

23rd February 2010

Manager, MCE Secretariat
Department of Resources, Energy and Tourism
GPO Box 1564
CANBERRA ACT 2601

By Email: MCETMarketReform@ret.gov.au

National Energy Consumer Framework Second Exposure Draft

Australian Power & Gas (APG) welcomes the opportunity to comment on the Ministerial Council on Energy (MCE), National Consumer Framework (NECF) Second Exposure Draft. APG recognises the importance of the reform process being undertaken by the MCE, however we are concerned that the Second Exposure Draft has strayed from the original policy objectives, which is of significant concern.

Key Areas of concern relate to;

- burden under the NECF and its failure to minimise such burden, Regulatory
- variation and the limits placed on retailers to vary a market contract, Market contract
- arrangements, Retail support
- the National Objective, The dilution of
- Scheme under the NECF, & Ombudsman
- arrangements. Credit support

Our detailed commentary on these issues is as follows.

Regulatory Burden

Under Section 14.5(e) of the Australian Energy Market Agreement Ministers agreed that the initial Rules for the national framework for retail and distribution will minimise the regulatory compliance burden and associated cost. The Second Exposure Draft fails to meet this objective.

A number of areas seek to impose a greater level of regulatory burden (and therefore cost) than currently exists in any one jurisdiction. Rather than attempting to achieve consistent least cost harmonisation several sections of the draft seek to adopt the more onerous and costly obligation from a jurisdiction and seek to apply this nationally, in

effect taking the highest denominator approach to regulation. This in no way seeks to minimise the regulatory & compliance burden on retailers and is not in line with good regulatory practice.

Market Contract Variation

A retailer's ability to vary a market contract to support the delivery of innovative product offerings to customers has also been significantly hampered through the Second Exposure Draft. When considering the extent to which retailers should be allowed to amend minimum terms and conditions under a market contract, the 2008 SCO response stated that,

"the minimum terms and conditions should not overwhelmingly compromise retailers' capacity to innovate and therefore compete for custom and customers' opportunity to benefit from a different term or condition that it has chosen to 'trade' for some offsetting benefit."

Retailer's capacity to innovate has been overwhelmingly compromised, and this is demonstrated by the reduction in the number of clauses from in excess of 20 to around 6 which could be varied in a market contract across the NECF consultation process.

The Wind-back in the scope for varying a market contract has been most pronounced in the area of security deposits. Restricting the application of security only serves to restrict the level of access credit risk customers would otherwise have to market offers.

Further the proposed obligation to allow security deposits to be paid by instalment will impose additional costs on retailers, create an uncertain compliance obligation, and add an unwarranted level of complexity in managing customer accounts.

Retail Support Arrangements

Current jurisdictional use of system agreements and co-ordination agreements are generally based upon documents drafted by distribution business acting as monopoly service providers with little intervention by regulators to redress their inherent power imbalance. APG supports the NECF approach to bringing retail support arrangements into the regulatory framework, and to create greater reciprocity in the distributor-retailer relationship.

However, a number of sections do not adequately address the lack of reciprocity

- Rule 217 requires retailers to reimburse customers the cost of a meter test if the meter is found to be faulty. However, there does not appear to be a reciprocal

- obligation on the distributor to reimburse the retailer in those circumstances, remembering the meter is the property and responsibility of the distributor,
- Rule 514 requires the distributor to pay charges for the energy consumed at a premise if the distributor fails to disconnect in accordance with the retailers instructions. However, the current South Australian and Victorian agreements require the distributor to pay the spot market price to the retailer. This requirement should be retained in the NECF
 - Rule 6B2.2 allows the distributor to initiate direct billing arrangements with the customer. However there is no provision for retailers to initiate similar arrangements, as per the existing Victorian and New South Wales frameworks.
 - Rule 6B3.2 imposes network tariff reassignment obligations upon retailers, but no such obligations are placed on distributors.
 - Section 6B3.3 requires payment following a dispute to be made to the other party within 3 business days of the dispute. Although this is a reciprocal clause, it is most likely to be the retailer making the payment. Given the potential for large monetary values to be involved, requiring, for example board approval to make payment, a 5 business day requirement would be more reasonable, and consistent with the Queensland and South Australian co-ordination agreements.
 - Retailers are required to pay network charges regardless of whether or not the retailer has been able to recover those charges from the customer. However in the case of theft or illegal usage it is the distributor who identifies the breach and instigates legal proceedings against the customer. As the distributor is best able to manage this risk, retailers should not be required to collect any network charges on its behalf where theft or illegal consumption has occurred.

Retailer of Last Resort

APG is supportive of the NECF's proposed ROLR framework, in particular the opportunity for a market-based mechanism to facilitate the provision of ROLR services. However, contrary to the extent of consultation during the earlier stages of the ROLR scheme development, no consultation was conducted between the release of the final consultant report and the NECF drafting. As a consequence, we consider there are significant issues in the current drafting.

A key area of concern relates to the scheme provisions regarding information orders. Under the scheme if it is viewed that an "apprehended" ROLR event is deemed to exist a retailer may be issued with an information order and be required to provide detailed information which would include financial statements.

APG is concerned that the provision of such information may be in contravention of ASX company information disclosure rules. We are currently seeking legal advice on what we see as an important issue that needs further clarification. We would suggest that the RPWG seeks the same clarification.

It also remains unclear for what purpose this information is being requested and how it will be used. The type of information being requested can be highly sensitive commercial information, and the Second Exposure Draft provides no assurances on how this information will be handled once it is provided to the required parties.

