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Dear MCE Secretariat

NATIONAL ENERGY CUSTOMER FRAMEWORK - SECOND EXPOSURE DRAFT

Thank you for the opportunity to provide comment on the Second Exposure Draft of the National Energy Customer Framework (NECF 2).

The attached submission on the NECF 2, which takes the form of a Table of Comments, has been prepared by the Essential Services Commission of South Australia (the Commission).

I note that while the submission has been prepared and submitted by the Commission, the contents of the submission have been endorsed by each of the following organisations:

- ▲ Energy Industry Ombudsman of South Australia;
- ▲ South Australian Council of Social Service;
- ▲ UnitingCare Wesley (Adelaide); and
- ▲ COTA (Seniors Voice South Australia).

If you have any queries in relation to the attached submission or require clarification on any of the issues raised, please do not hesitate to contact Adam Wilson, Director Regulatory Development & Implementation on (08) 8463 4354 or via email at adam.wilson@escosa.sa.gov.au or Kate Thomas, Legal and Regulatory Compliance Officer on (08) 8463 3959 or via email at kate.thomas@escosa.sa.gov.au.

Yours sincerely

Patrick Walsh

Chairperson

Submission on the: Second Exposure Draft of the National Energy Customer Framework

Key:

The following definitions are used in the Table of Comments below:

NERL – National Energy Retail Law
 NERR – National Energy Retail Rules
 Regulations – National Energy retail Regulations
 EIOSA – Energy Industry Ombudsman of South Australia
 ESCOSA – Essential Services Commission of South Australia
 AER – Australian Energy Regulator

Note:

Comments provided below incorporate comments covering the NERL, NERR and the Regulations.

Part 1 NERL – Preliminary

Topic	NERL / NERR	Comment
Definition of “standard retail contract”	NERL	▲ The term “designated” should be inserted in this definition before the word “retailer” (NERL s. 102).
Use of the term “premises”	NERL/NERR	▲ The use of the term “premises” throughout the NERL and NERR for the purposes of establishing various matters (for example, customer classes (NERL s. 105); definition of “designated retailer” (NERL ss. 102(4)&(5)), rather than the reference of “connection point”, is a departure from the current regulatory arrangements. This departure is magnified by the provisions in NERL s. 107(a), which provide for Rules to be made classifying customers as <u>either</u> residential or business in respect of predominant use of energy at “premises” rather than making that same classification on the current “connection point” basis.

		<ul style="list-style-type: none"> ▲ It is considered that this change may cause significant practical and operational difficulties, particularly where there may be multiple connection points to individual “premises”, with separate uses at each connection point. ▲ For example, under current regulatory arrangements one premises may have a residential customer who purchases energy under a customer retail contract and who also purchases energy under a business contract (i.e. the one person is both a residential customer and a business customer). It is understood that at least 20,000 examples of that situation exist in South Australia in respect of farming premises. ▲ The application of many provisions of the NERL and the NERR in these circumstances is unclear, particularly in the situations where significantly different consumer protection regimes are proposed for residential and small business customers. Refer, for example, to the potential under s. 213 of the NERL for a small market offer customer (as defined) to not have access to a standing offer if that customer is offered and declines a market retail contract from a designated retailer. Under current proposals, that customer has no further recourse to a standing offer. In a scenario where the customer has multiple uses at a single premises (e.g., a farm) and has been deemed to be a business customer based on predominant use (NERR s. 107), the future inability to access a standing offer will impact not only on the business use or energy, but also on the residential use. ▲ Moreover, putting aside the issue of non-access of a standing offer, it is also the case that where a multiple-use customer has been deemed as either residential or business, that customer will only be able to access the corresponding tariff for all use at the premises – without distinction between uses. ▲ While it is noted that the NERR (s.108) make provision for revision of customer classifications, at all times it appears that customers must be classified as <u>either</u> residential or business in respect of <u>premises</u>. If this is the case, it is an extremely inflexible arrangement and a departure from the current flexible arrangement which permits contracts to be formed in respect of predominant use of energy at “connection points”, of which, as noted above, there may be more than one at a premise. ▲ To foreclose access by customers to retail contracts relevant to the purpose for which energy is consumed at a connection point by aggregating all consumption at a “premises” level is therefore not supported. Furthermore, the current proposals will result in energy retailers becoming less, not more flexible in terms of their ability to respond to the individual customer usage needs in the market.
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National Energy Retail Objective	NERL	<ul style="list-style-type: none"> ▲ While the intention of s. 113(2) is supported, it is suggested that the first reference to “hardship customers” adds little to the concept which is being promoted – the latter reference to the “development, approval and application of customer hardship policies” suffices. It is therefore suggested that the clause might better provide simply that: <i>“The national energy retail objective should not be taken to prevent or restrict the development and application of consumer protections for small customers, including the development, approval and application of customer hardship policies”.</i> ▲ Drafted in that way, the clause would highlight the policy intention that consumer protections generally (whether for residential, small business or hardship customers) are considered to be within the scope of the national energy retail objective (subject to the necessary cost/benefit analysis by the AEMC of any proposed consumer protection measures prior to introduction).
Application of NERL etc.	NERL	<ul style="list-style-type: none"> ▲ Sections 103 and 116 of the NERL both contain application provisions, on slightly differing terms. It may be beneficial to consolidate those provisions.

