SACOSS
South Australian Council of Social Service

Marjorie Black House
47 King William Road
Unley SA 5061

P. 08 8305 4222
F. 08 8272 9500
E. sacoss@sacoss.org.au
www.sacoss.org.au

ABN 93 197 662 296

Essential Services Commission of South Australia

Submitted by email to escosa@escosa.sa.gov.au

13th December 2013

Dear Commissioners,

RE: NERL Review Methodology Issues Paper[1]

Thank you for the opportunity to comment on the NERL Review - Methodology for Review.

As the peak body for the community services sector in South Australia, SACOSS has a long–standing interest in the delivery of essential services and particular the cost of basic necessities like electricity because they impact greatly and disproportionately on vulnerable disadvantaged people.

Background

SACOSS was active early in the debate around inclusion of a Review of the operation of the National Energy Retail Law (NERL) and maintains a focus on the importance of the NERL Review.

The requirement for the Review can be found at Section 30 of the National Energy Retail Law (South Australia) Act 2011.[2]

30—Review

(1) The Commission must conduct a review of the operation of the National Energy Retail Law in South Australia after the expiry of 2 years from the date fixed under section 4.

(2) The review must focus on the impact of the National Energy Retail Law on consumers of energy and whether the implementation of the Law has—

(a) resulted in increased efficiencies; or

(b) adversely affected customer protection in pursuit of national consistency,

and may address such other matters as the Commission thinks fit.

(3) The Commission must prepare a report on the outcome of the review and provide a copy of the report to the Minister.

(4) The Minister must, within 6 sitting days after receiving a report under subsection (3), have copies of the report laid before both Houses of Parliament.

(5) The Commission must, between the date fixed under section 4 and the completion of the review under this section, publish, on a quarterly basis, statistics about the de-energisation of premises due to inability to pay energy bills during each quarter, unless the Commission is satisfied that the AER publishes comparable statistics on a quarterly basis.

[1] http://www.escosa.sa.gov.au/projects/204/nerl-review.aspx

[2] www.legislation.sa.gov.au/LZ/C/A/NATIONAL%20ENERGY%20RETAIL%20LAW%20%28SOUTH%20AUSTRALIA%29%20ACT%202011.aspx

The review is legislated to commence two years after the adoption of the National Energy Customer Framework (NECF) in SA (the NERL is a fundamental element of the NECF which commenced on February 1st, 2013). SACOSS notes that ESCOSA is not proposing to commence the review early but is consulting on the *methodology* of the review to ensure that all necessary data collection activities occur first.

A final NERL Review Methodology is to be published in February 2014, a full year prior to the earliest start date of the review in February 2015.

A SACOSS Perspective

As indicated in Section 30 clause (5), the disconnection of households is of critical importance for the Review and also for SACOSS. Against a backdrop of significant price rises immediately prior to the commencement of the NECF, SACOSS continues to highlight the trend of relatively high rates of disconnection and reconnection in South Australia. A copy of the most recent SACOSS publication on this subject, *Keeping the power on – a SACOSS response to electricity disconnections November 2013*, is attached to this submission.

The NECF conceives of disconnections as a 'last resort' option (section 47 of the NERL) but SACOSS is also increasingly of the view that energy bills are becoming simply unaffordable for many households and the NECF simply codifies a path to exclusion from the market. SACOSS would like to see this intent of "last resort" tested by the NERL Review.

> **47—General principle regarding de-energisation (or disconnection) of premises of hardship customers**
>
> A retailer must give effect to the general principle that de-energisation (or disconnection) of premises of a hardship customer due to inability to pay energy bills should be a last resort option.

SACOSS agrees that the requirement to conduct the review of the operation of the NERL" … *suggests that the Commission must also make a finding as to whether overall the operation of the NERL has furthered the interests of South Australian energy consumers*."[3] Further, SACOSS supports a focus on " … *seeking to determine if there is any indication that the NERL has adversely affected customer protection in pursuit of national consistency."*[4]

SACOSS is conscious that the NERL commenced operation in SA at the same time as the deregulation of energy prices and that it may be difficult to separate the influence of these two significant changes on consumers.

SACOSS also agrees that an examination of pricing outcomes is important to provide a context for the review and agrees, for example, that "*… an increase in hardship customers in the absence of pricing information would be harder to interpret*".[5]

The Issues Paper states at page 6:

[3] ESCOSA 2013, NERL Review Issues Paper page 4
[4] ESCOSA 2013, NERL Review Issues Paper page 4 and NERL Act s30 (2)(b)
[5] ESCOSA 2013, NERL Review Issues Paper page 4

" … it is only feasible in a quantitative sense to determine if customer protection has deteriorated or not under NECF by comparing performance in metrics under NECF with performance prior to NECF. Where the AER reports a broader range of hardship metrics, there will be no pre-NECF performance against which to compare for these additional metrics."

SACOSS is however of the view that observable trends over the two-year review period from Feb 2013 to Feb 2015 are as important as any changes from the pre-NECF period. As such, it is important that ESCOSA incorporate analysis of metrics that may not have been part of its previous performance monitoring regime.

South Australian specific provisions are also important to analyse (see Division 3 of the NERL Act 2011 "South Australian arrangements") as is the influence of any SA specific context for the NERL's operation such as:

- Heat waves
- Limited competition for gas
- The significant proportion of solar PV customers
- The overwhelming extent of vertical integration between wholesale and retail in the state.

In terms of an overarching approach, SACOSS would encourage the Commission to adopt an adaptation of the structure of the Australian Energy Regulator (AER) Retail Energy Market Performance Update January to March 2013. This report presented information in sections "*reflecting the escalating stages of customers experiencing payment difficulties*". Such an approach could seek to answer the following series of questions:

- Are consumers able to access competitive prices and fair terms and conditions of contract?
- To what extent have customers expressed dissatisfaction with the performance of retailers?
- How responsive have retailers become to complaints and disputes?
- What is the extent and trends of arrears (amounts owed to retailers by customers)?
- How effective are payment plans in avoiding or managing arrears?
- How effective are hardship programs in managing arrears?
- What are the trends in disconnections for an inability to pay and subsequent reconnections?
- What is known (or can be inferred) about the 'path to disconnection' and has operational performance embodied the principle that disconnection is a last resort under the NECF?

In answering these questions it will be important to distinguish the performance of individual retailers from state-wide trends. Further it will be important to answer these questions for electricity and gas and, separately, for dual fuel customers (i.e. those who are supplied both energy sources by the same retailer).[6]

The remainder of this submission responds to the specific questions asked in the Issues Paper.

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[6] National Energy Retail Rules (NERR) rule 117 makes specific reference to the requirement on retailers to stagger the disconnection of these services for dual fuel customers.

Responses to Questions

Question 1:

Are the following proposed metrics supported to form the basis of a quantitative assessment of customer protections under NECF?:

-telephone and written performance;

-complaints (including complaints to the Energy & Water Ombudsman);

-hardship program customers;

-concession recipients;

-disconnections;

-reconnections;

-instalment plans; and

-security deposits.

Question 2:

Are there any other considerations the Commission should have regard to in making an assessment on whether the implementation of the NERL has adversely affected customer protection?

As discussed above, SACOSS is of the view that an understanding of the extent and trends in arrears is critical to interpreting the performance of NECF. SACOSS supports the items listed in Question 1 and refers the Commission to the rest of this submission in response to Question 2.

Question 3:

Should the Commission adopt a broad economic interpretation of the term 'efficiency'?

Question 4:

Should the Commission consider the extent to which the South Australian energy retail market is effectively competitive as part of the NERL Review?

Question 5:

If so, is the Commission's proposed approach to undertaking an assessment of the level of effective competition in the South Australian energy retail market sufficiently comprehensive?

Question 6:

Are there any other considerations the Commission should have regard to in making an assessment on the extent and nature of efficiencies resulting from the implementation of the NERL?

SACOSS agrees that competition is a key enabler of the *potential* for the market to deliver efficiency and the long term interests of consumers and should be a critical element of the methodology. The assessment of efficiency (discussed at Issues Paper 2.2, page 7) must be done in full recognition of the links between the retail and wholesale energy markets in South

Australia. Table 1 illustrates the extent of vertical integration between retail and generation in South Australia. As shown 99% of small customers are contracted to six 'gentailers' (vertically integrated generator-retailers: Simply Energy is the retail arm of generator GDF Suez and Lumo is the retail arm of generator Infratil).