Other specific concerns include:

- The proposed regulation of large customer margins and terms and conditions is inconsistent with all existing retailer-based ROLR schemes and the regulation of retail prices generally. Large customers have the bargaining power to negotiate their own prices and terms, even in a ROLR event.
- Under section 648 of the Law and rule 1122 respectively the AER may limit recoverable costs, and retailers may cover “at least the efficient costs.” Given the financial and operation risk that the ROLR is subjected to, and the market-wide benefit that the ROLR service provides, the retailer should be entitled to recover all reasonable costs.

National Objective

APG supports the SCO response under section 8.4 of the June 2008 Policy Response Paper, that the market objective “will drive the best outcome, giving to the AEMC when exercising its rule making function, appropriately balanced guidance between the objectives of protecting consumers and minimising the cost and burden of regulation.”

We are concerned that this position is undermined by the “interpretive clause” introduced to NECF, and in particular that it may undermine the application of the efficiency objective to the framework. We also note that the only example provided in the explanatory note and by members of the RPWG referred to customer hardship policies, whilst the clause covers the entire consumer protection framework.

Ombudsman Scheme

APG remains of the view that it is sufficient for retailers to be members of an approved Ombudsman scheme as it currently applies in most jurisdictions. There is no justification to enshrine requirements in the Law relating to Ombudsman schemes. The current inclusion of the Ombudsman functions in the Law fundamentally alters their current functions and powers.

The functions listed in the Law do not reflect the functions and powers of current schemes as specified in their respective constitutions. Under existing Ombudsman schemes, the relevant Board through the Constitution provides appropriate checks and balances on the actions of the Ombudsman. These checks and balances (which are fundamental to the scheme and that of participant’s confidence in the scheme) are removed if the functions and powers are provided through legislation.

Credit Support

APG was disappointed to see that the “Credit Support Guidelines” as foreshadowed in the First Exposure Draft have not come to fruition. Credit support and more particularly the form in which credit support is provided is a key issue for smaller second tire retailers like APG.

The First Exposure Draft provided some comfort to retailers that positive changes to the credit support mechanism would occur through the NECF consultation process. These

positive changes would have been brought about through the AER Credit Support Guidelines and in particular clause 504(4) which stated;

The AER, in preparing the AER Credit Support Guidelines, must provide guidelines on a variety of acceptable forms of credit support, which may include any or all of the following—

- (a) a shareholder guarantee;*
- (b) a bank guarantee;*
- (c) a third party guarantee;*
- (d) credit insurance;*
- (e) any other form agreed between a distributor and a retailer.*

The inclusion of the recognition of a retailer's ability to meet their credit support obligations through the use of a credit insurance option was seen as a positive step to elevate barriers to market expansion that small retailers currently experience through the existing narrow options available to retailers in meeting credit support obligations.

APG would strongly urge the RPWG to review its position on credit support and that of having the AER develop a set of credit support guidelines so as to ensure smaller retailers are no longer materially disadvantaged through existing credit support obligations.

At a minimum we firmly believe the RPWG should meet separately with retailers to discuss their concerns in detail.

Whilst the above highlights key areas of concern, following is a more extensive list of issues we have identified with the Second Exposure Draft. Should you wish to discuss any aspect of our submission I may be contacted on (02) 8908-2714 or via email at: sruddy@auspg.com.au

Yours Sincerely

Shaun Ruddy
Manager Regulatory & Compliance
Australian Power & Gas



Australian Power & Gas[®]
Simply smarter energy

Australian Power & Gas Pty Ltd
ABN 26 118 609 813

t 02 8908 2700
f 02 8908 2701
a Locked Bag 5004
Royal Exchange NSW 2000

www.australianpowerandgas.com.au

Comments – Second Exposure Draft of the National Energy Customer Framework: Law, Rules, Regulations and Contracts

Organisation commenting: Australian Power & Gas (APG)

Draft National Energy Retail Law		
Part 1 - Preliminary		
Section	Subject Matter	Comment
102	Carry-over customer	A carry-over customer is defined through sub-clause (b) as a customer who has not applied to a retailer for the provision of retail services. However, any application must be in accordance with Law, and the definition of carry-over customer should make this explicit. The definition should be amended to: (b) without applying to a retailer <u>in accordance with the Law</u> for the provision
102	Public holiday	Current drafting refers to “ <i>the area concerned</i> .” Current jurisdictional definitions are more specific: NSW; a holiday throughout the State: SA; a bank holiday in Adelaide: Vic & Qld; in accordance with relevant Acts. To remove uncertainty and ambiguity, the NECF should be drafted accordingly.
105(3)	Large customers	To cater for new customers the large customer definition should include “is likely to consume energy” above the threshold.

113(2)	National energy retail objective	<p>Sub-section (2) waives the national objective for consumer protection. This is contrary to the SCO response under section 8.4 of the June 2008 Policy Response Paper.</p> <p><i>The SCO agrees with the AAR recommendation not to amend the existing objectives. In the SCO's view this will drive the best outcome, giving to the AEMC when exercising its rule making function, appropriately balanced guidance between the objectives of protecting consumers and minimising the cost and burden of regulation.</i></p> <p><i>The SCO's view is also consistent with the Beale report recommendations in relation to the ESCV. In particular, the SCO agrees with Mr Beale that the most appropriate bodies to protect the interests of consumers are Governments. Indeed, the interests of consumers will necessarily be protected by various SCO recommendations on the structure of the new national customer framework. Good examples of this are the recommendations that the obligation to supply and the existence of deemed contracts are located in the Law. The existence of the obligation and deemed contracts in turn requires 'consumer protection' Rules dealing with the minimum terms and conditions of those contracts.</i></p> <p><i>In this way, Government acting through the Parliament drives and controls consumer protection. Consistent with the observations made in the Beale report, this regulatory design is the most appropriate means by which Governments may drive social and environmental outcomes. In summary, the SCO considers that the AAR recommendations in relation to the adequacy of the current statutory objectives should be accepted.</i></p> <p>APG supports the original SCO response and are concerned that such a significant reversal of a fundamental policy position has occurred with no consultation. Whilst the explanatory note only refers specifically to the avoiding the diminution of hardship policies, and this was the only issue identified by the RPWG at the NECF2 briefing, we are concerned that the clause would dilute consideration of the efficiency objective with respect to the entire NECF package,</p> <p>It is understood that the intent is to provide an interpretative clause, but this could be achieved through alternative references, such as in the second reading speech.</p>
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Draft National Energy Retail Law

