

26 February 2010

Manager, MCE Secretariat,
Department of Resources, Energy and Tourism
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Dear Sir/Madam

Subject: Second Exposure Draft of the National Energy Customer Framework

Envestra is Australia's largest natural gas distributor, delivering gas to over 1,000,000 customers in all mainland states except for Western Australia. Being subject to numerous jurisdictional regulatory regimes, Envestra is well placed to comment on the proposed national framework. Because our comments and concerns are shared by other distributors, our comments on key issues are incorporated into the submission by the Energy Networks Association (ENA). We do not wish to repeat aspects of the ENA submission here, as that submission adequately covers the key issues from our perspective.

Whilst Envestra is pleased that the second draft of the legislation is a substantial improvement on the first draft, further changes are required to efficiently achieve the objectives of the National Electricity and Gas Laws. We are particularly concerned with:

- (a) the "Victorian centric" approach that has appeared to pervade the draft legislation, and which is evident in the remaining two key issues that are of concern to distributors (liability and credit support). There appears to be a notion by SCO that Victorian energy regulation and policy is at the forefront, with no apparent consideration given by SCO as to whether aspects of other regimes would provide a more balanced outcome, notably in the long term sustainable interest of consumers. (It is Envestra's experience that the extent and cost of regulation in Victoria is higher than in other jurisdictions).
- (b) the lack of transparency in formulation of the draft legislation – the Explanatory Memorandum (EM) provides no real explanation on key issues such as liability. Submissions in response to the first draft legislation have gone to great lengths to provide substantive comment on issues, but the EM failed to provide any information or reasoning in relation to positions adopted by SCO on those issues.

Envestra notes that it is common regulatory practice for issues raised in submissions to be summarised and responded to. There also appears to be a reluctance by SCO to discussing or providing information to support “policy” positions. The formulation of “policy” decisions in the absence of robust argument or input from stakeholders appears in itself to be a policy failure.

- (c) the lack of consultation – the restriction of consultation to “mass stakeholder” meetings and one formal consultation period between each successive drafting of the legislation drafting is, in Envestra’s view, inadequate and inefficient. Given the substantial proposed changes to current legislation, more frequent consultation and a degree of informal consultation would provide a better and more practical outcome, a more efficient process, and also avoid surprises.

It is important to note that there are a multitude of lower level issues that need addressing that are not covered in the ENA submission and that the industry has not had time to adequately consider collectively. Whilst priority necessarily must be given to higher order issues, such as ensuring an efficient and effective credit support and liability regime, it must be acknowledged that, as businesses drill down to lower levels of detail, various implementation and operational issues will come to the fore. Such issues may be relatively trivial and perhaps overcome with simple drafting changes, whilst others may appear trivial but could have wide-ranging impacts on processes (notably business to business processes), and consequential costs to consumers. (As an example, there is a draft requirement to notify customers of the time of a planned interruption to supply. If Envestra were to change its processes in order to ensure that it advised customers of the time of interruption and organised its field crews to honour that time, Envestra would need to incur substantial additional costs. It has not been demonstrated that this change is in the public interest. Consumers would ultimately pay for this increased level of service. However, there is no evidence to suggest that consumers are dissatisfied with the current level of service, or that they would be prepared to pay for significantly increased service levels).

The attachment to this submission sets out some of these issues identified to-date. It is imperative that as many of these issues are identified and rectified as early as possible, and that the implementation timeframe allows for on-going dialogue in respect of the final drafting of the legislation.

We look forward to participating further in the consultations and development of regulation that will shape our industry.

Yours sincerely



A Staniford
Group Manager - Commercial

NECF SECOND EXPOSURE DRAFT COMMENTS

pg	CI	Draft Exposure Clause	Comment/Proposal
		NERL	
20	102	Energisation of premises meansand re-energisation has a corresponding meaning;	Whilst the definition for de-energisation includes the words "or disconnection", there is not mention of reconnection in the definition of energisation. The definition of energisation should be modified accordingly: "and re-energisation or reconnection has a corresponding meaning"
53	307(1)	A distributor must comply with the obligations imposed on the distributor under the terms and conditions of a deemed standard connection contract between the distributor and a customer.	This clause should either be deleted (as the obligation is already evident in the law) or be reciprocal, ie amended to apply to the customer also.
		NER Rules	
	103	Definitions	There is no definition for 'planned interruptions'. The following is proposed, and is consistent with the definition approved and incorporated in gas access arrangements in South Australia and Queensland: planned interruption means an interruption pertaining to planned work, maintenance or repair, being a task that is planned in advance and where the plan to undertake that task was developed or formulated at least seven days before the date on which that task is scheduled to occur.
	106	Classification of customers Customers are classified as follows: (a) retailer classification of a customer as— (i) a residential customer; or (ii) a business customer; (b) distributor classification of a business customer as— (i) a small customer; or (ii) a large customer; (c) <u>distributor classification</u> of a business customer who is a small customer as— (i) a small market offer customer; or (ii) not a small market offer customer.	Distributor should not need to classify customers and maintain such a database where this is done purely for retail purposes, unless it is demonstrated that this is the most cost effective option from an industry perspective. Such decisions should not be made lightly or without industry consultation. This requirement, if implemented, will result in a substantial increase in distributor costs due to the need to modify IT systems and B2B processes.