Retailer	Small Customer Base[7]		*Peak Demand*[8]	Conventional Generation	MW	Wind Power	MW
AGL (incl Powerdirect)	455,324	55%	*1,153 MW*	Torrens Island	1280	Hallett1, Hallett 2, Wattle Point, North Brown Hill, The Bluff	309
Origin	146,113	18%	*370 MW*	Quarantine, Ladbroke Grove, Osborne	484	-	
Simply Energy	76,474	9%	*194 MW*	**GDF Suez:** Pelican Point, Synergen peaking stations	860.5	Canunda	46
Energy Australia	84,724	10%	*215 MW*	Hallett	228.3	Waterloo, Cathedral Rocks	177
Lumo	48,891	6%	*124 MW*	**Infratil:** Angaston, Pt Stanvac and Lonsdale	128	Snowtown	98.7
Alinta	9,531	1%	*24*	Pt Ausgusta Power Stations	770	-	
SUBTOTALS		**99%**			**3,751**		**631**

Table 1: Illustration of the extent of Vertical Integration of Electricity Retail and Generation in South Australia.[9]

Question 7:

Are there any other considerations the Commission should have regard to in relation to incorporating pricing evidence for the review?

At page 15, the Issues Paper states:

> *"The Commission does not propose to monitor movements in the level of administrative and related charges (e.g. account establishment fees). Those charges tend to be one-off and so it is more difficult to determine the impact of any price movements in such charges for the 'average' customer. Such charges are also generally not material, on average."*

SACOSS is not comfortable that the importance of fees and charges can be so readily dismissed. In our experience, many consumers do not agree that these are not "material" and in our view the NERL review provides an opportunity to demonstrate the materiality or otherwise of the incidence of these charges. The presence of early termination fees is one example. The Electricity (General) Regulations 2012 and Gas Regulations 2012 were amended alongside the introduction of the National Energy

[7] As at Dec 2012, Source: ESCOSA Annual Market Performance Reports

[8] The small customer market is settled based on what is referred to as the Net System Load Profile (NSLP). Retailers are responsible for the 'peak demand' of their customers and the total peak demand of the NSLP (approx. 2,100 MW recorded in 2008/9) is allocated to retailers in proportion to their contracted number of small customers. Vertical integration is largely driven by the desire to have a portfolio of generation to provide a 'physical hedge' against this demand. Table 1 illustrates that each of the retailers comprising 99% of the small customer market each have enough generation capacity to cover their small customer base.

[9] Source: ESCOSA, AEMO as at December 2012

Customer Framework (NECF) in South Australia to require all NERL retailers to make available an energy market contract that would not incur any early termination fees for any reason. The Commission has developed *Energy Guideline No. 5 - Information Disclosure for No Early Termination Fee Market Contracts* for this purpose.[10]

A simple parallel can be drawn with the current class action in the Federal Court against the ANZ Bank regarding their fees and charges being above "reasonable cost".[11] SACOSS is of the view that it is in the consumer interest to investigate this further.

> **Question 8:**
>
> **Are there any other matters that the Commission should address in the review, that deal directly with the impact of the NERL on small consumers of energy?**

Given the large number of solar customers in South Australia (153,000 installations as at October 2013[12] compared to around 620,000 households) it is considered important for price monitoring to distinguish the offers made to these customers for their consumption. Integrating information that may be collected regarding the prices offered by retailers for surplus electricity production returned to the grid is also important.

A recent report from SACOSS Member Andrew Nance, *Relative Energy Poverty in Australia*[13], highlights the relatively high costs faced by 'dual fuel' households. Noting the limited competition in the gas market, it is considered important that the NERL review is able to assess the NERL in the context of these customers and, to the extent possible, distinguish them from 'electricity only' customers.

Further, *Relative Energy Poverty in Australia* highlights the vulnerability of a large cohort of households who rely on wages and salaries for income but have very limited 'capacity to pay' yet are largely ineligible for concessions. As discussed in the report this limited capacity to pay is a function of low wages and relatively high housing costs.

> **Question 9:**
>
> **The Commission's preferred option is Option 1 on the basis that it will allow for a robust quantification of the pricing information. Views are sought on the costs and benefits of Option 1 compared with Option 2.**
>
> **Question 10:**
>
> **Is there an alternative option that the Commission should consider? If so, on what basis should this option be preferred over the options listed in this Issues Paper?**

The Issues paper presents two options for the reporting of price data by retailers. SACOSS is not comfortable with the transparency of pricing trends currently available and is supportive of an option that provides the most flexibility to analyse and interpret trends. Further, SACOSS remains concerned that incentives and opportunities exist to increase

[10] Refer to the ESCOSA project page at http://www.escosa.sa.gov.au/projects/projectdetails.aspx?p=69&id=193
[11] Refer to www.mauriceblackburn.com.au/areas-of-practice/class-actions/current-class-actions/bank-fees-class-action.aspx and www.abc.net.au/news/2013-12-02/class-action-over-anz-bank-fees/5126286
[12] Source: Office of the Clean Energy Regulator accessed 01.December.2013
[13] Available from SACOSS at www.sacoss.org.au/reports/energy-water

prices for contracted 'sticky customers' above what is 'constrained by competition' to attract those customers in the first place. The Issues paper discusses this at page 13 and SACOSS believes this necessitates an approach like Option 1.

SACOSS expects retailers to resist Option 1 and favour Option 2 on the basis of the administrative effort required to provide more detailed information or that it compromises confidentiality and hence undermines competition. SACOSS pre-emptively rejects this as a reasonable position and asserts that it is in the interest of retailers to openly demonstrate that competition is effective and that the NECF is in fact advancing the consumer interest. Any resistance of transparency can only exacerbate the feelings of mistrust toward energy businesses that exist in the community.

A November 2013 report of a survey conducted by Choice, The Brotherhood of St Laurence and the Energy Efficiency Council highlighted community views about electricity costs.[14] The report states:

> "South Australians were much more likely to say that it was 'very important' for the State Government to take action on energy bills than the national average, with 63 per cent of South Australians stating it was 'very important' for the State Government to take action, compared to 53 per cent nationally."

SACOSS is of the view that an important response to these ongoing perceptions are attempts to restore trust in electricity businesses and the electricity market overall. Transparent reporting by independent parties ensuring the accountability of policy and its implementation is a critical element in this process. The NERL review can be an important contributor to this.

SACOSS notes that this is a final stage of the methodology review but would be pleased to engage further. We thank you in advance for your consideration of our comments. If you have any questions relating to the above, please contact SACOSS Senior Policy Officer, Jo De Silva on 8305 4211 or via jo@sacoss.org.au.

Yours sincerely,

Ross Womersley
Executive Director

[14] Available from http://www.choice.com.au/consumer-action/energy/energy-campaigns/electricity-bill-shock-biggest-household-worry.aspx

SACOSS
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Keeping the power on –
a SACOSS response to electricity disconnections

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47 King William Road
Unley, SA, 5061 Australia
Ph (08) 8305 4222
Fax (08) 8272 9500
Email: sacoss@sacoss.org.au
Website: www.sacoss.org.au

Executive Summary

In recent years, the rate at which households are being disconnected has risen significantly in South Australia and in other jurisdictions.

This SACOSS report considers trends in data reported by energy regulators[1] to demonstrate that:

- The most important statistic is the number of households that are disconnected for failing to pay but are subsequently reconnected in the same name at the same address – and this is above its long-run average and rising.
- The disconnection/reconnection rate tends to increase soon after a sudden step change in the price of electricity – a 'bill shock' effect.
- Comparing the disconnection/reconnection rates of South Australia's five main retailers against their performance in the Victorian market shows that each retailer tends to perform the same in both SA and VIC.
- The comparison also shows consistently different performance between the retailers: AGL, Alinta and Simply have relatively high rates while EnergyAustralia and Lumo have relatively low rates. Origin has had historically low rates but has reported a recent upswing.
- The National Energy Customer Framework (NECF) is failing to reduce the growing rate of disconnections.

SACOSS believes that having the power cut off because you are unable to afford your energy bills is the worst possible outcome for a vulnerable energy consumer. The recommendations in this report are aimed at reducing the rate of disconnections. The recommendations are:

1. The specific retailers with high disconnection/reconnection rates (AGL, Alinta and Simply Energy) need to take immediate action to reduce their disconnections rates. These retailers are to be encouraged to develop best practice in relation to the customer's level of arrears, helping manage consumption, offering lower prices and opting to waive debt where appropriate.