Part 1 – Relationship between retailers and small customers

Section	Subject Matter	Comment
205	Variation of standing offer prices	<p>Throughout this section references are made to varying <u>the</u> standing offer prices. For example sub-section (6) refers to the proposed 6 month restriction for varying <u>the</u> standing offer prices. However, standing offer prices are a collection of numerous individual prices, which may or may not all be varied at the same time. An unintended consequence of current drafting if only some standing offer tariffs are varied at any point in time, none of the tariffs which were not varied at that time could be varied with the following six month period.</p> <p>References to <u>the</u> standing offer prices should be amended to <u>a</u> standing offer price.</p>
219	Presentation of Market Offers	<p>Presentation of Market Offers is appropriately regulated through the competitive market, whereby retailers who do not provide clear and relevant information to consumers will lose market share.</p>

222(1)(b)	Record of informed consent	<p>Retaining consent records imposes costs on retailers, whereby the consumer benefit must be weighed against compliance costs. If a customer disputes that consent has been given, this will be done reasonably within a very short time after the point which consent is claimed to have been obtained. Consequently a 12 month requirement to maintain consent records is more than adequate to deal with any reasonable dispute. A two year requirement would double compliance costs with no customer benefit.</p> <p>The obligations is also inconsistent with section 223(2)(b) which requires the customer to raise an objection regarding explicit informed consent within 12 months.</p>
223(5)(b)	No or defective Explicit Informed Consent	<p>The new retailer should not be required to pay the old retailer the wholesale and network charges related to the customer if the new retailer is unable to recover those costs.</p>
231(1)(b)	Payment plans	<p>The reference to “other residential customers experiencing payment difficulties” should be “other residential customers who inform the retailer, either directly or through a third party, they are experiencing payment difficulties.” In the absence of customer or third party advice the retailer is not in a position to assess whether the customer is experiencing payment difficulty.</p>
232	Definitions – retail marketer	<p>The words “or an associate of a retailer” should be deleted. Associates of a retailer are captured in “another person”, and as currently drafted all associates of a retailer would be captured, regardless of whether or not they engage in marketing.</p>
235	Deemed customers	<p>For clarity a “move-in customer” should be redrafted as an “unknown move-in customer,” to ensure that those customers that do move-in and appropriately apply for retail services are not considered to be in this category.</p>

Draft National Energy Retail Law

Part 3 – Relationship between distributor and retailers

Section	Subject Matter	Comment
307	Direct billing arrangements	<p>Inconsistent with the National Electricity Rules and existing jurisdictional arrangements this section appears to provide distributors with the discretion as to whether retailers can establish energy only contracts with their own large customers.</p> <ul style="list-style-type: none">• Vic Use of System Agreement 3(a)(1)<ul style="list-style-type: none">• The parties agree that the DB will provide distribution services to the Retailer in respect of each customer except to the extent that the Retailer and the Customer have entered into an agreement under which the Retailer does not provide or procure and UoS services to the customer• NSW Market Operations Rule (NUSA) No.2<ul style="list-style-type: none">• Where a customer (who is not a small retail customer or a Registered Customer) and a Retail Supplier agree, the DNSP may require payment of, and issue bills for, NUOS Services Charges, in respect of that customer's Agreed Points of Supply.• NER 6.20.1(c):<ul style="list-style-type: none">• If a Distribution Customer and the Market Customer from whom it purchases electricity agree, the Distribution Network Service Provider may bill the Distribution Customer directly for distribution services used by the Distribution Customer in accordance with paragraph (a)(2)."

Draft National Energy Retail Law		
Part 4 – Small customer complaints and dispute resolution		
Section	Subject Matter	Comment
Part 4	Small customer complaints and dispute resolution	APG does not support the inclusion of this section as it relates to ombudsman schemes. It should be adequate to require retailers to be members of an AER approved ombudsman scheme. Under existing Ombudsman schemes, the relevant Board through the Constitution provides appropriate checks and balances on the actions of the Ombudsman. These checks and balances are removed if the functions and powers are provided through legislation.
401(1)(a)	Definitions – relevant matter	Sub-section (vi) refers to a decision of a distributor or retailer under Division 3 of Part 7. However, Division 3 of Part 7 exclusively deals with distributors. To ensure that it is unambiguous that it does not deal with retailers, the definition of relevant in 401(1)(a)(vi) should not include the word “retailer.”
402	Role of energy ombudsman	The roles of energy ombudsman are determined in accordance with their respective constitutions or legislative authorities and should not be specified in the NERL.
406	Functions and powers	The role of the energy ombudsman in Victoria, New South Wales and South Australia does not extend to resolving the dispute, only facilitating the resolution.

