

Joint Implementation Group

Bulletin No. 2

National Energy Customer Framework – Implementation activities August-October 2011

The Joint Implementation Group (JIG) is co-ordinating the implementation of the National Energy Customer Framework (NECF) by participating jurisdictions. The JIG is working closely with the Australian Energy Market Operator (AEMO) and the Australian Energy Regulator (AER) to meet the commencement date of the NECF on 1 July 2012.

This Bulletin provides information about NECF implementation activities for the August-October 2011 period.

Retailer implementation and readiness

SCO has written to licensed retailers regarding their transition to national retailer authorisations at NECF start. On 21 September 2011, JIG representatives met with transitioning retailers in Melbourne to discuss retailer readiness and management of transition issues.

At that meeting, the following matters were discussed:

- The mass transition of customer retail contracts to the NECF (see Attachment A);
- Issues relating to the transition from current billing requirements to NECF requirements;
- Specific issues in relation to implementation of bill benchmarks (see further below);
- Expectations relating to retailer readiness and compliance for the NECF start date of 1 July 2012.

This was a productive meeting and it is anticipated that another retailer meeting will be held later in the year.

Distributor implementation and readiness

On 25 August 2011, JIG representatives met with members of the Energy Networks Association (ENA) to discuss issues identified by distributors for NECF compliance and readiness. Distributors requested clarification or assistance on a number of implementation issues.

JIG representatives will continue to liaise with the ENA and distributors regarding transitional arrangements for NECF implementation. Distributors are advised to continue to consult with their local jurisdiction(s) directly regarding jurisdiction-specific implementation matters.

Implementation issues

Project manager

The Ministerial Council on Energy Standing Committee of Officials (SCO) is in the process of engaging a project manager for the NECF. In recognising the significant work required to implement the NECF by jurisdictions, market bodies and market participants, the SCO agreed to engage a dedicated resource to manage NECF readiness and implementation in close cooperation with the NECF Legal Project Manager and the Chair of the JIG.

Bill benchmarking

The consultancy to undertake research to develop the initial set of bill benchmarks is now well under way. The consultants have completed the online survey and have achieved the target of 4750 households. The information from the survey will be used to develop the household size algorithm for electricity use and to develop models on other factors that affect energy use. Survey participants provided permission for their meter data to be collected from the distributors and much of this data has now been received by the consultants due to the prompt responses from distributors. It is expected that the algorithm and energy use data will be provided to energy retailers in December 2011.

The AER has received notification of localised zones and their associated postcodes from all jurisdictions. The AER will now write to all transitioning retailers to provide them with the zone information, and additional information regarding the bill benchmarking requirements in the National Energy Retail Rules.

Jurisdictional activities during July—October 2011

Individual NECF jurisdictions are progressing their legislative work for NECF implementation, and this is also being supported through the national working groups under the SCO.

The JIG and the Legal Working Group meet weekly to discuss issues and to co-ordinate work. Where there are common issues that require a consistent approach, the JIG and the Legal Working Group facilitate regulatory consistency between jurisdictions as they prepare their NECF packages.

Victoria

The Department of Primary Industries (DPI) reviewed the submissions received in response to its consultation paper regarding Victorian-specific regulation which has informed the making of drafting instructions for the NECF application Act. The drafting instructions outline the repeal of existing provisions in the *Electricity Industry Act 2000* and *Gas Industry Act 2001*, amendment of provisions, application of the National Energy Retail Law and supplementary provisions where Victoria-specific regulation is considered necessary.

Cabinet approval-in principle of the Victorian NECF application Act and associated amendments is scheduled for October 2011. Should the package receive approval, the Victorian Government will release a decision paper outlining the Victorian approach to NECF transition and any Victoria-specific regulation to be contained in subordinate instruments. Drafting of instruments will commence following cabinet approval.

Queensland

The Department of Employment, Economic Development and Innovation (DEEDI) is progressing drafting of its application Act and consequential amendments in conjunction with the Office of the Queensland Parliamentary Counsel.

Targeted consultation is currently under way with the legislation expected to be introduced in the last quarter of 2011.

DEEDI officers continue to liaise with key stakeholders, including consumer groups, to gather advice and feedback across the range of NECF implementation issues.