2. Introduce a mechanism whereby a third party would intercede and test for fairness before an energy disconnection proceeds. SACOSS believes that this new type of review would dramatically reduce the number of households who have their power cut off. The SACOSS objective in proposing third party review is to restrict disconnections to those who can pay but don't, including the 'skippers'. A key principle for SACOSS is that retailers are not the entity best placed to deliver this objective.

3. Reform the energy concession so that it is calculated as a percentage of the bill, so it always goes up in line with the real increase in the price of energy and increases capacity to pay for this essential service.

[1] The Essential Services Commission of South Australia (ESCOSA) reports electricity market statistical data up until the end of 2012. From February 2013, the Australian Energy Regulator became responsible for this activity under the National Energy Customer Framework (NECF). As a result there is some potential for a discontinuity in time series data.

Contents

Introduction

In a typical year, around one in every one hundred South Australian homes will have its electricity disconnected due to unpaid bills[2]. The Essential Services Commission of South Australia (ESCOSA) and the Australian Energy Regulator (AER) have released figures showing that electricity disconnections in 2012-13 came in at more than 10,000 customers per annum. Just under 5,000 of these are subsequently reconnected. Only 70% of these customers are being re-connected within 7days[3].

Disconnections are the electricity market's ultimate sanction. Past attempts to ban the practice have been strongly resisted by electricity retailers. Retaining the right to withhold supply over unpaid accounts is cited as a business fundamental. 10,000 household disconnections for the year means that there are around 40 households disconnected every business day throughout the entire year.

For a household under extreme financial stress, the ultimate penalty is disconnection. The impacts of disconnections are not just felt by the household in question – they are felt by the whole community. The impacts are more than just financial, they are also emotional and psychological and there are also impacts on health and safety. In the words of consumers (interviewed for the Public Interest Advocacy Centre):

> *"It got to the stage where I didn't want to get up in the morning… I just couldn't handle it anymore, I thought I was going to have a breakdown. I just felt stuck"* p.19[4]
>
> *"I was so embarrassed I felt I couldn't tell anyone about being disconnected"* p.40
>
> *"… didn't know the company could disconnect someone when there were young children living in the house"* p.41
>
> Karinya will never forget the time of year that she was disconnected, as she was without electricity for her daughter's eighteenth birthday. This was the "*worst feeling a mother can ever have*" … Karinya believes the Department of Housing showed her support because she was a long-term tenant and they understood why she was facing very hard times. *"If it wasn't for them I would have lost these kids permanently over a stupid bill. Things you don't think of – having no electricity or gas with children, I didn't know that if my electricity was cut off I would lose my kids."* pp.42-3
>
> Zoe needs electricity to sterilise things for the baby, wash him properly and heat up the food. *"They're not the only bills you have to pay, if only they were more considerate and polite about what other bills you have. … If they can see that you have kids in the house, they shouldn't be able to disconnect you."* p.48[5]

South Australia remains one of the States where people are most likely to be disconnected. Given the extremes of weather in the summer and winter seasons, this is cause for great concern. There is an urgent need to understand exactly who is being disconnected and why this is happening.

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[2] **Source:** ESCOSA Annual Market Performance Reports and AER Annual Report on the Performance of the Retail Energy Market 2012-13. Disconnections per 100 customers for the 11 years from 2002-3 to 2012-13 averaged 1.11 with a median value of 1.02.

[3] **Source:** SACOSS Analysis of AER Annual Report on the Performance of the Retail Energy Market 2012-13, combined with previous year's ESCOSA Annual Market Performance Reports. Total disconnections = 10, 723. Reconnections in the same name and address totalled 4,900 (estimated from AER reported reconnection rates by retailer and ESCOSA report customer numbers as at December 2012 [taken as a median value for the 2012-13 financial year]). Reconnection within 7 days is estimated at 3,326 or 68% of the total reconnections.

[4] Public Interest Advocacy Centre (2005) "Cut off: the impact of utility disconnections" http://www.piac.asn.au/project/disconnections

[5] Public Interest Advocacy Centre (2009) "Cut off II: the experience of utility disconnections"

Who feels the impact of disconnections

The potential long term consequences of disconnections for the families involved can be significant. Disconnection can be a trigger for a change of housing. Disconnection often triggers the rapid raising of funds to clear at least some debt and get re-connected. This means that the methods available to many vulnerable households simply shift the problem to another part of their lives.

Modern life without electricity does not only mean compromising on 'nice to have' things such as television but compromising on energy services that promote health and safety. While little is known about the demographics of those disconnected in South Australia, it is likely to contain at least some proportion of households with children. Single parent households in particular have been shown to be most at risk of disconnection due to their probability of having lower than average incomes yet higher than average energy consumption. Case studies from consumer organisations around Australia have illustrated the complexity of life events that can surround a disconnection.

Some of the common attributes cited in these reports include:

- Families, especially single parent families
- Aboriginality
- Renting, especially public housing
- Unemployment
- Language and literacy
- Reliance on pre-paid mobile phones

Readers wanting more detailed analysis are directed to the following resources:

Public Interest Advocacy Centre (2013) *Cut Off III: the social impact of utility disconnections* at www.piac.asn.au/publication/2013/04/cut-iii

Dr Lynne Chester (2013) *The impacts and consequences for low-income Australian Households of Rising Energy Prices*, University of Sydney at www.householdenergyuse.com

St Kitts Associates (2013) *Relative Energy Poverty in Australia* at www.sacoss.org.au/reports/energy-water

Queensland Council Of Social Service (2012) *Energy Hardship and Electricity Disconnections in Queensland* at www.qcoss.org.au/sites/default/files/Disconnections%20Report%20Final_1.pdf

Public Interest Advocacy Centre (2009) *Cut Off II: the experiences of utility disconnections* at www.piac.asn.au/sites/default/files/publications/extras/Cut_Off_II_January_2009.pdf

Public Interest Advocacy Centre (2005) *Cut Off: the impact of utility disconnections* at www.piac.asn.au/sites/default/files/publications/extras/cut-off_ucap_disconnections_report.pdf

Paul Laris & Associates (2004) *Powering poverty: a report on the impact of the 2002-2003 electricity price rises on 12 low-income households in South Australia,* Western Region Energy Action Group, Adelaide.

Committee for Melbourne Utility Debt Spiral Project (2004) at www.cuac.org.au/index.php?option=com_docman&task=doc_download&gid=180&Itemid=31

Annual Reports of the Energy and Water Ombudsman South Australia www.ewosa.com.au/

Disconnection Reporting

Disconnection statistics reported by regulators around the National Energy Market jurisdictions tend to report on two basic headline figures: residential disconnections for a failure to pay an amount due and reconnections in the same name at the same supply address.

The overall disconnection number captures what is sometimes referred to as the 'won't payers' as well as the 'can't payers' and therefore includes those account holders who leave an address with an unpaid account (otherwise referred to as the '*skippers*'). These disconnections do not affect households directly in so far as they relate to vacant properties and the decision by the retailer to halt consumption by issuing a disconnection order is arguably quite reasonable.

ESCOSA has commented on the relationship between disconnection and hardship:

> *"The Commission monitors the number of disconnected households that are reconnected (in the same name at the same supply address) as this can provide an indication of the number of households that perhaps could have been identified for further assistance by the retailer. Conversely, it could also indicate that such customers did not need hardship assistance in the first place."*[6]

The Essential Services Commission of Victoria has also commented on this relationship between disconnection and hardship:

> *"This year retail energy companies were more vigorous in disconnecting customers who did not pay their bills and were not in financial hardship… This approach to non-payment appears to be effective from the retailer's viewpoint. Fifty per cent of disconnected customers were able to make outstanding payments and be reconnected."*
>
> *" … it is possible retailers are not proactively identifying and offering enough support to customers experiencing hardship and who may need to be in a hardship program or on a payment plan. It may also be that customers are ignoring retailer's efforts to engage them, leaving disconnection as the only option remaining for unpaid accounts."*[7]

Of the two groups represented by disconnection statistics, the cohort of most interest then is those households that are disconnected and after a period of time are reconnected: the assumption being that, in the period between disconnection and reconnection, the household has reached a financial arrangement that is to the satisfaction of the retailer. SACOSS concedes that while this approach will still include households that could be classified as can't pay as well as won't pay, it is considered a much better proxy of the situation for genuinely vulnerable households.

