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**Submission to the Ministerial Council on Energy/Standing Committee of Officials**

**National Energy Customer Framework – Second Exposure Draft Law and Rules**

Jemena appreciates this opportunity to comment to MCE/SCO on the release of the Second Exposure Draft Law and Rules for the National Energy Customer Framework.

We would be pleased to elaborate to MCE/SCO on any matters contained in this submission.

If required, I can be contacted on (02) 9270 4512 or email: [sandra.gamble@jemena.com.au](mailto:sandra.gamble@jemena.com.au).

Yours sincerely

A handwritten signature in black ink that reads "Sandra Gamble".

Sandra Gamble  
**Group Manager Regulatory**

# **National Energy Customer Framework – Second Exposure Draft Law and Rules**

**Submission from Jemena to the  
Ministerial Council on Energy  
Standing Committee of Officials**

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# 1 Key messages in this submission

## 1.1 Introductory

While NECF2 contains improvements on many of the issues raised in response to NECF1 there are still some significant concerns.

## 1.2 Modification of the NER objective

There is now an addendum to the national energy retail (NER) objective in NERL s113 *that the national energy retail objective should not be taken to prevent or restrict the development and application of consumer protections*. Jemena submits that this provision can override the expressed efficiency objectives of NERL s113(1), thus allowing the AER and the AEMC, in exercising their functions under the NERL, to give priority (or at least equal standing) to consumer objectives. There may also be implications for confusion and ambiguity in decision making and rule making under the NEL and NGL, given the interaction between the new retail customer connection regimes in the NEL and NGL and the retail contractual framework in the NERL.

## 1.3 Services provided by distributors

Jemena submits that service definitions need to clarify the scope of the supply obligation for which distributors are to be made responsible under NECF2 is clear. Jemena suggests slightly different definitions for gas and electricity (reflecting the different circumstances of those members).

## 1.4 National connections frameworks

Jemena submits that the following matters require further attention or reconsideration:

- The AER's approval role for standard connection contracts and standing offers for 'basic' and 'standard' connection services
- Uncertainty about the scope of the proposed 'basic' and 'standard' connection services
- The need for connection conditions established under the new rules to have ongoing application under the NERL Part 3 Deemed Contract and AER Approved Contracts.
- Connection contract application, negotiation and formation timeframes under NER 5A and NGR 12A.
- For electricity, the connection negotiation and charging regime under NER 5A Part E and how it interacts with NER Chapter 6.

The NECF2 retail connection framework for gas is similar – but not exactly the same - to the connection framework for electricity

- Jemena welcomes the NECF2 assurances that gas connections will sit with the national access framework and will not conflict with it
- In addition both the NERL and NGR 12A need to make it clear that each gas distributor will be entitled to a regulatory pass through of their connections framework establishment costs and ongoing operating costs.

## 1.5 Retailer of Last Resort (RoLR)

Jemena submits that:

- distributors should be entitled to full cost recovery of all costs and lost revenue associated with a RoLR Event (without applying any materiality threshold)
- further clarification is required as to how the RoLR processes currently being developed by AEMO will relate to the RoLR procedures which AEMO will be required to make under proposed new sections 618 and 619 of the NERL.
- the NERR should include an express reference to the role of distributors in facilitating the designation of RoLRs and the transfer of customers of failed retailers to designated RoLRs

## 1.6 Credit support

Jemena submits that the new credit support arrangements result in:

- unacceptably high levels of credit allowance (CA) being afforded to retailers with low credit ratings. Jemena notes that if the dollar amount of credit support is far too low, then there is effectively no credit support
- a much greater risk of unrecovered network charges having to be passed on by distributors to consumers.

Jemena notes that credit support is a means to protect regulator-approved tariffs and to recover efficient distributor costs through revenue. It is not a payment by a retailer for no service at all. If a retailer does not pay its required amounts, then the distributor suffers a revenue shortfall while its costs remain unaffected.

Jemena identifies the following problems in NECF2:

- it gives too great an emphasis to the proportion which the retailer's distribution services charges liability (DSCL) bears to the distributor's total revenue. Credit support should be based primarily on the credit risk posed by the retailer, not the distributor's revenue
- The level of the credit allowance for retailers is too high, meaning that credit support cuts in at too high a level]

- the formulae for calculating the retailer's DSCL and its credit allowance (CA) are unnecessarily complex
- the retailer's DSCL calculation should cover all charges owed to the distributor
- retailer credit ratings below the BB+ level should not have any credit allowance.

Jemena submits that the new credit support rules should provide for the required credit support amount to be calculated largely by reference to a distributor's reasonable 90 day forward estimates of charges payable by the retailer.

## 1.7 Liability arrangements

Under NECF2, distributors are still prohibited from limiting their liability for negligent supply failures under the model connection contract for both small and large customers. Jemena submits that this:

- is inconsistent the existing NEL liability regime
- is neither an appropriate accountability nor an appropriate economic incentive for distributor network reliability
- is not consistent with the majority of current state/territory liability arrangements in both electricity and gas
- substantially increases each distributor's total financial risk exposure which is only partly insurable and at significant additional cost which will need to be passed through to customers.

Jemena notes that the ENA has recommended a number of specific changes to the NECF2 liability arrangements, including a regulation to be made to set liability caps for distributor negligence resulting in supply failures.

## 1.8 Smart meter consumer protection issues

Given there is a separate MCE-SCO workstream underway to look more closely at consumer protection issues for smart meters, JEMENA submits that the current NECF2 consultation process should not be used to address a subset of issues noted by SCO. Jemena nevertheless submits some preliminary comments on those issues. Distributors would expect to be consulted on drafts of whatever NECF2 changes might be proposed by MCE-SCO in respect of smart meters.

## 2 Background

### 2.1 Background to Jemena

Jemena directly owns Jemena Gas Networks (the largest individual gas distribution network in Australia) and Jemena Electricity Networks in Victoria. Jemena partially owns the United Energy Distribution electricity distribution business in Victoria (34%) and the ActewAGL gas and electricity distribution business in the ACT (50%). Additionally, Jemena owns two major gas transmission pipelines.

Jemena provides widespread services to a range of gas and electricity assets in Australia. Overall, Jemena manages \$8 billion worth of gas and electricity assets.

### 2.2 Previous submissions

Jemena made a substantial submission to the MCE SCO consultation on the NECF first exposure draft Law and Rules on 26 June 2009.

Since the discussion papers on a national customer framework were first issued in 2004, Jemena and its predecessor organisations have fully participated in the ensuing consultations. Through the Energy Networks Association (ENA), Jemena has also assisted in developing a distribution industry position on the NECF.

## 3 Introduction

### 3.1 Changes from NECF1 and future directions

Jemena's submission on NECF1 raised a number of substantive concerns with:

- the proposed legal architecture and contractual framework
- services definitions
- detailed content of the draft law and rules
- the proposed role of the AER in approving credit support and other distributor proposals; and
- an obvious lack of clear milestones for distributors in transitioning to the NECF<sup>1</sup>.

Jemena is therefore pleased to note that NECF2 has addressed (wholly or partially) a number of issues raised in our earlier submission and also in our submissions on the proposed customer connection frameworks for gas<sup>2</sup> and electricity<sup>3</sup>. Notably, NECF2 has adopted revised approaches to:

- services definitions
- the retailer-distributor relationship
- the proposed role of the AER in credit support arrangements
- some indemnity issues

At the same time, NECF2 has introduced major new elements, including:

- modification of the NERL objective
- full versions of the connection frameworks for gas and electricity
- detailed retailer of last resort provisions
- credit support formulae
- small customer dispute resolution and compensation claims

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<sup>1</sup>Jemena Limited, National Energy Customer Framework – First Exposure Draft Law and Rules: *Submission to the Ministerial Council on Energy Standing Committee of Officials*, 26 June 2009.

<sup>2</sup>Jemena Limited, *Submission on the National Framework for the Connection of Retail Customers to Natural Gas Distribution Networks*, 18 September 2009.

<sup>3</sup>Jemena Limited, *National Framework for Electricity Distribution Network Planning, Connection and Connection Charge Arrangements*, 10 March 2009.



However, MCE-SCO has declined to modify some key parts of NECF1, including:

- A direct distributor-end user contractual relationship in both gas and electricity
- The proposal for uncapped distributor liability in cases of negligence

Further, in the explanatory material, NECF2 canvasses new positions to be developed on smart meter consumer protection and on bill benchmarking for future inclusion in the NECF.

### **3.2 Structure of this submission**

In view of the matters outlined above, this submission addresses in turn:

- changes from NECF1
- new elements in the framework
- matters not changed
- other issues

There is also an Attachment which suggests improved drafting to assist operation of the NECF as well as some transition and implementation matters.

Jemena expresses disappointment that the MCE-SCO has again not addressed NECF transitional and implementation issues (even in a broad way) to give greater certainty to distributors, especially those in the process of undertaking regulatory resets with the AER. The status of existing access arrangements and price determinations upon the application of the NECF by jurisdictions also remains uncertain.

The fact that business processes and systems may need significant change further illustrates the need for businesses to have a clear view of transition paths to the NECF and the nature and timing of any amendments to relevant jurisdictional legislation.

## 4 Changes from NECF1

### 4.1 Modification of the NER objective

#### 4.1.1 Background

NECF1 adopted a form of national energy retail (NER) objective which closely followed that in the NEL (s7) and NGL (s 23). Some key elements of the objective were to:

- promote efficient investment in energy services
- promote efficient operation and use of energy services
- both of the above for the long term interests of consumers (with respect to price etc).

The words of the NER objective were virtually identical with the national electricity and national gas objectives, except that the latter were concerned with infrastructure services whereas the NER objective referred to 'energy services'. Jemena acknowledges the proposed NER objective which now exists as NERL s113(1)<sup>4</sup>.

However, there is a new addendum in NERL s113(2):

*(2) The national energy retail objective should not be taken to prevent or restrict the development and application of consumer protections for hardship customers and other small customers, including the development, approval and application of customer hardship policies.*

Jemena observes that this addendum is listed in the MCE-SCO explanatory material as a significant matter for consultation<sup>5</sup>.

#### 4.1.2 Issues

At first glance, s113(2) appears directed at the new Division 6 Part 2 of the NERL, which requires retailers to develop a customer hardship policy for residential customers and to have it approved by the AER<sup>6</sup>. The minimum requirements for a policy are set out in s226. 'Customer hardship policy' is a defined term in the NERL and is cross-referenced to Division 6.

However, s113(2) is expressed in much more general terms than retail customer hardship. The national energy retail objective is qualified by a requirement that (it) *should not be taken to prevent or restrict the development and application of consumer protections*. The words following this

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<sup>4</sup> Jemena's 26 June 2009 submission (p.25) submitted that the existing NEL and NGL objectives would suffice to cover a fully integrated NERL/NGL/NEL Law. However, SCO has declined to accept full integration of the NERL and existing laws.

<sup>5</sup> MCE SCO, *National Energy Customer Framework, Second Exposure Draft, Explanatory Material*, item 37, p. 7

<sup>6</sup> Division 6 is an expansion of an equivalent Division 9 Part 2 in NECF1.

requirement simply cite *customer hardship policies* as one example of consumer protections. There is no indication that such protections are to be confined to retail matters of Division 6.

The major consequence of s113(2) is that it changes the emphasis of the objective from economic efficiency to a situation where customer protection has either equal standing with efficiency or can override it, thus creating conflicting objectives under the NERL for AER decision-making and AEMC rule-making. This would be a fundamental change to the purpose of creating a national retail market, where consumers were intended to benefit from competition, i.e. economic efficiency.

Further, given that the new retail customer connection regimes in NER 5A and NGR 12A interact directly with the NERL customer connection contractual framework, there is a real potential for AER connection regime decisions to have inconsistent and overlapping objectives applying to them. This could in turn confuse the application of the national electricity and national gas objectives to decision making under the NEL and NGL.

Social objectives should not be part of the core regulatory and rule making functions of efficient markets administered by the AER and the AEMC. In fact, this position was specifically adopted by MCE-SCO in revising the economic regulatory frameworks in recent years for both electricity and gas.

Jemena's strong recommendation is that s113(2) should be deleted., Some words could be inserted in Division 6 Part 2 to indicate that retailer development of hardship policies is not in conflict with the NER objective.

## 4.2 Service definitions

### 4.2.1 Background

In response to NECF1, the Energy Networks Association (supported by distributor submissions including Jemena's) submitted that the conceptual framework behind the proposed definitions comprising 'customer distribution services' was faulty, and therefore the definitions themselves were problematic.