	109	<p>(2) On being notified by a retailer that the customer is a business customer, the <u>distributor</u> for the premises must classify the customer in relation to those premises:</p> <p>(a) as a large customer or a small customer; and</p> <p>(b) <u>if a small customer, as or as not a small market offer customer.</u></p> <p>(3) The distributor must, as soon as practicable, notify the financially responsible retailer for the premises of the classification of the customer under this rule.</p> <p>(4) The distributor must keep a record of the classification of the customer.</p>	See comment above
		Part 4 Relationship between distributors and customers	
51	403	<p>Application for customer connection services</p> <p>(1) Application of this rule</p> <p>This rule applies where a customer is seeking the provision of customer connection services in respect of an existing connection at the customer's premises.</p>	<p>Not clear what this means. Is it for an "existing, but de-energised connection"?</p> <p>Confusion regarding terminology may be avoided by using the term "customer network services" for the on-going services supplied by distributors, and reserving the term "connection service" for the connection of a customer and alterations to that connection.</p>
55	410	<p>Provision of information</p> <p>A distributor must, on request by a customer or a customer's retailer, provide information about the customer's energy consumption or the distributor's charges</p>	<p>Clause 14.2 of deemed standard connection contract allows for charges for providing consumption data to customers (as such data should be sought from the retailer, with referral to the distributor only if the retailer does not have the data). Clause should incorporate the words</p> <p>"...but may charge a reasonable fee for doing so."</p> <p>It should be noted that requests are sometimes but infrequently made to Envestra for such data, but due to their infrequency, charges are not levied. However, if the legislation resulted in a material increase in enquiries that should be handled by retailers, Envestra considers that it is appropriate to charge for this service.</p>
56	413(2)	<p>Contents of notification [planned interruptions]</p> <p>The notification must—</p> <p>(a) specify the expected <u>date, time</u> and duration of the interruption;</p>	<p>It is not possible to provide an expected time for all interruptions, and it is not possible in some instances of work to provide an expected date (some work can only be narrowed down to a particular week, especially if the notification is made more than a month prior to the planned interruption. For example, the nature of gas meter change work means that expected date of interruption can in most cases only be narrowed down to a week or month. Proposed amendment:</p> <p>(a) specify, where possible, the expected date, time and duration of the</p>

			interruption;
57	414	In the case of an unplanned interruption, a distributor must— (a) within 30 minutes of being advised of the interruption, or otherwise as soon as practicable, make available, by way of a 24 hour telephone service, information on the nature of the interruption and an estimate of the time when supply will be restored or when reliable information on restoration of supply will be available	There is a threshold number missing in this clause, ie it would require a distributor to provide a recorded message even where a single customer loses supply, which is clearly not the intention. It is recommended that a threshold number of customers be allowed for, in line with industry practice. However, this is one example of where “one size does not fit all”, as the threshold for a large electricity network would be different to that for a small one, and different again for a gas network. It is therefore recommended that the words be amended to: “In the case of a material unplanned interruption, ...” If necessary, this allows jurisdictions to adjudicate on what is “material” under their own guidelines, taking into account specific circumstances. However, Envestra feels that current arrangements in such respect are already adequately in place.
		Part 5 Relationship between distributors and retailers	
60	508	(1) The distributor— (a) must notify the retailer of planned interruptions and give the retailer all information that the distributor is required to give to a customer under rule 413; and (b) must do so within the same time period as the distributor is required to notify the customer. (4) If a customer contacts the retailer about a planned interruption requested or proposed by the distributor, the retailer must— (a) refer the customer to the distributor; or (b) if <u>the customer does not wish to contact the distributor</u> , give the customer the information provided by the distributor under this rule	This is an example of where it cannot be assumed that what is in place in Victoria is best or efficient practice. Envestra currently advises retailers of planned interruptions in only one of the five jurisdictions in which it operates, and in that jurisdiction (Victoria) retailers have confirmed that the information supplied is not used. It is therefore inappropriate to duplicate processes that do not add value but merely increase the cost of energy to consumers. Enquiries by customers to retailers concerning planned interruptions by a distributor should be directed to the distributor (as directed in the communication given to customers by the distributor - clause 413(2)(c) requires that the notice given by the distributor to the customer must state that the customer must contact the distributor). Parts 1 and 4(b) of this clause should be deleted. Elimination of double handling of information will ensure efficiency and means that customers will receive first hand

