

4 February 2011

Ms Khayen Prentice
Regulatory Review – Smart Meters
Essential Services Commission
Level 2, 35 Spring Street
Melbourne, VIC 3000

By email: khayen.prentice@esc.vic.gov.au

Dear Ms Prentice,

**Smart Meters Regulatory Review – Capacity Control and Verifying Bills Issues Paper
(December 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. CUAC has a particular interest in representing low-income, disadvantaged, rural and regional, and indigenous consumers.

We welcome the opportunity to comment on the Essential Services Commission's (ESC)'s Smart Meters Regulatory Review – Capacity Control and Verifying Bills Issues Paper (December 2010) ("Issues Paper").

Assessing the benefits and risks of capacity control products – supply capacity control and direct load control products

In our submission to the ESC Regulatory Review – Smart Meters Final Decision (September 2010) ("Final Decision"), CUAC supported a review of direct load control and the use of supply capacity control products for non-credit/debt management purposes (that is, where consumers receive an incentive for capacity control).

This part of our submission provides an overview of our concerns regarding capacity control products, in particular the risks associated with these products. The other parts address the questions posed by the ESC in their Issues Paper.

Capacity control products represent an area of innovation in the energy arena. We recognise that some customers may benefit from taking up capacity control products which align with their needs and energy consumption objective. However, we note that there are potential risks for consumers generally, and significant risks in particular for vulnerable or low income customers who may experience considerable detriment or disadvantage in taking up these products.

CUAC believes that no Victorian consumer should be disconnected from their energy services due solely to an inability to pay. All households should be able to access affordable, reliable and sustainable energy services and to participate fully in the competitive retail energy market. Energy is not a discretionary good; the universal service nature of energy distinguishes it from other types of retail regulation. Consumer groups have advocated for an energy market, and customer protections that benefit all consumers. Currently, the *Energy Retail Code* and the National Energy Customer Framework (NECF) provide a set of provisions that are intended to protect consumers accessing essential services. The customer protections include provisions protecting customers from disconnections, affordable payment plans and retailer hardship programs which assist consumers experiencing financial hardship remain on supply.

CUAC is concerned, however, that these hard fought customer protections may be eroded with the introduction of capacity control products, in particular, supply capacity control products.

CUAC provided a grant to the Financial and Consumer Rights Council (FCRC) to undertake a project which examined the impacts of competition and a deregulated energy market on consumers, particularly low income and vulnerable consumers, in 2009. 81 financial counselling case studies on utility issues were collected, highlighting the experiences of low income and vulnerable consumers in Victoria. The report found that people with payment difficulties and vulnerable customers in particular, experience significant disadvantage in exercising their rights under current regulatory protections. Some of the key findings of this research included:

- Overall, 31 Financial Counselling case studies identified 51 breaches of Codes used to regulate Victoria's energy industry.
- Difficulties were experienced by vulnerable customers in financial hardship when negotiating with energy retailers on an agreed payment amount for instalment plans. Retailers relied solely on the cost of ongoing usage without considering a customer's capacity to pay when demanding instalment payments.
- Vulnerable consumers experienced misleading conduct and sales pressure from energy retail marketing representatives, who are also failing to gain a customer's explicit informed consent when signing them up to electricity and gas contracts.

- Vulnerable consumers, including those from culturally and linguistically diverse communities (CALD) are accessing Financial Counselling services as a result of energy retailers failing to adhere to industry codes, and properly addressing payment difficulties. These failures cause otherwise unnecessary efforts of Financial Counsellors to correct the problems caused to consumers.
- 26% of electricity and gas studies presented high utility debts ranging from \$1,000 to \$4,500 and energy retailers have not offered these customers assistance at a time when their debt was at a lower amount, or during the accumulation of their debt.
- Almost 19% of electricity and gas (mains) case studies involved CALC customers experiencing financial hardship and difficulties in accessing assistance from energy retail representatives.¹

We also refer the ESC to another project funded by a CUAC grant, which looked at the experiences of people accessing emergency relief services from five service providers across metropolitan Melbourne. The case studies reflect their experience with utilities including the difficulties they experience with meeting any rise in energy costs.² In particular, the case studies illustrate that people on low incomes often limit their energy use to their detriment due to affordability issues.

