

# REVIEW OF ENERGY REGULATORY INFORMATION ENERGY INDUSTRY GUIDELINE NO. 2 FINAL DECISION

**June 2010**





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# 1 INTRODUCTION

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## 1.1 *Background*

Energy Regulatory Information (Energy Retail Code Retailer) – Energy Industry Guideline No 2 (Guideline 2) is made by the Essential Services Commission of South Australia (the Commission) and provides for the collection, allocation and recording of business and operational performance data on a quarterly basis from energy retailers selling gas and/or electricity to, generally speaking, small customers. It covers a range of information requirements specified by the Commission.

Guideline 2 details the:

- ▲ nature of information that the Commission requires in order to monitor retailer performance; and
- ▲ mechanism by which that and any other information that may be required by the Commission to fulfil its functions and obligations, may be collected.

Guideline 2 does not deal with the reporting of compliance by a licensed retailer. That is dealt with separately by Compliance Systems and Reporting – Energy Industry Guideline No. 4 (Guideline 4). Guideline 4 outlines the Commission's expectations and requirements in relation to a retailer's compliance system and compliance reporting arrangements.

In furtherance of the Commission's objectives, in particular, the protection of the long-term interests of South Australian consumers, data collected under Guideline 2 is primarily used by the Commission to monitor and promote improvement in standards and conditions of service under the Energy Retail Code and promote economic efficiency. The data collected under Guideline 2 also forms an important input into the Commission's Annual Performance Report.

Based on stakeholder feedback and Commission requirements, the Commission has recently undertaken a review of the structure, format and content of Guideline 2 and proposed a series of amendments. The purpose of the review is to ensure that appropriate data are obtained to allow the Commission to perform its functions, without unduly burdening retailers through this process.

The amended version of Guideline 2 will become effective from 1 July 2010 to capture the 2010/2011 operational performance reporting period.

## **1.2 Purpose of this Paper**

The Commission released its Draft Decision<sup>1</sup> seeking comments on the proposed amendments to Guideline 2 on 10 May 2010, with submissions due 28 May 2010.

The Commission received submissions from:

- ▲ AGL Energy;
- ▲ Energy Retailers Association of Australia;
- ▲ Simply Energy; and
- ▲ TRUenergy.<sup>2</sup>

The Commission has reviewed the submissions and, taking into account the issues raised in response to the Draft Decision, the Commission now releases this Final Decision. The submissions made in response to the Draft Decision are being released together with this Final Decision.

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<sup>1</sup> Available on the Commission's website at <http://www.escosa.sa.gov.au/library/100510-EnergyGuidelineNo2Review-DraftDecision.pdf>

<sup>2</sup> Refer <http://www.escosa.sa.gov.au/projects/134/review-of-energy-guideline-no-2-2010.aspx>.

## 2 KEY ISSUES

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The Commission's amendments to Guideline 2 are largely structural aiming to make the guideline more logical and easier to understand, thereby reducing the regulatory burden felt by retailers. This includes:

- ▲ clarifying the timing and methodology of current reporting requirements;
- ▲ removing redundant or obsolete metrics;<sup>3</sup>
- ▲ providing for the annual data collection requirements from retailers that sell to large market customers only; and
- ▲ improving the defined terms and consolidating them within the Glossary.

In addition, the revised Guideline 2 clarifies the Commission's current process for using the Commission's online data reporting system and for submitting data variations using the Commission's data variation template (Appendices 2 and 3).

The Commission also proposed the introduction of several new 'hardship indicator' reporting metrics in its Draft Decision. Having regard to the submissions received, the Commission has decided not to proceed with that proposal. The issues raised in the submissions and the Commission's responses are provided in section 2.6 and Appendix 1.

The Commission's final decisions in relation to the other proposed amendments are provided in the remainder of this chapter. The Commission will adopt its proposed amendments where no submissions were received to the contrary.

### 2.1 *National consistency*

The proposed new National Energy Retail Law (NERL), National Energy Retail Rules (NERR) and Regulations being implemented as part of the National Energy Customer Framework (NECF)<sup>4</sup> will transfer non-price distribution and retail regulatory functions from state and territory jurisdictions to the Australian Energy Regulator (AER) (except in Western Australia and the Northern Territory in respect of electricity). It is expected that some of the Commission's operational performance monitoring functions will transfer to the AER on an incremental basis from the middle of 2011.<sup>5</sup>

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<sup>3</sup> As a result of the Commission's review of Guideline 2, a small number of metrics recommended by the Utility Regulators Forum Steering Committee on National Regulatory Reporting Requirements (SCONRRR) Retail Working Group have been removed from the guideline due to lack of relevance and/or usefulness to the Commission's ongoing reporting requirements. The SCONRRR Retail Working Group noted in the Final Decision paper that efforts were made to limit the extent of any changes until a more thorough review could be undertaken by the national regulatory bodies (the AER and the AEMC). Refer <http://www.accc.gov.au/content/item.phtml?itemId=779487&nodeId=e759ad6cf20f258b73c09820458d62c7&fn=National%20Energy%20Retail%20Performance%20Indicators%20-%20Utility%20Regulators'%20Forum%20-%20May%202007.pdf>.