			<p>information.</p> <p>In addition, where notification is currently provided by distributors to retailers, it is only where significant numbers of customers are affected (since individual/small outages are usually of short duration and attended to before the customer may be even be aware of the gas outage). It is noted that the wording of the clause makes no distinction in terms of threshold levels.</p>
60	509(1)	<p>Unplanned interruptions</p> <p>(a) must make available to the retailer all information regarding unplanned interruptions due to faults or emergencies that the distributor is required to make available to a customer under rule 414; and</p> <p>(b) must do so within the same time period as the information is required to be made available by the distributor to the customer.</p>	<p>See comment in relation to clause 508.</p>
63	514	<p>Liability of retailer for ongoing charges</p> <p>(1) If the distributor is required to de-energise a customer's premises within the timeframes for de-energisation in accordance with a distributor service standard, and the distributor fails to do so, the distributor must—</p> <p>(a) waive any distribution charges applicable to the premises after the timeframes expire; and</p>	<p>Note that fixed charges should not be affected. Amend to:</p> <p>(a) waive any distribution charges applicable to the premises for energy delivered after the timeframes expire; and</p>
		Gas Deemed Standard Connection Contract	
	7	<p>Our Liability</p> <p>Pursuant to section 68A of the <i>Trade Practices Act 1974</i> (Cth) and equivalent State or Territory legislation, our liability for breach of this contract is limited to:</p> <p>(i) in the case of energy:</p> <p>(A) the supply of equivalent energy; or</p> <p>(B) the payment of the cost of acquiring equivalent energy;</p> <p>(ii) in the case of services:</p> <p>(A) the supplying of the services again; or</p>	<p>A distributor should not be liable in circumstances where it has acted <u>prudently</u>. Whilst protections are afforded the distributor where circumstances are beyond its control, there may be unusual circumstances within its control that might lead to a breach of contract, but where a prudent operator had no choice but to implement the measure that led to a contract breach. For example, a distributor might be faced with making a decision as to whether to allow a small quantity of contaminated gas into the network (knowing that there is a possibility that a small number of consumers might be affected) as opposed to ceasing gas supply to a whole network and thousands of consumers losing gas supply).</p> <p>Without such protection, any single customer could take action to enforce the contract</p>

	(B) the payment of the cost of having the services supplied again.	and legally require the distributor to honour the contract even where that is not prudent and efficient. This would be contrary to the interests of consumers as a whole. The following part should therefore be added as 7(c): (c) We are not liable for breach of contract if we have acted in a manner consistent with that of a prudent and efficient operator acting reasonably and in accordance with good industry practice.
9.5	Emergencies If the supply of energy to the premises is interrupted in or as a result of an emergency or in other urgent circumstances, we must: (a) make information on the following available, by way of our 24-hour telephone information service: (i) the nature of the emergency; and (ii) where reasonably possible, an estimate of the time when the supply of energy will be restored;	For outages affecting a small number of customers in a confined location (eg 8 customers at the end of a ruptured gas main), the phone service is not used, as customers are individually notified and in any event must be contacted in order to safely restore gas supply. The phone service is only used for significant outages, where customers may be remote from the source of the incident and the number of customers is too great to contact them individually in a reasonable time frame. Hence using a telephone information line for small outages is not practical nor would it improve customer service. Suggested amendment: we must: (a) endeavour to make information on the following available (which may be by way of our 24-hour telephone information service for significant outages): (i) the nature of the emergency; and (ii) where reasonably possible, an estimate of the time when the supply of energy will be restored;
11.2	We may disconnect the premises: (a) if your retailer informs us that it has a right to arrange for disconnection under your contract with your retailer and requests that we disconnect the premises;	There is no need for a retailer to inform the distributor that it has a right to disconnect in every instance because it must be a fundamental assumption that the retailer will abide by the law and not arrange a disconnection unless it has a right to do so. Disconnection requests are normally done electronically using B2B processes, meaning that the only practical way of meeting this obligation is to have a statement printed on every service order, which would provide no benefit for the additional cost.
11.3	We may disconnect your premises under clauses 11.2(c), 11.2(d) or 11.2(e) only if: (a) we have sent you a disconnection warning notice that:	In some cases the notice may be sent by the retailer, depending on the circumstances (eg 11.2(c)) and customer (eg large customers), especially where the retailer wishes to maintain a customer relationship. The reworded clause below allows for such flexibility.