Draft National Energy Retail Law

Part 5 – Authorisation of retailers and exempt selling regime

Section	Subject Matter	Comment
520(2)(b)	Power to revoke	Given the severity of revocation it should only be considered after all other enforcement procedures have been exhausted. In addition, “reasonable expectation that the retailer will not be able to meets its obligations” is a more appropriate test than “reasonable apprehension.”
529	Exempt related factors	<p>The criteria listed are generally inconsistent with the policy principles listed in section 529. In particular sub-sections (e) and (f) do not apply to authorised retailers and it is inequitable to apply them to exempt sellers. If there are other laws to govern the applicant’s behaviour, then these other laws should also be adequate to govern an authorised retailer’s behaviour. Similarly if the costs of regulation exceed the benefits, then the regulations should also not apply to authorised retailers.</p> <p>These principles should apply to Authorised Retailers and the national rules generally. Clearly they do not. It is therefore inequitable to apply such a principle to the obligations imposed on exempt retailers. Sub-rules (1)(e) and (f) should be deleted.</p>

Draft National Energy Retail Law

Part 6 – Retailer of last resort scheme

Section	Subject Matter	Comment
605(7)	Default ROLR	<p>It is unreasonable to require a default ROLR to meet the organisational criterion and implement adequate systems to meet that criterion as soon as practicable after registration.</p> <p>It is also inconsistent with section 604(2)(a)(ii) which requires retailers to be able to implement adequate systems in a timely manner.</p>
606(1)	ROLR register EOI's	An annual EOI process is costly and unnecessary
612(e)	Issue of ROLR notice	The ROLR notice will specify the transfer dates on which the customers of the failed retailer to the designated ROLR. However the transfer would have already occurred prior to the issuing of the notice.
614	Transfer of customers	Contrary to existing industry processes, this section would appear to preclude pending transfers being allowed to complete at the time of a ROLR event to allow customers to transfer to their preferred retailer.
622(4)	Large customers	<p>Consistent with existing jurisdictional arrangements the prices charged to large ROLR customers should be fair and reasonable, and not subject to regulatory approval. It is important to note that large customers are allowed to nominate a designated ROLR, and therefore negotiate their terms and conditions in advance of a ROLR event.</p> <p>Reference to the “actual wholesale energy cost” should be to the half-hour price at the regional reference node, consistent with existing commercial arrangements with large default customers.</p>
624	Duration for large customers	Given their negotiating power, it should be sufficient for large customer deemed ROLR arrangements to be terminated after 3 months, following a notice after 2 months.
627	General regulatory information order	<p>The purpose of a GRIO and the circumstances under which it would be enacted are unclear. Given the extreme powers it provides the AER, further consultation is required, and we request that a separate briefing is held.</p> <p>It was claimed at the NECF2 that the General Information Order was based upon the information requirement regime established by Ofgem. However, Ofgem’s “Supplier of Last Resort – Revised Guideline, November 2008” is considerably more specific, and limited, than proposed in NECF2:</p>

		<p>1. A description of (or organogram showing) the current ownership of the Licensee, including any parent companies and any significant shareholdings in the Licensee and any parent companies.</p> <p>2. A copy of the standard contract (or, if more than one standard contract, the various forms of standard contract) entered into by the Licensee with customers. To the extent the terms and conditions on your website accurately and completely represent the contractual arrangements you have with customers, you may simply refer to this.</p> <p>3. A brief description of the financial position of the company as at the date of response, including a statement as to whether, were the licensee company to be wound up by its members, such winding-up would be a solvent or insolvent winding-up under the Insolvency Act 1986 (otherwise known as a members or a creditors voluntary liquidation).</p> <p>We are also concerned that by its nature issuing a General Information Order may give cause to an unwarranted apprehended ROLR event (if financial statements are incorrectly interpreted), or may increase the likelihood of a ROLR event being triggered (by precipitating panic and defensive responses by counter-parties).</p>
634(1)&(2)	Information described in a ROLR RII	The purpose of requiring financial information and how that information will be used is unclear. Given the commercial sensitivity of such information, further consultation is required. As above, the broad scope of information that may be required is in contrast to that specified by Ofgem.
634(4)(e)	Information provided in a ROLR event	Rather than “average consumption” the ROLR will require actual metering data.
643(7)	ROLR plans	Annual ROLR plan reviews are costly and unnecessary
648	ROLR cost recovery	<p>Given that the provision of ROLR services is providing a market-wide benefit to all participants there should be no limits on the costs that are recoverable.</p> <p>Furthermore, the Law makes no reference to the rights of a ROLR to set an up-from fee, consistent with paragraph C20 of the explanatory note, and as discussed in the consultants report.</p>
652(2)	ROLR information	It is unnecessary, costly and excessive for the AER to impose a standard form for the ROLR information notice, and specify how the notice is to appear in the contract. No jurisdiction currently adopts such an approach.

Draft National Energy Retail Law		
Part 8 – Functions and Powers of the AER		
Section	Subject Matter	Comment
812	Disclosure of Confidential Information	Given the impact of disclosing confidential information it would be more appropriate if the introduction to subsection (1) read: Despite sections 809, 810 and 811 but subject to this section, the AER is authorised to disclose information given to it in confidence after the restricted period if the AER <u>is of the reasonable opinion that the disclosure is necessary and:</u>

Draft National Energy Retail Law		
Part 8 – Functions and Powers of the AEMC		
Section	Subject Matter	Comment
906	AEMC Rule Making Powers	It appears that the reference to Part 8 in this section is incorrect
914(b)	Confidentiality of information	The paragraph should be amended to read “the AEMC reasonably decides that the information is confidential information”