<sup>4</sup> Refer *National Energy Customer Framework, Second Exposure Draft*, Ministerial Council on Energy Retail Policy Working Group, available [http://www.ret.gov.au/Documents/mcel\\_documents/NECF%20Package%20-%20Second%20Exposure%20Draft.pdf](http://www.ret.gov.au/Documents/mcel_documents/NECF%20Package%20-%20Second%20Exposure%20Draft.pdf).

<sup>5</sup> Refer Australian Energy Regulator's Future Retail Functions, available <http://www.aer.gov.au/content/index.phtml/itemId/730412>.

The AER has commenced preliminary consultation on various retail guidelines relating to its expected new functions.

The AER released an Issues Paper on the development of National Hardship Indicators in April 2010, with submission closing on 4 June 2010.<sup>6</sup> The AER's Issues Paper noted that the proposed NERL specifies that the National Hardship Indicators must cover:

- ▲ Entry into hardship programs;
- ▲ Participation in hardship programs; and
- ▲ Assistance available to and provided to customers under customer hardship policies.

The AER further noted that the National Hardship Indicators would form part of the AER's wider performance reporting regime. The AER is expecting its performance reporting regime to cover retailers' performance in a number of areas, including:

- ▲ Disconnections and reconnections;
- ▲ Customer service and customer complaints;
- ▲ Pre-payment meters;
- ▲ Concessions; and
- ▲ Security deposits.

The Commission understands that the AER has foreshadowed the release of a further consultation process in relation to its proposed approach to performance reporting in June 2010.<sup>7</sup>

### 2.1.1 Submissions received

The submissions received all advocated for minimal changes to the Commission's current reporting regime.

AGL submitted that it:

*... strongly endorses and would like to move towards national consistency in the energy market. AGL has reviewed Guideline No. 2 and acknowledges that the proposed amendments to the current reporting guidelines are, for the most part, not inconsistent with those set out in the NECF. Having said this, however, there are some differences between the reporting requirements and for this reason, in order to achieve the goal of national consistency, AGL would prefer to see the*

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<sup>6</sup> Refer *National Hardship Indicators: Issues Paper*, AER, available <http://www.aer.gov.au/content/item.phtml?itemId=736029&nodeId=80a26bca5a0553184da0031a56a6a1e4&fn=Issues%20Paper%20%E2%80%93National%20Hardship%20Indicators.pdf>.

<sup>7</sup> Refer <http://www.aer.gov.au/content/index.phtml/itemId/730415>.



*Commission wait for the NECF reporting requirements to be implemented, rather than proceed at this time with amendments to the South Australian regime.<sup>8</sup>*

Similarly, the ERAA submitted that:

*...in general, any changes to energy regulatory information guidelines or similar requirements ought to be as consistent as possible with the forthcoming National Energy Customer Framework. Based on today's informal consultations by the AER with hardship stakeholders, it's clear that there is not yet consensus on what constitute valid performance indicators in this area.<sup>9</sup>*

Simply Energy submitted that it:

*...was concerned about the addition of a number of new KPIs (e.g. customer debt levels, hardship indicators, credit and collection complaints), given the pending move to national regulation of energy retailing. The Australian Energy Regulator (AER) will shortly consult on KPI reporting arrangements to apply under the National Energy Customer Framework (NECF) from 2011 onwards.*

*Increased jurisdictional reporting requirements at this stage in the transition to national regulation are, in Simply Energy's view, undue – the costs of establishing new reporting processes do not appear justified by the benefits to the Commission in receiving, for example, one full year of KPIs prior to KPI reporting falling within the remit of the AER. In such a scenario, the Commission would not be able to make meaningful comparisons such as performance in one quarter compared to the corresponding quarter in previous years.<sup>10</sup>*

TRUenergy submitted that:

*Given the National Energy Customer Framework (NECF) is due to commence in 2011, TRUenergy does not see the benefit of implementing the proposed changes to Guideline 2 prior to the new Framework coming into operation. To this end, TRUenergy would note that the AER is in the process of consulting on the drafting of guidelines for the NECF on hardship, compliance and performance monitoring. As such TRUenergy is concerned that Guideline 2 may end up being inconsistent with the NECF if it is finalised prior to the AER completing its consultation on the above guidelines.<sup>11</sup>*

## 2.1.2 Commission's response

It is important to recognise that the AER's current consultation program on its future retail functions is in its early stages. The main discussion in the publicly released Issues Papers is primarily concerned with the AER's high-level approach to its future retail functions, based on the second exposure draft of the NECF and thus may change once the national legislation is passed.