In the ENA's words<sup>7</sup>:

*Under the NERL, the physical delivery/supply process by distributors has been artificially split into:*

- *a 'conveyance' service along the network to the supply point for retailers (under the mandated Retail Support Contract); and*
- *a 'transfer' service from the network at the supply point for customers, which is deemed to be a '[customer] supply' service (under a mandated Distribution Contract).*

*This artificial splitting of what is in reality a single physical delivery/supply process, into a service for retailers up to a supply point and then a service for customers at that point:*

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<sup>7</sup> Energy Networks Association, Submission on the first exposure draft of the National Energy Customer Framework, 26 June 2009, p. 27.

- *introduces significant regulatory overlap and uncertainty to delivery rights and obligations between distributors, retailers and customers. This is exacerbated by an unclear definition of 'supply point'.*
- *is also inconsistent with how the physical delivery service is currently regulated in both gas and electricity as a single service.*

The ENA further submitted that the NECF1 approach conflicted with the operation of the national regulatory regimes for gas and electricity and proposed alternative drafting to resolve the consequent regulatory overlap.

#### 4.2.2 *Jemena comment*

Jemena is pleased to note that, while not accepting all the ENA recommendations, MCE-SCO has developed an alternative conceptual framework and thus new definitions. Specifically:

- the 'Retail Support Contract' no longer exists
- there is no reference to any service as between the distributor and retailer
- there is no longer a definition of 'customer supply service'
- the concept of 'customer distribution service' in NECF1 has been replaced by 'customer connection service' in NECF2, with the latter defined essentially as:
  - (a) a service relating to a new connection
  - (b) a service relating to a connection alteration
  - (c) a service relating to the ongoing energisation of the premises
  - (d) a service prescribed by the Rules as a customer connection service for the purpose of this definition

Jemena commends this approach as a major improvement. It accords with the view previously expressed by the ENA that the focus of distributor accountability to end-users – certainly in gas - should be on connection and energisation<sup>8</sup>.

#### 4.3 **'Supply' as part of 'connection services'**

Although there is no longer a definition of customer supply service, Jemena notes that the service of 'ongoing energisation' in item (c) above does include 'supply':

- (c) *a service relating to the ongoing energisation of the premises, including the initial energisation, supply, de-energisation or re-energisation*

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<sup>8</sup> ENA submission p. 33.

'Energisation' is further defined as:

- (a) *in the case of electricity – the closing of a connection; or*
- (b) *in the case of gas – the opening of a connection,*
- (c) *in order to allow the flow of energy to the premises.*

Jemena finds the reference to 'supply' in conjunction with 'ongoing energisation' to be at least unclear, and potentially reintroducing the uncertainty that was evident in NECF1. While energisation (and its derivatives) is a defined term, supply is not. The reference to 'supply' as a service could again suggest the concept of a dual service, with connection and energisation taking place at the connection point and an inference that 'supply' encompasses the entire energy delivery chain to a customer. If so, we would get back to the vexing issue of energy conveyance governed by economic regulation which gave stakeholders so much trouble in NECF1.

As currently defined, the function of supply is contained within 'ongoing energisation' and appears intended to clarify what comprises 'ongoing energisation'.

Given that 'energisation' is defined as closing/opening a connection to allow the flow of energy, the mere fact that 'energisation' exists at a premises is sufficient to determine if energy should normally be flowing. From a customer's perspective, the circumstances when energy will not be flowing are set out in the model standard connection contract (item 9.1 of schedule 2 to the NERR). There appears to be no need to introduce a concept of 'ongoing energisation'.

Jemena agrees with the ENA that this definitional uncertainty needs to be clarified in a way which reflects the contrasting nature of the services which electricity and gas distributors provide.

- For the purposes of electricity only, the section 102 customer connection service definitions simply need to clarify that 'supply' is an ongoing service relating to (but without being limited to) the energisation of premises;
- For gas, the 'supply' obligation imposed on distributors as part of customer connection services should be limited to energisation of premises (as defined in section 102).

Accordingly, Jemena agrees with the ENA that the following amended definitions for section 102 NERL should apply (changes underlined):

**customer connection service** *for premises means any or all of the following:*

- (a) *a service relating to a new connection for the premises;*
- (b) *a service relating to a connection alteration for the premises;*
- (c) *supply of energy to the premises;*

- (d) *a service prescribed by the Rules as a customer connection service for the purposes of this definition.*

**energisation of premises** means:

- (a) *in the case of electricity—the closing of a connection; or*
- (b) *in the case of gas—the opening of a connection.*

*in order to allow the flow of energy to the premises; and re-energisation has a corresponding meaning;*

**supply of energy to premises** means:

- (a) *in the case of electricity—an ongoing service relating (but not limited) to the energisation, de-energisation or re-energisation of the premises; or*
- (b) *in the case of gas—the energisation, de-energisation or re-energisation of the premises.*

#### 4.3.1 *Use of 'supply' in connection frameworks*

The new national Retail Connection Rules accompanying NECF2 (chapters 5A of the NER and 12A of the NGR) contain a definition of a 'supply service'. This is:

**supply service** *means a service (other than a connection service) relating to the ongoing supply of [electricity or gas].*

Jemena notes that a similar difficulty arises with the use of the term 'supply' in this definition as was raised above in respect of 'ongoing energisation'. The scope of a 'supply service' is not clear, except that it is not a connection service. It is also not clear whether the definition of 'supply service' in the Retail Connection Rules is intended to be consistent with 'supply' under the section 102 NERL service definitions.


Given the level of interaction between these Retail Connection Rules and the customer connection services provided under the NERL (and in any event), it is important that use of the term "supply" is consistent under both the Retail Connection Rules and the NERL.

Accordingly the definition of "supply service" under clause 5A.A.1 of NER 5A and under clause 119A of NGR 12A, should be amended to read as follows:

**supply service** *means the supply of energy to premises as defined in section 102 NERL*

## 4.4 **Distributor – retailer relationship**

Jemena commented on NECF1 (in respect of gas):



*Given SCO's preference for 'standard' terms, the manner to achieve this with least distortion to the access regime is by putting any necessary terms into the Rules directly, and ensuring that those matters are incorporated into what SCO calls 'gas service agreements' (ie transportation contracts). Direct use of the national Rules is the appropriate mechanism, rather than the artifice of a deemed 'retail support contract'<sup>9</sup>.*

Jemena therefore supports SCO's decision to make retail support obligations a matter for the rules rather than the artifice of a contractual model.

At the same time, some items appear to have been inserted into the new gas rules that were not evident in the old retail support contract. For example, rule 105 of the Draft National Gas (Retail Support) Rules states that distribution service charges (between the distributor and the retailer) must be calculated in accordance with the applicable access arrangement. This provision is not consistent with section 322 of the National Gas Law, which does not prevent a service provider from entering into an agreement with a user or prospective user that is different from an applicable access arrangement. Thus, the access arrangement is not binding on a user (in the case of proposed rule 105, a retailer) if they want to negotiate terms outside an access arrangement.

Jemena submits that the retail support rules must reflect the NGL.

#### **4.5 Credit support between retailers and distributors**

ECF1 proposed to allow the AER to develop credit support guidelines. Many stakeholders (including Jemena) submitted that this was not an appropriate role for the AER, given that it would be developing its own rules and then enforcing them. Jemena noted that:

*[Jemena] considers that it is appropriate to fully examine the issues now rather than delegate that responsibility to the AER, with the conflict of interest which would follow.*

NECF2 now locates the credit support rules in the NER and NGR, in a new Chapter 6B of the NER (for electricity) and in a proposed new Part 21 of the NGR (for gas).

This is a significant improvement on NECF1, given that credit support is a major contributor to the efficient operation of energy distribution and retailing and should be a matter for the rules. However, Jemena considers that the credit support requirements need further refinement in order to underpin market efficiency. This is discussed in section 5.

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<sup>9</sup> Jemena Limited, National Energy Customer Framework – First Exposure Draft Law and Rules: *Submission to the Ministerial Council on Energy Standing Committee of Officials*, 26 June 2009, p23.

## 4.6 Distributor liability and immunity provisions

### 4.6.1 *The distributor retailer indemnity*

Jemena notes the inclusion of a new distributor and retailer mutual indemnity in new section 1502 of the NERL under which, in s1502(1), the distributor indemnifies the retailer for claims by customers against the retailer which are caused by negligent or bad faith acts or omissions of the distributor.

Jemena submits that this provision is inappropriate, because:

- (a) Distributors and retailers contract with each other under existing NGR and NER economic access regulation which can deal with indemnities. The proposed distributor/retailer indemnity requirement clearly intrudes into these arrangements.
- (b) Section 1502 provides the retailer with no incentive to ensure that customers' claim are genuine and fairly reflect their loss because the distributor completely indemnifies the retailer for the court-awarded costs, whatever they may be.
- (c) The model connection contract entitles customers to make negligence claims against the distributor directly and that this is the appropriate avenue.

Section 1501 NERL retains an uncapped liability for distributor negligence, which remains a major concern. See section 6.2.

## 5 New matters for consultation

### 5.1 Frameworks for new connections

#### 5.1.1 SCO explanatory background

The NECF2 explanatory material devotes more attention to connections frameworks than any other matter, and this is perhaps appropriate, given that this is the first time these frameworks have been fully articulated.

Even so, the explanatory material notes that the proposed new Chapter 5A of the NER and Part 12A of the NGR do not contain the consequential amendments to the NEL and the NGL and their associated rules that may be necessary to fully implement the new connection frameworks<sup>10</sup>. Jemena submits that these matters govern the future workability of the new arrangements, and should be fully consulted upon when developed.

The explanatory material further notes:

*The connections frameworks will sit within the NER and NGR, as these frameworks pertain to the provision of connection services which are integral to the economic regulatory regimes<sup>11</sup>.*

Jemena welcomes this explanation to the extent that it recognises the view in Jemena's submission on the gas connection framework (but equally applicable to electricity economic regulation) that:<sup>12</sup>

*Alignment with the gas access regime is a low-cost option for both distributors and customers. It is vastly superior to any approach which envisages the total separation of forecast connection costs from other forecast capital expenditure and the recovery of those costs through individual charges applied to every single retail customer through a new and costly administrative support structure. It is also unclear in what way the AER could approve connection costs if they were divorced from the capital approval criteria of the existing access framework.*

### 5.2 Jemena comments on the national connections framework for both electricity and gas

#### 5.2.1 Background

NECF2 contains a new retail customer connection framework in Part 3 NERL and the new Retail Connection Rules NER 5A (for electricity) and NGR 12A (for gas). This comprises a substantial amount of new material which deals with (among other things):

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<sup>10</sup> MCE SCO, explanatory material, Attachment A, item 5, p 14.

<sup>11</sup> Op.cit., Attachment A, item 7, p 14

<sup>12</sup> Jemena, *Submission on the National Framework for the Connection of Retail Customers to Natural Gas Distribution Networks*, 18 September 2009, p. 3.

- a wide range of retail customer connection contractual, regulatory and pricing issues currently dealt with in each jurisdiction under its own complex existing regulatory frameworks; and
- the interaction of these with the existing NER framework.

Based on its review of the connections framework, Jemena submits that the following matters require further attention or reconsideration:

- the AER's approval role for standard connection contracts and standing offers for basic and standard connection services.
- uncertainty about the scope of basic and standard connection services under proposed NER 5A and NGR 12A.
- the need for connection conditions established under proposed NER 5A and NGR 12A to have ongoing application under the NERL Part 3 Deemed Contract and AER Approved Contracts.
- connection contract application, negotiation and formation timeframes under proposed NER 5A and NGR 12A.

A particular electricity focus is:

- The connection negotiation and charging regime under proposed NER 5A Part E and how it interacts with National Electricity Rules Chapter 6.

### 5.2.2 *AER Approval of Standard Connection Contracts and Standing Offers*

Part 3, Division 5 of the NERL provides that distributor's may apply to the AER for the approval of one or more forms of standard connection contract to apply to large customers under the NERL.

NER 5A, Part B provides that a distributor:


- must submit for the AER's approval a standing offer to provide basic connection services for each of 2 specified classes of customers<sup>13</sup> on specified terms and conditions
- may submit for the AER's approval one or more standing offers to provide standard connection services.

NGR 12A, Division 2 provides that a distributor:

- must submit for the AER's approval a standing offer to provide basic connection services on specified terms and conditions.

Jemena submits that the AER approval role for each of the above standard connection contract and standing offers, would significantly and unnecessarily increase the administrative time, effort and cost

<sup>13</sup> Namely, those customers who are not micro embedded generators and those customers who are.



required of both distributors and the AER to establish these contracts and standing offers for each distributor. It would also make the whole process for establishing and varying standard connection contracts for large customers under the NERL and standing offers under NER 5A unnecessarily rigid and inflexible.