Draft National Energy Retail Law

Part 10 – National Energy Retail Rules

Section	Subject Matter	Comment
1003(3)(c)	Subject matters – Ombudsman	The section states that the Rules may confer functions or powers on an energy ombudsman. Most existing energy ombudsmen have their powers and functions conferred by their relevant constitution. Given that the policy intent is not to amend existing functions and powers this reference should be deleted.
1003(4)	Subject matters – contract variation	While the Rule must specify a date on which an amendment to the model terms and conditions must apply, there does not appear to be any allowance for the retailer to make the necessary amendments.
1007	Criminal Offences	The AER should not only be prohibited from making a Rule that creates an offence for a breach or provides for a criminal penalty or civil penalty for a breach, but the AER should also be prohibited from amending a Rule which has those effects.
1008(2)	Documents	Para (a) and (b) should be cumulative (i.e. “or” should be replaced with “and”)
1012	Content of requests for Rules	Insert “market initiated proposed” in front of the first use of “Rule”

Draft National Energy Retail Law

Part 12 – Compliance and Enforcement

Section	Subject Matter	Comment
1206	Carrying out of compliance audits	Audits required by the AER should only be in response to evidence of systemic and material non-compliance, and should take into consideration the compliance record of the retailer. At the very least, the circumstances in which an audit would be required should be set out in the AER Compliance Procedures and Guidelines.
1209(d)	Contents	A report on any additional matters that the AER considers appropriate for inclusion, should be subject to a reasonableness test.
1210	AER Compliance Procedures and Guidelines	The circumstances in which an audit would be required should be set out in the AER Compliance Procedures and Guidelines.

Draft National Energy Retail Rules

Part 2 – Customer retail contracts

Rule	Subject Matter	Comment
105(2)(b)	Aggregated business customers	<p>Under the business aggregation rules, Part 2 of the Rules (Customer retail contracts) do not apply. This is consistent with jurisdictional arrangements. However within those jurisdictional frameworks disconnection rules also only apply to small customers, whereby both large business and relevant aggregated small business are not covered. The sections should be amended such that Part 6 of the Rules do not apply.</p> <p>More broadly, consistent with all current jurisdictional arrangements, the Rules should be explicit that Disconnection rules do not apply to large customers.</p> <p>In addition, Parts 3 (customer hardship and payment difficulties) Part 7 (life support) and Part 8 Pre-payment meter systems, should not apply to large customers.</p>
106(c)(ii)	Classification	<p>It is confusing to categorise customers as “small market offer”, given that some customers will be small market offer customers, in the sense of being a small customer on a market offer, but below the “small market offer” customer consumption threshold. An alternative description, such as “intermediate small customer” should be adopted.</p>
205 (2)	Pre-contractual duty of retailers	<p>The only circumstances in which it is of benefit to the customer to remind them of their rights to a standing offer contract (when a market offer is available to that customer), is if, due to regulatory failure in retail price setting arrangements, standing offer tariffs have not been transitioned to cost-reflective levels. This regulatory failure should not be resolved by imposing additional regulation upon retailers.</p> <p>Further we believe the New South Wales obligation to be counter productive, leading to customer frustration at the volume of information required at the time of contracting, and confusion as to why an additional product is being offered. It can also lead to the customer choosing a sub-standard product compared to the market contract on offer.</p> <p>Consistent with the efficient operation of clause 4.2.10 (a) of the Queensland Electricity Industry Code, the obligation on a financially responsible retailer to advise of the obligation to provide a standing offer should only apply if the retailer has refused to offer the customer a market contract, or the customer has not accepted that offer. Victoria also currently operates efficiently under the FRMP model with no such requirement.</p> <p>If there are concerns regarding the level of understanding on the availability of standing offer contracts, this is</p>

		more appropriately addressed through other communications, including the regulator's website and a government funded awareness campaign. This was the approach adopted by the Victorian and Queensland governments.
207 (3)(a)	Pre-contractual request to designated retailer – Acceptable identification	Victoria, South Australia and Queensland all permit the retailer to request from the customer contact details for the owner (or the agent of the owner) of the premises if the application is for a rental property. This is at no cost to the customer and should be included.
207(5)	Pre-contractual request to designated retailer – Unpaid account	The section refers to “an unpaid account in relation to other premises”. However, if the customer has applied for connection at the same address following disconnection, the unpaid account may relate to the current premises. The words “in relation to other premises” should be deleted.
207(6)	Pre-contractual request to designated retailer – conditions precedent	The draft significantly weakens existing pre-contractual requirements. Both South Australia (4.1.1(h-j)) and Queensland (4.7.1(h-j)) require the customer to pay any required security deposit, and to either repay an existing debt from a previous supply address or enter into a payment plan for that debt. Removing these obligations would lead to higher prices for all customers (including those who meet their obligations), and increase the likelihood of subsequent disconnection for those who do not, with a corresponding increase in financial and emotional stress. We also note that under rule 615, a customer seeking re-energisation must rectify the matter that led to the de-energisation prior to the re-energisation. This would include the payment of debt or the provision of a security deposit. Rule 207 creates an anomaly whereby a customer who moves premises is not required to provide either outstanding payments or a security deposit prior to energisation, but a customer remaining at a premises must do so.
208(1)(c)	Responsibilities	Retailers will not know the relevancy of any government schemes etc at the time of request for the sale of energy. General information of these schemes is therefore provided to customers. The words “any relevant” should be deleted.
209	Basis for bills	The section requires retailers to use best endeavours to read the meter quarterly and in any even at least once every 12 months. As responsibility for small customer meter reading rests with distributors, so too should the obligation to read the meter. At the very least, a reciprocal requirement is required for distributors to read the meter as frequently as required to allow the retailer to meet its obligations.
210(1)(c)	Estimations	The word “where” is repeated and should be deleted.
210(4)	Estimations	The reference to 209(2) should be to 210(2)