NSW

NSW released (8 September 2011) a public paper that outlines the NSW approach to implementation of NECF. The paper is available at:

<http://www.trade.nsw.gov.au/energy/customers/necf>

The NSW Government's overarching policy principle is that energy retail and distribution businesses must be NECF compliant from commencement. However, it is recognised that transitional arrangements will be required to ensure a smooth transition, minimise cost impacts on retailers and distributors, and take into account existing commitments such as price regulation frameworks. The Division of Resources and Energy, Department of Trade and Investment will work with retailers and distributors to ensure a smooth transition.

The Department is working with the NSW Parliamentary Counsel's Office to draft the NSW NECF legislative package to give effect to the above implementation and transitional framework. Throughout the drafting process, the staff of the Resources and Energy Division will continue to liaise with key stakeholders.

South Australia

During August, the Department for Transport, Energy and Infrastructure continued to meet with key stakeholders to discuss various subjects including the transition to NECF retail authorisations/exemptions and transitional arrangements for the new gas RoLR scheme. The Department is currently analysing its options to determine the best way forward for class and individual exemption holders as well as consumers. As a RoLR scheme will be a new feature of South Australia's gas retail arrangements, a transitional period is being considered to allow time for the development of fully automated systems to support the gas RoLR scheme.

Drafting of South Australia's implementation legislation, which will cover application of the NERL and amendments to South Australia's Electricity Act 1996 and Gas Act 1997, commenced in August and continued during September. The Department is currently working with the South Australian Parliamentary Counsel to assist the drafting process, and to prepare the Explanatory Memorandum, which will accompany and explain the content of the Bills. The implementation package, including the draft legislation and Explanatory Memorandum, will be released for public consultation, providing an opportunity for stakeholder feedback.

Tasmania

A program of targeted stakeholder consultation on NECF implementation and transition commenced in late July, and will be ongoing. This includes the Tasmanian Chamber of Commerce and Industry, the Tasmanian Council of Social Services, Anglicare, the Small Business Council, and the Tasmanian Farmers and Graziers Association.

It has been agreed that the small customer threshold in Tasmania will be 150 megawatt hours per year. This will ensure that the existing level of customer protection afforded to business customers who became contestable on 1 July 2011 will continue after NECF commencement. It has also been agreed that NECF will not apply to the Tasmanian gas distribution network at this stage.

ACT

The Environment and Sustainable Development Directorate (which includes the former Department of Environment, Climate Change, Energy and Water) has initiated the development of the application legislation to implement the NECF. This includes the preparation of drafting instructions for ACT's implementation legislation, which will cover application of the National Energy Retail Law, and amendments to the *Utilities Act 2000* of the ACT.

Concurrent processes are also being undertaken jointly with the Independent Competition and Regulatory Commission (ICRC) and other stakeholders to ensure that existing codes, regulations and guidelines which will be impacted by the implementation of the NECF are also reviewed and updated in advance of 1 July 2012. The ICRC process to review its codes and guidelines will include public consultation providing opportunity for stakeholders to give feedback.

The Directorate will continue its targeted consultation process with ACT energy businesses and other stakeholders to ensure a smooth transition to the NECF.

AER activities

Development of price comparator website

The AER has commenced consultation on the development of its retail energy price comparator website. The AER is consulting with a broad range of key stakeholders, including jurisdictional regulators, customer representatives, and energy retailers to inform its approach to developing the price comparator. An issues paper was released for public comment in July 2011 with a public forum held in August 2011. The issues paper can be found on the AER's website (www.aer.gov.au). The AER is currently considering stakeholder submissions, which closed on 26 August 2011.

The AER has already released final decisions on many of the guidelines and instruments to support the operation of the Retail Law and Rules.

Submission of initial customer hardship policy

Existing energy retailers who are transitioning to the national retailer authorisations regime will be required to have an AER approved customer hardship policy in place on commencement of the Retail Law. To ensure this requirement is met, retailers will be required to submit their customer hardship policy to the AER for approval by 1 December 2011. Guidance on AER approval of retailers' customer hardship policies under the Retail Law was released in May 2011. Transitioning retailers are encouraged to approach the AER in the coming months to assist them in preparing their hardship policies for submission.

New retailer applicants

The AER's Retail Authorisation Guidelines were released in July 2011. New entrants to the energy retail market are now able to submit applications for national retailer authorisations to the AER by contacting [AERInquiry@aer.gov.au](mailto:AERInquiry@ aer.gov.au). Consultation has now closed on the AER's exempt selling guidelines, which will establish circumstances in which a national retailer authorisation will not be required, and final guidelines are expected to be released by the end of October.