Part 2 NERL – Relationship between retailers and small customers / Part 3 NERR Customer hardship and payment difficulties

Topic	NERL / NERR	Comment
Application of Part	NERL	<ul style="list-style-type: none"> ▲ S. 201 provides that the Part governs the “relationship” between retailers and small customers. The term relationship is not defined and appears broad enough to encompass both “contracts” (in the terms specified in s.202) and other “arrangements”. This raises a question as to whether or not the deemed RoLR “arrangements” under Part 6 are affected by Part 3 and, if so, whether that is the intended outcome?
Standing Offer	NERL	<ul style="list-style-type: none"> ▲ For the period for which the Commission continues to regulate energy standing contract prices in South Australia, it is presumed that the provisions of Part 2 will not apply to that extent in this State. This particularly relates to the requirement for each retailer to have a standing offer price – this is not currently the case in South Australia and to adopt that position would require a significant change in the pricing approach adopted by the Commission.

<p>Designated retailers obligation to make a standing offer</p>	<p>NERL/Regulations</p>	<ul style="list-style-type: none"> ▲ S. 213 of the NERL limits the obligation on designated retailers to offer the standing offer to small market offer customers. If the policy intention is that customers must always have access to a standing offer, this is not achieved by this clause. In such circumstances, small market offer customers have no other choice but to look elsewhere for other market retail contracts which may also contain terms such customers consider unfavourable. ▲ In addition, the threshold levels set under the NECF are too low for the small market retail customer class. There seems to be little rationale for setting the cut off point for small market retail customers at 40MWh/annum. This is likely to see many small businesses that use large amounts of electricity disadvantaged as they will not be able to access the consumer protections that they are currently able to access. (NERL s. 106, regulation 9(2) of the NER Regulations). Further, small business customers are not in a good position to be able to negotiate a favourable market contract.
<p>Standard and standing offers</p>	<p>NERL</p>	<ul style="list-style-type: none"> ▲ The concept of designated retailers' "standard retail contracts" and the concept of "standing offers" at times merge throughout the proposed new regime (see, for example, ss 204 and 208) – if it were possible to clarify the operation of the various terms relating to the "standing offer", this would be of benefit to all parties in simplifying the transition to a new regulatory regime.
<p>Minimum requirements for market retail contract</p>	<p>NERL</p>	<ul style="list-style-type: none"> ▲ S. 216(1) provides that the Rules may set out minimum requirements that apply <i>in relation to small customers</i>. While it is understood that the NERL (and therefore presumably the relevant application Act) will provide for consumers to be directly controlled, this is a departure from current arrangements under which it is considered, as a matter of principle, that it is not appropriate to impose direct obligations on consumers but rather to control behaviours indirectly by imposing rights and obligations on retailers. ▲ In the case of s. 216(1)(a), for example, the same policy intention could be achieved by changing the clause to provide that the Rules may set out "<i>minimum requirements that are to apply to retailers in their dealings with...</i>" This would permit the Rule to provide for arrangements where by customers' behaviours could be indirectly controlled by providing that a retailer need not do a certain thing unless the customer has first met some objective threshold requirement. ▲ The point to be made is that it is far more likely that a retailer will be aware of regulatory obligations set out in the NERL and associated documents – the extent to which an individual customer will, or ought to, have the same level of awareness of those instruments is highly questionable.