211	Bill smoothing	<p>The requirement for 6 monthly review of bill smoothing arrangements, which currently only applies in Victoria, imposes additional costs that will only deter retailers from making this customer service available.</p> <p>If the clause is retained, 6 month should be amended to 7 month, to allow 6 months data to be used in reconciliation.</p>
212	Frequency of billing	<p>The obligation to provide a bill at least once every three months should be subject to availability of accurate metering data from the responsible person. If the metering data provides values outside of the tolerable range, retailers will query the distributor as to the accuracy of the data. Resolving the issue will require some time, whereby retailers may not be able to meet this obligation through no fault of their own.</p>
217(5)	Billing disputes	<p>The retailer must reimburse the cost of a meter test if the meter or metering data proves to be faulty. There does not appear to be a reciprocal obligation on the distributor to reimburse the retailer in those circumstances.</p>
219(6)	Overcharge threshold	<p>Consistent with clause 6.6.1(a) of the South Australian Code the threshold amount should be \$100, not \$50 as currently drafted. The \$100 threshold has operated effectively in South Australia since market start, and has not been changed or questioned through several code review processes.</p>
220	Payment methods	<p>Telephone and ETF are not current requirements in jurisdiction arrangements, and are potentially onerous for niche retailers.</p>
222	Shortened collection cycle	<p>Sub-rule 2(a), restricts shortened collection cycles to customers not experiencing payment difficulties. This restriction does not currently apply in any jurisdiction. The Victorian Retail Code, the only code which applies a restriction, refers in clause 11.2 to the customer contacting the retailer and advising they are experiencing financial difficulty or the retailer “otherwise believing the customer is experiencing payment difficulties.”</p> <p>If any restriction applies, it should be limited to residential customers, and only those on the retailer’s Hardship scheme.</p>
223	Request for final bill	<p>The words in brackets “(but not de-energisation)” should be deleted to avoid confusion regarding the rights of the retailer to de-energise a site for which it is financially responsible, but for which no customer is contracted to take supply.</p>
225	Payment for security deposit	<p>Current jurisdictional arrangements allow retailers to request a security deposit at any time when the security deposit provisions are triggered, and not just when supply is requested, as is currently drafted (whilst it may be claimed there is some ambiguity in Queensland and South Australia, no restriction applies in Victoria, and in New South there is only a one year restriction for standard contract customers).</p> <p>Otherwise the framework would treat those customers who move supply address (from whom retailers could</p>

		<p>make a request) differently to customers who do not move (and no request could be made). The words “at the time when the customer requests the sale and supply of energy under a customer retail contract” should be deleted, as should sub-section (6).</p> <p>The list of circumstances in which a retailer can request a security deposit should also include money owed to the retailer in relation to the sale and supply of energy at the current premises, as the customer may have been disconnected at the current premise, and may be seeking reconnection. Rule 225(1)(a) should be amended to read “the customer owes money to that retailer in relation to the sale and supply of energy; or”.</p> <p>Sub-section (2) should be simplified whereby a security deposit cannot be requested from hardship customers.</p> <p>Current jurisdictional arrangements do not provide for the payment of security deposits by instalments as per sub-section (3). Such a process would be unworkable, creating uncertainty regarding what form the instalments must take and when the disconnection provisions could be triggered. If a customer requires instalments to pay a security related to debt, they should be on the retailer’s hardship program.</p> <p>Under sub-section (7) a retailer is not obliged to reconnect a customer if the customer has refused to provide a security deposit after connection. However it is unclear whether this provision applies if the security deposit remains unpaid 10 business days after disconnection.</p>
226	Payment of security deposit	Sub-rule (1) does not prescribe a time period in which the customer must provide a security deposit. Consistent with clause 4.17.1 of the Queensland Electricity Industry Code, the customer should be required to pay a security deposit within 5 business days of the request.
228	Interest on security	Consistent with current arrangements in most jurisdictions, NECF1 deducted 1% from the bank bill rate to allow retailers to cover the costs of managing security deposits. This approach should be retained and the words “less one full percentage point” reinstated.
229(1)(a)	Use of security deposit	South Australia (8.7.1(a)), Queensland (4.17.10) and New South Wales (22.6) allow security deposits to be used upon disconnection, with no condition requiring “no contractual right of re-energisation.” The NECF should be drafted accordingly with those words deleted from the section.
230	Obligation to return a security deposit	The circumstances under which a security must be returned should be subject to variation under agreement in a market contract, in accordance with NECF1 and all previous RPWG and SCO papers.
234	Termination of a standard contract	Retailers must have a right to terminate a contract if the customers consumption exceeds the small market offer consumption threshold, otherwise the retailer may never be able to transition the customer to a market offer.
235	Termination of a market	Consistent with the SCO response, market contracts should be able to specify additional circumstances under which a retailer may terminate, providing that there is no inconsistency with section (1)(a-g). This section should

	contract	make such a right explicit.
236 (2)	Right of rescission	Consistent with clause 17(b) of the model terms and conditions for standard retail contracts, the information required to be provided to customers in accordance with rule 4 of the Marketing Rules should be deemed to have been received within two business days of being posted.
237(4)	Retail notice of contract expiry	Contracts may be evergreen, whereby reference to the expiry date should only apply "if applicable."
247	No contact times	Telephone contact times are governed by Commonwealth Law, without a need to regulate in Energy Law. Reference to "in person" should be to "door-to-door" to ensure that canvassing in shops or public places is not captured.
253	Record keeping	The section refers to retailers maintaining records of visits "conducted" and calls "places", whereas existing jurisdictional instruments refer to marketing contacts. The NECF2 drafting may be interpreted as requiring unsuccessful contacts to be recorded, significantly increasing record keeping costs, with no identifiable benefit, and inconsistent with current arrangements.