The proportion of households that are disconnected for failing to pay an account and then subsequently reconnected has been around 0.5 per 100[8] for the last decade in SA. So, around half of those disconnected could be regarded as 'skippers' (even though some of these may have been in genuine financial hardship at the time). ESCOSA have published a time-series of the reconnection statistics by retailer since privatisation in 2000/1 to December 2012, with the Australian Energy Regulator publishing similar data for activity since January 2013.

Figure 1 illustrates the disconnection/reconnection rates:

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[6] ESCOSA (2011) "Assisting South Australian households experiencing financial stress in the energy market – 2010/11" at http://www.escosa.sa.gov.au/library/111118-FinancialStressInEnergyMarket-ReportCard_2010-11.pdf p2

[7] Essential Services Commission (2012) "Energy Retailers Comparative Performance Report" at www.esc.vic.gov.au/getattachment/edd78ebc-e203-4bea-86aa-8c8de7afade7/Energy-retailers-comparative-performance-report-Cu.pdf p22

[8] Source: ESCOSA Annual Market Performance Reports and AER Annual Report on the Performance of the Retail Energy Market 2012-13. Reconnections per 100 customers for the 11 years from 2002-3 to 2012-13 averaged 0.49 with a median value of 0.43.

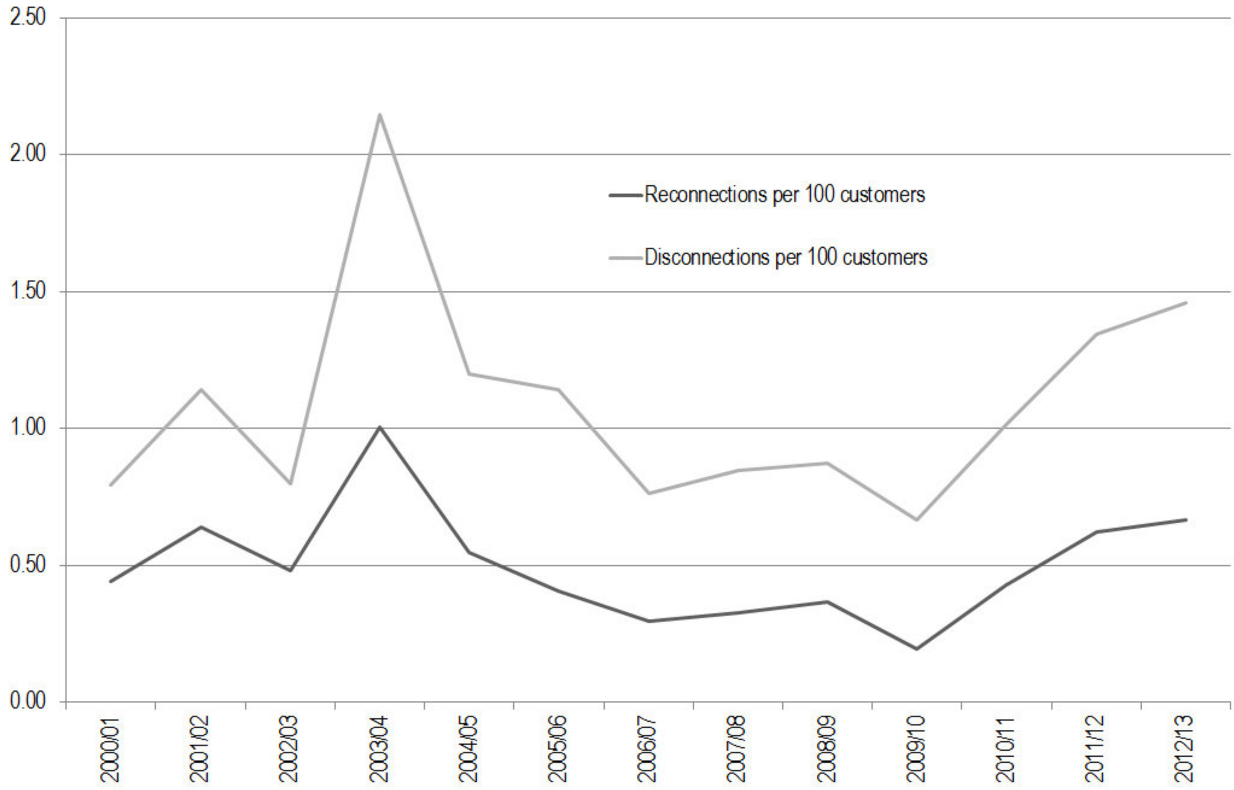


Figure 1: Residential Electricity Disconnection and Reconnection Rates, South Australia (Source: ESCOSA[9])

As can be seen, a spike in 2003/4 was followed by a relatively stable period until 2009/10 after which steady increases can be seen. The spike in disconnection / reconnection rates reported in 2003-4 followed the introduction of full retail competition in January 2003 (prices rose in excess of 20% on January 1st 2003). The 2010/11, 2011/12 and 2012/13 financial years also correspond to a period of substantial price increases.

[9] ESCOSA Annual Market Performance Reports at www.escosa.sa.gov.au

Bill Shock

The apparent relationship between disconnections and price movements supports the idea that affordability is strongly linked to the notion of 'bill shock' – financial stress caused by an unexpectedly large bill.

Figure 2, below, shows quarterly reconnection rates and electricity CPI movements from 2009-10 to the end of 2012 (when quarterly data stopped being published by ESCOSA). Note that in the figure, the Apr-Jun electricity price changes are regularly negative to reflect the end of the application of higher summer tariffs in the Jan-Mar quarter.

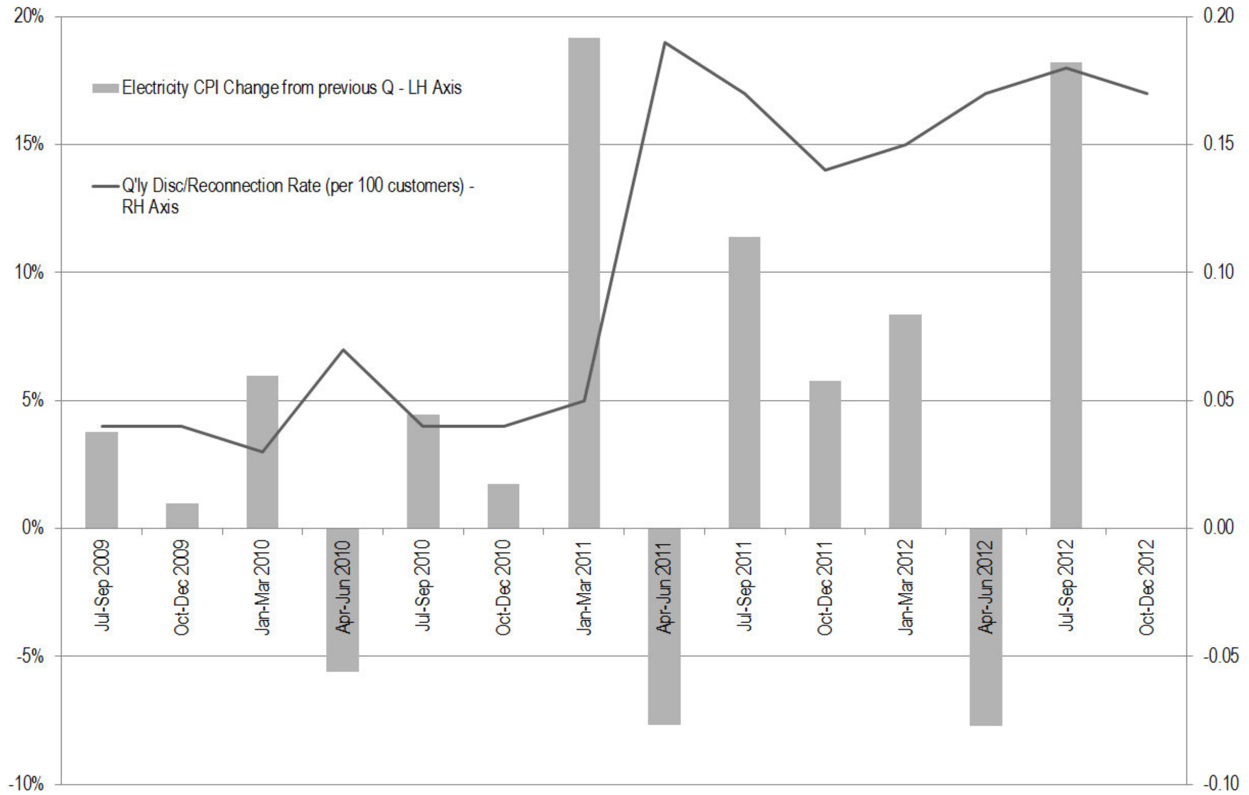


Figure 2: Quarterly residential electricity reconnection rates compared to quarterly electricity price movements 2009 to 2012 (LHS = CPI change in % from previous quarter) (Source: ABS[10])

In summary, there is an apparent correlation between step changes in the price of electricity and the rate at which households are disconnected then subsequently reconnected for a failure to pay. This seems to be most pronounced when these price changes are above a certain threshold (i.e. small changes do not exhibit the same effect). Such observations are intuitive, consistent with anecdotal evidence[11] and supported by the data presented in the preceding charts. However, 'bill shock' is only likely to be one of a number of factors.