Record of explicit informed consent	NERL	<ul style="list-style-type: none"> ▲ A retailer should be required to retain a record of explicit informed consent for at least two years or the period of the contract, whichever is the longer to ensure that any dispute over the obtaining of explicit informed consent can be adequately dealt with during the entire term of a customer contract. (s. 222(1)(b)) ▲ Retailers should be required to provide a copy of any explicit informed consent to an Energy Ombudsman as well as a customer at no charge if it is relevant to any complaint being handled by that Energy Ombudsman. (s. 222(3)) This is consistent with the requirement in clause 2.5 of the South Australian Energy Customer Transfer and Consent Code.
No explicit informed consent	NERL	<ul style="list-style-type: none"> ▲ If there is no explicit informed consent obtained, the relevant contract between a customer and a retailer should be considered “void” or “voidable”. These terms have clear meanings in contract law whereas “invalid” does not. (s. 223(1)) ▲ As a matter of law there is either explicit informed consent or there is not. Any attempt to “cure” or “ignore” defective consent renders this concept of little value. ▲ It is submitted that the apparent effect of clause 223(2) is to limit the way in which an absence of explicit informed consent may be proven. It is unclear why the ability of a customer to establish a lack of explicit informed consent should be so limited. This clause should be amended to clarify that it is only one means by which a lack of explicit informed consent may be established. Alternatively, if this clause is intended to contain the entire scheme for establishing lack of explicit informed consent, it is not supported in its current form on the following grounds: <ul style="list-style-type: none"> - Customers should not be unfairly disadvantaged by having to raise issues concerning the obtaining of explicit informed consent within 12 months of the relevant transaction occurring with a retailer. EIOSA has dealt with complaints from numerous customers who have not discovered an issue exists until some greater time than 12 months after the transaction has occurred. There is no benefit to customers in limiting the timeframe within which to raise such issues and it is suggested that this limitation should be removed from the section or that the timeframe should be expanded to coincide with that set out in section 222(1)(b) – (which, as submitted above, should itself be amended). (s. 223(2)(b))

		<ul style="list-style-type: none"> - In the event a customer is transferred without their consent, there is no avenue for them to be reimbursed for any losses they may have suffered. For example, it would appear that any foregone financial benefit a solar PV customer would have received in terms of a feed-in tariff but for a “wrongful” transfer without consent cannot be recovered. (s. 223(5)) - The use of the term “satisfactory” in section 223(2)(c)(ii) is unclear – to whose satisfaction? The retailer’s? The customer’s? The Ombudsman’s? Elements of discretion such as these should not appear in the NERL within clear indications of who holds the relevant discretion.
Customer Hardship	NERL	<ul style="list-style-type: none"> ▲ If the AER determines that a retailer’s Customer Hardship Policy is deficient, the retailer should be required to amend its policy in accordance with the AER’s directions and then resubmit the policy for approval by the AER. In addition, the AER should review Customer Hardship Policies on an ongoing basis to ensure they are updated when necessary (i.e. a review could be undertaken every 2 years). A Consumer Advisory Committee (or equivalent) may be the appropriate body to consult when such a review is undertaken. (s. 227 (2)) ▲ It may be difficult for a retailer to accurately determine that the non-payment of a bill is a result of a residential customer being in hardship. Accordingly, while the obligation for a retailer to inform a residential customer of that retailer’s hardship policy is supported, it may be more appropriate for a retailer to be required to provide information about its hardship policy on the reminder notice a customer receives in relation to the non-payment of a bill (and not on the bill itself). (s. 228)
	NERR	<ul style="list-style-type: none"> ▲ Rule 306 of the NERR provides little guidance on what the national hardship indicators may be and, more importantly, to what use they are to be put. Further, it would be beneficial if retailers were required to publish their hardship indicators on their website and the AER consulted with a Consumer Advisory Committee (or equivalent) when determining appropriate hardship indicators.

Marketing	NERL	<ul style="list-style-type: none"> ▲ The definition of marketing should be linked to the intent of the retail marketer to directly effect the entry into a retail contract by a customer. In the absence of an intention provision, bodies that provide general information on energy contracts (such as bodies like ESCOSA providing pricing comparison services) may fall within the definition even though the body providing the service has no intention of inducing a person to enter into a retail contract. (s. 232, definition of “marketing” and subsection (b) of “retail marketer”) ▲ It is assumed, but unclear, that the Rules contained in Division 11 of the NERR are the “Retail Marketing Rules” referred to in Division 8 of the NERL.
Deemed customer retail arrangements	NERL	<ul style="list-style-type: none"> ▲ S. 235(6) of the NERL, which imposes a statutory obligation on deemed customer retail arrangement customers to contact new a retailer, is not supported in its current format. As noted previously in this submission, on a principles basis it is not appropriate to impose direct statutory obligations on customers under the energy retail laws as customers are in no position to know or be aware of the content of those laws. It is better to impose rights on retailers to refuse to do certain things unless a customer satisfies some requirement. This is essentially because it is far more likely that retailers and other energy industry participants will be aware of the provisions of the energy laws – and the same policy objectives can be achieved by using the suggested means. Is it intended that all energy customers should be aware enough of the energy retail laws to find, understand and act upon, for example, the obligation contained in s. 235(6)? ▲ It is also noted that s. 235(6), placing an obligation on customers, is inconsistent with the approach adopted under r. 238 of the NERR. That rule is couched in terms of notification obligations placed on retailers with concurrent rights in the absence of certain matters being done by customers following receipt of that advice. The approach contained in r. 235 is supported.