We are concerned that the introduction of capacity control products will introduce an additional layer of complexity to the already complex energy market for consumers generally. This could also exacerbate the difficulties experienced by low income and vulnerable customers if they sign up for products which are inappropriate for them. Consumers with significant payment difficulties should have additional support to help manage their energy bill payments so as to retain access to essential services. We want to avoid situations whereby vulnerable consumers sign up for these products as a means of managing their payment difficulties. There is a risk of this happening especially in the context of rising energy prices. CUAC is concerned that these customers may inadvertently choose to accept supply capacity control products that expose them to disconnection, less reliable supply and potential health and welfare detriment.

CUAC believes that the risks of supply capacity control products are greater with regard to low income or vulnerable customers; the risks arguably outweigh the benefits for this particular customer group. Nevertheless, because of the potential risks involved in the

¹ Financial and Consumer Rights Council, Still an unfair deal? Reassessing the impacts of energy reform and deregulation on low income and vulnerable consumers (2009), at 5-6. See <http://www.cuac.org.au/database-files/view-file/3874/>

² Victorian Council of Social Service, A snapshot of electricity and gas services and their impact on households seeking Emergency Relief (December 2009). See <http://www.cuac.org.au/database-files/view-file/4034/>

use of supply capacity control products, *all* consumers need to fully understand this product to be able to make an informed decision as to whether it is appropriate for their circumstances. If capacity control products are introduced, consumers need to be educated about these products, including their potential benefits and risks associated with their operation. Comprehensive information should be provided to customers before they take up these products.

The ESC needs to comprehensively assess all the risks associated with the use of capacity control products. There has to be an appropriate regulatory framework in place before such products (assuming that the benefits are found to outweigh the risks) are offered to consumers. As part of this review, we suggest pilot trials of capacity control products so that the pros and cons of these products and their impacts can be assessed. The ESC should also test consumer acceptability of capacity control products as part of its review.

Supply capacity control

Issues for comment

The Commission seeks stakeholder comments on:

- How will cut off limits be set and agreed?
- For how long should supply be cut off before restoring?
- Once restored, should the power remain on for a guaranteed period before being subject to cutting off again?
- Should there be limits for cut offs in terms of how frequently and how many times in total?
- Possible health and safety risks to consumers
- Safeguards for customers on life support
- Any potential for customers to manually override an automatic cut off under supply capacity control
- How to ensure that supply capacity control is used only for purposes other than credit management
- Ensuring that offers of supply capacity control include making customers adequately aware of the disadvantage they will experience by using this product
- What should be done if a customer agrees to have supply capacity control and subsequently suffers financial difficulty?
- For how long should arrangements about supply capacity control run? (e.g. for one year? For the life of the contract?)
- The customer's ability to cancel a supply capacity control arrangement
- Could supply capacity control arrangements be part of a standing offer?
- Privacy considerations.

Complexity of energy offers - direct marketing

In CUAC's experience, consumers are already experiencing difficulties participating in the competitive Victorian retail energy market. Consumers confronted with direct marketing

and complex dual fuel market offers have limited capacity to determine whether or not the offers are in their interest. The introduction of smart meters and time-of-use tariffs and other products will further increase this complexity.

The ESC's Respecting Customers - Marketing Conduct Regulatory Program 2009-10 was introduced in recognition that marketing behaviour continued to reflect badly on the retail energy market in Victoria. The ESC recently reported that only 46 per cent of customers who obtained energy quotes by phone received written offer summaries, notwithstanding the regulatory requirement for its provision to customers on request.³

Notwithstanding the current marketing regulations and protections that we have around marketing, a common topic which arises in CUAC's engagement with stakeholders is the misleading practices and unconscionable conduct of sales agents. A project funded by a CUAC grant found that:

An overall trend in survey information suggests low income earners including vulnerable clients such as newly arrived migrants, people with language or literacy difficulties, those experiencing mental health issues, and the disabled, were experiencing difficulties with electricity, and gas retailers as a result of retail representative conduct (door to door sales). This also included a failure to gain explicit informed consent and not providing a contract copy on a customer's request when signing up. Clients often did not receive pre-contractual information; including rights to cancel a contract and whether a retail marketing representative was due to receive a commission...Clients who presented to financial counsellors were often confused about which retailer was servicing their energy supply, particularly if they had signed multiple times within a period of 1-3 months. Case studies that presented with multiple transfers between energy retail providers and multiple authorisations were also seen impacting on customer payment plans. EWOV complaint data shows 4,839 cases involving marketing issues including misleading conduct and sales pressure...Furthermore, 1,766 complaints were received from retail customers about their energy account transferring between retail providers without their consent, and without their cooling off rights and contract terms being explained to them, were also reported...for the financial year ending June 2009...⁴