[10] Australian Bureau of Statistics Consumer Price Index Australia – 6401.0 Sep 2013

[11] See, for example, Public Interest Advocacy Centre (2013) *Cut Off III: the social impact of utility disconnections* at www.piac.asn.au/publication/2013/04/cut-iii

Comparing retailers

A further layer of analysis possible from the published data is that of comparing trends between retailers and between states. South Australia's five main electricity retailers (with >95% share of the residential market) also operate in the Victorian electricity market and have a combined market share in excess of 80%. It has therefore been possible to compare the reconnection rates of these same retailers in these two jurisdictions by consolidating data from the respective Essential Service Commissions[12].

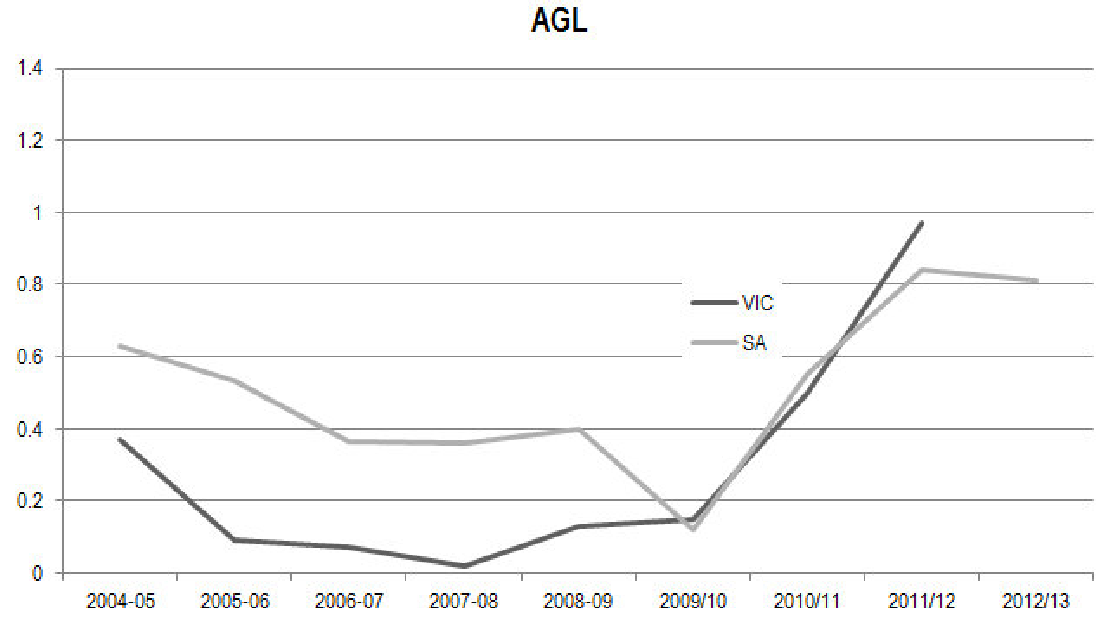


Figure 3: Residential Electricity Reconnection Rates (per 100 customers), AGL Energy. (Source: ESCV, ESCOSA[13])

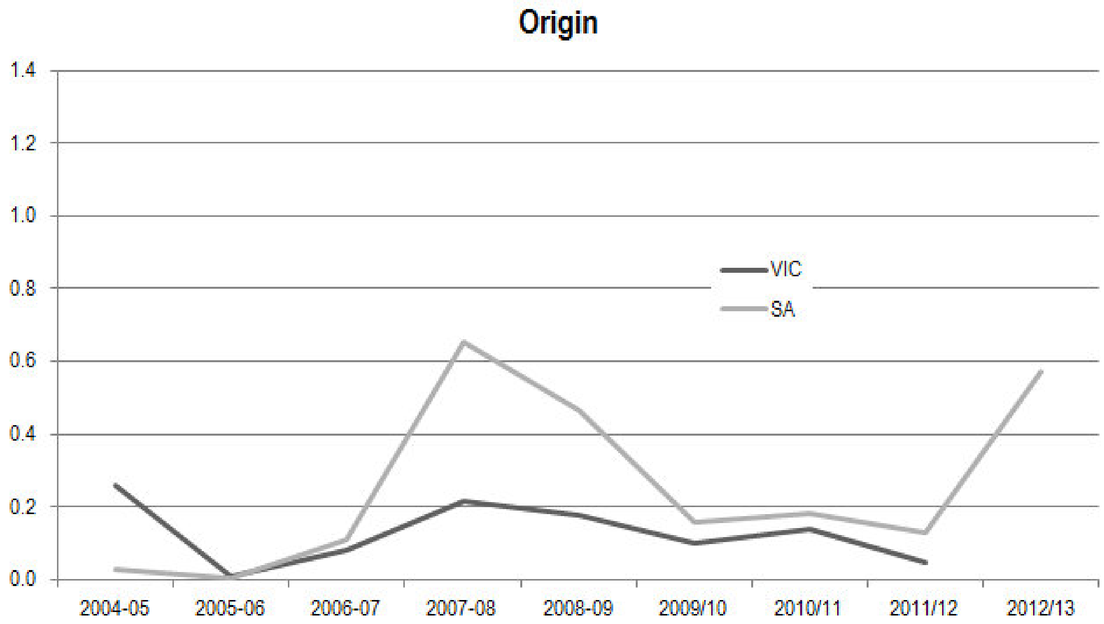


Figure 4: Residential Electricity Reconnection Rates (per 100 customers), Origin Energy. (Source: ESCV, ESCOSA)

[12] At the time of publication, comparable data sets for both jurisdictions for financial year 2012/13 were not available

[13] Essential Services Commission Victoria Energy Retailer Comparative Performance Reports (http://www.esc.vic.gov.au/Energy/Energy-retail-performance-reports) and Essential Services Commission of South Australia Annual Performance Reports (http://www.escosa.sa.gov.au/electricity-overview/reporting-and-compliance/annual-performance-reports.aspx)

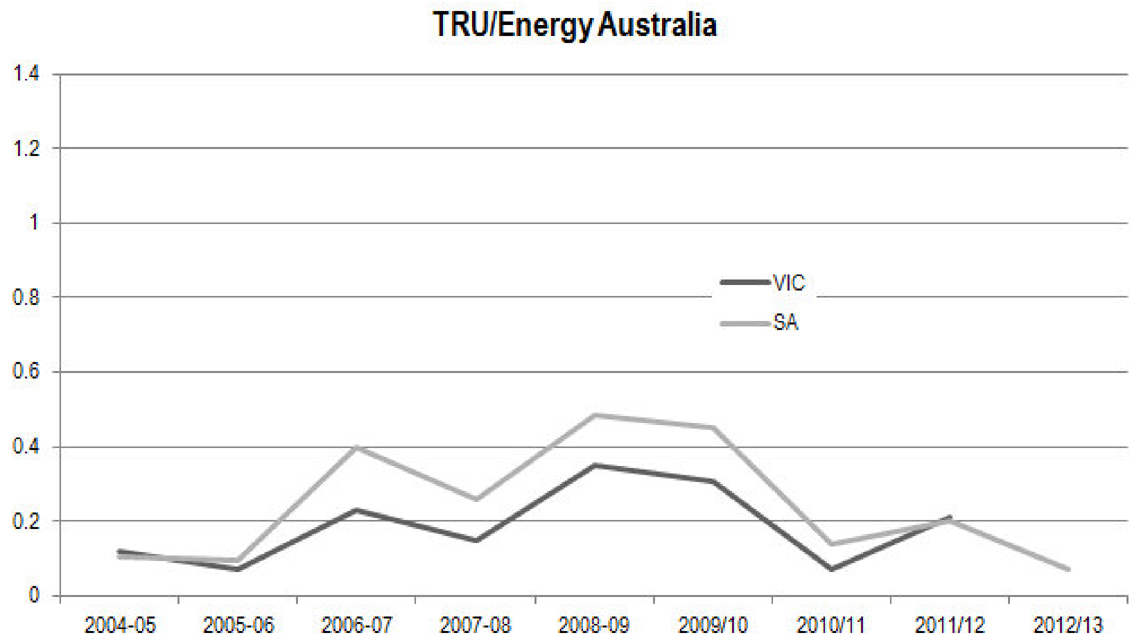


Figure 5: Residential Electricity Reconnection Rates (per 100 customers), Energy Australia. (Source: ESCV, ESCOSA)