Jemena considers that the key requirements for the content and preparation of these standard connection contracts and standing offers can be satisfactorily addressed by specific and comprehensive requirements included in the NERL/NERR and under NER 5A and NGR 12A respectively.

There would then be an obligation under the NERR that any standard connection contract for large customers must comply with the content and preparation requirements set out in the NERL/NERR.

NER 5A and NGR 12A would in turn provide that a distributor:

- must prepare a standing offer to provide basic connection services (for each class of basic connection service customer); and
- may prepare one or more standing offers to provide standard connection services, which comply with the content and preparation requirements.

Failure to comply with any of these requirements would be a rule breach, enforceable by the AER which would also have an audit, compliance and enforcement role.

Retailers, other intermediaries and customers who consider that a distributor's published standard connection contract for large customers (under the NERL) or its published standing offers under NER 5A or NGR 12A do not comply with the rules could notify the AER who could investigate and, if necessary, prosecute the distributor for breach of the Rules.

### *5.2.3 Clarification of the scope of basic and standard connection services*

Based on the wording of:

- for electricity, clauses 5A.B.1, 5A.B.2 and 5A.B.4 (and on the definitions of 'basic connection services' and 'standard connection services' in clause 5A.A.1);
- for gas, clauses 119B, 119C and 119E (and on the definitions of 'basic connection services' and 'standard connection services' in clause 119A)

Jemena understands that the position proposed under NER 5A and NGR 12A for basic and standard connection services is as follows:

- for each distributor there is intended to be only one AER approved standing offer for basic connection services for all customers within a specified class of basic connection service customers:

- an AER approved standing offer for a standard connection service cannot be made for connection services which fall within the definition of basic connection services (as a result of the definition of “standard connection service” in clauses 5A.A.1 and 119A).

If that is the intention, then Jemena submits it will pose problems for distributors for the following reasons:

- a. there may be categories of customer whose required connection services all fall within the definition of basic connection services, but who will nevertheless have quite different connection requirements from other customers in their class;
- b. however, it appears that that separate basic connection service standing offers cannot be developed for different categories of customers within one specified customer classes since there can there can only be one standing offer for each class.
- c. it also appears that separate standing offers for standard connection services cannot be used for these different categories of customer if the connections they require all fall within the definition of basic connection services.

An example of (c) is where within a broad class of customers whose connection does not require network extension and augmentation (and who are all therefore part of the one class of ‘basic connection service’ customers) there are:


- customers who require minimal connection works to make a connection to the network; and
- other customers who require the construction or installation of significant connection equipment or connection plant on the customers premises, which would ordinarily require a range of standard conditions specifically for these types of customers with these requirements (such as the granting of an easement or lease for the placement of the distributor’s connection equipment on the customer’s premises, and other conditions relating to safety and equipment protection).

Jemena submits that a single framework for a basic connection service standing offer does not well accommodate the above two categories of customers. Because they are both ‘basic connection customers’ a separate standing offer for standard connection services can not be developed for one of them.

Jemena suggests an amendment to NER 5A and NGR 12A to make it clear that there can be different forms of standing offer developed for different categories of basic customer connection services.

#### *5.2.4 NER 5A and NGR 12A connection conditions need to apply to subsequent customers under NERL Deemed and AER Approved Contracts*

For any customers who specifically apply to a distributor for a new connection or a connection alteration under NER 5A or NGR 12A, the distributor’s necessary requirements on the customer as a condition for connecting them (such as equipment service, installation and ongoing information



provision requirements), can be included as conditions of connection under standing offers and negotiated contracts established under NER 5A and NGR 12A.

However these specific contractually established requirements under NER 5A and NGR 12A also need to continue to apply to subsequent customers at the same premises who:

- have not established a contract with the distributor under NER 5A; and
- will instead be covered only by a Deemed Standard Connection Contract (or any AER approved Standard Connection Contract) under NERL Part 3.

This outcome could be achieved by amending the existing clause 6.3(b) of the NERL Part 3 Deemed Connection Contract, so that it includes a requirement to comply with the distributor's reasonable requirements in accordance with the energy laws, including:

- the distributor's service and installation rules; and
- any requirements under any previous customer connection contract established for the premises.

Upon request, the distributor could notify the customer of any such requirements in writing, including any obligation on (the customer) to provide and maintain at the premises any reasonable or agreed facility required by (the distributor) for the provision of customer connection services.

There should also be a corresponding obligation under the NERL for retailers to notify their customers of any requirements relating to their customers' premises and which are notified to the retailer by the distributor.

### *5.2.5 Connection contract application, negotiation and formation timeframes*

Jemena has concerns with proposed clauses NER 5A C.2 and NGR 12A 119J which require a distributor, within 20 business days of receiving an application for negotiated connection services, to notify the applicant of the information the distributor requires in order to make a connection offer to the applicant.

This will result in an inflexible 20 business day time limit, and does not allow for different timelines to assess all the information requirements for connection installations of varying complexity. It makes no allowance for any investigations which could be required to identify information requirements.

Jemena submits that a 20 business day time limit should be replaced with a requirement for the distributor to:

- use its best endeavours to notify the applicant of the information the distributor requires in order to make a connection offer within 20 business days of receiving the application<sup>14</sup>; and

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<sup>14</sup> Jemena notes that 20 business (or a date agreed) already applies in Victoria.

- if the distributor cannot meet a 20 day time period, then the distributor must notify the applicant of a further time period (not to exceed a further 20 business days) and use its best endeavours to notify the applicant of the information the distributor requires within that period.

### 5.2.6 *Connection negotiation and charging regime under NER 5A Part E and its interaction with NER Chapter 6*

Under NECF2, this is essentially an electricity issue.

Part E of NER 5A is a regime which regulates (for retail customers and for non-registered embedded generators):

- capital contribution charges for shared network augmentations;
- payment for dedicated connection assets; and
- reimbursement of customers from contributions recouped from subsequent customers.

Part E sets out some high level governing principles; and provides for the AER to publish more detailed guidelines (based on the AER's assessment of what is fair, taking into account a distributor's reasonable costs and the quantifiable benefits to the distributor).

This is demonstrably a fundamental part of the proposed NER 5A Retail Customer Connection Rules.

Jemena raises the following matters:


- (a) *There appears to be a considerable degree of uncertainty over the categorisation of assets and scope of charges for them under Part E and how this will interact with the categorisation of assets and charges under existing Chapter 6*

Key connection related terms used in NER 5A are defined differently to those in NER Chapter 10 (for use in the rest of the NER, particularly under Chapter 6). Also, a new term 'dedicated connection assets' is introduced in NER 5A.

This creates uncertainty about:

- what it is that falls within the scope of the actual connection assets and connection services being regulated and charged for under NER 5A; and
- the relationship with how connection assets and shared network assets are regulated, negotiated and charged for under Chapter 6.

It is possible that 'connection assets' as defined under NER 5A may extend beyond what is currently defined as 'connection assets' under Chapter 10 (for the purposes of Chapter 6). NER 5A may therefore include assets which are part of the shared network under Chapter 6, which are regulated differently via DUOS charges under Chapter 6.



It is also not clear how negotiated connections and connection charges under NER 5A are to be classified or treated in relation to the categories classification of distribution services regulated under NER Chapter 6.

Jemena submits that considerably more work needs to be undertaken in reviewing and integrating NER 5A to ensure that these potential overlaps and inconsistencies with NER Chapter 6 are properly addressed.

*(b) It may be doubtful that a single consistent national approach to capital contributions and connection charges can realistically be attained*

The manner in which capital contributions and connection charges payable by customers is currently regulated is complex and differs substantially among jurisdiction. Capital contributions are often seen as customer policy issues.

Consequently, even if the definitional and potential regulatory overlap issues discussed above are addressed, the effort needed to develop a comprehensive national regime acceptable to all jurisdictions would be substantial and ultimately may not be achievable.

It may therefore be preferable for NER 5A Part E to simply reference jurisdictionally based instruments which deal with capital contributions and connection charges.

*(c) Detailed guidelines to be developed by the AER*

Rules which govern charging for and negotiation of capital contributions and connection charges are a fundamental part of the retail customer connection regulatory framework, and so should be set out in NER 5A as complete rules.

The AER's function should then be to apply the rules and its guidelines should deal only with processes relating to the performance of its regulatory role. It is inappropriate to give the AER (as a rule enforcer and regulator) wide discretionary powers to effectively make rules.


Jemena submits that a significant body of further work would be needed to (1) devise an appropriate set of principles acceptable in all jurisdictions; and (2) transform these into a sufficiently comprehensive set of rules for the AER to apply.

*(d) Small customers and the cost of augmentation*

Under clause 5A.E.1

- large customers must make “an appropriate capital contribution cost” towards the cost of any network extension and any network augmentation necessary to connect them;
- Whereas small customers are only required to contribute towards the cost of any network extension and not towards network augmentation costs.

This distinction between large and small customers should not be relevant to the issue of determining who pays for the cost of an augmentation. The need for an augmentation and its cost is not driven by



the consumption level of the particular customer seeking connection, but by the overall demand in the area and the size of the capital investment required to meet it.

Generally, costs of augmenting the shared network (as opposed to assets dedicated solely to the customer) should be recovered through DUOS charges.

*(e) Large customers and contribution to costs of network extensions and augmentations*

The large customer capital contribution requirement in clause 5A.E.1 appears to require that a large customer must always make “an appropriate capital contribution” towards the cost of any network extension or any network augmentation necessary to connect the customer.

This would be a significant departure from the current position under Chapter 6 of the NER. This allows DUOS recovery of network augmentation costs consistent with relevant distribution determinations.

Capital contributions for network augmentations should only be required from customers to the extent that the customer requires an augmentation which would not be recoverable under regulated DUOS charges.

*(f) Reimbursement schemes*

Clause 5A.E.1(b) appears designed to require a customer reimbursement to apply to every customer if the connection assets the customer has paid for cease to be solely dedicated to them.

A reimbursement scheme this vast in scope (even if it were to apply just to large customers, let alone small customers as well) is significantly beyond what is currently in place in at least one jurisdiction. This could result in large metropolitan distributors having to administer complex reimbursement schemes for thousands of connection points within 3 to 5 years and would impose a substantial administrative and cost burden on distributors, which would in turn need to be recouped from customers.

## **5.3 National connection framework for gas**

### *5.3.1 Background*

The NECF2 retail connection framework for gas is similar – although not in every respect - to the retail customer connection framework for electricity.

Jemena wishes to first, make observations on some comments on gas connections in the NECF2 explanatory material, and then propose some additional matters for consideration in NECF2.

### 5.3.2 *Comments on gas connections in explanatory material*

#### Framework for gas connections

*In the future, as now, 'access' as defined by Part IIIA of the Trade Practices Act 1974 (Cth) will be provided to Users seeking pipeline services under the NGR. In respect of retail customers, this will be the customer's retailer.*

*However, the NECF's focus on customers means particular connection-related services now provided by distributors to retailers will formally become accessible by customers themselves<sup>15</sup>.*

#### *Jemena comment:*

While acknowledging SCO's intent for a direct approach to distributors by customers, Jemena maintains the view in its gas connections submission that the vast majority of gas connections are best handled by alternative means. Jemena submitted that:

*In Jemena's view, intending customers would be most unlikely have the competency to arrange their own connection by taking full responsibility for the safety of their gas installation which the distributor is obliged to connect to, and have the ability to define their own supply requirements such peak load and gas pressure. An intermediary of some kind is needed to evaluate these matters.*

*Jemena's view is that it would be appropriate under the connections framework for distributors to have the obligation to receive connection requests from responsible parties on behalf of the end-use customer, including retailers, licensed gasfitters and builders or certified engineers. Under this model the distributor would deal with a much smaller number qualified parties as a business to business transaction at a much lower cost<sup>16</sup>.*


#### Charges for gas connection

*[Stakeholders sought] clarity on what the treatment of connection related capital expenditure would be under the gas connections framework, and whether a system of direct charges for connection assets outside of the regulated asset base of distributors was envisaged.*

*SCO has arrived at the view that for covered pipelines, existing practice with respect of connection related capital expenditure should continue – that is, distributors should make capital expenditure that is prudent, and to the extent that customers requesting connection would not otherwise meet the justifiable expenditure test under s. 79 (2) (b) of the NGR, they will need to make a capital contribution to the distributor in order to proceed to be connected.*

<sup>15</sup> MCE SCO explanatory material, Attachment section A.3.1, items 47 and 48.