A 2009 report by the Footscray Community Legal Centre highlighted specific concerns about retailers' marketing activities to newly arrived refugees, particularly members of the African community in the western suburbs.⁵

³ Essential Services Commission, Energy Retailers Comparative Performance Report, Pricing (2009-2010), at 64.

⁴ Financial and Consumer Rights Council, Still an unfair deal? Reassessing the impacts of energy reform and deregulation on low income and vulnerable consumers (2009), at 24-25. See <http://www.cuac.org.au/database-files/view-file/3874/>

⁵ The African Consumer Experience of the Contestable Energy Market in the West of Melbourne: A report prepared by the Footscray Community Legal Centre and the Financial Counselling Service Inc (March 2009).

The concerns around marketing misconduct have also been acknowledged by industry. Energy Assured Limited (EAL) has recently developed a voluntary code of practice with the aim of improving the standard of energy door-to-door marketing in Australia. This code is subject to Australian Competition and Consumer Commission ("ACCC") approval (EAL applications for authorisation A91258 & A91259). CUAC raised a number of concerns about the code of practice, in particular the lack of consultation with consumer organisations in the drafting of the code of practice.⁶ We are not persuaded that self-regulation through a voluntary code of practice would raise the standard of direct marketing and enhance consumer experience given the level of non-compliance with the current regulatory framework around marketing.

In view of the problems around direct marketing, CUAC believes that direct marketing of supply capacity products to consumers would expose more consumers to the risk of signing up for a product which is inappropriate to their circumstances and needs. The type of information consumers would need to make an informed decision include: an explanation of the product; what an appropriate threshold would be and whether changes to the threshold are permitted; the disadvantage customers will be exposed to in the event that they exceed the threshold; cost implications etc. The research cited above indicates that sales agents have failed to provide adequate information on energy offers to customers. In light of this, we are not confident that customers will be provided with clear information upon which to make an informed decision as to whether it is in their interest to enter into a contract for a supply capacity control product.

Supply capacity control products - Customer protections

Supply capacity control is an automated disconnection product. It will potentially expose consumers to constant and repeated self-disconnection arising from consumption over the agreed threshold. This would be equivalent to self-disconnections from prepayment meters in jurisdictions which allow them. In Victoria, one of the significant measures taken to protect households from energy related financial hardship and disconnection of supply was the banning of pre-payment meters.⁷ A 2004 CUAC joint research report into access to energy and water in Victoria argued that the claim that customers like prepayment meters because they make it easier to manage expenses was misleading and recommended that the Victorian Government introduced a ban on prepayment meters because:

Prepayment meters would not help households in financial hardship any more than affordable instalment payment plans or Centrepay. On the other hand, prepayment meters would assist suppliers to avoid the need to deal directly with customers in financial hardship.

⁶ <http://www.cuac.org.au/database-files/view-file/5026/> (23 November 2010)
<http://www.cuac.org.au/database-files/view-file/5074/> (10 January 2011)

⁷ In late 2004, the Victorian Parliament passed the *Energy Legislation (Amendment) Act 2004*, making important changes to the *Electricity Industry Act 2000* and the *Gas Industry Act 2001* which govern the regulation of the Victorian energy industry.

In other words, prepayment meters discourage suppliers from improving their processes for dealing with customers in hardship as they are able to disengage from these issues.[...] If suppliers are of the opinion that the provision of alternative or flexible payment arrangements is a worthy objective in itself, they should ensure that the flexibility and range of alternative payment plans, billing cycles and payment methods offered by them are optimal and meet the demands of customers before embarking on such risky changes as the introduction of prepayment meters.⁸

Strong controls need to be in place to ensure that vulnerable customers or low income customers do not sign up for supply capacity control products as a means to manage their payment difficulties. For example, there is the risk of low income or vulnerable consumers with below average consumption, agreeing to thresholds that they are unable to maintain to support their basic household needs (for example: cooking, refrigeration, lighting and heating). The result would be that consumers experience reduced access to an essential service and reduced amenity. There would also be significant health, social and welfare consequences.