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<sup>8</sup> AGL submission, <http://www.escosa.sa.gov.au/library/100528-EnergyGuidelineNo2Review-DraftDecision-Submission-AGL.pdf>, p. 1.

<sup>9</sup> ERAA submission, <http://www.escosa.sa.gov.au/library/100528-EnergyGuidelineNo2Review-DraftDecision-Submission-ERAA.pdf>, p.1.

<sup>10</sup> Simply Energy submission, <http://www.escosa.sa.gov.au/library/100528-EnergyGuidelineNo2Review-DraftDecisionSubmission-SimplyEnergy.pdf>, p. 1.

<sup>11</sup> TRUenergy submission, <http://www.escosa.sa.gov.au/library/100528-EnergyGuidelineNo2Review-DraftDecisionSubmission-TRUenergy.pdf>, p.1.

The AER has publicly noted that its preliminary consultation is not intended to replace the formal consultation required by the NERL and NERR. Rather, the AER's preliminary consultation is aimed at assisting the AER to prepare its guidelines once it is formally empowered to do so later in 2011.

In light of the submissions received and the AER's current consultation process, the Commission's amendments to Guideline 2 will be more limited than previously proposed at this time. The outcomes of the AER's current consultation processes on National Hardship Indicators and Retail Market Performance Reporting will be of increasing relevance to the Commission's performance monitoring role during the transitional period. While it is too soon for the Commission to modify its current Guideline 2 in line with the AER's proposals, the Commission will continue to actively monitor the AER's developments over 2010/11.

#### **FINAL DECISION 1.**

The Commission's final decision is to limit the introduction of any new reporting metrics during the development of the NECF, NERL and NERR. The Commission will continue to actively monitor the AER's consultation processes during the transitional period.

## **2.2 Clause 2.5 - Responsibility Statement**

The Commission requires retailers to provide a signed Responsibility Statement to accompany the quarterly Guideline 2 data. The Responsibility Statement provides the Commission with an assurance from the retailer that the operational performance reporting data being submitted:

- ▲ has been prepared in a manner that meets the requirements of Guideline 2;
- ▲ presents fairly and accurately all information concerning operational performance as required by clause 2 of the Energy Retail Code;
- ▲ contains a fair and accurate description of, and reasons for:
  - ▲ all marked deteriorations in operational performance (including all failures to meet service standards in accordance with the Energy Retail Code); and
  - ▲ all significant variations in the data from one period to the next or from this reporting period to the same period last year; and
- ▲ contains information concerning plans to improve performance (where required) so as to meet the service standards set out in clause 2 of the Energy Retail Code.

Quarterly Guideline 2 reports must be accompanied by a Responsibility Statement signed by either the retailer's CEO or a senior officer as agreed by the Commission in writing. The annual Guideline 2 report must be accompanied by a Responsibility Statement signed by the retailer's CEO (or equivalent).

### 2.2.1 Submissions received

AGL raised a question in relation to increased flexibility for the annual sign-off requirements for Responsibility Statements, submitting that:

*Within its Annual Responsibility Statement, AGL currently provides the Commission with the signature of one of its senior officers. This officer is AGL South Australia Pty Ltd's equivalent of a Chief Executive Officer. AGL and the Commission have mutually consented to this arrangement however there is no provision within Guideline 2 expressly allowing this. We encourage the inclusion of a clause similar to that existing for quarterly Responsibility Statements, which would allow the signatory requirement to be varied by written agreement for an Annual Responsibility Statement. This would be especially valuable where there is no Chief Executive Officer for a reporting entity.<sup>12</sup>*

### 2.2.2 Commission's response

The Commission must be confident that the data provided by retailers have been verified, are accurate and can be relied upon by the Commission in furtherance of its statutory objectives. It is for this reason that each submission of Guideline 2 performance data must be accompanied by a responsibility statement. The Commission must have a high degree of assurance that the retailer's operational performance data provides a true reflection of the retailer's performance.

It is the Commission's expectation that a retailer has performed the appropriate quality assurance checks on its performance reporting data prior to it being submitted to the Commission.

The Commission notes that, from an operational perspective, obtaining CEO certification increases the time taken for the submission of Guideline 2 performance reports. However, such certification and authorisation ensures that management responsibility is imposed at a clear, discernible and high level by someone with sufficient authority within the licensed retailer's company.

There is also a direct legal implication of having this obligation placed on the CEO (or equivalent). Company officers and directors owe duties to the company, including that they exercise due care and skill. If they fail in these duties, they may be personally liable for pecuniary penalties (civil fines) or damages. These duties exist both in common law and under the *Corporations Act 2001*.