Part 3 NERL – Relationship between distributors and customers

Topic	NERL / NERR	Comment
Formation of deemed standard connection contract	NERL	<ul style="list-style-type: none"> ▲ One of the issues which has been identified in South Australia in relation to deemed contracts between the distributor and customers is that those contracts only apply to a person in his or her capacity as a customer (i.e., a person using energy): they do not apply to a person in his or her capacity as a generator (i.e., a person generating energy, particularly in relation to small embedded PV generators and similar plant). ▲ The specific issue arising is that the provisions allowing standard form contracts to arise only permit that to occur as between distributors/customers and cannot be used to govern the distributor/generator relationship. It has therefore been necessary to establish a specific regime (outside of deeming provisions) for the connection of small embedded generators. To the extent that the NECF intends to deal with small embedded generation connection, this specific issue will need careful consideration. (refer, for example, s.306) The existence of a generator at a connection point raises some specific issues (e.g., safety and technical issues) which need to be addressed.

Part 4 NERL – Small customer complaints and dispute resolution

Topic	NERL / NERR	Comment
Role and functions of Energy Ombudsman	NERL	<ul style="list-style-type: none"> ▲ It is noted that the provisions of Part 4 of the NERL, at least in the case of the South Australian regime, confer executive powers under enactment on a private company, the Energy Industry Ombudsman. More particularly, various sections in the NERL and the NERR expand the role and functions of EIOSA (e.g, s. 722 of the NERL provides that a small customer can lodge a complaint relating to the decision of a distributor under the small compensation claims regime with an Energy Ombudsman. As such a regime does not exist in South Australia, this provision acts to expand the role of EIOSA). ▲ While the ability of conferring such powers on a private body is not questioned, it is queried whether or not the implications of that action have been fully considered? For example, it may be the case that the exercise by the Ombudsman of powers under the NERL is a matter which may be reviewable by the Courts (e.g., seeking prohibition or certiorari in relation to a specific decision). That outcome would not be consistent with a regime which seeks responsive and low

		<p>cost resolution of consumer disputes and is not the prevailing position in South Australia.</p> <ul style="list-style-type: none"> ▲ It is also noted that the functions and powers granted to an Ombudsman under the proposed regime are to be performed and exercised “in accordance with” the Ombudsman’s constitution and charter (s.406(2)). It is suggested that the proper formulation should be that the powers and functions should be exercised “subject to” the constitution and charter, otherwise it is likely that there will need to be extensive changes to those documents. In South Australia this would be a timely and costly process and there is no guarantee that members would approve the required amendments. (s. 406(2)) ▲ It is not clear whether the objective of s. 402(2) is to clarify that Part 4 of the NERL will not affect the functions and powers of an Energy Ombudsman that are set out in a constitution or charter. If this is the objective of this section it should be made clearer.
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Part 5 NERL – Authorisation of retailers and exempt selling regime/ Part 9 NERR – Exempt selling regime

Topic	NERL / NERR	Comment
Exempt Sellers	NERL & NERR	<ul style="list-style-type: none"> ▲ Currently, under the NERL and the NERR, a number of exempt sellers are required to simply “self assess” themselves against the requirements of an exemption to determine if they fall within an exemption. In addition, these sellers are in no way required to be registered or make themselves known to the AER. This approach is problematic for a number of reasons including: <ul style="list-style-type: none"> - it assumes that they know the exemption exists and that to rely on it they must comply with the requirements or conditions of the exemption; - there is no mechanism for the AER to locate self assessed exempt sellers who are gaining the benefit of an exemption to determine whether or not they are complying with the exemption requirements; - in light of the above, exempt customers (as defined in the NERL) may not be afforded the consumer protections that customers who purchase energy from an authorised retailer are because the exempt seller is not aware they are required to. <p>In South Australia, the exemption regime that is provided to an operator that resells electricity through an inset network (a transmission or distribution system that serves a group of premises under the same ownership) under the Electricity (General) Regulations 1997 assumes that these operators are aware of the conditions they must comply with to benefit from a licence exemption. However, in practice, many operators are not aware of the conditions and, as they</p>