<sup>16</sup> Jemena Limited, *Submission on the National Framework for the Connection of Retail Customers to Natural Gas Distribution Networks*, 18 September 2009, p. 4.



*Division 4 of Part 12A provides for connection charges to be set consistent with a set of connection charges criteria. This entails ensuring that to the extent the incremental costs of connecting a customer exceed the expected incremental revenue from connecting the customer, the charges should not exceed the shortfall<sup>17</sup>.*

*Jemena comment:*

Jemena welcomes the clarification that SCO's intention is not to supplant existing practice under economic regulation with a vastly expanded system of direct charging for every connection and connection type that might arise. From this, Jemena draws the implication that direct customer charging for economic connections made under s. 79 (2) (b) of the NGR should be a very limited exception rather than the rule.

Jemena also notes that the connection charges criteria in Division 4 of Part 12A provide that, in calculating expected incremental cost for the purpose of applying a connection charge for otherwise uneconomic connections, the distributor must use apply he criteria specified in clause 119M (2) Jemena would therefore expect that capital expenditure undertaken in connection with 119M (2) would meet the prudent capital expenditure test in NGR 79(1).

#### Capital asset reimbursement scheme for gas

*Stakeholders noted that the costs and benefits of such a scheme are unknown and that there may be less use for such a scheme in the gas industry versus electricity, where such schemes are already operating. Nevertheless, the equity rationale underlying the proposal is considered to be worth pursuing. To this end, SCO is further investigating the costs and benefits of a reimbursement scheme.<sup>18</sup>*

*Jemena comment:*

Jemena's gas connections submission advanced a number of reasons why a reimbursement scheme would be problematic. Summarising these<sup>19</sup>:

- gas distribution networks do not recover contributions from persons that obtain an advantage from the original extension to the network for which a capital contribution was required.
- conceptually, the original connection will have met the justifiable/conforming tests by means of a capital contribution, while any additional connections would be likely to meet the tests without a contribution. Thus long term efficiency in terms of the national gas objective does not require a reimbursement scheme to be in place.

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<sup>17</sup> MCE SCO explanatory material, Attachment section A.3.6, items 55, 56 and 57.

<sup>18</sup> Op. cit. Attachment section A.3.6, item 59.

<sup>19</sup> Jemena Limited, *Submission on the National Framework for the Connection of Retail Customers to Natural Gas Distribution Networks*, 18 September 2009, p. 5.

- Jemena noted that the concept of ‘reimbursement’ was erroneous because all that distributors would be doing is transferring money amounts between an additional customer or customers and the original customer. However, in deciding to pay a capital contribution upfront, the original connecting customer will have fully recognised the economic value of gas to themselves.

In general, Jemena considered that for gas the benefits of a reimbursement (transfer payment) scheme are negligible, while the costs would be substantial and real. Given the role of gas as a discretionary fuel, 100 per cent potential customer uptake along a network extension is totally unrealistic, unlike the case with electricity network extensions.

### **5.3.3**      *Recovery of the distributor’s connections framework establishment costs*

Gas distributors may need to make a significant initial investment to establish all of the systems and processes necessary to enable them to comply with all of the customer connection contracting and regulatory requirements under both NERL Part 3 and NGR 12A.

Jemena submits that the NERL and NGR 12A need to make provision for gas distributor to have an entitlement to a regulatory pass through of their NERL Part 3 and NGR 12A establishment costs under the regulated tariffs charged under their access arrangements.

### **5.3.4**      *Recovery of the distributor’s ongoing connections framework processing costs*

In addition to incurring initial establishment costs, gas distributors will incur ongoing NERL Part 3 & NGR 12A connections framework operating costs relating to (for example) maintaining the capability to process connection applications and ongoing compliance obligations.

These costs would not form part of the connection services provided for under NGR 12A and need to be recovered separately by distributors.

For these costs NGR 12A should provide for:

- cost recovery via a new cost pass through provision which Jemena submits should be included in NGR 12A; or
- (at the option of the distributor) the charging of a fee per customer, which would be treated as an ancillary service charge and would not form part of its regulated tariffs.

## **5.4**      **Retailer of last resort scheme**

### **5.4.1**      *Background*

NECF2 contains a new retailer of last resort (RoLR) scheme, encompassing:

- new provisions in the NERL and NERR governing the establishment and ongoing administration of the proposed new RoLR arrangements; and

- provisions in the new Retail Support Rules (for both gas and electricity) which effectively allow distributors to apply to the AER for approval to pass through the costs they incur as a result of a RoLR Event.

Jemena submits that:

- distributors should be entitled to full cost recovery of all costs and lost revenue associated with a RoLR Event and that the new Retail Support Rules should make this clear
- clarification is needed on how the RoLR processes currently being developed by AEMO will relate to the RoLR procedures which AEMO will be required to make under proposed new sections 618 and 619 NERL.
- there is a need for the new RoLR provisions in the NERR to expressly recognise the importance of the distributor's role in administering designated RoLR requirements.

#### *5.4.2 RoLR Event cost recovery for distributors*

The new Retail Support Rules for gas and electricity both suggest mechanisms for distributors to apply to the AER for approval to pass through their costs and lost revenue resulting from a RoLR Event.

Jemena submits that distributors should be entitled to full cost recovery of all costs they incur as a result of a RoLR Event. To be absolutely certain that all retailer failure situations are covered under the definition of RoLR event, Jemena proposes that the RoLR definition in section 602 be expanded to include 'trade sale'. A 'trade sale' event is when one retailer sells the retail business to another retailer and the first retailer subsequently is declared insolvent.


The occurrence of a RoLR Event is something which the distributor has no control over and cannot predict; but which still requires the active co-operation and involvement of the distributor to assist with the transfer of the defaulting retailer's customers to the RoLR and their continuing supply of energy.

By definition, this results in the distributor occurring unavoidable costs for the benefit of the affected customers, which the distributor could not have foreseen and which therefore will not have been allowed for in relevant pricing determinations or access arrangements.

Distributors should not be expected to bear any of these costs themselves and should be entitled to a pass through of all of them (subject to the AER being satisfied that they have been genuinely incurred in connection with the RoLR Event).

#### Cost recovery in gas

Clause 133(3) of the Retail Support Rules for gas expressly recognises that a the AER must determine a RoLR pass through amount which reflects a gas distributor's increase in costs incurred as a consequence of the RoLR Event. However there is no time limit specified for the AER to make a decision on a distributor's RoLR cost pass through submission. Jemena submits this should be amended to require the AER to make a decision within 30 days of the distributor's submission;



otherwise, it will be deemed to have accepted the distributor's submission (this is consistent with current pass through determination requirements applicable to current Victorian electricity distributor determinations).

#### Cost recovery in electricity

There is no corresponding provision to clause 133(3) in the electricity Retail Support Rules, which simply provide for a RoLR Event to be included in the definition of "pass through event" under Chapter 10 of the Rules.

Jemena therefore submits that the Retail Support Rules for electricity should include:

- an express provision allowing full pass through of all RoLR event costs, with no materiality threshold to apply and with the inclusion of a 30 day time period for the AER to make a decision
- a supporting provision stating that it prevails over any other pass through provisions contained elsewhere in the NER or in a distributor's distribution determination.

#### *5.4.3 RoLR processes currently being developed by AEMO*

The proposed new sections 618 and 619 of the NERL (together with proposed new Part 11, Division 2 of the NERR) require AEMO to make RoLR Procedures to deal with matters such as the transfer of customers from failed retailers to designated RoLRs.

However, AEMO is currently already conducting a fairly detailed consultation on proposed NEM RoLR processes.

By the time the NERL and the NER come into operation, AEMO's RoLR processes will have been fully developed and operating for some time. These processes will necessarily require a significant investment by distributors in the technology, systems and processes necessary for implementation and compliance.

Jemena seeks clarification on the extent to which the NEM processes currently being developed by AEMO are to be accommodated or drawn on in the development of the RoLR procedures to be developed by AEMO under the new NERL and NERR.

#### *5.4.4 NER Recognition of distributor's role in administering designated RoLRs*

Distributors' involvement in the administration of RoLR Events is technically complex and pivotal to effective resolution.

Jemena submits that clause 1108(1)(c) of the NERR (in describing the matters to be dealt with in AEMO's RoLR procedures) should include an express reference to the role of distributors in facilitating the designation of RoLRs and the transfer of customers of failed retailers to designated RoLRs.

## 5.5 Credit support and credit support formulae

### 5.5.1 Summary/key messages

Jemena welcomes the development of specific credit support arrangements in NECF2 rather than leaving these to an AER guideline. However, Jemena considers that some of the credit support requirements in the new Retail Support Rules need further consultation and development.

Jemena submits that the method of calculating the amount of required credit support has the following problems:

- It gives too great an emphasis to the proportion which the retailer's distribution services charges liability (DSCL) bears to the distributor's total revenue. Credit support should be based primarily on the credit risk posed by the retailer, not the distributor's revenue.
- The level of the credit allowance for retailers is too high.
- The formulae for calculating the retailer's DSCL and its credit allowance (CA) are unnecessarily complex.
- The retailer's DSCL calculation should cover all charges owed to the distributor.
- Retailer credit ratings below the BB+ level should not have any credit allowance.

In summary, the foregoing problems result in:

- unacceptably high levels of credit allowance being afforded to retailers with low credit ratings; and
- a much greater risk of unrecovered network charges having to be passed on by distributors to consumers.

This method of calculating required credit support gives too much weight to the erroneous perception that current levels of retailer credit support create a barrier to entry for retailers.

Jemena notes that the ENA has developed a number of suggestions as to how the credit support formulae could usefully be re-worked.

### 5.5.2 Jemena concerns

Credit support requirements need to provide distributors with the ability to mitigate the credit risk that they are exposed to from late payment or non-payment by retailers of amounts owing. For certain credit rated retailers, credit support needs to be obtained up front and to be based on the credit worthiness of the retailer.

Jemena has concerns with the following aspects of the proposed Rules:

- the basis on which the required credit support amount for a retailer is to be calculated under the proposed Rules
- qualifications placed on the distributor's right to apply credit support, once a retailer defaults on the payment of charges
- the treatment of disputes under the Credit Support Rules as an access dispute to be resolved under Part 10 NEL (for electricity) or Chapter 6 NGL (for gas)
- some specific changes are needed to the disputed charges provisions under the Rules (which indirectly impact on a distributor's credit support rights and obligations).
- the absence of enforcement consequences against retailers who fail to comply with credit support requirements has not been addressed in NECF2.

Jemena notes that the Retail Support Rules appear to provide some opportunity for distributor cost recovery of unpaid retailer network charges, where a retailer has been the subject of a RoLR Event. This requires further development.

### 5.5.3 *Concerns with calculation of required credit support under the new Rules*

#### Calculation methodology


The calculation of the retailer's required credit support is based predominantly on the proportion which its distribution services charges liability (DSCL) bears to the distributor's total revenue, instead of primarily on the credit worthiness of the retailer itself

Under the above calculation method, the primary determinant of the retailer's credit support amount is the size of its DCSL as a proportion of the distributor's credit allowance (CA). CA is determined primarily by the distributor's total overall annual revenue (with an adjustment to reflect the retailer's credit rating).

Therefore, a retailer's credit support requirement is determined predominantly by the size of its distribution services charges liability as a proportion of the distributor's overall revenue.

There are a number of concerns about this. But in essence, the emphasis in the proposed Credit Support Rules on the proportion which each retailer's estimated unpaid charges bears to the distributor's total annual revenue (instead of on the actual credit worthiness of the retailer, regardless of the size of its unpaid charges) poses a much greater risk of higher accumulated unrecovered retailer charges across all retailers, with higher charges to consumers to reflect these costs.

While the calculation method does take into account the retailer's credit worthiness to an extent, it does so by applying a credit rating percentage adjustment to the retailer's credit allowance which is still primarily determined by reference to the size of the distributor's total annual revenue.



Even after the application of a retailer's credit rating percentage adjustment, the primary focus of the calculation method is not on the actual credit worthiness and credit risk of non payment posed by the retailer.

#### The level of the credit allowance for retailers is too high

Jemena considers that the retailers credit allowance (CA) should not be based on the distributor's total revenue.

One problem with this is that the starting amount of the distributor's revenue (i.e. 1/3<sup>rd</sup> of its total annual revenue) and the levels of the credit rating percentage adjustments applied by the formula, result in credit allowance thresholds at unacceptably high and risky levels for retailers with certain credit ratings. Consequently, in many cases distributors will not be entitled to obtain credit support and will be unable to manage the risks of late or non-payments by retailers.