Draft National Energy Retail Rules

Part 5 – Exempt selling regime

Rule	Subject Matter	Comment
513	Notice of de-energisation	It is important that retailers are advised that the distributor has completed the de-energisation if it has been requested by the retailer. The section should be reworded so that the distributor is only required not to advise the distributor of the reason for de-energisation if requested by the retailer.
514	Liability for ongoing charges	Sub-section (1)(b) requires distributors to “pay charges for energy consumed.” The Victorian Use of System Agreement (6.3(c)) and the South Australian Co-ordination Agreement (13.2(a)) require the distributor to pay to the retailer “the costs incurred by the Retailer payable to NEMMCO in connection with the consumption of energy by the Customer.

Draft National Energy Retail Rules

Part 6 – De-energisation of premises

Rule	Subject Matter	Comment
602	De-energisation limited by this Part	The SCO response (2.26) included the following grounds for disconnection: <i>(in the case of a market retail contract) the contract has been terminated in accordance with the terms of the contract, and the customer has not entered into another retail contract.</i> The rules should reflect this decision.
603(3)	Reminder notices	Contrary to NECF1, and all existing jurisdictional arrangements outside New South Wales, NECF requires details of the Ombudsman scheme to be included in reminder notices, in addition to disconnection warnings. Retailers must be given first opportunity to resolve any issues directly with their customers, and this is consistent with the practice of advising customer of the retailer's internal complaint arrangements in the first instance on reminder notices, and of the ombudsman scheme in the subsequent disconnection warning. It is wrong and misleading to suggest that receipt of reminder notice is related to a potential unresolved dispute. There are also cost implications given that retailers are charged for each related call to the ombudsman, and that a high proportion of customers receive reminder notices.
604(2)(d)	Costs of re-energisation	It is not feasible for retailers to inform customers in a disconnection warning of the “associated costs” of a re-energisation, given that those costs vary by distributor, site conditions, and disconnection type performed. In addition, the customer may also be required to any safety or metering works identified as necessary by attendance at the site. It is not a current requirement in any jurisdiction. It should be sufficient to inform the customer that reconnection costs will apply.
605(1)(d)	De-energisation for not paying bill – contact customer	The obligation for an additional customer contact prior to disconnection currently only applies in specified circumstances; In Victoria (13.2) and South Australia (9.2.1) if the customer has a lack of sufficient income, and in Queensland (4.18.3) if the customer is experiencing financial difficulty. A similar restriction should apply in the national rules.
605(2)	Non-payment of payment plan	In sub-rules 605(2)(b) and 605(2)(c) reference is made to “non-payment:” under a payment plan. To avoid any doubt that a part payment should not be regarded as payment, the clause should be redrafted to refer to the customer's “failure to comply” with a payment plan. This would be consistent with the drafting of clause 11.2(3) of

		the Victorian Retail Code.
606(1)	De-energisation – security deposit	De-energisation should be due to the customers “failure” to pay the security rather than “refusal.” It is the act of not paying, rather than conveying to the retailer that they will not pay which is the appropriate trigger.
606(9)	Disconnection	Inconsistent with general obligations in all jurisdictions other than New South Wales, these sections require retailers to send two disconnection warnings of their intention to disconnect in the case of not providing security, denying access to the meter, and not providing acceptable identification. Given that retailers would have attempted or made contact with these customers in pursuit of the security, access or identification, the obligation for a further contact in addition to the disconnection warning is unnecessary costly and should be deleted.
610(1)	Restrictions on de-energisation	Paragraphs (1)(c-e) should not apply where the reason for de-energisation is denying access to the meter.

Draft National Energy Retail Rules

Part 10 – Retail market performance reports

Rule	Subject Matter	Comment
1002	Content of retail market report - Overview	Second tier retailers do not currently collect data on the number of customers on a standard contract, and any requirement to do so would impose significant system costs. This was recognised in the development of the Queensland Code whereby under clause 8.5.2 retailers are not required to provide this information to the QCA. The intent in the national rules is understood to be to allow for the identification of regulatory failure, in the case of standing offer tariffs not transitioning to cost-reflective levels whereby customers remain, or revert, to the standing offer tariff. However regulatory failure should not be monitored by imposing additional costs on retailers, particularly when available aggregate data, including customer transfer statistics, number of active retailers etc, can provide an adequate indication at no cost.
1003(1)(d)	Content of retail market report – De-energisation	The bracketed text distinguishes between two categories of customers, those in hardship and “other residential customers experiencing payment difficulties).” The words “experiencing payment difficulty” should be deleted, as only some non-Hardship customers de-energised will be experiencing payment difficulty, and this may or may not be known to the retailer at the time of disconnection. The reference should be to “hardship customers and other residential customers.’
1003	Content of retail market report - Review	Large customers not currently covered by retail market performance reports

Draft National Energy Retail Rules

Part 11 – Retailer of Last Resort Scheme

Rule	Subject Matter	Comment
1115	Arrangements for large customers	Pricing and terms and conditions for large customers are not currently regulated in any jurisdiction, in any circumstances (including ROLR), and should not be regulated here.
1122	Decision (on cost recovery)	ROLR should be able to recover reasonable costs rather than efficient costs
1124	Information to be included	Given the likelihood of a ROLR event applying to a customer, and the absence of any benefit to the customer of knowing this information in advance, it is unreasonable for the retailer to be required to place a ROLR notice in a “prominent position” in the contract” or to require it to be in a standard form published by the AER. This is not a feature of current jurisdictional arrangements.

Draft National Energy Retail Regulations		
Regulation	Subject Matter	Comment
5	Recognised energy industry ombudsman	The corresponding obligation in Victoria, South Australia, and New South Wales is for retailers to participate in an approved ombudsmen scheme, whereby the schemes in those jurisdictions are established by industry, not legislation. A consistent approach should be adopted in the national framework whereby retailer should be required to participate in a scheme approved by the AER.
10	Review of consumption thresholds	The minimum review period of 5 years is too long, particularly given that the AEMA requires the AEMC to review the effectiveness of retail competition biennially. Reviews of the consumption threshold should also be conducted biennially, ideally in conjunction with the competition reviews.
Schedule 1	Civil penalty provisions	Civil penalty provisions should only be attached to sections which have the potential for material impact upon the functioning of the market.