		<p>are not required to be registered in any way, there is currently no way of determining how many operators are relying on the exemption and whether they are complying with the exemption conditions. This has been an ongoing issue in South Australia.</p> <ul style="list-style-type: none"> ▲ While it may not be an issue in other jurisdictions, there are inset networks in South Australia which do not have NEM compliant metering and therefore do not fall within the National Metrology Procedures. On the basis that the NERL and the NERR are to apply to essentially anyone supplying or distributing energy, inset network operators (who usually provide both retail and distribution services) may be very difficult to identify and the AER should determine whether (or how) the relevant law will apply to parties involved in inset network arrangements. ▲ While it may not be appropriate for the full raft of customer protections to apply to all exempt customers (as defined in the NERL), it is important for these customers to be afforded protections when it comes to billing, overcharging, disconnections, dispute resolution and special needs.
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Part 6 NERL – Retailer of last resort scheme

Topic	NERL / NERR	Comment
RoLR Scheme	NERL/NERR	<ul style="list-style-type: none"> ▲ The scheme as contained in the NERL and NERR is not supported in its current form. It is submitted that at least this aspect of the package should be the subject of separate consultation with stakeholders as a matter of priority. ▲ For example, there are significant underpinning policy decisions which have not been explained, or the power for which is unclear, in the proposed regime. Under R.1119, it appears that the AER has the power to make retail energy price determination, whereas it has no such powers at this stage (and such powers are not contemplated under the AEMA). ▲ The Commission would welcome additional consultation on the RoLR scheme.

Part 7 NERL – Small compensation claims regime

Topic	NERL / NERR	Comment
Small compensation claims regime	NERL	<ul style="list-style-type: none"> <li data-bbox="701 312 2020 443">▲ The scheme set out in Part 7 of the NERL appears to be based on the Victorian Voltage Variation compensation scheme, which was developed for a much smaller and limited purpose. The scheme proposed is of a much broader nature and it is suggested that it requires further consultation and refinement prior to a policy position on such a scheme being finalised. <li data-bbox="701 464 2020 659">▲ Section 701(2) of the NERL states that the regime does not involve the elements of fault, negligence or bad faith on the part of the distributor. However, there are various sections throughout Part 7 (eg s. 715) which require parties to provide evidence or proof that property damage was caused by a claimable incident. The principle of causation is one deeply steeped in the law of negligence. Accordingly, the statement in s. 701(2) appears inconsistent with various sections of Part 7. <li data-bbox="701 679 2020 1018">▲ There is a statement in paragraph 54 of the Explanatory Memorandum that the small compensation claims regime set out in Part 7 of the NERL will only apply in jurisdictions that specifically provide for the regime via a State or Territory instrument. However, this statement appears to be inconsistent with sections 703 and 704 which do not have limited application in the manner claimed in paragraph 54; rather, those provisions allow for local instruments to determine what a “claimable incident” might be (noting that there remains the possibility of a “claimable incident” being called into existence under the National Regulations – which may be inconsistent with the local instrument) and limitations on the extent to which property damage or other matters related to a “claimable incident” are to be considered “compensable matters”. There is otherwise no express provision for a “carve-out” of Part 7, whether in whole or in part. <li data-bbox="701 1038 2020 1169">▲ In determining whether or not compensation is payable in respect of a claimable incident, there is a requirement for the occurrence of the claimable incident to be established. However, there is no guidance in the NERL on who is responsible for actually determining that a claimable incident has occurred. Accordingly, this should be clarified. (s. 710(1)(a)) <li data-bbox="701 1190 2020 1417">▲ If a distributor is required to pay compensation, section 719 requires a distributor to pay to the small customer any reasonable costs incurred by the customer during the process. However, the section provides no guidance on who determines whether the costs incurred are reasonable or not, which may lead to circumstances where a distributor disputes such costs. It would be beneficial to clarify who is required to determine the reasonableness of such costs unless it is intended that the dispute resolution provisions of Part 7 will deal with any dispute that arises in relation to this issue.