Credit support needs to be obtained up front from retailers with non-investment grade credit ratings. A retailer that is not paying bills on time will probably have difficulty in providing credit support. The proposed NECF2 arrangements do not provide adequate up front credit support for distributors.

#### The formulae for calculating DSCL and CA are unnecessarily complex

The formulae, particularly the formulae for the calculation of the DSCL, are complex and difficult to follow for anyone with only a cursory knowledge of the proposed Credit Support Rules.

Jemena submits that all that is needed for DSCL is the distributor's reasonable forward estimate of all charges payable by a retailer to the distributor for the next 90 days from the date from which the obligation to provide (or top up) credit support arises.

#### DSCL should not be limited to distribution charges

The credit exposure which a distributor has with each retailer (which could lead to retailer payment defaults and unrecovered charges passed on to the market and consumers) is not limited to retailer payment of distribution charges. It extends to all charges payable by the retailer to the distributor. The DSCL should be expanded to include a distributor's estimate of all charges payable by the retailer to the distributor over the relevant period.

#### Retailer Credit Ratings below the BB+ level should not have any credit allowance

The credit ratings specified in the Table in Schedule 1 to the Retail Support Rules should not go below BB+ and any retailer with a credit rating below that should not be entitled to any credit allowance. This is because a retailer with a credit rating below that (unsupported by a full level of credit support covering all of the retailer's 90 day charges exposure) poses too great a credit risk for distributor's and the market place.

#### *5.5.4 Changes to the method of calculation of the required credit support amount under the Retail Support Rules*

Jemena notes that under clause 6B.6.3 of the electricity Retail Support Rules, the distributor is required to use a credit rating advised to it by the retailer. This needs to be amended to:

- oblige the retailer to notify the distributor of its credit rating upon request by the distributor and upon any change in the retailer's credit rating; and
- entitle the distributor to use a credit rating for the retailer as notified to the distributor by a credit rating agency or any agent or service provider used by the distributor who has access to that information.

#### *5.5.5 Distributor's rights to apply credit support*

Clause 6B.8.3 of the electricity Retail Support Rules and clause 129 of the gas Retail Support Rules provide that a distributor cannot apply a retailer's credit support to reduce an amount owed by the retailer to the distributor, unless:

- a. the distributor has first given the retailer 3 days notice of its intention to do so; and
- b. there is no dispute outstanding in relation to that amount under the disputed statements rule (i.e. clause 6B.3.3 for Electricity and clause 110 for Gas).

Jemena accepts that where the retailer has disputed an amount under the disputed statements rule then the distributor should not be entitled to apply credit support against the disputed amount. However, subclause (b) of clause 6B.8.3 (electricity) and clause 129 (gas) should be amended to make it clear that:

- there is a time limit on the retailer's right to dispute a statement under the disputed statements rule (there is none at present). This time limit should be two business days prior to the due date for payment of the amount.
- the retailer is itself complying with the disputed statements rule and in particular that it has paid any amounts required under the rule as part of the process for resolving the dispute.

Jemena also submits that

- provided amounts are due and payable and the distributor has made final demand for payment under the Rules
- and subject to there being no dispute outstanding
- then the distributor should not be required to give 3 days notice to the retailer before accessing and applying the retailer's credit support.

Obliging the distributor to notify the retailer that it is about to cash the retailer's bank guarantee (after the retailer has already been given every opportunity under the rules to make payment and to raise any dispute it has), effectively puts at risk the whole benefit of having the bank guarantee.

#### *5.5.6 Credit support dispute resolution*

Clause 6B.7.4 of the electricity Retail Support Rules and clause 126 of the gas Retail Support Rules provides that any dispute between a retailer and a distributor in relation to any matter arising under the credit support rules is to be treated as an access dispute to be resolved under Part 10 of the NEL (for electricity) or Chapter 6 of the NGL (for gas).

Jemena submits that each of these clauses should be amended to allow any such dispute to be submitted by either party for resolution under Chapter 8 of the NER (for electricity) or Part 15C of the NGR (for gas), instead of the requirement for it to be treated as an access dispute.

This is because:

- where the content of terms and conditions of access have already been agreed between the parties (in the form of a written agreement) or determined for them then the terms and conditions governing access have been established and both parties are then bound by them.
- any dispute which then arise about whether or not one party or the other is complying with or in breach of those legally enforceable terms and conditions is then in essence a typical legal or commercial dispute falling under those terms and conditions. Disputes of this kind should be treated as legal and commercial disputes between parties under terms and conditions of access which have already been established and are legally binding, not as access disputes to establish the terms and conditions of access to be offered.

#### *5.5.7 Enforcement of retailers' credit support and network charge payment obligations*

NECF 2 (like NECF1) provides no means for distributors to enforce the obligations for a retailer to pay network charges and to provide credit support as required by the Retail Support Rules.

The lack of any means to enforce retailer obligations to pay charges and provide credit support under the Retail Support Rules is a particular concern for electricity distributors because:

- The only arrangement they will have with retailers which obliges retailers to pay network charges and provide credit support will be the Retail Support Rules. However, the Rules do not allow distributors to terminate the provision of their services or provide for any other enforcement rights
- It is AEMO that governs retailer registration as a NEM market customer at connection points.

The combined effect of this is that:

- retailers can stop paying network charges;

- and refrain from providing credit support,

yet remain registered for their existing connection points and can continue to register more connection points with AEMO while the credit exposure of distributors is still growing.

Gas distributors face a similar issue because although their access arrangements give them the right to cease supply upon non-payment, this is not an option in practice.

#### The enforcement remedies required

Jemena submits that the following enforcement mechanisms should be inserted in the NECF:

- The NERL should impose a condition on retailer authorisations that retailers must comply with the Retail Support Rules dealing with payment of distributor charges and provision of credit support.
- Distributors should be entitled to request that the AER revoke a retailer's authorisation where:
  - the retailer has failed to pay distributor charges or provide credit support in accordance with the Retail Support Rules;
  - there is no dispute outstanding in relation to the unpaid charges or the un-provided credit support, under the relevant dispute resolution provisions of the Retail Support Rules
  - the retailer has not remedied the failure within a reasonable time of the distributor issuing a breach remedy notice.
- The AER should be given explicit enforcement powers to revoke a retailer's authorisation where the retailer fails to comply with the Retail Support Rules.
- Distributors should also be entitled to object to further transfers of connection points to the retailer (for electricity, in the MSATS system) where the retailer has failed to provide credit support or pay distribution charges in breach of the Retail Support Rules.


#### *5.5.8 Distributor recovery of unpaid distribution charges*

##### Electricity distributor cost recovery

The credit support rules for electricity provide that a RoLR Event or any other event nominated in the distributor's distribution determination, can be a 'pass through event' under the determination.

This essentially means that where:

- a distributor has unpaid network charges which it cannot recover from a retailer; and
- a RoLR Event has occurred for that retailer,

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- then the distributor can apply to the AER for a pass through of its unrecoverable network charges and any other costs incurred due to that RoLR Event. The AER would ordinarily apply a 'materiality threshold' to these costs before allowing a pass through.

Jemena submits that:

- A distributor should be entitled to full cost pass through of all unrecoverable network charges accrued by defaulting retailers, because a distributor is required under the regulatory framework to continue accruing unpaid network charges with no control over the level of this and no allowance having been made for it in its distribution determination.
- This should be the case regardless of whether or not a RoLR Event is ultimately triggered for a defaulting retailer. This is because a financially failing retailer which fails to pay network charges does not necessarily always become the subject of a RoLR Event. The failing retailer may (for example) sell all its customers and energy trading book before going out of business with unpaid debts, with the result that no RoLR Event is ever triggered.
- To achieve this, the Retail Support Rules for electricity should include a provision that makes it clear that the AER must allow a pass through of all proven unrecovered retailer network charges with no materiality threshold to be applied.

#### Gas distributor cost recovery

Gas distributor's should also be entitled to full cost pass through of all unrecoverable network charges accrued by a defaulting retailer, as they also have minimal means in practice of limiting their continuing exposure to the accrual of unpaid network charges by retailers, with no allowance having been made for these costs in their approved access arrangements; recovery should be permitted whether or not a RoLR Event is ultimately triggered for a defaulting retailer.

The reasons for this are essentially the same as those outlined above for electricity.

Jemena submits that clause 133(3) of the Retail Support Rules for gas should be amended to make it clear that the RoLR pass through amount to be proposed by the distributor and approved by the AER expressly does include any proven unrecovered retailer network charges (with no materiality threshold).

## 6 Matters not changed

### 6.1 A direct distributor-end user contractual relationship in both gas and electricity

There have been some minor improvements to the contractual form of the distributor-end user relationship, now embodied in 'model connection terms' under the NERL. For example, clause 7.2 of the former customer distribution contract has been removed and the wording of the Trade Practices Act liability clause (now clause 7) has been improved.

### 6.2 Liability arrangements

#### 6.2.1 *Background*

Under NECF 2, distributors are still prohibited from limiting their liability for negligent supply failures under the model connection contract for both small and large customers and under any other connection contracts with small customers.

Jemena submits that this unlimited and contractual liability for negligent supply failure:

- is inconsistent the existing NEL liability regime
- is neither an appropriate accountability nor an appropriate economic incentive for distributor network reliability.
- is not consistent with the majority of current state and territory liability arrangements in both electricity and gas
- substantially increases each distributor's total financial risk exposure.


Jemena further submits that this substantially increased total financial risk is only partly insurable and at significant additional cost. The substantially increased insurance costs will need to be passed through to customers and Jemena questions whether this additional cost to customers is the most economically efficient way of covering potential supply failure losses.

Jemena suggests a number changes should be made to the NECF2 liability arrangements to provide a more balanced approach to distributor liability.

#### 6.2.2 *Policy rationale*

The policy rationale underpinning the NECF2 liability arrangements is stated in Part 3.8 of the NECF2 Explanatory Materials.

There are significant concerns with these policy rationales:

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- (a) Contrary to paragraphs 71 and 74, the NECF2 statutory liability regime is not consistent with the existing NEL liability regime
  - (b) Contrary to paragraph 72, the NECF2 effective exposure of distributors to unlimited contractual liability for negligent supply failure is neither an appropriate accountability nor an appropriate economic incentive for distributor network reliability
  - (c) Contrary to paragraph 73 the NECF2 distributor and customer liability arrangements are not consistent with the majority of current state and Territory liability arrangements.

Jemena submits that the policy rationales in Part 3.8 cannot properly be used to justify the NECF2 statutory prohibitions against distributors contractually limiting their liability in negligence to customers.

Additionally, Jemena is concerned that these NECF2 policy rationales appear to be based on an implied supposition that the scope of any contractual negligence exposure for distributors under NECF2 is manageable.

### 6.2.3 *NECF2 liability regime is inconsistent with the existing NEL liability regime*

Paragraphs 71 and 74 of Part 3.8 of the NECF Explanatory Materials state the following:

*71. In line with the existing liability regimes in the NEL, the NERL contains a statutory immunity from liability, excluding liability arising from negligence and/or bad faith...*

*74 General arrangements for immunity and liability provisions in the national energy markets have already been established. The arrangements are not being reconsidered as part of the development of the NECF."*


Jemena submits that neither of these statements is correct.

The statutory immunity from liability as stated in section 120(1) NEL does not itself extend to cover supply failures resulting from negligence.

However section 120(2) NEL expressly entitles electricity distributors (as registered NEM participants) to contractually vary the scope of that immunity so as to cover negligence.

the NERL statutory immunity from liability regime, taken as a whole, is not only inconsistent with section 120(2), but actually seeks to take away substantially all of a distributors rights to contractually limit their liability in negligence with their customers under section 120(2). The NERL does this as follows:

- the NERL prevents a distributor from contractually limiting its liability with any of its small customers (sections 1501 & 305 NERL, and clauses 405 & 407 NERR)
- the NERL compels distributors to adopt a model connection contract for all customers, including large customers for whom there is no applicable AER approved standard connection contract, in a form which includes no limitation on liability for negligence and the NERL prohibits the



distributor from varying it the terms of this model connection contract (other than in minor respects which would not cover a limitation on liability) (sections 305 NERL and clause 405 & Schedule 2 NERR). Jemena submits that the large customers should not be included in Rule 303(a). By including large customers in 303(a), the Rule is effectively compelling the distributors to seek an AER approved standard contract for large customers and prejudices the distributor ability in reaching a negotiated connection contract under Rule 303(c).

This mandatory model connection contract will be the default connection contract applicable to all large customers, unless:

- the distributor can persuade a large customer to sign a negotiated connection contract on less favourable terms than the model connection contract which a large customer would simply have no incentive to do; or
- the distributor can persuade the AER to approve a standard contract with negligence liability limitations in it for large customers under Part 3, Division 5 of the NERL (which appears an unlikely prospect).