If supply capacity control products are offered, thresholds, limits for cut offs with regards to frequency of cut offs, duration of each cut off, the total number of cut offs permissible, are required. Customers should be allowed to manually override an automatic cut-off as this safeguard might be required in emergency situations, for example, as a result of illness. While ESC guidance on thresholds is required, it is a complex area. Any thresholds or limits regarding supply (minimum kWh consumption level) will inevitably involve value judgements about the amount of electricity a household requires to support their lifestyle. This varies between households depending on a range of factors including household size/type, location, and appliance mix.

In addition, the interrelationship between supply capacity control products and the current provisions on disconnection, particularly those found in the *Energy Retail Code* and *Electricity Distribution Code* must be examined. Clarification is needed to establish the duration of cut-off that constitutes an actual disconnection. Further, clarification is also needed about the relationship of supply capacity control products against protections such as reminder and disconnection notices. In the event that the supply capacity control product malfunctions and a customer is wrongfully cut-off from supply, the issue around wrongful disconnection payment has to be considered.

We suggest that the ESC consult and obtain expert guidance on the health and welfare implications on supply capacity control products from the Department of Health and Department of Human Services. Stronger safeguards are required to ensure that

⁸ Nicole Rich (Consumer Law Centre Victoria now called Consumer Action Law Centre), May Maseuth (Consumer Utilities Advocacy Centre), Access to energy and water in Victoria – A research report (November 2004), at 118. See <http://www.cuac.org.au/database-files/view-file/2323/>

customers who are highly dependent on energy supply for their health and wellbeing are not offered supply capacity control products. This includes: customers who are on life support; those who are dependent on other medical equipment; those who suffer from a condition which requires them to heat or cool their homes more than average. An example of a safeguard would be to include in a contract for supply capacity control products a notification (in large print) warning this group of vulnerable customers about the risk of signing up for these products.

We note from the Final Decision that Energy Safe Victoria is looking into the safety issues of remote disconnection and reconnection. The safety concerns around supply capacity control products should likewise be referred to Energy Safe Victoria for their advice. Supply capacity control products could potentially result in appliance damage arising from voltage variations. This has potential implications for consumer compensation and insurance claims. If supply capacity control results in a customer's appliance, being damaged inadvertently, it will be reasonable and fair for the business to compensate the customer for damage.

The Final Decision required industry to establish a set of privacy principles for the dissemination of consumption information through in-home displays. There is also a need for adequate privacy protections (for consumption and metering data, customer personal information etc) for supply capacity control product contracts between the customer and energy business.

Supply capacity control products – contractual provisions

Appropriate checks must be in place to ensure that supply capacity products are not used for credit and debt management purposes. As raised in our submission to the Final Decision, using supply capacity control product as a debt and credit management tool is punitive and undermines universal access to an essential service.

Supply capacity control products should not be offered as part of the standing offer. If a customer experiences financial hardship after accepting a supply capacity control contract, that customer should be permitted to exit the contract without penalty and be assisted through the retailer's hardship program. Any contract for supply capacity control products should be limited in duration (not more than a year) so that customers have the opportunity to review their personal circumstances regularly to assess whether the supply capacity control product they have agreed to is still appropriate for them. This is important given the fact that these products are relatively new and consumers may not fully understand the interrelationship between the product and their energy consumption.

Supply capacity control products – monitoring and compliance

The ESC needs to establish a monitoring and compliance framework for supply capacity control products. There should be a reporting framework associated with the use of supply capacity control products. The ESC should also monitor complaints received by the Energy and Water Ombudsman Victoria (EWOV) as complaint numbers would indicate whether there are areas of concerns which require further investigation.