Draft Model Standard Retail Contract		
Clause	Subject Matter	Comment
3.2, 4.1	Application & Commencement	These terms do not apply to a deemed contractual arrangement, and this should be made explicit.
8.1	Tariffs and Charges	<p>Consistent with clause 9.1 of the South Australian standard retail contract, a clause should be included to allow the pass-through of taxes and charges in accordance with other instruments:</p> <p><i>In some cases we can pass through to you certain taxes and other charges in accordance with applicable regulatory instruments. We can do this by either changing the tariffs and charges, or including the amount as a separate item in your bill.</i></p>
11	Meters	Meter reading obligations are specified in section 3.3 of the Metrology Procedures, and require the responsible person, which in almost all circumstances for small customers is the distributor, to use best endeavours to read the meter at least once every 3 months. Contrary to clause 11(b), there is no absolute obligation on any party to read the meter at least once in any 12 month period.

Chapter 6B - Retail Support Rules (and corresponding sections for Gas)

Clause	Subject Matter	Comment
2.2	Direct customer billing	There is no provision for retailers to initiate an energy-only contract with its customers. Notice to the retailer under sub-section (b) should be at the time of the agreement, not commencement of eth arrangement.
2.4(b)	Statement of charges	Under sub-section (b), in default of an agreement the statement of charges is as reasonable determined with the distributor. Current jurisdictional arrangements require the statement to be in a format consistent with industry practice.
2.5 (b)	Time of payment	10 business days to pay an invoice is based upon a quarterly billing cycle, with a third of customer sites billed in each invoice. In an interval meter environment, with the potential for monthly invoices for all customer sites, the processing of the invoice would become unmanageable. Distributors should only be allowed to invoice a third of sites in any one statement, with 5 business days between the issuing of each statement.
3.2	Tariff reassignment	The rule should also require distributors to provide advance notice to retailers of any tariff reassignment.
3.3(e)	Billing Disputes	Payment should be in five business days, rather than the proposed three business days, consistent with the South Australian (10.6(c)) and Queensland (8.5(d)) Co-ordination Agreements. Given the potential for significant monetary sums to be involved, that board approval may be required, and that the clause is reciprocal, the longer time period is reasonable and preferable.
7.2	Acceptable form of Credit Support	Acceptable forms of credit support should be expanded to reflect those as drafted in the First Exposure Draft which included a third party guarantee and insurance options.
8.3	Application of credit support	Consistent with the proposed changes to clause 110(e), the notice period for the application of credit support should also be five business days.
15.5	Notices	Notices sent by post should be deemed to have been received within two business days of being sent, consistent with the standard retail contract. NECF1 identified three business days.

Attachment B – Customer Registration & Transfer

Clause	Subject Matter	Comment
Box 5	Cooling-off period	<p>APG supports the right for retailers to initiate a transfer request prior to expiry of the cooling-off period to facilitate a smooth customer transfer process. However in a move-in scenario, in which the customer is unlikely to be aware of the financially responsible retailer (FRR), if the customer cools-off the market contract does not apply, but the customer should be placed on that retailer's standing contract under a deemed arrangement, rather than reversing the transfer to the previous FRR.</p>
Box 6	Transfer on estimate	<p>The provision suggests that the customer's explicit informed consent is required to allow a transfer on a special meter read. It is reasonable that EIC is required when the customer is paying for the cost of the special meter read. However, it should be clear that if the retailer is paying for the read, then EIC is only required for the transfer and not the special meter read.</p>
Box 7	Objections	<p>APG supports the right of retailers to object on the grounds of debt and the absence of a haulage contract.</p> <p>Debt objections are currently allowed in Victoria and Queensland, and no customer protection concerns have been raised. It provides a valuable debt management tool to retailers to the benefit of all participants and other customers.</p> <p>Customers transferring in error to a retailer with no haulage contract requires considerable administrative support including off-market settlement to resolve. Allowing objection would assist in preventing this from occurring.</p> <p>Indeed, an additional provision is required to prohibit a market operator from allowing such a transfer to occur.</p>

Attachment D – Future Smart Meter Customer Protection

Clause	Subject Matter	Comment
D2	Historical Billing	Any obligation to provide historical billing information to customers free of charge must consider frequency of request, method of delivery, and costs involved. This is recognised in current jurisdictional arrangements.
D3	Re-mote disconnection	APG recognises the concern that a disconnection notice should inform the customer that the disconnection may be performed remotely. However, we do not support any requirement to impose an additional contact requirement on remotely disconnected customers, given the additional costs that would be incurred and the extensive number of previous contact attempts required under the required disconnection procedure.
D4	Undercharging Provisions	Undercharging relates to complex issues (crossed meters, changed addresses) which require an extended time to investigate and remedy, unrelated to the number of billing cycles.

National Gas (Retail Connection) Amendment Rules

Clause	Subject Matter	Comment
119u	Negotiated connection offer	20 business days is insufficient time for an offer to remain open for acceptance. The customer will need to obtain a retail contract and make other arrangements prior to accepting the offer. The time period should be extended to 40 business days.

National Electricity (Retail Connection) Amendment Rules

Clause	Subject Matter	Comment
Part E	Connection charges	Consistent with section 119O of the draft National Gas (Retail Connection) Amendment Rules a section is required to clarify the circumstances in which the distributor is not permitted to charge the customer via the retailer.