if used as a price disclosure tool, consumption bands may add to the complexity of information. Consumption bands may be more useful in the development of policy rather than to facilitate consumer decision making. We note that past consumption levels will provide the most accurate guide to consumption (provided that the customer's circumstances remain the same). However, the impact of new offers and network or retail tariffs needs to be taken into account.

There are limitations on the use of load profile data. CUAC supports more research on this matter including how load profile data can help in presenting pricing information to customers.

- (c) Requiring retailers to display the average price paid per day or unit of energy on the bill to provide customers with a simple index for understanding how their costs are trending, with information on how to compare that cost against competing offers

We support the continuation of using c/kWh or c/mJ and suggest that information and education be provided to assist consumers to understand this measure of consumption. We note that standardised unit pricing is now used in other sectors such as in supermarkets. We support standardised unit pricing in principle. We acknowledge that presenting prices using standardised unit pricing will be useful where there is a flat tariff. However, it might not be the best method where there is a complex tariff structure, for example, where there is a five

⁷ Department of Climate Change and Energy Efficiency, Carbon Pollution Reduction Scheme: Australia's Low Pollution Future (2008), Volume 2, Chapter 17:

<http://www.climatechange.gov.au/publications/cprs/white-paper/cprs-whitepaper.aspx>

part time of use tariff or inclining block tariffs. We suggest that the ESC investigate innovative ways to develop unit pricing information in the presence of complex retail market offers. Further, separately disclosed discounts/rebates/fees may make it more difficult for some customers to compare prices because it relies on the customer calculating whether one offer (with all the discounts, rebates, fees factored in) is better than offers (with all the discounts, rebates, fees factored in) from other retailers. As previously mentioned, we support further research and the use of consumer focus groups to find out how information on rebates, discounts, product vouchers, loyalty schemes, fees (for example: exit fees, late payment fees, reconnection fees) should be listed so that consumers are best able to compare offers.

Term and termination – Part 7, ERC

We refer to Clauses 22.1-24.6 of the ERC at Appendix A. Currently, Clause 24.1(b) of the ERC requires customers to provide 28 days notice if they wish to terminate a contract. One of the benefits of smart meters is an easier transfer process. Therefore, we believe that the termination period required of customers should be reduced. In principle, we support SVDP's proposal at Appendix A.

Provision of information, Charter - Energy Retail Code (January 2010) (ERC),

We are pleased that the ESC is reviewing the Charter requirements in Clause 26.2 of the ERC based on comments made by the Financial Consumer Rights Council (FCRC) at Appendix A. That is, retailers should provide in their Charter, information on smart meters, billing requirements and how customers will be impacted.

Provision of Information - Electricity Distribution Code (February 2010) (EDC),

Clause 9.1.14 of the EDC⁸ sets out the type of advice distributors must give to customers when a smart meter is to be installed. Given the current moratorium on ToU tariffs and the uncertainty around the policy framework, we question whether the words to be included, in the distributor's notification to customers, is appropriate. The distributor's notification is also inaccurate as Minister Batchelor has put on the public record that customers will be able to have the option of "a traditional style flat tariff" or a ToU tariff.⁹

Maintenance of life support register - Energy Retail Code (January 2010) (ERC) and Electricity Distribution Code (February 2010) (EDC)

⁸ Clause 9.1.14, Electricity Distribution Code (February 2010): The *distributor* must twice advise each *customer*, who has an annual electricity consumption of less than 20 MWh, that their electricity network tariffs in the future may be set on the basis of *time of use tariffs*. The first advice must be sent at least 20 *business days* prior to the meter exchange and the second advice at least 4 *business days* prior to the meter exchange.

The words to be inserted by the *distributor* in the notification are:

"The rollout of smart meters may result in your tariff being changed in future to a time of use tariff. Your retailer will notify you of any change and implications for your retail prices and charges."

⁹ Discussion about the rollout of electricity smart meters and the present moratorium on time of use pricing, Interviewee: Peter Batchelor, Victorian Minister for Energy, Resources and the Arts; Compere: Derryn Hinch; 5 May 2010, 3AW Station.

We note the amendments which have been made to the ERC and EDC following the ESC's Review of Electricity Distributors' Communications in Extreme Supply Events. We are disappointed that the review did not result in the creation of a priority register of people who have legitimate health reasons for continuous electricity supply reliability and we reiterate our concerns.

Such a register should be linked to a regulatory requirement on distributors to avoid supply withdrawal to people on that register and, should supply withdrawal be absolutely unavoidable, to ensure all necessary steps are taken to guarantee the wellbeing of any registered customer. We acknowledge that the administration of such a register would come at some cost. However, this is a cost which consumers and business should be more than willing to bear in order to protect the more vulnerable members of our society. We are favourably disposed to a register similar to the Priority Services Register in England. Such a register delivers comprehensive protections to consumers vulnerable to extremes of temperatures. We acknowledge the difficulty in maintaining an accurate register of such vulnerable consumers and this highlights the need for close cooperation between distribution businesses, the Department of Human Service, the relevant energy regulator and community agencies.

We also note the importance of supply reliability to particular Government services such as health facilities. We support the idea of developing community facilities with air conditioning that have a high priority supply or significant back up generation capacity during extreme heat events to provide vulnerable Victorians with a refuge.

We understand that this issue is outside the scope of the Issues Paper. However, we are of the view that such policy responses to extreme events are important to raise for the consideration of distributors and regulators alike.

Code of Conduct for Marketing Retail Energy in Victoria (January 2009) (Marketing Code)

Training

The regulatory framework must ensure that energy marketers are trained and able to provide information to consumers in a way which is easily understood by consumers. ToU pricing can be complex and hence difficult for consumers to understand. Particular regard must be given to the needs of vulnerable and disadvantaged groups such as those from culturally and linguistically diverse (CALD) backgrounds who may have English language difficulties.