Part 12 NERL – Compliance and performance

AER Performance Regime	NERL	<ul style="list-style-type: none"> ▲ S. 1211(1) should be amended to clarify that regulated entities are only required to report to the AER on performance against indicators or service standards set by the AER (i.e., national data). In particular, the reference to distributor services standards in s. 1211(1)(a) needs to be limited to the distributor standards set by the AER. This is necessary to preserve the requirement of reporting performance against state based services standards and indicators to jurisdictional regulators.
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Part 2 NERR – Customer retail contracts

Topic	NERL / NERR	Comment
Pre-contractual duties on entities	NERR	<ul style="list-style-type: none"> ▲ The scheme set out in rr. 205(3) and 206(2) contain a number of requirements on retailers and distributors which will simply result in customers being shuffled between entities when seeking a supply of energy. ▲ Under r. 205(3), if a retailer had determined not to offer a contract to a customer, what detriment is there in that retailer then being obliged to advise the customer of the contact details for the standing offer retailer? It might be suggested that a retailer would not wish to name a competitor; however in circumstances where that retailer's behaviour indicates a desire not to sell to the customer, what difficulty is there in a direct reference to the standing contract retailer? Furthermore, the concept of not electing to offer at the request of a customer appears odd and should be deleted from this rule, as it adds nothing and only confuses the intent. ▲ Under r. 206(c), the customer, having been passed on to the distributor under r. 205(3)(b) with the advice that the distributor will be able to tell him or her who the standing contract retailer is, is now simply told to refer to the AER's website to establish who other retailers might be. That appears unhelpful at best and, at worst, will diminish the levels of customer confidence and engagement in the market – through the statutory mandating of a shuffling from entity to entity to respond to a simple query.
Pre-contractual duties on customers	NERR	<ul style="list-style-type: none"> ▲ Throughout this submission we have referred to the inappropriateness of placing direct statutory obligations on customers through NERL/NERR.

		<ul style="list-style-type: none"> ▲ R. 207(3) contains another provision which offends that principle. It would be better to allow that a retailer may chose not to accept a request without the provision of such information.
Basis for bills	NERR	<ul style="list-style-type: none"> ▲ R. 209(2) should acknowledge that there are pre-existing obligations for meter reading frequencies established under the National Metrology Procedures and ensure that any obligations placed on retailers are not directly inconsistent with those Procedures.
Estimation as basis for bills	NERR	<ul style="list-style-type: none"> ▲ It is unclear whether the term “estimation” for the purposes of r.210 is intended to exclude estimates provided by the responsible person in accordance with the National Metrology Procedure. If it is intended that such estimates are in fact to be considered as actual reads for the purposes of clause 210(b), this should be clarified.
Frequency of bills	NERR	<ul style="list-style-type: none"> ▲ R212(3) should provide that the rule does not apply where an alternative arrangement for the issuing of bills is expressly agreed under the terms of a market retail contract.
Content of bills	NERR	<ul style="list-style-type: none"> ▲ There are no requirements under the NERR in relation to the format of bills. Accordingly, a clause that reflects clause 6.3.7 of South Australia’s Energy Retail Code should be inserted so that retailers are obligated to issue bills in a format which permits a customer to easily verify that the bill conforms to the terms of their contract. A retailer should not be able to make an offer in one form and bill the customer in another form. ▲ Given the importance of price signals in the retail market – particularly in the context of climate change response measures and initiatives such as distributor promoted demand management tariffs- there is a strong argument that retail, distribution and metering charges be unbundled in bills. In South Australia, ETSA Utilities will soon be required to unbundle its distribution and metering charges in an effort to increase transparency of energy costs. Under the current arrangements and the proposals in the NERL/NERR, notwithstanding that: <ul style="list-style-type: none"> - there are separate contracts for retail services and distribution services, with separate charging arrangements under each; - distributors are structuring tariffs in ways which are intended to provide demand-related price signals to consumers (so as to potentially defer augmentation or to improve power factor for example), it appears that retailers are permitted to “bundle” charges, effectively dampening or smearing those price signals, and not passing through the structure of distribution tariffs to customers.