The implication that the NECF2 statutory immunity from liability regime is in line with and is not seeking to revisit the existing NEL section 120 arrangements (on the supposed basis that distributors are still free to contractually vary their liability indemnities with large customers) is incorrect.

#### 6.2.4 *Unlimited liability as a distributor accountability and economic incentive*

Paragraph 72 of Part 3.8 of the explanatory material says:

*"72. By not extending immunity to liability for actions attributable to negligence and/or bad faith, the immunity provisions retain appropriate accountability and economic incentives for network service reliability."*

Jemena submits that, on the contrary, exposing distributors to unlimited contractual liability in negligence is neither an appropriate economic incentive nor an appropriate accountability measure for distributor network reliability.

Each of these points is addressed separately below.

##### Distributor economic incentives for network reliability

Electricity distributors in all jurisdictions already have strong economic incentives through the various Service Target Performance Incentive Schemes (STIPS) currently operating in each jurisdiction. The AER is also establishing a new national STIPS as part of its distribution pricing and revenue regulation powers under the NEL.

Under most of these jurisdictional schemes and under the AER's new national scheme:

- a range of network reliability performance statistical measures (among other things) are placed on distributors; and
- a percentage of the distributor's regulated revenue is placed at risk, based on their performance against these reliability measures.

Some jurisdictions also require payments to be made to customers where reliability performance standards are not met.

Additionally, for both gas and electricity distributors, there are significant economic costs associated with having to remedy supply interruptions and failures. These additional costs reduce the margin available to distributors from their regulated revenue and accordingly provide a strong and direct economic incentive for distributors to minimise network supply failures and interruptions.

These additional supply interruption costs (as well as the revenue risk and cost incentives for network performance for electricity distributors described above) impact directly on a distributor's yearly recurring expenditure and revenue and therefore provide a more direct and real economic incentive for distributors to optimise their network performance than the more generalised threat of large, unexpected damages claims from customers.

(b) Distributor accountability for network reliability

Distributors are clearly in control of and responsible for the operation and maintenance of their networks. If there is any failure in the operation of a distributor's network, then customers and others who rely on the network could suffer losses.

However the degree of control a distributor has over the operation of its network and its capacity to cover losses suffered by customers, is limited by two key factors which are beyond the distributor's control:

1. regulatory limits imposed by the AER on the amounts a distributor may incur (and recover through charges) on operating and maintaining its networks; and
2. limits on the levels and type of insurance available from the insurance market place to recover any losses suffered by customers as a result of network supply failures.

In relation to the first of these, Jemena observes that the level of expenditure a distributor may incur (and recover through charges) on operating and maintaining its network is a key determinant of the supply reliability of the network. However, this is subject to regulation by the AER. So the extent to which a distributor can in fact spend the money necessary to avoid network failures is limited.

Accordingly, Jemena submits that NECF2's exposure of distributors to unlimited contractual liability for negligent supply failure losses is:

- substantially out of proportion to the limited control which distributors actually have over those supply failures and the insurance available to distributors to cover any losses; and

- is therefore a wholly inappropriate level of network reliability accountability to place on distributors.

#### 6.2.5 *NECF2 is inconsistent with existing jurisdictional liability arrangements*

Paragraphs 73 of Part 3.8 of the NECF Explanatory Materials states the following:

*"73. Current arrangements for distribution networks in most States and Territories do not provide capped and/or statutory immunity for negligence. NECF2 reflects these arrangements."*

Jemena submits the proposed NECF2 liability arrangements for distributors and customers do not reflect the distributor and customer liability arrangements currently in place for both gas distributors and electricity distributors in most states and territories.

#### Gas

The current regulatory arrangements for gas distributors in all jurisdictions except Victoria, do not:


- require distributors to have a direct customer connection contract with customers at all (in Victoria distributors may choose to have a deemed contract with customers, but they are not required to do so and they never have); nor
- seek to limit in any way a distributor's freedom to contractually limit their liability in negligence, with the exception of Victoria where such a limitation is placed on any deemed contracts between distributors and customers but (as indicated above) there are no such deemed contracts currently in place, so the possibility of direct contractual negligence to customers does not currently arise.

#### Electricity:

- all jurisdictions provide for a form of direct connection contract between distributors and customers; but
- only two out of six of the current NEM jurisdictions (i.e. Queensland and Victoria) do not provide, or allow for, some level of limiting or capping of liability for negligent supply failure to customers under those contracts.

Contrary to the NECF2 policy rationale stated above, the current regulatory arrangements for both gas and electricity distributors in most NEM jurisdictions do allow distributors to limit or cap their liability to customers for negligent supply failures.

Where liability is not capped, the full cost of the exposure in those jurisdictions has not been seen, as a large wide-spread claim has not been made. It would therefore be unwise to assume that the exposure can be managed satisfactorily.



It is doubtful that the price impact of that policy via increases in insurance premiums and self insurance costs to has been fully reflected in the price of electricity network charges and pass through costs which will significantly add to the costs of electricity for customers.

#### 6.2.6 *NECF2 liability substantially increases distributors' financial risk exposure*

As stated in 3.1 above, the NECF2 distributor liability policy rationales appear to be based on the supposition that the scope of the negligence liability exposure for distributors under NECF2 is not really that substantial or unmanageable and is not substantially different to what distributors currently face.

This is not the case.

In summary:

- The possibility of large numbers of customers suffering what could be very substantial combined losses from a network supply failure cannot be discounted. It is quite conceivable that (under a worst case scenario) a significant supply failure affecting several hundred thousand customers could result in total financial losses suffered by all customers of several billion dollars.
- The extent to which each of those a large number of customers who suffer substantial supply failure losses can in fact legally recover any of those losses against a distributor responsible for the network failure, largely depends on whether they can successfully make out a claim against a distributor under tort, contract or statute against the business which caused the loss.

Jemena submits that the NECF2 arrangements will make it significantly easier for any customer who suffers a negligent supply failure loss to establish a successful claim for it against their distributor under both contract and therefore under tort as well. This is because (as indicated above), NECF2:

- gives all customers connected to gas and electricity networks a direct contractual right to supply under connection contracts with distributors; and
- prohibits (in the case of small customers) and effectively prevents (in the case of large customers) distributors from limiting liability in any way for their liability for negligent supply failures to small customers; and
- prohibits the distributor from varying the default model contract so as to limit liability for negligent supply failures to large customers, thereby making it difficult, if not most unlikely, that large customers will agree to a negotiated contract which includes such a negligence liability limitation.

### 6.2.7 *The increased financial risk is only partly insurable and at significantly increased cost*

There is still a significant level of uncertainty about the size of the insurable limit and premiums that will apply because the full effect of direct uncapped contractual liability for negligent supply failure across (potentially) a substantial customer base has not yet been experienced and assessed.

Consequently, the premium costs could significantly increase if there is an increase in the number or quantum of claims made over time, as a result of customers having stronger contractual rights for recovery against distributors and distributors no longer being able to contractually limiting their liability.

### 6.2.8 *Pass through of increased insurance costs and its impact on customers*

Under the NECF2 liability arrangements as currently proposed, the additional insurance costs are a prudent and necessary cost which distributors will need to incur in seeking to cover their exposure to direct, uncapped contractual liability for negligent supply failure across their customer base.

These additional insurance costs are not reflected in current network tariffs they are still very much subject to change because the available insurances and the cost of premiums going forward is uncertain. Accordingly, distributors would need a cost pass through mechanism to recover these additional insurance costs, similar to that currently provided under NECF 2 for RoLR Events (but amended in accordance with 5.2 of this submission).


While this is a necessary consequence of the currently proposed uncapped contractual negligence regime for distributor's (which will apply to the great majority of their customers) under NECF2, Jemena questions whether this outcome is consistent with the economic efficiency objective underpinning the regulation of national energy markets.

Economic efficiency requires that the cost of managing the risk associated with a customer (particularly a large customer) losing supply is best borne by the party that best manage and cover that risk. By contrast, the distributor is not in a position to assess the impact which a loss of energy will have on each of its many customers' businesses and the extent of insurances they actually need to cover their specific losses. Accordingly a prudent distributor, faced with the possibility of an uncapped and uncertain contractual liability exposure to all of its customers would need to err on the side of over-insuring to cover any potential losses of an unknown quantum.

Such an outcome is more likely to result in higher insurance costs being passed through to customers than if they had only limited recourse against distributors and therefore had to take out their own insurance or take other measures that may be available to them to protect themselves against supply failures. Additionally, to the extent that customers already take out their own insurance for those losses anyway, they would effectively be paying twice for insurance covering the same losses.

### 6.2.9 *Recommended revised liability arrangements*

Jemena supports the ENA recommendations that:

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- (a) NERL s1501, like s119 NEL, should provide for a regulation to be made to set liability caps for distributor negligence resulting in supply failures.
  - (b) The NERR should require standard distribution contracts and small customer negotiated distribution contracts to be consistent with s1501 and the regulation to be made under it.
  - (c) A separate work stream, parallel to the further development of the NERL, should proceed to develop a regulation on liability limits and caps. In this way the timetable for the NERL will not be compromised.
  - (d) The regulation will need to be commence at the same time as the NERL commences, but phased in to match distributor cost recovery of any additional insurance under future AER distributor determinations.

Additionally, distributors will need a cost pass through mechanism to recover any additional insurance costs they need to put in place to cover any increased liability exposure imposed on them under NECF2, similar to that currently provided under NECF 2 for RoLR Events.

## 7 Other issues

### 7.1 Smart meter consumer protection issues

Attachment D of the NECF2 explanatory material gives examples of some of the consumer protections that are currently included in the NECF2 package, and which may require further refinement as part of the ongoing smart meters work.

*Given there is a separate more comprehensive SCOMCE-SCO workstream underway to look more specifically at consumer protection issues for smart meters (under both NECF and more generally), Jemena submits that NECF 2 is not an appropriate forum to address a handful of issues in a compressed timeframe.*

Nevertheless, Jemena makes the following brief comments on the matters raised in Attachment D.

#### Energy consumption information

The position outlined under heading D.1 of Attachment D is satisfactory.

#### Historical billing data

If NER clause 216 is to be extended to require the detailed provision of historical billing data to the extent specified in heading D 2 of Attachment D as a result of which the distributor is obliged to provide that detailed data to the retailer on request, then the distributor should be entitled to recover from the retailer its reasonable costs of doing so.


#### Notification of remote disconnection

The control and administration of remote disconnection of customers is an important issue. In addition to the requirements specified under heading D 3 for inclusion in the model connection contract and in disconnection warning notices under the NERR, there needs to be similar requirements imposed on retailers in their model retail contract and the disconnection warning notices they issue

#### Undercharging provisions

Jemena does not agree with the proposed reduction from 12 months to 4 months for the time retailers would have to notify customers of billing errors (which would effectively limit the time within which distributors would need to notify retailers of any errors).

The assumption that retailers and distributors will no longer need a period of 12 months to pick up metering errors (due to daily data availability from smart meters) is misconceived. The 12 month period is needed to enable seasonal consumption levels to be compared, as an important method of checking for errors. It also reflects the fact that retailers and distributors have very large customer bases and the time and resources required to check for and locate errors is significant.



A 12 month limit on the time retailers would have to notify customers of billing errors should only apply to small customers. For large customers distributors and retailers should be entitled to go back further than this (i.e. as far as the general law allows).

## ATTACHMENT

Page ref	Rules	Comments
<b>National Energy Customer Framework (p1 to 361)</b>		
<b>National Energy Retail Law</b>		
<b>Part 4 Small customer complaints and dispute resolution</b>		
59 of 361	Rule 404 - Complaints made to retailer or distributor for internal resolution	Jemena suggests that there should be an obligation placed on both retailers and distributors to forward complaints to the other party if the complaint was initially referred to the wrong party by the customer.  Suggest the new rule immediately follows Rule 404(1).
<b>Part 6 - Retailer of last resort</b>		
77 of 361	Definition of RoLR event  (f) the cessation of the sale of energy by retailer to customers including a trade sale; or	To be absolutely certain that all retailer failure situations are covered under the definition of RoLR event, Jemena proposes that the RoLR definition (f) in section 602 be expanded to include 'trade sale'. A 'trade sale' event is when a retailer sells the retail business to another retailer and subsequently becomes is declared insolvent.
83 of 361	Rule 612 (2)(d)	Jemena suggest the use of higher level identifiers such as TNIs rather than particular areas the customers are located and NMIs to differentiate particular customer or classes of customers. Similar identifiers (eg. MIRNs) should be used for the sector.  The suggested matters to be covered in a ROLR notice do not enable efficient allocation of customers to ROLRs.