The Commission provides retailers with one calendar month after the completion of the relevant quarterly reporting period to allow retailers time to undertake this internal checking and obtain the appropriate sign off.

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<sup>12</sup> AGL, p. 2.

In recognition of the importance of obtaining CEO (or equivalent) certification of data submitted under Guideline 2 on an annual basis, the Commission allows two calendar months for finalisation of the annual Guideline 2 data submission.

Accordingly, the Commission will amend the proposed clause 2.5 so that the sign-off provisions are consistent with that contained in clause 3.5.2 of Guideline 4. The Commission notes that the Guideline 2 provisions relating to Responsibility Statements simply clarify retailer's current obligations.

#### FINAL DECISION 2.

The Commission's final decision is to amend Guideline 2 in the following manner:

1. Delete proposed clause 2.5 and replace with the following:

**2.5 Responsibility Statement**

2.5.1 A *licensee* is required to provide a *responsibility statement* (in the form specified in Operational Performance Proforma OP6) evidencing responsibility for information provided to the *Commission*.

2.5.2 The annual *responsibility statement* must be signed and dated by:

- (a) the Chief Executive Officer of the *licensee*;
- (b) a person holding an equivalent position to Chief Executive Officer of the *licensee*;
- (c) a person to whom the Board of the *licensee* has formally delegated the exercise of the power and functions of the *licensee* at a level equivalent to that held by a Chief Executive Officer; or
- (d) the person acting as Chief Executive Officer or equivalent position during an absence of the substantive office-holder.

2.5.3 A quarterly *responsibility statement* may be signed and dated:

- (a) in accordance with clause 2.5.2; or
- (b) by a senior officer other than the Chief Executive Officer, as agreed in writing with the *Commission*.

2.5.4 A *responsibility statement* will be taken as evidence that the data provided by the *licensee* has been verified, is accurate and can be relied upon by the *Commission* in furtherance of the *Commission's* statutory objectives.

### 2.3 Proforma OP2 – Time to Respond to Written Enquiries

Clause 2.2 of the Commission's Energy Retail Code provides that a retailer must use its best endeavours to respond to:

- ▲ 85% of telephone calls within 30 seconds (between 8 am and 6 pm on business days); and
- ▲ 95% of written enquires within 5 business days,

during each financial year.

Clause 2.2.1(b) of the Energy Retail Code provides that a retailer must keep sufficient records to monitor its performance level against these service standards and to provide the Commission with relevant information. The Commission collects this information under OP2 of Guideline 2.

### 2.3.1 Submissions received

TRUenergy sought clarification on the correct interpretation of the 5 business day requirement, submitting that:

*...the Commission needs to clarify if the day on which the correspondence is received is counted as day zero and that the retailer would therefore need to respond within seven actual days (five business days) after receiving the correspondence.<sup>13</sup>*

### 2.3.2 Commission's response

The Commission confirms that day on which the written enquiry is received by the retailer is counted as day zero. The first full day after the correspondence is received is counted as business day one. This definition of business days is in accordance with Section 36 of the *Acts Interpretation Act 1901* which provides:

**36 Reckoning of time**

- (1) *Where in an Act any period of time, dating from a given day, act, or event, is prescribed or allowed for any purpose, the time shall, unless the contrary intention appears, be reckoned exclusive of such day or of the day of such act or event.*
- (2) *Where the last day of any period prescribed or allowed by an Act for the doing of anything falls on a Saturday, on a Sunday or on a day which is a public holiday or a bank holiday in the place in which the thing is to be or may be done, the thing may be done on the first day following which is not a Saturday, a Sunday or a public holiday or bank holiday in that place.*

#### FINAL DECISION 3.

The Commission's final decision is to amend Guideline 2 by adding the following clarifying note in Proforma OP2:

**1. Proforma OP2 – Time to Respond to Written Enquiries**

6. The business day on which the written enquiry is received is taken to be 'day zero'.

## 2.4 Proforma OP3 – Timeliness of Appointments

Retailers are currently required to report on several metrics related to the timeliness of appointments it schedules with customers.

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<sup>13</sup> TRUenergy submission, p. 2.

## 2.4.1 Submissions received

AGL submitted that it is:

*...unable to justify the requirement to report on the 'Total number of late appointments'. Given ETSA's refusal to allow AGL or other retailers to book appointments, we consider this reporting requirement to be redundant. AGL does not conduct personal meetings with customers or their representatives and we consistently report no data in this area. AGL recommends the removal of this requirement as it is irrelevant and not applicable to retailers in South Australia.<sup>14</sup>*

## 2.4.2 Commission's response

The Commission notes that no retailers currently report against these metrics. However, at the time of reform of the electricity and gas markets, the South Australian Parliament sought to retain the minimum service standards provided to South Australian consumers in the period prior to privatisation of the State's assets.