The AER's Retail Pricing Information Guideline, Retail Law Compliance Procedures & Guidelines, and Performance Reporting Procedures & Guidelines have also been finalised. These guidelines have been published on the AER's website (www.aer.gov.au) to allow energy retailers and distributors time to prepare for the Retail Law commencement on 1 July 2012. Consultation on

instruments to support the Retailer of Last Resort Framework has now closed, and final instruments will be released later this year.

National electricity connections charging guidelines

The AER published a consultation paper on the design of the electricity connection charge guidelines under the new chapter 5A of the National Electricity Rules in June 2011. Following the release of this paper, the AER hosted a public forum in July 2011 to explain the issues identified in the paper in order to facilitate stakeholders in preparing their submissions to the AER. A total of 18 submissions were received. The AER will be publishing a draft guideline for consultation in December 2011. It is intended that the guideline will be finalised and published by February 2012.

AEMC activities

The Australian Energy Market Commission (AEMC) is already responsible for developing rules under both the National Electricity Law and the National Gas Law. The AEMC will acquire rule making and market development responsibilities under the NERL from 1 July 2012. These new responsibilities, under the umbrella of the NECF, will further extend consistent regulatory decision making across the energy sector.

The AEMC is already preparing for its NECF responsibilities. It has developed an internal work program to establish a suite of resources, business systems, business processes and capabilities to discharge its functions and powers effectively from the NECF start date.

To date, implementation activities have focussed on project planning and articulation of project work streams. Priority tasks for the AEMC going forward include: development of guidelines to assist rule change proponents to prepare rule change requests and make submissions on future rule change requests under the NERL; ongoing engagement with external stakeholders to identify issues for possible rule change requests and market development areas; and development of AEMC resources, business systems and processes.

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Transition of existing customer contracts

The transition to the National Energy Customer Framework (NECF) involves the transfer of large numbers of existing customer contracts to the national regime, which necessitates adoption of a “mass transition” approach.

The JIG recognises that further transitional issues are likely to emerge during the implementation phase, which will be dealt with as part of industry readiness engagement on implementation.

When the NECF starts, the local regulatory frameworks supporting customer contracts will fall away, and jurisdictions will be transitioning existing contracts to be contracts under the NECF.

To allow retailers and distributors to continue with their preparation for NECF start, the JIG wishes to outline the proposed approach to contract transition for:

- existing customer retail contracts with small customers;
- existing customer connection contracts;
- resolving disputes relating to contract transition.

SCO policy guidance

SCO has previously announced the following national policy principles for contract transition:

- minimal disruption to existing customer contracts (and thus to small customers, distributors and retailers);
- moving toward compliance with NECF requirements for energy contracts as soon as possible after NECF start;
- the preservation of accrued rights and liabilities under existing energy contracts as at the date of transition to NECF.

Transition of existing standard retail contract (SRC)

Where there is an existing SRC:

- a contract in the retailer’s form of standard retailer contract (adopted under s 25 of the National Energy Retail Law (NERL) will be deemed to have taken effect on the transition date¹ between the small customer and that retailer;
- except for price, (see below), the terms and conditions of the old SRC are taken to be replaced by the terms and conditions of the retailer’s form of standard retail contract under the NERL;

Standard retail contracts—price: tariffs and charges:

If the price under the old SRC is a regulated retail price:

Approach: the price under the new SRC is taken to be the regulated retail price that was in place under the old SRC immediately before the transition date. This will be subject to local requirements that apply to regulated retail prices, eg changes to prices and any relevant jurisdictional transitional arrangements relating to regulated retail prices

If the price under the old SRC is a standing offer price that is not a regulated retail price:

Approach: the price under the new SRC is taken to be the standing offer price that was in place under the old SRC immediately before the transition date.

Note 1: The NECF standing offer price variation regime would apply to transitioned standing offer prices from NECF start.

Note 2: If a charge is expressly prohibited under the NECF, (eg rule 73 NERR late payment fees for hardship customers), the NECF prohibition will apply from NECF start.

Transition of existing market retail contract

The SCO policy principles for market retail contract (MRC) transition are:

- Small customers are entitled to the minimum protections applicable to market retail contracts under the NECF once the NECF starts.