We agree with the ESC's view at Appendix A that with the rollout of smart meters; "customers will want to know about the role of smart meters and how ToU tariffs will impact their bills, how they will be able to benefit from ToU pricing, why they have to pay for meters, etc. Retailers will have to adapt their marketing practices." However, it is not merely retailers who will be engaged in marketing in the future. We submit that the Marketing Code needs to be expanded to cover marketing by distributors. Smart meters are expected to result in more innovative products and services being offered by industry. There is the potential for distributors to market products and services to customers.

Energy is a complex product. Currently, marketing practices vary amongst retailers. We note that retailers have reported systemic incidents of non-compliances with the Marketing Code. Retailers have also been reported cases involving the lack of explicit informed consent from customers.¹⁰ Systemic issues regarding marketing have also been reported by the Energy and Water Ombudsman (Victoria) (EWOV) in its Annual Report (2009).¹¹ We believe that the ESC should be prescriptive in stipulating training required of energy marketers. There is a need for a consistent training platform and high standards that apply to all energy marketers. This will reduce the incidence of non-compliance and minimise the detrimental impacts of bad marketing practices on consumers. We also support the ESC's view to include marketing conduct in independent audits of retailers' compliance with Marketing Code obligations.¹²

Clause 3.3 Pre-contractual information

It is unclear which specific part of section 3.2 of the Issues Paper the issue mentioned in Appendix A relates to. We assume the reference is to section 3.2.3 of the Issues Paper. We submit that the pre-contractual information provided to customers must include information on all new tariff structures, products and services (for example, dynamic/critical peak pricing, direct load control etc) offered by retailers or distributors. Consumers need to be able to make an informed decision as to whether the energy offer they are presented with is in their interest. It is essential that information is presented in a manner which is easily understood by consumers.

Clause 3.4 Cooling off

We agree with the ESC's view at Appendix A that "attention should be given to marketing conduct in a ToU environment." Given the complexity of ToU pricing and the expected new products and services that will be offered by industry, we believe that attention to marketing should not be confined to "the first 2-3 years."

At Appendix A, there appears to be some confusion as to when the cooling-off period commences. The ESC has stated in Appendix A that "[t]he obligation must be on the retailer to demonstrate that the material was given to a customer within 2 business days, and *the cooling-off commences from that date* (see Clause 3.5 of Marketing Code)." (*emphasis* ours) This is incorrect as under the Marketing Code, the cooling-off period commences from the "relevant date" and not when the customer obtains a copy of the contract. Clause 3.4(b) of the Marketing Code allows a customer to cancel a market contract within "5 ***business days*** from and including the ***relevant date***" if the customer requested energisation, or "10 ***business days*** from and including the ***relevant date***." "Relevant date" is defined in Clause 8 of the Marketing Code as; "(a) the date on which the ***consumer*** and the ***retailer*** agree to enter into the ***contract***, or (b) if the ***consumer's explicit informed consent*** is required

¹⁰ Essential Services Commission, 2008-2009 Compliance Report for Energy Retail Businesses (February 2010), at 21-25.

¹¹ Energy and Water Ombudsman (Victoria), 2009 Annual Report, at 20-21.

¹² Essential Services Commission, Respecting Customers Report, Energy Retailers' Marketing to Vulnerable Customers (March 2010), at 6.

before the **contract** can commence to be effective, the date on which the **explicit informed consent** is given.”

Our view is that the cooling off period should only commence once the customer has actually received a copy of the contract and a notice advising the customer about his/her cooling-off rights. As to the ESC’s comment that “the proposal by SDVP is externally driven and impossible to enforce (e.g. postage late, customer says didn’t receive, etc),” there are ways to circumvent this. For example, sending the contract by registered mail; emailing a copy of the contract with return receipt.

Electricity Customer Transfer Code (December 2009) (Transfer Code) Electricity Customer Metering Code (June 2009) (Metering Code)

We are unable to provide conclusive views for the proposed amendments to the Transfer Code and Metering Code referred to in Appendix A because the impact of these amendments, have also not been adequately discussed or consulted upon. There is no reference made to any of these matters at Appendix A in the Issues Paper.

We note that there are references to “smart metering” as well as “smart meters” in the Metering Code. We note that while the ESC has proposed a definition of “smart meters”, there is no proposed definition for “smart metering.”

We note that at Appendix A, the ESC has proposed amending Clause 2.6 of the Electricity Customer Metering Code (June 2009) (Metering Code) so that the information provision obligations on retailers, distributors and responsible persons are expanded to cover smart meters.¹³ We believe that this information should also be provided to the consumer free of charge. However, it is likely that when consumers try to verify their bills, they will be confused as to why their “total consumption reading on the meter may become increasingly remote from the cumulative consumption figure calculated by the retailer.”¹⁴ This would lead to more complaints to the Energy and Water Ombudsman (Victoria) (EWOV).

¹³ ESC’s proposed amendment to Clause 2.6 of the Electricity Customer Metering Code (June 2009): A **distributor, retailer** or **responsible person** must provide sufficient written information to the **customer** so that the **customer** can access, at a minimum, the cumulative total **energy** measured by an **interval meter** or **smart meter** at the customer’s premises when:

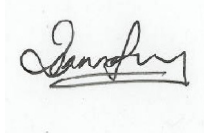
- the **meter** is installed at a **customer’s** premises, and
- requested by the customer.

¹⁴ Essential Services Commission (ESC), Regulatory Review, Smart Meters, Issues Paper (April 2010), at 14.

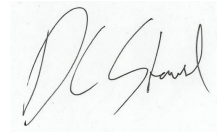
If you have any queries on this submission, including the attached consultancy report, please do not hesitate to contact us.



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