Section 24(2)(i) of the Electricity Act provides:

- (2) *The Commission must make a licence authorising the retailing of electricity subject to conditions determined by the Commission—*
  - (i) *requiring the electricity entity to comply with code provisions as in force from time to time (which the Commission must make under the Essential Services Commission Act 2002) imposing minimum standards of service for customers that are at least equivalent to the actual levels of service for such customers prevailing during the year prior to the commencement of this section and take into account relevant national benchmarks developed from time to time, and requiring the entity to monitor and report on levels of compliance with those minimum standards.*

This requirement is encapsulated in clause 8 of the standard form contract provided in Part B and Part C of the Energy Retail Code,<sup>15</sup> which provides the following requirement in relation to appointments:

### **8 Appointments**

*We will do our best to be on time for any appointment with you. Unless due to circumstances beyond our reasonable control, if we are more than 15 minutes late we will credit your next bill with \$20 (including GST) and phone you to apologise.*

However, in light of the representations that retailers do not routinely make appointments with customers, the Commission will remove this reporting metric from Guideline 2. The Commission notes that the removal of this metric will result in consequential renumbering of the remaining sections of Guideline 2.

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<sup>14</sup> AGL, p. 2.

<sup>15</sup> The standard terms and conditions customer sale contracts provided in Parts B and C of the Energy Retail Code are published in accordance with section 36 of the *Electricity Act 1996* and section 34 of the *Gas Act 1997*.

**FINAL DECISION 4.**

The Commission's final decision is to remove Proforma OP3 – Timeliness of Appointments.

## **2.5 Proforma OP4 – Statistical Information – Part B. Customer Service**

The Commission regards the level of complaints directed to energy retailers as an important part of monitoring customer service levels. The types and levels of complaints can provide an insight into an energy retailer's approach to dealing with customer enquiries and concerns in relation to their energy service. Energy retailers are required by the Energy Retail Code to have in place complaints handling procedures, outlining the way customer complaints are dealt with, and the internal escalation process if customers are not satisfied with the way their energy retailer handles their complaint.<sup>16</sup>

Retailers must also participate in an Industry Ombudsman Scheme so that complaints that cannot be satisfactorily resolved by the retailer can be escalated to an independent dispute resolution body.<sup>17</sup> The Energy Industry Ombudsman currently provides an independent, free dispute resolution service to South Australian residential and business electricity and gas customers.<sup>18</sup>

In addition to the complaints statistics reported by energy retailers under Guideline 2, the Commission also monitors the total number of complaints received by the Energy Industry Ombudsman to provide further insight into the level and type of customer complaints. Such an indicator provides an overview of the effectiveness of energy retailers' internal complaints handling procedures and gauge customer awareness of the Energy Industry Ombudsman scheme.

The Commission currently requires retailers to report on four categories of complaints directed to energy retailers: billing, marketing, transfer and all other complaints.

In its Draft Decision, the Commission proposed to introduce:

- ▲ “credit and collection complaints” as a new complaint category across each fuel type; and
- ▲ Complaints directed to the Energy Industry Ombudsman, by each category.

### **2.5.1 Submissions received**

In relation to the introduction of a new “credit and collections” complaint category, AGL submitted that:

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<sup>16</sup> In accordance with clause 3.2.1(f) of the Energy Retail Code, licensees must establish complaint handling and dispute resolution procedures in accordance with AS ISO 10002-2006.

<sup>17</sup> Refer clause 3.2.1(e) of the Energy Retail Code.

<sup>18</sup> <http://www.eiosa.com.au/>.

*No other state is specifically required to report on 'Credit and Collection' complaints and there is no indication that retailers will be required to report on this complaint type as part of the NECF. As this addition is not consistent with practises in other states or the proposed NECF, we do not consider making temporary changes to the current processes in South Australia or to AGL's systems would be valuable. AGL considers that maintaining national consistency would be of great benefit.<sup>19</sup>*

In relation to dual fuel complaints, AGL sought clarification around the reporting requirements for these metrics. AGL submitted that:

*It is our understanding that a complaint is to be flagged as "Dual Fuel" when a customer who has both fuels with us, is complaining about both fuels. If this customer had fuels with separate retailers and made a complaint to both retailers, this would be reported to the Commission as 2 separate complaints. If, however, the complaints were made to the same retailer, it would be reported as 1 'dual fuel' complaint. We consider this requirement has the potential to skew complaint reporting data if not recorded, provided or interpreted accurately. We consider that reporting complaint data for each fuel separately would achieve the same aim without further complicating the process.<sup>20</sup>*

TRUenergy noted that if the new complaints categories were introduced by the Commission it would need a minimum of two weeks notice prior to the start of the reporting period to implement the changes.