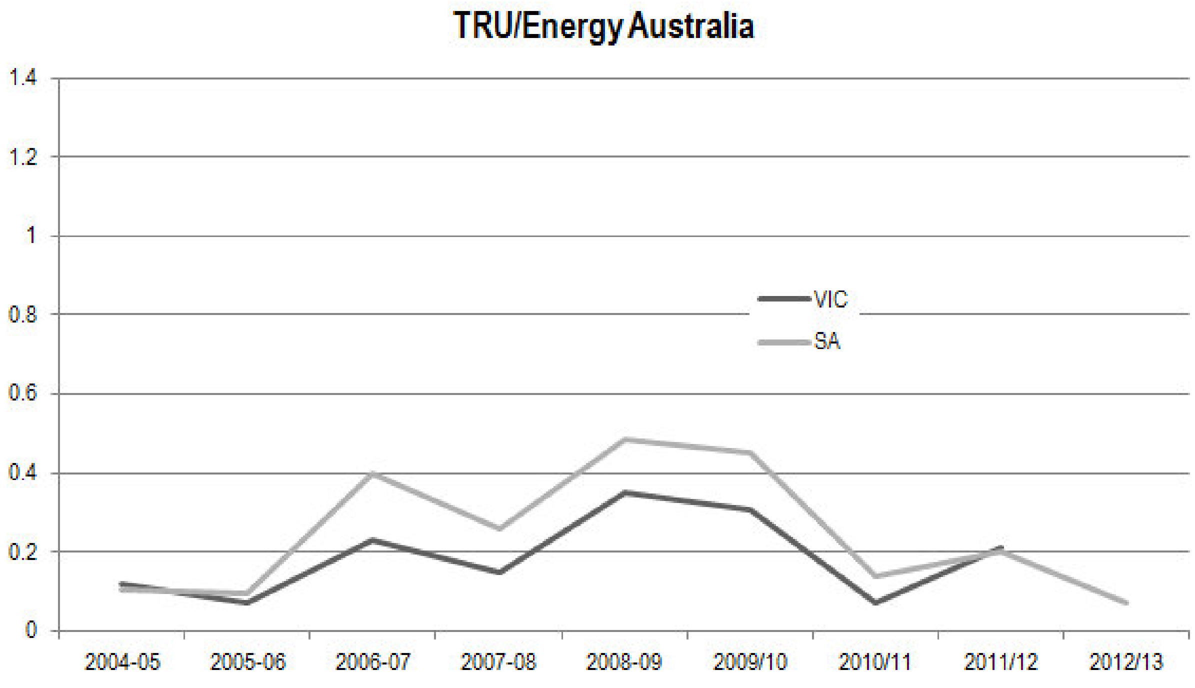


Figure 6: Residential Electricity Reconnection Rates (per 100 customers), Simply Energy. (Source: ESCV, ESCOSA)

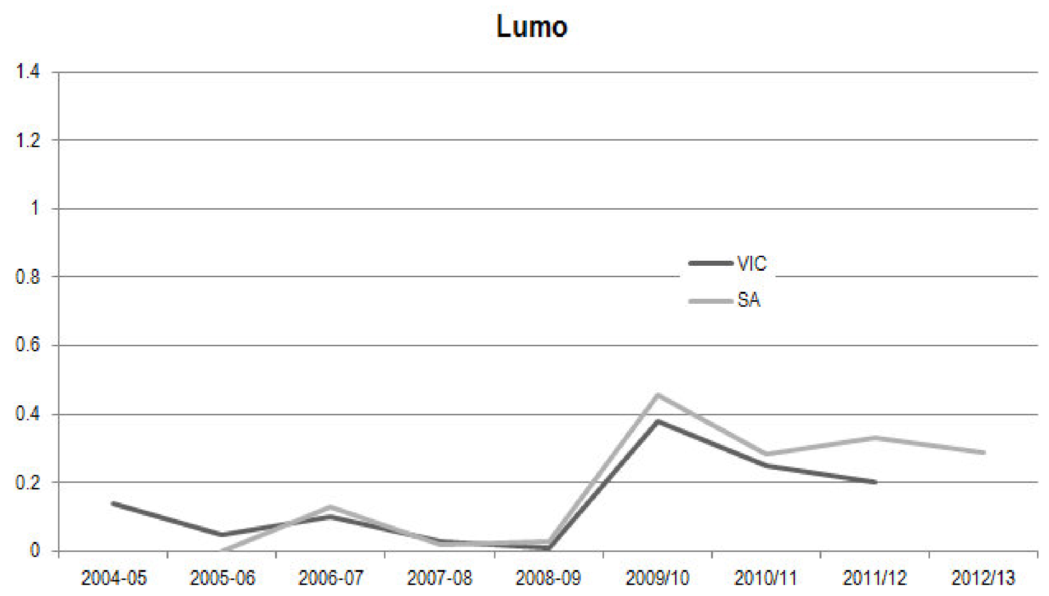


Figure 7: Residential Electricity Reconnection Rates (per 100 customers), Lumo Energy. (Source: ESCV, ESCOSA)

It can be observed from the preceding charts that in recent years there has been strong alignment in the reconnection rates and trends in both states within each business. The other observation is of the diversity of magnitude and trajectories.

There appears to be some similarities between the historical results for Origin Energy, Lumo and Energy Australia as well as between the results for AGL and Simply Energy. Based on these observations it is reasonable to suggest that it is not just changes in the price of electricity that impact on disconnections and reconnections but also the approach taken by each retailer.

AER's initial reports under the National Energy Customer Framework (NECF) seems to confirm that historical trends are continuing for the main retailers as shown in Table 1.

2012-13 Retailer Performance	Market Share (Dec 2012)	Disconnection Rate	Reconnection Rate	% reconnected	% of reconnected within 7 days
AGL	51%	1.7%	0.8%	48%	71%
Alinta	1.3%	7.9%	2.8%	35%	58%
EnergyAustralia	11%	0.2%	0.1%	33%	37%
Lumo	6.2%	1.0%	0.3%	29%	63%
Momentum	0.1%	0.6%	0.2%	38%	25%
Origin	18%	1.2%	0.6%	50%	72%
Powerdirect	2.1%	0.6%	0.2%	36%	84%
Red	0.6%	1.6%	0.4%	24%	57%
Simply	10%	1.7%	0.8%	48%	57%
Weighted Averages		1.46%	0.67%	46%	68%

Table 1: 2012-13 Electricity Retailer Disconnection/Reconnection Performance[14]

[14] Source: SACOSS analysis of ESCOSA Market Performance time series data (AER Annual Report on the Performance of the Retail Energy Market 2012-13 (available from www.escosa.sa.gov.au/electricity-overview/reporting-and-compliance/annual-performance-reports.aspx and www.aer.gov.au/node/22827)

One hypothesis that combines these factors would be that the rate of disconnection/reconnection is driven by not just price changes but retailer's responses to the payment challenges these price changes create. The overall trend of increasing disconnections and reconnections in recent times is apparently being driven mainly by AGL and Simply Energy and not by the other main retailers. However, Origin's disconnection/reconnection rates are showing an upswing in 2013 and will be monitored closely by SACOSS.

A standout performance was delivered by Alinta Energy in 2012-13. The AER reported[15]:

> *"All retailers disconnected fewer than 2 per cent of their customers in 2012–13, except Alinta Energy which disconnected over 7 per cent. Alinta Energy explained that its recent focus on debt recovery has resulted in a higher level of disconnections. … all of Alinta Energy's disconnected customers in the March quarter had been on a payment plan in the preceding 12 months."*

In summary, these results definitely point to the conclusion that when it comes to affordability and disconnections, customers can expect quite different treatment depending on which retailer they are contracted to.