Page ref	Rules	Comments
100 of 361		<p>Typo in Rule 649 (6)</p> <p>“Section <del>205</del> (5) does not apply...”</p>
<b>Part 6 Small compensation claims regime</b>		
106 of 361	Rules 705, 706 & 707	<p>It would appear the purpose of creating a <i>medium amount</i> and <i>maximum amount</i> is to establish a <i>mandatory</i> and <i>discretionary</i> range. In Victoria there is a threshold amount (established by the ESC and not publically available) below which is considered a mandatory range and the distributor cannot make its own assessment. Amounts above the threshold amount is considered as a discretionary range and the distributor can carry out its own assessment and pay a lesser amount, can be below the threshold amount. There are no maximum, medium or minimum amounts as proposed under Rules 705, 706 &amp; 707.</p> <p>The customer can take their compensation claim to the Ombudsman or Victorian Civil and Administrative Tribunal (VCAT). The Ombudsman in Victoria can make a binding decision on the distributor up to a certain amount – beyond which the claimant’s only recourse is to go to VCAT or the court.</p> <p>Jemena considers the Victorian compensation regime is simpler to administer than the NECF2 proposal.</p> <p>In Jemena’s view, Rule 714 imposes a “must advice” obligation on the distributor. This is unnecessary, if the distributor decides to process the claim that is higher than the maximum amount. Jemena proposes that an additional section be inserted below Rule 714 that states:</p> <p><i>Rule (1) is deemed to be complied if the distributor decides to process a claim that is above the maximum amount.</i></p>

Page ref	Rules	Comments
		<p>Additionally, Jemena considers that the maximum, medium or minimum amounts should not be made public as it would prejudice the distributors in setting the claims. Accordingly, Jemena proposes that Part 7 of the NERL should reflect this requirement.</p>
<b>National Energy Retail Regulations</b>		
<b>Part 2 Customer retail contracts</b>		
201 of 361	Rule 216 – Historical billing data	<p><u>Historical billing data</u></p> <p>Jemena accepts that billing data in relation to a small customer should be provided without charge for the previous 12 months. However, distributor should be entitled to recover from the retailer its reasonable costs of providing the data for the period beyond the 12 months period.</p> <p>Jemena suggests:</p> <p>Modify clause 216 (3) as follows:</p> <p><u>“..provide the information to the retailer at no cost and for the previous 12 months, but for data requested for an earlier period or more than once in any 12 month period may be provided subject to a reasonable charge. The data must be provided in a timely manner.</u></p> <p>The suggested words are similar to that in clause 216(2) that applies to retailers. Moreover, the proposed change aligns with Schedule 2, clause 14.2 of the deemed standard connection contract (p318 of 361)</p>
<b>Part 4 Customer retail contracts</b>		
231 of 361	Definition of planned interruption	<p>Insert the word the word “planned” before the words “maintenance of metering” in item (b). Refer to highlighted word in the left column.</p>

Page ref	Rules	Comments
	<p><b>planned interruption</b> means an interruption of the supply of energy for—</p> <p>(a) the planned maintenance, repair or augmentation of the transmission system; or</p> <p>(b) the planned maintenance, repair or augmentation of the distribution system, including <b>planned</b> maintenance of metering equipment; or</p> <p>(c) the installation of a new connection, or a connection alteration, for the supply of energy to another customer;</p>	<p>The reason for inserting the word “planned” is to avoid doubt that it excludes emergency repair of faulty meters which are critical to success of AMI communication system. An element of AMI communication relies on data ‘hopping’ from meter to meter in serially to a data collector. Faulty communication equipment in a customer’s meter may prevent data from other customer metering points from getting to the data collector, thus requiring the repair of the faulty meter as soon as possible. This type of repairs can be carried out under Schedule 2, clause 9.3(b) of the deemed standard connection contract.</p>
234 of 361	<p>502 Definitions</p> <p><b>distribution charges</b> means charges of a distributor for—</p> <p>(a) use of the distributor’s distribution system; and</p>	<p>Schedule 2, clause 10 of the <b>deemed standard connection contract</b> also gives meaning to <b>distribution charges</b>. These two sections should be closely aligned.</p>

Page ref	Rules	Comments
	(b) if applicable, any charges payable by the distributor for use of a transmission system to which the distribution system is connected;	
236 of 361	<p><b>Information on planned interruptions</b></p> <p>(1) The distributor—</p> <p>(a) <b>must make available to the retailer notice of</b> planned interruptions and give the retailer all information that the distributor is required to give to a customer under rule 413; and</p>	<p>Jemena proposes that the words ‘notify the retailer’ be replaced with the words ‘make available to the retailer notice of----’. The rule should not assume all retailers would require such information be sent to them automatically.</p> <p>Jemena understands that the retailer will want this information. But an unintended consequence of this rule is that retailers may be potentially inundated with a large volume of e-mail advices on planned interruptions from numerous distributors.</p> <p>A practical and efficient solution is to require distributors to make the requisite information available (e.g. via secure website) to retailers.</p>
237 of 361	<p>509(3) – If a customer contacts a retailer by telephone about a fault or emergency, the retailer must <b>immediately refer</b> the customer to the distributor’s fault enquiries or emergency telephone number.</p>	<p>Insert the word ‘immediately’ before the word ‘refer’.</p> <p>Late referrals do not facilitate a quick response to a fault or emergency.</p>
239 of 361	514 – Liability of retailer for ongoing charges	

Page ref	Rules	Comments
	<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 <u>(and the retailer pays the distributor's reasonable charge to disconnect the premises)</u>, 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>(b) pay charges for energy consumed at the premises after the timeframes expire, if the retailer has used all reasonable endeavours to recover the charges from the customer and has been unable to do so.</p>	<p>Rule 514 (1) is an onerous obligation to be placed on a distributor when access to premises for disconnection is deliberately denied by the customer.</p> <p>Where access is denied by the customer, disconnection can be effected at the connection point of the distributor's network, which is generally in the road reserve. The retailer must be made to pay the higher truck visit charge to effect the disconnection. Disconnection is normally carried out at a customer's premises by removing the service fuse located at the meter board or the point of attachment of the service cable to the supply property.</p> <p>Jemena suggests the Rule be expanded to ensure a retailer pays the <u>entire</u> reasonable disconnection costs.</p>
248 of 361	<p>614 (1) (b)</p> <p>where the customer has made a complaint <u>to a distributor</u> , directly</p>	<p>This obligation relates to a distributor. Therefore, the Rule must make clear that the complaint refers to a complaint made to a distributor not a retailer or any other third party. There is no way for a distributor</p>

Page ref	Rules	Comments
	related to the reason for the proposed de-energisation, to the energy ombudsman and the complaint remains unresolved ; or	to know if the customer has made a complaint to others.
248 of 361	<p><b>614 (2) Non-application of restrictions where de-energisation requested by customer <u>or retailer</u></b></p> <p>The restrictions in subrule (1) do not apply if the customer <u>or retailer</u> has requested de-energisation.</p>	The non application rule must be extended to cover the case where a request for de-energisation is made by a retailer.
<b>Part 7 Life support equipment</b>		
251 of 361	<p><b>(2) Cessation of requirement for life support equipment</b></p> <p>A customer whose premises have been registered under this rule must advise the retailer if the person for whom the life support equipment is required has vacated the premises or no longer requires the life support equipment, and the retailer must inform the distributor of the advice received from the customer <u>within</u></p>	<p>Jemena suggests that a there be a time limit imposed on the retailers to ensure the life support register is kept up to date within reasonable time period.</p> <p>The suggested time limit is two business days.</p>

Page ref	Rules	Comments
	2 business days.	
<b>Schedule 2 Model terms and conditions for deemed standard connection contracts</b>		
306 of 361	<p>Clause 4.2 When does this contract end?</p> <p>(a) Your contract with us ends when on the later of any of the following occur:</p>	Replace 'when' with 'on the later of'.
310 of 361	<p><b>6.8 Obligations</b></p> <p><b>if you have a small generator --- such as a solar panel</b></p>	<p>It is not appropriate for a clause heading to specify a single example of a small generator. Small generators can include fuel cells, solar panels, combine heat and power units, small scale wind generators etc.</p> <p>Suggest delete the words 'such as a solar panel' from the clause heading.</p>
311 of 361	<p><b>8.1 Your obligations</b></p> <p>Under the energy laws, you must provide us and our authorised representatives (together with all necessary equipment) safe and unhindered access to the premises, including taking appropriate action to</p>	<p>Jemena suggests that It is not appropriate to single out this example of an access problem (animals) in the preamble to clause 8.1. This may not represent the main difficulties of access.</p> <p>Suggest delete "including taking appropriate action to prevent menacing or attack by animals at the premises".</p>

Page ref	Rules	Comments
	<p>prevent menacing or attack by animals at the premises, at any reasonable time to:</p>	
327 of 361	<p>6B.2.4 (a) A distributor must provide a statement of charges (“statement of charges”) to a retailer <u>by</u> the 10th business day of each retail billing period for distribution service charges for the previous retail billing period.</p>	<p>Propose ‘<u>on</u> the 10<sup>th</sup> business day’ be replaced with ‘<u>by</u> the 10<sup>th</sup> business day’ and insert the words “or on a date agreed between the parties” at the end of the sentence.</p> <p>The above amendment is important as it provides flexibility for the parties to stagger the dates when invoices are sent and payments received and consequential IT support costs.</p>
<b>Chapter 5A – Electricity connection for retail customers and embedded generators</b>		
5A.B.2 (b) (3), (4) & (7)	<p><b>5A.B.2 – Standing offer for basic connection services</b></p> <p>(b) (3) the qualifications required for carrying out the <b>contestable</b> work, or particular aspects of the work (including reference to the jurisdictional or other legislation and statutory instruments under which the qualifications are required); and</p>	<p>This clause contemplates contestability of basic connection services (vis-à-vis NSW arrangements). Unlike NSW, basic services (e.g. aerial service connection to small customers) are currently not contestable in Victoria. Contestability of basic services does not necessarily extend to all jurisdictions. It is for the distributor to specify the terms and conditions of a standing offer applicable a customer or an accredited service provider.</p> <p>The proposed changes to recognise jurisdictional differences are highlighted in the left column.</p>

Page ref	Rules	Comments
	<p>(b) (4) the safety and technical requirements (including reference to the jurisdictional or other legislation and statutory instruments under which the requirements are imposed) to be complied with by the <del>distributor</del> <b>the provider of the contestable service</b> or the customer (or both); and</p> <p>(7) (iii) the special safety and, technical and accreditation of requirements (including reference to the jurisdictional or other legislation and statutory instruments under which they are imposed) to be complied with by the <del>distributor</del> <b>installers or the relevant equipment</b> or the customer (or both).</p>	
5A.B.4 (c)(3) & (4)	5A.B.4 <b>Standard connection services</b>	Similar changes as proposed for 5A.B.2 (above) are suggested for clauses 5A.B.4 (c) (3) & (4) to recognise contestability and the requirements of accredited service providers.

Page ref	Rules	Comments
5A.D.3 (e)	<p><b>5A.D.3 Application process</b></p> <p>(e) The distributor must, within 10 business days after receipt of an application for a connection service (or some other period agreed between the distributor and the connection applicant):</p> <p>(1) advise the connection applicant whether the proposed connection service is a basic connection service, a standard connection service or neither; <b>and if a connection is completed within 10 business days after receipt of an application for a connection service, the obligation</b></p>	<p>In Victoria, the Electricity Distribution Code<sup>20</sup>, requires basic connections to be currently completed within 10 business days after receipt of an application for a connection service. This obligation imposes an additional step of first verifying (in most cases requiring a site visit) and then advising the connection applicant whether the requested connection service is a basic connection service, a standard connection service or neither before a distributor provides the connection service.</p> <p>This additional step under 5A.D.3 (e) (1) is unnecessary as it will increase the time and cost of the service because of two visits:</p> <ul style="list-style-type: none"> <li>• first to verify on site the nature of connection service requested</li> <li>• the second to effect the connection</li> </ul> <p>thus potentially taking more than 10 business days to complete a connection from the date of receipt of an application.</p>

<sup>20</sup> Electricity Distribution Code, 2.2 New connection

Subject to clauses 2.3.1 and 2.6.1, where a *connection* request has been made by a *customer* or a *retailer* on behalf of a *customer*, a *distributor* must use best endeavours to *connect* the *customer* at a new *supply address* on the date agreed with the *customer* or with the *retailer* on behalf of the *customer*. Where no date is agreed, the *distributor* must *connect* the *supply address* within 10 *business days* after the request.