## 2.5.2 Commission's response

The Commission notes the comments made in relation to the introduction of the new "credit and collections" complaints category. For the reasons outlined in 2.1 above, the Commission will not introduce this new complaint category at this time.

In relation to AGL's query about the reporting requirements for dual fuel customers, the Commission recognises the potential for undue complication in accurately capturing and reporting on this metric and will therefore delete the dual fuel complaints metric.

The Commission did not receive any specific comments opposing the introduction of Part B.4 Complaints – Industry Ombudsman Complaints; other than general comments related to minimising reporting changes prior to the introduction of the NECF.

As previously noted, the Commission currently receives complaint data from the Energy Industry Ombudsman. The complaint data recorded by the Energy Industry Ombudsman showed a significant increase in the level of electricity complaints between 2007/08 and 2008/09. However, what is of most significance is the fact that while the total increase in the complaint levels reported by electricity

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<sup>19</sup> AGL, p. 2.

<sup>20</sup> Ibid.



retailers has increased approximately 50% over the period, the level of electricity complaints reported by the Energy Industry Ombudsman has approximately doubled.

It is the Commission's view that it is unlikely that the data reported by either electricity retailers or the Energy Industry Ombudsman in this area is significantly in error. As a result, the most probable explanation is that electricity retailers, or some electricity retailers, are less than adequately dealing with complaints and disputes internally, resulting in escalation to the Energy Industry Ombudsman to a degree previously not seen. If correct, this is a concerning trend and would be indicative of a failure by electricity retailers to properly utilise internal processes to provide the necessary redress to their customers.

Accordingly, to allow the Commission to monitor this situation more closely during the transitional period, Guideline 2 will be amended to introduce a new Energy Industry Ombudsman complaints reporting metric. As discussed above, clause 3.2.1(e) of the Energy Retail Code requires retailers' complaints and dispute resolution procedures to include a process for referral to the Energy Industry Ombudsman where a retailer is not able to satisfactorily resolve a complaint itself. This new Energy Industry Ombudsman complaints metric will capture the referrals under clause 3.2.1(e).

**FINAL DECISION 5.**

The Commission's final decision is to amend Guideline 2 in the following manner:

1. existing Proforma OP4 becomes new Proforma OP3;
2. remove existing OP4 - Part B Complaints: Dual Fuel; and
3. introduce the proposed OP4 – Part B Complaints: Energy Industry Ombudsman Complaints as the new OP3 – Part B to collect the total number of complaints a retailer has had to refer to the Energy Industry Ombudsman, by both electricity and gas, in accordance with clause 3.2.1(e) of the Energy Retail Code.

## ***2.6 Proforma OP4 – Statistical Information – Part C. Payment Difficulties***

Guideline 2 currently requires retailers to report on several of the Energy Retail Code provisions relating to consumer protection arrangements for customers experiencing payment difficulties. These metrics are deemed to be most likely to indicate that a retailer's customers are experiencing payment difficulties (or, "hardship indicators").

The Commission's proposed changes to the hardship indicators, the submissions made in relation to each and the Commission's final decisions are summarised in Appendix 1.

The Commission notes the representations made in relation to the AER's current consultation process on the establishment and introduction of a National Hardship Indicators guideline.<sup>21</sup> The Commission will continue to closely monitor these developments with a view to reconsidering its positions once the process for implementation of the NECF and the AER's guideline becomes clearer.

The Commission notes AGL's comments in relation to the lack of regulation around hardship programs in South Australia and makes the following comments.

The Commission's Energy Retail Code<sup>22</sup> contains several provisions relating to retailers' obligations in relation to residential customers in financial hardship. Clause 7.6 of the Energy Retail Code provides that where a residential customer informs its retailer in writing or by telephone that it is experiencing payment difficulties, the retailer must offer that customer an instalment plan which complies with clause 7.7, as soon as is reasonably practicable.

There is also a positive obligation on retailers to have in place credit management systems and processes sufficient to allow it to identify any of its residential customers experiencing payment difficulties.

In addition, a retailer must provide information (free of charge) about:

- ▲ the customer's right to have a bill redirected to a third person, as long as that third person consents in writing to that redirection;
- ▲ State Government assistance programs (and referral to those programs); and
- ▲ independent financial and other relevant counselling services.

Clause 7.7 of the Energy Retail Code provides the minimum requirements for customers seeking to pay their energy bills by instalments.