[15] AER Annual Report on the Performance of the Retail Energy Market 2012-13 page 37 (available from www.aer.gov.au/node/22827)

National Energy Customer Framework - Background

It is important to locate this discussion in the context of the newly introduced National Energy Customer Framework (NECF) and the National Energy Retail Law (NERL).

While it is true that disconnection rates have been rising along with electricity prices in SA and other jurisdictions over recent years, it has been argued that the context has changed. From February 1st 2013 South Australia became part of the national regulatory framework for energy retailing. The National Energy Customer Framework (NECF) is aiming to harmonise a number of regulatory functions across the NEM states. The National Energy Retail Law (NERL) incorporates a principle (s47) that electricity disconnections for an inability to pay must be a last resort:

> **47 — General principle regarding de-energisation (or disconnection) of premises of hardship customers**
>
> A retailer must give effect to the general principle that de-energisation (or disconnection) of premises of a hardship customer due to inability to pay energy bills should be a last resort option. [16]

The Ministerial Council on Energy (now the Standing Council on Energy and Resources, SCER) provided clarification in its NECF Explanatory Material (MCE SCO, 2009):

> *"The NERL requires retailers to have customer hardship policies to assist hardship customers to better manage their payments and reduce the risk of disconnection. Retailers' customer hardship policies will now be subject to approval by the AER. While the NERL specifies minimum requirements for customer hardship policies, AER approval is considered necessary to ensure that customer hardship policies adequately cover the minimum requirements and achieve the purpose of assisting customers to better manage their energy bills on an ongoing basis.*
>
> *Further, the obligation on a retailer to offer a payment plan to a hardship customer prior to taking action to disconnect a hardship customer has been extended to all residential customers who advise their retailer they are experiencing financial difficulty."* [17]

The notion of hardship is defined in the legislation as:

> *hardship customer* means a residential customer of a retailer who is identified as a customer experiencing financial payment difficulties due to hardship in accordance with the retailer's customer hardship policy;

The AER will review hardship policies against the purpose outlined in s43(1):

> (1) The purpose of a retailer's customer hardship policy is to identify residential customers experiencing payment difficulties due to hardship and to assist those customers to better manage their energy bills on an ongoing basis.

In summary, under the NERL:

- Retailers MUST develop a hardship policy that conforms with minimum requirements including establishing processes to refer customers to Concession Schemes, Financial Counselling Services and any Energy Efficiency schemes[18]

[16] http://legislation.sa.gov.au/LZ/C/A/NATIONAL%20ENERGY%20RETAIL%20LAW%20%28SOUTH%20AUSTRALIA%29%20ACT%202011.aspx
[17] Ministerial Council on Energy Standing Committee of Officials National Energy Customer Framework Second Exposure Draft Explanatory Material November 2009. http://www.ret.gov.au/Documents/mce/_documents/Explanatory%20Material.pdf
[18] http://www.legislation.sa.gov.au/LZ/C/A/NATIONAL%20ENERGY%20RETAIL%20LAW%20(SOUTH%20AUSTRALIA)%20ACT%202011.aspx

- The hardship policy MUST be approved by the Australian Energy Regulator (AER)

- Once approved, any amendments must also be submitted to the AER for approval[19]

- A retailer must offer a payment plan if a customer self-identifies as having payment difficulties or if the retailer identifies repeated payment difficulties[20]

- Once a customer becomes a hardship customer, the hardship policy overrides the terms and conditions of a market contract[21]

- A retailer's Hardship Policy must give effect to the general principle that disconnection of a hardship customer due to inability to pay energy bills is a last resort option[22]

The payment plan must be structured having regard to the customer's capacity to pay in accordance with National Energy Retail Rule 72[23]:

> **72** Payment plans
> (1) A payment plan for a hardship customer must:
> (a) be established having regard to:
> (i) the customer's capacity to pay; and
> (ii) any arrears owing by the customer; and
> (iii) the customer's expected energy consumption needs over the following 12 month period.

Debt recovery proceedings must not commence if the customer adheres to the payment plan[24]. However, while payment plans are the primary tool for retailers to assist customers experiencing payment difficulties, retailers are not required to offer customers more than two payment plans within 12 months if the customer has had both payment plans cancelled due to non-payment or has been convicted of an offence involving the illegal use of energy in the previous 2 years.[25]

As can be seen, the framework goes to some length in formalising the opportunities that must be provided to households in order to preserve access (i.e. avoid disconnection). The arrangements provide a systemic approach to identifying customers with a genuine difficulty in paying, and offering a payment plan that reflects their circumstances – all of which must occur before disconnection. The disconnection process itself is covered by Part 6 of the National Energy Retail Rules (NERR).

So, the only customers that should be disconnected are:

- those who do not make contact with their retailer

- those who do make contact but are unable to complete a payment plan

[19] NERL ibid
[20] NERL ibid
[21] NERL ibid
[22] NERL ibid
[23] NERR http://www.aemc.gov.au/retail/national-energy-retail-rules/current-rules.html
[24] NERL op.cit.
[25] NERR http://www.aemc.gov.au/retail/national-energy-retail-rules/current-rules.html

NECF Performance Reporting

In the AER Retail Energy Market Update for the March 2013 Quarter, the AER states:

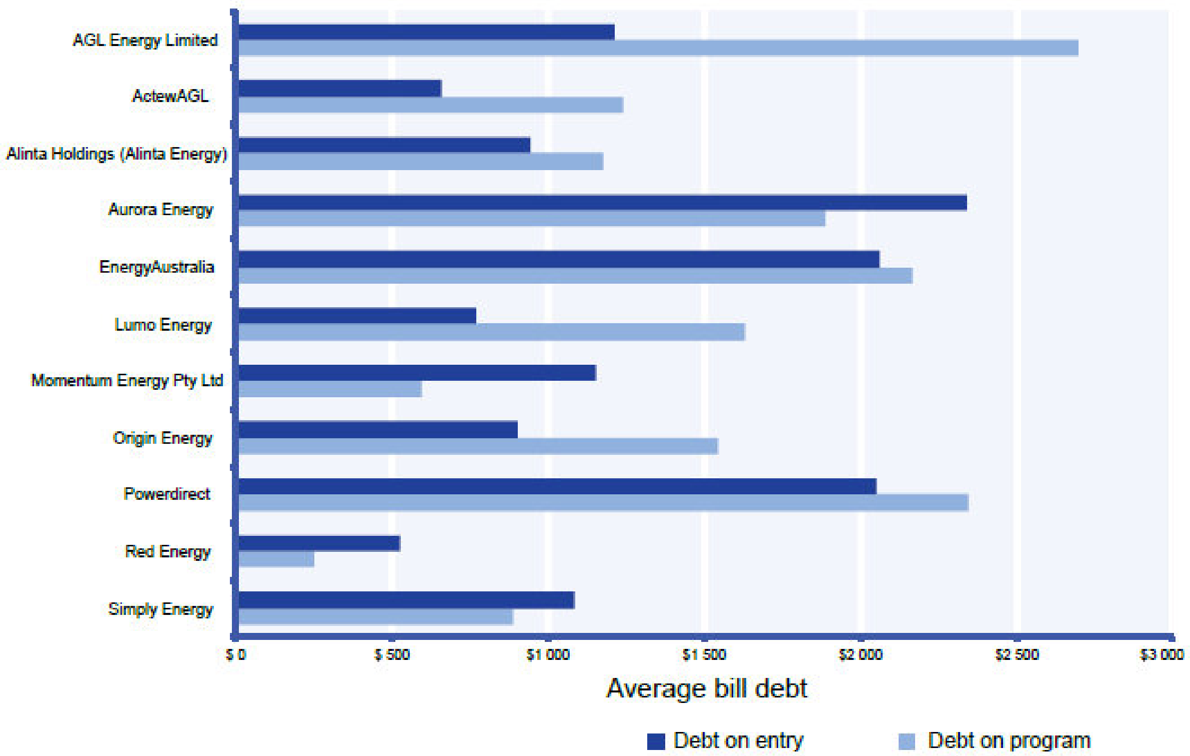
> *"…where a retailer's customer debt levels are lower while on their hardship program than on entry we would consider the program to be effective at helping customers manage their energy bills."*[26]

And further, the AER notes:

> *" … one of the purposes of a hardship program is to assist a customer to reduce debt to a manageable level."*[27]