			(a) we or your retailer have sent you a disconnection warning notice that:
12.2	Time for re-energisation If, at the time of the request for re-energisation: (c) the necessary infrastructure to re-energise the premises remains in place;		In a minority of circumstances, the distributor may need to disconnect by way of buried infrastructure, in which case excavation is also required to effect re-energisation. Whereas “aboveground re-energisation” can normally take place the same day, “below ground re-energisation” requires scheduling a field crew with a backhoe, and therefore entails a longer timeframe. Suggested amendment: (c) the necessary infrastructure to re-energise the premises is easily accessible and remains in place;
14.2	Access to information If you request it, we must provide you with the following information: (a) time of use metering data (where it is available); and (b) your energy consumption; and we may charge you a reasonable fee for providing the information.		Customers must be encouraged to approach their retailer first for billing/metering data. The wording here may give the impression that they must contact the distributor and that there may be a fee. Suggested amendment: If you request it, and you have been unable to obtain it from your retailer, we must provide you with the following information:
	Dictionary		
	disconnection (or de-energisation) means for electricity the opening of a connection, and for gas, the closing of a connection, in order to prevent the flow of energy to your premises, but does not include an interruption;		Suggested amendment: disconnection (or de-energisation) means for electricity the opening of a connection, and for gas, the closing of a connection, in order to temporarily prevent the flow of energy to your premises, but does not include an interruption; The word “temporarily” makes clear to all parties that de-energisation is an action that is only intended to be a temporary measure, ie it does not preclude recommencement of supply in due course, and does not normally involve removal of any assets. It is necessary to make this distinction because the term “disconnection” is also used in the industry in reference to more permanent disconnections, which entail more serious measures, such as street excavation. Disputes regarding reconnection timeframes have occurred due to the failure of some regulatory instruments to differentiate between temporary and permanent disconnections, so this mistake should be avoided.
	Gas (Retail Support) Amendment rules (Retail Contract)		

4	106	<p>Statement of charges</p> <p>(1) A distributor must provide a statement of charges ("statement of charges") to a retailer on the 10th business day of each retail billing period for distribution service charges for the previous retail billing period. The statement must include:</p>	<p>This rule precludes:</p> <p>(a) Any negotiated billing arrangement that may be negotiated between a retailer and distributor; or</p> <p>(b) Any other billing arrangement that the AER may deem to be appropriate in respect of a particular Access Arrangement or covered pipeline.</p> <p>Accordingly, the following amendment is proposed:</p> <p>(1) Unless agreed otherwise, or an access arrangement otherwise allows, a distributor must provide a statement of charges ("statement of charges") to a retailer on ...</p>
		National Gas (Retail Connection) Rules	
	119B	<p>Standing offers to be approved by the AER</p>	<p>Industry believes that there is no need for the AER to approve standing offers and variations. It is appropriate for the AER to maintain an audit and compliance role, such that it can direct a DB to modify a standing offer if the AER deems it to be non-compliant.</p>
	119C	<p>(2) The terms and conditions of the standing offer must cover:</p> <p>(a) a description of the connection;</p> <p>(b) the time within which the work is to be commenced and a <u>target date</u> for its completion;</p>	<p>As a standing offer, it is not possible to state a target date for completion of future/potential contracts. Suggested amendment:</p> <p>(b) the expected timeframe within which the work is to be commenced and completed;</p>
	119C	<p>(2) The terms and conditions of the standing offer must cover:</p> <p>(c) details of the metering equipment to be installed;</p>	<p>It is unclear why details of metering equipment would be of interest to a customer, unless "details" refers to the rated capacity of the meter.</p>
	119O	<p>Payment of connection charges</p> <p>(1) Connection charges payable in respect of connection service must be paid to the distributor by the customer's retailer unless:</p> <p>(a) the retailer did not apply for the connection service under Division 5, Subdivision 3 and the distributor has notified the customer that the customer must pay the connection charge directly; or</p> <p>(b) the customer asks to pay the connection charge directly and the distributor agrees.</p>	<p>There is a missing option here:</p> <p>(c) The distributor and retailer agree that the distributor will recover the connection charge from the customer.</p>