A retailer must offer residential customers at least the following payment options:

- ▲ a system or arrangement under which a residential customer may make payments in advance towards future bills;
- ▲ an interest and fee free instalment plan or other arrangement under which the residential customer is given more time to pay a bill or to pay arrears (including any disconnection or reconnection charges).<sup>23</sup>

A retailer may require a residential customer to pay by instalments in advance if the residential customer is in arrears or as an alternative to the customer paying a security deposit.<sup>24</sup>

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<sup>21</sup> Refer *AER Future Retail Functions: National Hardship Indicators Issues Paper*, Australian Energy Regulator, <http://www.aer.gov.au/content/index.phtml/itemId/736022>.

<sup>22</sup> Refer <http://www.escosa.sa.gov.au/library/091221-EnergyRetailCode-ERC02.pdf>.

<sup>23</sup> Clause 7.7.1.

<sup>24</sup> Clause 7.7.2.

A retailer does not have to offer a residential customer an instalment plan if the customer has had two instalment plans cancelled due to non-payment in the previous 12 months. In such a case, the retailer is only required to offer another instalment plan if the retailer is reasonably satisfied that the customer will comply with the new instalment plan.<sup>25</sup>

When offering an instalment plan, a retailer must:

- ▲ in determining the period of the plan and calculating the amount of the instalments, take into account information from the residential customer about that customer's usage needs and capacity to pay;
- ▲ specify the period of the plan;
- ▲ specify the number of instalments (not less than 4, unless the residential customer agrees otherwise);
- ▲ specify the amount of the instalments which will pay the residential customer's arrears (if any) and estimated usage during the period of the plan;
- ▲ state how the amount of the instalments is calculated;
- ▲ state that due to seasonal fluctuations in the residential customer's usage, paying by instalments may result in the residential customer being in credit or debit during the period of the plan;
- ▲ monitor the residential customer's compliance with that plan; and
- ▲ have in place fair and reasonable procedures to address payment difficulties a residential customer may face while on the plan.<sup>26</sup>

The Commission further considered the nature of retailers' hardship programs in South Australia in exercising its discretion to determine "a class of persons who are experiencing hardship" for the purposes of the Residential Energy Efficiency Scheme (REES).<sup>27</sup> The Commission considered submissions received from all REES-obliged retailers, as well as other relevant documentation, to distil the common elements of retailers' hardship programs to form a set of basic principles (or minimum requirements) required for a hardship program to be considered valid for the purposes of the REES. As a result of this analysis the Commission determined that, for the purposes of the REES Code, a retailer's hardship program must, as a minimum:

- ▲ have a clearly defined entry and exit point of which the residential customer is advised in writing upon entering the program;
- ▲ protect the participating residential customer from credit collection action and disconnection;
- ▲ have a specialised team within the retailer to support participating residential customers;

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<sup>25</sup> Clause 7.7.3.

<sup>26</sup> Clause 7.7.4.

<sup>27</sup> Refer Regulation 7AE of the *Electricity (General) Regulations 1997* and Regulation 8DB of the *Gas Regulations 1997*.

- ▲ offer residential customers flexible payment arrangements that have regard to the residential customer's usage, capacity to pay and current financial situation; and
- ▲ provide additional support to residential customers through referral to third party support agencies, applicable Commonwealth and State government concessions and access to energy efficiency advice.

Thus, while the Commission does not currently prescribe the form of a retailer's hardship program, or formally approve a retailer's hardship program, as is the case in some jurisdictions, there are clear minimum requirements on retailers to provide customers in financial hardship assistance with managing their current and future energy bills to avoid disconnection for non-payment.

The Commission notes AGL's submission that:

*The statistics could not be used as a comparison tool given the vast differences between hardship programs of different retailers.<sup>28</sup>*

The Commission is of the view that a purely statistical reporting approach to measure the success or otherwise of a retailer's hardship program is not sufficient. Reporting in this area should focus on the success of a retailer's hardship program in meeting the requirements of the consumer protection measures provided in the Commission's Energy Retail Code.

Accordingly, the Commission will remove several of its previous hardship indicator metrics, (as outlined in Appendix 1), and instead introduce an annual hardship program reporting requirement for retailers. The annual Hardship Program Report would need to include:

- ▲ a description of the retailer's systems and processes for ensuring compliance with clauses 7.6 and 7.7 of the Energy Retail Code, including (but not limited to):
  - ▲ the manner in which residential customers are identified as being in financial difficulty through its credit management processes;
  - ▲ the way in which customers are educated/made aware of their ability to request access to a retailer's hardship program;
  - ▲ the information provided to customers once they have been identified as eligible to enter the retailer's hardship program;
  - ▲ the method for calculating a customer's capacity to pay;
  - ▲ the method for calculating the amount of the instalments to be paid by the customer;
  - ▲ the method for calculating a customer's future energy usage, and how they can pay for that usage in the future;

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<sup>28</sup> AGL, p. 3.