Page ref	Rules	Comments
	<p>is deemed to have been met.</p>	<p>Generally, service orders are dispatched to the service crew. Upon arrival at the site, if it is determined if there are any access issues to the supply address (such as excessive aerial service crossing of a neighbouring property due to the position of the power pole or if there is a large tree in the path of an aerial service connection). The service applicant can be then advised if the service would need to be treated as a standard or negotiated connection service.</p> <p>In order to preserve existing efficient connection processes and accommodate the intent of clause 5A.D.3 (e), Jemena proposes that the following sentence to be added at the end of clause 5A.D.3 (e)(1).</p> <p><i>If a connection is completed within 10 business days after receipt of an application for a connection service, the obligation is deemed to have been met.</i></p>

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

Organisation commenting: TRUenergy

Draft National Energy Retail Law		
Part 1 - Preliminary		
Section	Subject Matter	Comment
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.
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>TRUenergy 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, the clause goes further and actually applies to all consumer protections. 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>

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>
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 has itself incurred these costs and is unable to recover them. Otherwise the original retailer will receive a windfall gain for network and wholesale costs that it did not incur. The clause should also be subject to the customer providing access to the meter (if required) for the purpose of transferring the customer to the original retailer. Otherwise the arrangement could continue indefinitely.</p> <p>This clause appears to extend the rights of rescission to all items of explicit consent (see 220 (d)). The section should be limited to transfers where a customer clearly did not agree specifically to the transfer.</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>

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. For example;</p> <ul style="list-style-type: none"><li>• Vic Use of System Agreement 3(a)(1)<ul style="list-style-type: none"><li>• 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</li></ul></li><li>• NSW Market Operations Rule (NUSA) No.2<ul style="list-style-type: none"><li>• 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.</li></ul></li><li>• NER 6.20.1(c):<ul style="list-style-type: none"><li>• 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)."</li></ul></li></ul>

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	<p>TRUenergy 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. TRUenergy does not support the contention that the drafting of Part 4 simply provides the legal architecture to transition current jurisdictional arrangements to the national framework; rather, it diminishes the governance arrangements for member-based ombudsman schemes by lessening the power of boards to oversee the operation of these schemes.</p> <p>An alternative may be to give the AER power to monitor and ensure an ombudsman continues to operate within the scope of its powers and functions.</p>
401(1)(a)	Definitions – relevant matter	<p>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.”</p>
402	Role of energy ombudsman	<p>The roles of energy ombudsman are determined in accordance with their respective constitutions or legislative authorities and should not be specified in the NERL.</p>
406	Functions and powers	<p>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. In these schemes, the Ombudsman’s powers are already specified in the schemes’ respective charters.</p>

Draft National Energy Retail Law

Part 5 – Authorisation of retailers and exempt selling regime

Section	Subject Matter	Comment
Part 5	Authorisation of retailers and exempt seller regime	Any transitional provisions should include streamlined application procedures for existing retailers to transition their jurisdictional licences into a national authorisation.
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 meet 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
606(1)	ROLR register EOI's	An annual EOI process is costly and unnecessary. As an alternative approach, TRUenergy suggests an initial EOI process be run, followed by an open-ended opportunity for retailers modify or withdraw their EOI, or express interest where they have not already done so.
614	Transfer of customers	Consistent with some existing jurisdictional industry processes, this section should allow pending transfers to complete at the time of a ROLR event to allow customers to transfer to their preferred retailer.
622(4)	Large customers	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.  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.
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	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.  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 targeted and limited, than proposed in NECF2:  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).

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	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.  Furthermore, the Law makes no reference to the rights of a ROLR to set an up-front fee, consistent with paragraph C20 of the explanatory note, and as discussed in the consultants report.
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 10 – National Energy Retail Rules

Section	Subject Matter	Comment
1003	Subject matters of the Rules	This section (coupled with the expanded national objective) has greatly shifted the balance between protecting consumers and minimising the cost and burden of regulation. As identified in the comments to s113, TRUenergy is concerned that such a significant reversal of a fundamental policy has occurred without consultation.
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.

Draft National Energy Retail Law

Part 12 – Compliance and Performance

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 1 – Preliminary

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 small 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 ‘medium customer” should be adopted for clarity.</p>

Draft National Energy Retail Rules

Part 2 – Customer retail contracts

Rule	Subject Matter	Comment
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>The New South Wales obligation is 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 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.</p>
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	The draft significantly weakens existing pre-contractual requirements. Both South Australia (4.1.1(h-j)) and

	designated retailer – conditions precedent	<p>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.</p> <p>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.</p>
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	<p>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.</p> <p>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.</p>
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	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. Additionally as this is a

		penalty clause retailer risk either disputing the network billing and failing to bill the customer to receive a penalty or billing the customer for something that is more than likely incorrect and risk causing a complaint that may be investigated by one of the Ombudsman Schemes of which is an additional cost.
217(5)	Billing disputes	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.
219(6)	Overcharge threshold	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.
222	Shortened collection cycle	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.”  If any restriction applies, it should be limited to residential customers, and only those on the retailer’s Hardship scheme.
223	Request for final bill	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.
225	Payment for security deposit	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 Wales there is only a one year restriction for standard contract customers).  Otherwise the framework would treat those customers who move supply address (from whom retailers could 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).  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

		<p>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, when the disconnection provisions could be triggered, and complexity in the calculation of interest payments. 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	<p>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.</p>
228	Interest on security	<p>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.</p> <p>Bank Bill Rate has not been defined. The definition should also reflect an annual reset date of the BBR for all retailers (perhaps as at the 1<sup>st</sup> of July each year). Reviewing and resetting the bank bill rate each month is administratively burdensome.</p>
229(1)(a)	Use of security deposit	<p>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.</p>
230	Obligation to return a security deposit	<p>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.</p>
234	Termination of a standard contract	<p>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.</p>

235	Termination of a market contract	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 make such a right explicit.
235(3)(b) and (4)	Termination of a market retail contract	Reference to early termination fees being based on retailers' "costs" should be replaced with "loss suffered".
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 and procedures are governed by Commonwealth Law and Standards, without a need to regulate in Energy Law.  Reference to "in person" should be to "door-to-door" (On Premise sales) to ensure that canvassing in shops or public places (Off Premise sales) is not captured.
253	Record keeping	The section refers to retailers maintaining records of visits "conducted" and calls "placed", 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 – Relationship between distributors and Retailers – Retail support obligations

Rule	Subject Matter	Comment
		<p>The following obligations should appear in Part 5:</p> <ul style="list-style-type: none"><li>• where distributors are the responsible party, a requirement to read a meter as frequently as required as retailers are subject to a civil penalty provision to issue a bill at least once every three months</li><li>• a non-discrimination clause, which requires distributors to treat customers and retailers equally</li><li>• where meter or metering data proves to be faulty or incorrect, an obligation on the distributor to reimburse a customer for the cost of the check or test (cf Rule 217)</li><li>• in the case of theft or illegal use of energy, an obligation to reimburse retailers network charges as 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 network charges on its behalf</li></ul>
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	<p>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. It is important that the types of charges be specifically identified in this way.</p> <p>A distributor should not only be liable for energy charges where they have failed to de-energise after a lawful request from a retailer but also to charges that a retailer is unable to recover from a customer due to the distributors acts or omissions (such as distributor caused cross metering or incorrect network codes).</p> <p>TRUenergy does not believe that retailers should be required to use ‘all reasonable endeavours’ to recover the charges from a customer before being compensated by the distributor for failing to fulfil their obligations. It is more appropriate (and a greater incentive for a monopoly service provider to perform its duties) for the party who has breached its duties to wear any credit risk.</p> <p>The phrase ‘within the timeframes for de-energisation in accordance with a distributor service standard’ seems to be limiting a distributor’s liability to a few very specific incidences and should be deleted.</p>
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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(2)	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, and vary over time. In addition, the customer may also be required to pay to rectify 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 are 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	Application	These terms also apply under a deemed contractual arrangement, and this should be made explicit. A new sub section (d) is required - " <i>when you use energy at a residential premise under a deemed arrangement</i> ".
4.1	Commencement	Under a deemed arrangement this contract would commence when a customer used energy at the premise. This also needs to be reflected in this provision.
6.4	Life support equipment	In some jurisdictions customers may not qualify for the Life Support Rebate but they may qualify for 'do not disconnect'. This needs to be made clear under this obligation to avoid confusion.
9.4	How bills are issued	This must also allow electronic billing, whereby address should explicitly allow for an electronic address as an alternative to a physical address
Section 10	Fees and Charges	Consistent with the Victorian Energy Retail Code it should be explicit in the standard retail contract that retailers may charge customers for dishonoured payments and merchant service fees.
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.
14.1(a)	When can we arrange for de-energisation	The words 'or payment option offered by us' should be deleted from this clause as a payment plan is all that is required to be offered.

Model Terms and Conditions for Deemed Standard Connection Contracts

Clause	Subject Matter	Comment
5.1(e)	Distributor services	A new sub-clause 5.1(e) should be inserted "where we are the responsible party for metering services we will provide meter reading services as frequently as required to allow your retailer to prepare your bill".

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

Clause	Subject Matter	Comment
1.1	Application of this part	Similar to the Victoria UoSA, a provision should be inserted that establishes application of this part “applies where retailers and customers agree”.
2.2	Direct customer billing	There is no provision for retailers to initiate an energy-only contract with its large customers. Notice to the retailer under sub-section (b) should be at the time of the agreement, not commencement of the arrangement.
2.4(a)	Statement of Charges	Many billing disputes between retailers and distributors evolve around charges that are not linked to a particular retailer service request or that do not contain sufficient information to permit the retailer to verify the charges and prove to the customer (or a court if necessary). Distributors should be expressly prohibited from charging for distributor initiated service orders, unless the service and amount was previously approved by the customer or retailer.  For drafting purposes, clause 7.8 of the Queensland Electricity Standard Coordination Agreement could be a good starting point:  “Each statement of distribution charges issued by the distributor to the retailer must contain sufficient information so that to enable the Retailer to either:  a) Include that information in the retailers next bill to a particular shared customer; or  b) Reconcile the statement of distribution charges with the amounts included in a retailer’s bill to a particular shared customer.”
2.4(b)	Statement of charges	Under sub-section (b), in default of an agreement the statement of charges is as reasonably 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

		<p>each invoice.</p> <p>In an interval meter environment, with the potential for monthly invoices for all customer sites, the processing of the invoice would become unmanageable. The time for disputing the monthly network invoice should be increased to 20 business days to accommodate this extra work.</p>
3.2	Tariff reassignment	<p>The rule should require distributors to:</p> <ul style="list-style-type: none"> <li>• provide 20 business days notice to retailers of any tariff reassignment.</li> <li>• respond within 10 business days of a retailer request</li> </ul>
3.3(e)	Billing Disputes	<p>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.</p>
Division 3	Credit support regime	<p>Please refer to TRUenergy's comments on the credit support scheme in the covering letter attachment.</p>
8.3	Application of credit support	<p>Consistent with the proposed changes to clause 110(e), the notice period for the application of credit support should also be five business days.</p>
15.5	Notices	<p>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.</p>

Attachment B – Customer Registration & Transfer

Clause	Subject Matter	Comment
Box 5	Cooling-off period	TRUenergy 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.
Box 6	Transfer on estimate	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.
Box 7	Objections	<p>TRUenergy supports the right of retailers to object on the grounds of debt and the network should have the ability to object in the absence of a haulage contract.</p> <p>Debt objections are currently allowed in Victoria and Queensland, with no customer protection concerns raised. This provides is a valuable debt management tool to retailers to the benefit of all participants in the market as it restricts debt laden customers from jumping between retailers rather than gaining assistance from their current retailer to manage this debt. For example under a hardship program.</p> <p>Distributors should maintain the ability to object for haulage contract reasons as they are the only party aware of the existence of specific haulage contracts.</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	TRUenergy 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. Furthermore the remote disconnection process is subject to a risk analysis in Victoria and the findings in this study will assist to address all issues related to remote disconnection and the NECF 2 should not be finalised until this is determined.
D4	Undercharging Provisions	Undercharging often relates to complex issues including crossed meters, changed addresses etc. These require an extended time before than can be identified and remedied, unrelated to the number of billing cycles. In many cases seasonal consumption variations trigger billing issues which are also unrelated to billing cycles. At a minimum, undercharging could be identified only up to 6 months later in line with final settlement periods in the NEM.

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.