However, all of the AER reports to date go on to detail how this is not occurring. As shown in the following chart for electricity, Simply Energy is the only significant retailer to show lower levels of debt while on the program. AGL (and Powerdirect), Origin, Alinta, Lumo and (to a lesser extent) Energy Australia all showed debt levels increased while households were participating in the hardship programs. Similar results were obtained for gas and electricity.[28]

Figure 10: Average debt and average debt upon entry for electricity hardship customers (by retailer)



Contrary to some expectations about the role of NECF in reducing the rate of disconnections, the picture which has emerged from the AER Retail Energy Market Updates is that these measures to address financial hardship and stress are extremely limited. This is borne out by the following figures from the AER Retail Energy Market Update for the period to June :

- In addition to those on hardship programs (6,427), 39,626 residential electricity customers (5% of households) had an energy bill debt (i.e. an amount outstanding for more than 90

[26] AER (2013) *Retail Energy Market Update for March Quarter 2012-2013* at http://www.aer.gov.au/node/20862: p.15
[27] AER (2013) *Retail Energy Market Update for March Quarter 2012-2013* at http://www.aer.gov.au/node/20862: p.16
[28] AER (2013) *Retail Energy Market Update for March Quarter 2012-2013* at http://www.aer.gov.au/node/20862: p.14

days). This averaged $700 for a total of $28m (around 2.5% of residential electricity turnover)

- 16,626 residential gas customers (4% of households) had an energy bill debt. This averaged $265 for a total of $4.4m (around 1.8% of residential gas turnover)

- 20,906 electricity customers on a payment plan to pay off arrears represented only 53% of those reported as having an electricity debt

- 6,015 Gas customers on a payment plan to pay off arrears represented only 36% of those reported as having a gas debt

- Of the 6,427 residential electricity customers on hardship programs during the quarter, only 207 households successfully completed a program (3%)

It is clear from this data that hardship programs and payment plans are currently unable to stem the growing rate of disconnections.

Third Party Review

SACOSS is strongly supportive of a mechanism whereby a third party would intercede and test for fairness before an energy disconnection proceeds. SACOSS believes that this new type of review would dramatically reduce the number of households who have their power cut off. The SACOSS objective in proposing third party review is to restrict disconnections to those who can pay but don't, including the 'skippers'. A key principle for SACOSS is that retailers are not the entity best placed to deliver this objective.

While SACOSS believes that the NECF has clearly not delivered the positive outcomes anticipated in terms of stemming the growing rate of disconnections, third party review can be seen as the opportunity to ensure that these disconnected households are made visible to the broader social services (government and non-government) so that the more appropriate interventions already available do in fact occur. Third party review is also an opportunity for retailers to operate in an environment where it is acknowledged that retailers are not expected to have all the answers to supporting people in financial stress.

A review of historical disconnection and reconnection rates would suggest that the 'strike rate' of retailers has not changed over time – around half of all customers who are disconnected subsequently reconnect, regardless of the actual rate of disconnection (which for SA has varied from around 0.7% (2009-10) to over 2% (2003-4). Should we expect to see this ratio change over time if retailers were able to better discriminate those who can't pay vs won't pay?

The Energy Retailer's Association of Australia, the representative organisation of Australia's licensed energy retailers, publishes a hardship policy that outlines the role seen by retailers in this regard:

> *"At any one time there will be members of the community facing financial hardship. This can be either temporary hardship, where someone might be going through a difficult period, or chronic hardship, where people are indefinitely in a financially disadvantaged position. Energy retailers provide hardship programs for people who are having temporary difficulty paying for their energy consumption.*
>
> *Energy retailers accept that some of their customers might not be able to pay their energy bills from time to time. To help these customers out, retailers have support mechanisms to assist customers to manage energy debt. These include payment plans, flexible payment arrangements and advice on how customers can save on their energy bills. While these might assist those in temporary hardship, these support mechanisms alone are not the solution to more chronic hardship.*
>
> *The role of an energy retailer is not to administer social welfare policy: this is a core function of Governments. Hardship is best addressed through comprehensive social welfare policies, because after all, if someone is having difficulty paying their energy bills, then they are also probably having trouble paying their other bills and debts.*
>
> *… Price regulation is not an effective mechanism to protect people facing hardship."*[29]

As can be seen, emphasis is placed on differentiating *temporary* and *chronic* hardship. The implication of this is that there is likely to be a proportion of those disconnected who would meet the retailer's concept of "chronic" hardship and that they have done all they can to help.

AGL Energy, for example, in their latest annual Sustainability Report[30], state:

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[29] ERAA *Hardship Support* at http://eraa.com.au/wp-content/uploads/Hardship_Support.pdf accessed 15.09.13

[30] AGL 2013 Sustainability Performance Report, page 34 available from www.agl.com.au/sustainability

"At the forefront of the challenges associated with assisting customers experiencing financial hardship are the customers for whom hardship is an enduring and long-term systemic issue, with seemingly no foreseeable resolution. It is important that policy makers embrace the shared responsibility model and urgently consider whether the current assistance frameworks – from retailer hardship programs to jurisdictional concessions schemes – are adequately meeting the needs and expectations of the most vulnerable members of the community."

SACOSS does not dispute that retailers are often not the entity best placed to deal with the complex circumstances that can be expected to surround these cases. The third party review mechanism could be seen as the opportunity for retailers to formally demonstrate that this is the case.

The disconnection debate has always focussed on the can't pay vs won't pay. SACOSS believes that the NECF "disconnection as a last resort approach" and mandatory hardship policies deliver better discrimination between these. For SACOSS, this represents a key reason to explore alternatives.

SACOSS believes that the scale of third party review in South Australia is an important consideration. However, SACOSS believes that this should only influence how an alternative approach should proceed not whether or not alternatives should be explored. SACOSS has performed preliminary estimation of the numbers of customers who are likely to require third party review. SACOSS believes that there is a cohort of around 1 - 2,000 households who would represent a priority group for consideration by the third-party review mechanism[31].

This estimation allows for the following target groups: households containing children, households having disability and carer payments as the main source of household income and households who are concession recipients. A conservative estimate would be that at least 1,000 households (at least 1 in 5 of those reconnected) could be expected to fit a reasonable definition of "chronic hardship" and involve children. This can be taken to be indicative of the minimum scale of effort required to better protect these most vulnerable households.

[31] This estimation is based on 2009-10 ESCOSA Annual Market Performance Report data and ABS 6523.0 Household Income and Income Distribution, Australia – Detailed tables, 2011–12.

Percentage based energy concession

The NECF talks about customer hardship and the responsibilities of retailers. The NECF is guided by a principle that disconnection is a last resort and provides protection for customers in the form of mandatory hardship programs and protection from disconnection if customers can stick to a payment plan agreed between customer and retailer. According to the Australian Energy Regulator:

> *Payment plans*
>
> *Ask your retailer for a payment plan—where you pay for your energy in regular agreed amounts (instalments). Your retailer must offer you a payment plan unless you have already been on two or more plans in the last year and did not keep to them.*
>
> *When working out your payment plan instalment amount, your retailer must take into account your capacity to pay (what you can afford to pay each week or fortnight), as well as how much you owe and how much energy you are likely to use over the coming year.*
>
> *Only agree to an instalment amount you can realistically afford, because if you don't stick to the payment plan or skip payments your plan will be cancelled and you could be disconnected. If you do stick to your payment plan, your retailer cannot disconnect you.* (emphasis added)[32]

Disconnection can be initiated by a Retailer when a customer accrues arrears for which they do not demonstrate a willingness or capacity to repay. The concept of a percentage-based concession is relevant insofar as it can contribute to a customer's 'capacity to pay'. And since concession payments are made direct from Government to the retailer it is obviously a critical component in determining 'capacity to pay'. Only retailers are able to provide data on the relationship between disconnections and being in receipt of concessions. ESCOSA have reported such data in the past but stopped due to the unreliability of the information provided by retailers.

Capacity to pay, how this is assessed and how concessions can target this are obviously important components of any alternative approach to disconnections. The main issues with having a flat rate concession regime are that:

- It is blind to the impacts of household size on consumption.
- It is blind to the changing impacts on households as prices rise.

For these reasons, SACOSS recommends the introduction of a percentage based energy concession.

[32] AER webpage "Experiencing trouble paying your energy bills?" www.aer.gov.au/consumers/my-energy-bill/problems-paying accessed 15.09.2013