		<p>It is therefore strongly recommended that the NERR ensure that bills are unbundled <u>and</u> that retailers are required to pass-through not only the quantum of distribution charges payable by a customer but also the distribution tariff structure underpinning those charges. In the absence of such provisions, the effectiveness of climate change and demand management policies will be significantly impaired. (refer r. 213(g))</p> <ul style="list-style-type: none"> ▲ R. 213(j) and (n) of the NERR do not expressly require retailers to provide customers with start and end metering reading data so that customer can verify their consumption. The provision of such information to customers is currently required under the South Australian Energy Retail Code and should be included in the NERR to enable customers to adequately verify any bills they receive. ▲ It would be appropriate for retailers to include information on bills to small customers about price comparison services that customers are able to access as is currently required by regulation 7ABB(f) of the South Australian Electricity (General) Regulations 1997. ▲ It would also be appropriate for retailers to provide information on bills on how its complaint handling procedures can be utilised as is currently required by clause 6.3.4 of the South Australian Energy Retail Code.
Historical Billing Information	NERR	<ul style="list-style-type: none"> ▲ R. 216(2) contains provision for a retailer to impose a “reasonable” charge on a customer for providing historical billing information in certain circumstances. Two queries are put in relation to that matter: <ul style="list-style-type: none"> - Who determines what is “reasonable”? The customer? The retailer? The AER? The local pricing regulator? Or is it a matter to be determined by the Ombudsman if there is a dispute? - In what circumstances could a charge be considered “reasonable” in any event, given that the distributor, which collects and holds the relevant data and is, to that extent, the body which actually incurs relevant costs, is prohibited under r.216(3) from charging the retailer for providing the data? What costs would the reasonable charge be recovering given this arrangement?
Under and overcharging	NERR	<ul style="list-style-type: none"> ▲ Why is it considered that these provisions should not apply to a pre-payment metering system contract? Rr. 218(4) and 219(10) assume that there can be no error within such a system that would result in either under or over-charging. Is that demonstrably the case? If not, then the relevant rules should apply in full to pre-payment metering system retail contracts.

		<ul style="list-style-type: none"> ▲ It is not clear whether rule 219(5) of the NERR is trying to limit the time period within which a customer is entitled to be repaid an overcharged amount to 12 months if the overcharging was a result of the customer's fault or an unlawful act or omission. If it is the intent, we submit that it is unreasonable to place a time limit when overcharging occurs in this manner compared to other circumstances where no time limit has been introduced. It may be the case that a direct debit payment occurs twice due to a customer's inadvertence and the error is not picked up for some time. There seem to be no legitimate rationale for refusing such an amount to be repaid on the basis it occurred 12 months prior to its discovery.
Payment methods	NERR	<ul style="list-style-type: none"> ▲ In relation to the termination of direct debit arrangements under r.220(4), it is submitted that there be an obligation placed on retailers not only to terminate the arrangements, but to do so in accordance with the terms (if any) specified by the customer (e.g., as to effective date).
Request for final bill	NERR	<ul style="list-style-type: none"> ▲ The proposition that market contracts need not allow for requests for final bills to be dealt with in accordance with r.223 is not supported, as it serves only to potentially add complexity to the transfer/move in or out scenario. What is the basis for that proposition?
Security Deposits	NERR	<ul style="list-style-type: none"> ▲ For the purpose of determining whether a customer is required to provide a security deposit, a retailer should be required to take into account any credit history information that customer can provide, especially if they don't have a long standing credit history. Accordingly, the reference to "may" in relation to r. 224(1)(b)(ii) and (iii) should be amended to "must" – based on experiences in South Australia, such information can be relevant and the retailer ought to be obliged to consider that information (and demonstrate that they have done so), even if they nevertheless reasonably determine that a security deposit is to be imposed. This amendment is necessary to ensure that a retailer is able to satisfy r. 225(d) which requires the retailer to reasonably consider the credit history of the customer in question. ▲ R. 225(d) is strongly supported on the basis that retailers should be positively obliged to conclude (and demonstrate the reasons for that conclusion) that a customer has an <i>unsatisfactory</i> credit history. That is a significantly different proposition from establishing that a customer <i>does not have a satisfactory credit history</i>. Any suggestion that such a test should prevail should not be accepted and the current formulation should remain. ▲ The NERR requires a clause to expressly prohibit retailers from recovering costs from customers if they decide to utilise the services of a third party to perform credit checks (or equivalent) on customers. This is not a necessary service to use so customers should not be required to pay for such a service, especially if a customer can provide their own appropriate credit history information.