Load control

Issues for comment

The Commission seeks stakeholder comments on:

- How will load control limits be set and agreed?
- For how long should an appliance be automatically turned off before restoring?
- Once restored, should the appliance remain on for a guaranteed period before being subject to turning off again?
- Should there be limits for appliance turnoffs in terms of how frequently, how many times in total, or the number of appliances involved?
- Health and safety risks to customers from load control products
- Third party roles in the provision of load control products
- Ensuring that offers of load control include making customers adequately aware of the disadvantage they will experience by using this product
- The customer's ability to manually override on occasion when an appliance is automatically turned off
- The customer's ability to cancel the load control aspect of their electricity contract
- Information privacy when load control is offered by distributors, retailers or third parties
- For how long should arrangements about load control run? (e.g. for one year? For the life of the contract?)
- Might load control be part of a standing offer?
- What safeguards should be considered for customers on life support.

We have fewer reservations with regard to energy businesses offering direct load control of appliances (via the home area network) to customers. Nevertheless, some of our concerns raised in our response to supply capacity control products above also apply in the context of direct load control. In particular, our concerns around direct marketing, health and safety risks, and the need for a monitoring and compliance framework.

Similarly, direct load control contracts should not be part of the standing offer. As direct load control may be offered by third parties that are not licensed by ESC and thus outside the ESC's regulatory purview, privacy concerns (metering and consumption data and personal information etc) have to be addressed. We raised data security and privacy concerns around third party access to metering data in our submission to the

Final Decision. We recommend that the ESC work with Consumer Affairs Victoria (CAV) to examine the contractual provisions for direct load control products marketed by third parties and assess whether there are sufficient consumer safeguards in place. There also needs to be an appropriate compliance and monitoring framework in place regulating the supply of these products by third parties. Complaints against third parties providing these products, which presumably could be lodged at CAV, should also be monitored so that underlying concerns can be identified and appropriately addressed.

Direct load control products should require explicit informed consent. Therefore, it is essential that consumers have clear and sufficient information to allow them to make an informed decision as to whether the direct load control product is appropriate for their circumstances. Some customers may find the concept of direct load control confusing in the way equipment is cycled on and off. As a minimum requirement, the ESC needs to assess the types of products available for direct load control, the number of appliances on load control per household, the duration, frequency, when direct load control will occur (for example: on prescribed number of hot summer days in a year). Life support equipment and medical equipment must not be subject to direct load control. Direct load control on air conditioners and heaters would also be inappropriate for customers who suffer from a condition which requires stable heating or cooling.

Verifying bills

Readings at meter changeover

Issues for comment

The Commission seeks stakeholder comments on:

- Whether distributors should be required to provide customers with a copy of the final accumulation meter read at the time when the basic meter is replaced with a smart meter, and
- How this might be done.

We strongly support requiring distributors to provide customers with a copy of the final accumulation read at the time when the basic meter is replaced with a smart meter. We agree that it will help customers verify their final bill based on the accumulation meter and provide a starting point for verifying future bills from the smart meter. It potentially will reduce the number of customer enquiries and complaints with industry and the Energy and Water Ombudsman Victoria (EWOV). Once more information about customer experience with smart meters is available, this requirement could be reviewed.

Not all customers who are notified to take the current reading on the basic meter before it is replaced with a smart meter will do so. The more vulnerable and disadvantaged groups within our community (for example: customers with disabilities, low levels of literacy and numeracy etc) may not be in a position to take their own

meter reading. Therefore, it would be best if distributors provide customers with a copy of the final accumulation meter read at the time when the basic meter is replaced with a smart meter. This will not be onerous since the distribution business' representative who is undertaking the meter exchange onsite at the customer's premises, can also take the final reading.

"Start" readings on smart meter bills

Issues for comment

The Commission seeks stakeholder comments on:

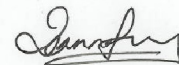
- The desirability of including in smart meter customers' bills the consumption read corresponding to the start of the billing period and
- The practicality of including in smart meter customers' bills the consumption read corresponding to the start of the billing period.

CUAC supports the above proposal. We note that the Final Decision required retailers to reflect on customers' bills the total accumulated consumption read from smart meters, corresponding to the end of the billing period. The Final Decision and the above proposal will allow retention of the current Victorian practice of current and previous read which is familiar to most customers. This will potentially reduce the number of complaints from customers to EWOV. When more information about customer experience with smart meters is available, this requirement could be reviewed.

Thank you for the opportunity to participate in this consultation. If you have any queries, please contact the undersigned on 03 9639 7600.



Jo Benvenuti
Executive Officer



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