¹ ‘Transition date’ is the date on which the NECF commences—1 July 2012

Transition of existing customer contracts

- To the extent possible, there should be minimal diminution of existing small customers' protections under an existing MRC.

Where the old MRC is consistent with NECF minimum requirements

Where an existing MRC contains terms and conditions that are generally consistent with NECF requirements, the old MRC will continue and be taken to be a MRC for all purposes under the NECF.

Where necessary, minimum requirements under NECF will apply to (or be implied into) a transitioned MRC so that those small customers have the benefit of all of the protections available under the NECF.

Some examples:

- Where a current MRC has equivalent terms and conditions to the minimum terms and conditions/requirements for MRCs under the NECF:
Approach: the old MRC will continue, and be taken to be a MRC for all purposes under the NECF.
- Where a current MRC provides 'lesser' rights for a small customer than those under a NECF MRC:
Approach: the old MRC will continue and be taken to be a MRC for all purposes under the NECF, and the small customer has the benefit of NECF protections which would be implied into those MRCs.
- Where a current MRC provides 'additional' rights for a small customer over and above the minimum requirements under the NECF:
Approach: the old MRC will continue and be taken to be a MRC for all purposes under the NECF.

Where the old MRC is inconsistent with NECF requirements

There are two general scenarios:

- Where an existing MRC contains a term or condition that is inconsistent with a NECF protection, and the current MRC term or condition confers a lesser protection for the small customer when compared with the NECF protection.
Approach: the old MRC term or condition would no longer apply from the transition date and the NECF protection would apply and prevail.
- Where an existing MRC contains a term or condition that is inconsistent with a NECF protection, and the current MRC term or condition is more advantageous for the small customer than the NECF:
Approach: the old MRC term or condition would continue to apply and would prevail for the term of the transitioned MRC despite the inconsistency.

Terms and conditions of transitioned MRC relating to tariffs and charges

There are a number of issues to manage in relation to price in the transition of existing MRCS to the NECF

- General principle: For a transitioned MRC, the terms and conditions relating to tariffs and charges applicable under the old MRC continue to apply after NECF start for the term of the transitioned MRC.
- Specific issues:
 - (1) Where a charge is prohibited under the NECF, (eg rule 48 and 49 of the NERR—early termination charges on evergreen contracts; rule 73 NERR late payment fees for hardship customers.)

Transition of existing customer contracts

Approach: The NECF prohibition will apply from the transition date.

- (2) The minimum requirements in the NECF relating to variation of tariffs and charges under a MRC would need to be applied to those transitioned MRCS (rule 46 NERR).

Transition of existing customer connection contract

Deemed standard connection contract transition (small and large customers)

Where there is an existing deemed standard connection contract ('DSCC') with a distributor:

- A contract in the distributor's form of DSCC adopted under s 69 NERL will be deemed to have taken effect on the transition date between the retail customer and that distributor.
- the terms and conditions of the old DSCC are taken to be replaced by the terms and conditions of the distributor's form of DSCC under the NERL ("a transitioned DSCC").

Existing negotiated connection contract with small customers

An existing negotiated customer connection contract with a small customer will continue and be taken to be a negotiated customer connection contract for all purposes under the NECF.

Two minimum requirements under NECF will apply to (or be implied into) a transitioned negotiated customer connection contract with a small customer:

- a dispute resolution provision (rule 82 NERR);
- a distributor must not include a limitation of liability term in a negotiated connection contract with a small customer (rule 83 NERR).

AER approved DSCCs for large customers

AER approved DSCCs are a new category of connection contract established by the NECF. Distributors have requested consideration of a transitional mechanism whereby existing large customers on DSCCs can be transitioned to an AER approved DSCC.

Further engagement with distributors will be required to develop a transitional arrangement that would support this aspect of contract transition.

Managing transition where no existing jurisdictional DSCC

Gas distributors in some jurisdictions do not currently have a customer connection contract with retail customers connected to their distribution network. This aspect of contract transition will be managed on a case by case basis, with the overriding policy principle that small customers should be provided with all NECF minimum requirements at NECF start.

Disputes on contract transition issues

- A small customer will be able to take to the Jurisdictional Energy Ombudsman a dispute with a retailer or a distributor about the application of the contract transition regime to their circumstances.
- The transitional dispute regime will require the small customer to set out the complaint to the retailer or distributor in the first instance, and if it is not resolved, it may then be referred to the jurisdictional energy ombudsman.