		<ul style="list-style-type: none"> ▲ When offering a customer the option of paying a security deposit in instalments, the instalment plan offered by the retailer must be reasonable and agreed to by the customer, otherwise the customer may receive no benefit in going on an instalment plan. Currently there is no obligation on the retailer to make such an instalment plan reasonable or agree with the customer the payment terms of the instalment plan. (r. 225(4)) ▲ R. 226(1) of the NERR should also provide that a retailer can only request a small customer to pay a security deposit on reasonable terms. ▲ Retailers should be required to separately account for any security deposit collected and any interest that accrues in relation to that amount. Currently, there is no obligation in Division 5, Part 1 of the NERR requiring retailers to do so. ▲ R. 229(6) is not supported as there is no demonstrable market requirement or benefit inherent in the proposition.
Termination	NERR	<ul style="list-style-type: none"> ▲ It is submitted that r. 235(4) should be amended to refer to “reasonable <i>administrative costs</i>” incurred or to be incurred.
Cooling-off	NERR	<ul style="list-style-type: none"> ▲ The use of varied terminology – withdrawal, cooling-off, rescission – throughout this rule is confusing. One term should be adopted and used consistently.
Marketing – required information	NERR	<ul style="list-style-type: none"> ▲ Based on experience in South Australia, where customers have had difficulties in obtaining information from a marketer describing the particular market offer made to them, it is submitted that r.246(1)(a) should be amended to refer to the “applicable prices, charges... and payment arrangements <i>related to the offer made to the customer...</i>”.
Guaranteed Service Standards	NERL / NERR	<ul style="list-style-type: none"> ▲ Telephone and written responsiveness service standards should be included in the overall NECF package as is required under clause 2.2 of the Energy Retail Code in South Australia. Service standards of this nature are particularly important for hardship customers wishing to discuss payment options and customers facing disconnection or those wanting to be reconnected. Further, EIOSA has received a very small number of complaints relating to telephone and written responsiveness by retailers compared to many other jurisdictions where service standards are not required. As a minimum, retailers should be required to set up a dedicated telephone number for hardship customers and customers calling in relation to disconnection or reconnection which must be answered within 30 seconds.

Part 5 NERR – Relationship between distributors and retailers

Assistance & Cooperation		<ul style="list-style-type: none"> ▲ The relationship between the distributor (ETSA Utilities) and retailers in South Australia is primarily a contractual one (i.e., which is governed by the Co-ordination Agreement). The effect of the NERL and NERR is that this contractual relationship essentially disappears and obligations between the two parties become statutory in nature. By removing the contractual relationship there will be a diminished opportunity for these parties to negotiate the performance of certain obligations which, in South Australia, they have had the opportunity to do. This will undoubtedly lead to increased compliance responsibilities on the AER in this regard.
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Part 7 NERR – De-energisation (or disconnection) of premises

Topic	NERL / NERR	Comment
Warning notices	NERR	<ul style="list-style-type: none"> ▲ The use of the term “disconnection” in warning notices to customers (rather than de-energisation) is supported on the basis that this term is a widely recognised term and de-energisation is not. The requirement to refer to “disconnections” however, should be extended to all communications with customers not just written warning notices to ensure that customers are fully aware of what a retailer is communicating to them about. (r. 604)
De-energisation for non-notification by customers	NERR	<ul style="list-style-type: none"> ▲ R. 609(1) is not supported to the extent that it relies on a customer's failure to comply with a provision of the NERL, which we have submitted should not be a direct obligation on a customer but rather an indirect obligation enforceable by a retailer. ▲ Aside from that, however, the intention of the clause is supported. It is noted, however, that if the current arrangement persists, it is unclear how the retailer will know whether or not the customer has complied with the requirements of s. 235(6) of the NERL. How is this to be effected?
Re-energisation	NERR	<ul style="list-style-type: none"> ▲ It is noted that Division 4, dealing with re-energisation, contains no provisions dealing with time periods for re-energisation to occur following satisfaction of requirements by customers. For example, in South Australia re-energisation is required on the same day if obligations are met and notified to a distributor by 3pm. The Division cannot be supported fully in the absence of timeframes, as it represents a significant diminution of current consumer protections for South Australians.

Prohibition on disconnections for non-payment during a heatwave	NERL / NERR	<ul style="list-style-type: none"> ▲ The overall NECF package should include a prohibition on retailers and distributors disconnecting any small customer for non-payment during a period of continuous hot weather given the increased prevalence and duration of heatwaves throughout Australia. The South Australian Energy Retail Code and Electricity Distribution Code currently include such a prohibition so that when the South Australian State Emergency Service (or other authorised body) issues an Extreme Heat Warning or an Extreme Heat Watch, retailers and the distributor are prohibited from disconnecting small customers for the period that the Extreme Heat Warning or an Extreme Heat Watch is active.
Life support equipment	NERR	<ul style="list-style-type: none"> ▲ The words “subject to subrule (c)” should be inserted at the beginning of rule 703(2)(b) so that a distributor does not contravene rule 703(2)(b) in the limited circumstances in which it can interrupt supply to premises registered as having life support equipment.