- ▲ how the retailer monitors the customer's compliance with the payment plan and how payment difficulties the customer may face while on the plan are dealt with; and
- ▲ an assessment of the effectiveness of the retailer's current hardship program for customers, including (but not limited to):
  - ▲ the number of customers that have entered the hardship program through self-identification;
  - ▲ the number of customers that have entered the hardship program through identification by the retailer; and
  - ▲ the number of hardship program customers that have entered a payment plan and successfully exited the plan by returning to the normal collection cycle of the retailer (during that financial year).<sup>29</sup>

As submitted by AGL:

*There is also no way of determining the success of a particular customer's program, other than via the retailer's own criteria.*<sup>30</sup>

Accordingly, the Commission would expect retailers to already be collecting the above information for its own internal hardship program monitoring and reporting purposes and thus the annual Hardship Program Reporting Statement should not pose a significant additional regulatory burden.

The Commission will consult further with retailers on the final requirements for the annual Hardship Program Reporting Statement in the second half of calendar year 2010.

#### FINAL DECISION 6.

The Commission's final decision is to amend Guideline 2 in the following manner:

1. existing Proforma OP4 becomes new Proforma OP3;
2. OP3 – Part C. Payment Difficulties
  - 1.1 Number of instalment payment plans operating in relation to residential customers and small business customers (clauses 7.6 and 7.7);
  - 1.2 Number of direct debit plan terminations as a result of default/no payment, in relation to residential customers and small business customers (clause 7.10);
  - 1.3 Number of residential customers and small business customers paying by direct debit (clause 7.3);

<sup>29</sup> Refer EIOSA submission to the AER National Hardship Indicators Issues Paper, available <http://www.aer.gov.au/content/item.phtml?itemId=737096&nodeId=3ed1e197f709e99db42246da9bbc2b55&fn=Submission%20-%20National%20hardship%20indicators%20-%20EIOSA.pdf>.

<sup>30</sup> AGL, p. 3.

- 1.4 Number of residential customers in receipt of an energy concession;
  - 1.5 Number and value of security deposits held by residential customers and small business customers (clause 8.1);
  - 1.6 Number of disconnections of residential customers and small business customers due to a failure to pay amount due (clause 9);
  - 1.7 Number of reconnections of residential customers and small business customers at the same premises in the same name within 7 days of disconnection due to a failure to pay amount due (clause 10.1);
  - 1.8 Number of residential customers participating in a retailer's hardship program.
- 3. Introduce a new annual Hardship Program Reporting Statement to apply during the NECF and AER guideline development transitional period.**

### **3 NEXT STEPS**

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The changes to Guideline 2 set out in the Commission's Final Decision will take effect from **1 July 2010**. An amended version of Guideline 2 will be released on the Commission's website concurrently.





## APPENDIX 1: PROFORMA OP4 – PART C. PAYMENT DIFFICULTIES

EXISTING INDICATOR	PROPOSED INDICATOR	SUBMISSIONS	COMMISSION'S RESPONSE	INDICATORS TO APPLY FROM 1 JULY 2010
<b>INSTALMENT PLANS</b>				
Number of instalment payment plans operating in relation to residential customers and small business customers (clauses 7.6 and 7.7)	Unchanged	Nil	This metric remains important. Current reporting requirement to remain.	Number of instalment payment plans operating in relation to residential customers and small business customers (clauses 7.6 and 7.7)
	Number of instalment payment plans in relation to residential customers and small business customers where the customer has defaulted on the agreed payment arrangement and been removed from the instalment plan	<p><u>AGL:</u></p> <ul style="list-style-type: none"> <li>Not been proposed in NECF;</li> <li>Not a requirement in any other state;</li> <li>A range of reasons customers default on instalment plans, most of which directly relate to the customer's circumstances;</li> <li>Without being provided with the specific reason for the default, the Commission would have no visibility of the effectiveness of the instalment plan process for each retailer.</li> </ul> <p><u>TRUenergy:</u></p> <ul style="list-style-type: none"> <li>Does not have the capability to report on this metric;</li> <li>Would require at least 12 months to report this information by state.</li> </ul>	The Commission will not introduce this metric at this time.	Nil

EXISTING INDICATOR	PROPOSED INDICATOR	SUBMISSIONS	COMMISSION'S RESPONSE	INDICATORS TO APPLY FROM 1 JULY 2010
<b>DIRECT DEBITS</b>				
Number of direct debit plan terminations as a result of default/no payment, in relation to residential customers and small business customers (clause 7.10)	Unchanged	Nil	This metric remains important. Current reporting requirement to remain.	Number of direct debit plan terminations as a result of default/no payment, in relation to residential customers and small business customers (clause 7.10)
Number of residential customers and small business customers paying by direct debit (clause 7.3)	Unchanged	Nil	This metric remains important. Current reporting requirement to remain.	Number of residential customers and small business customers paying by direct debit (clause 7.3)
<b>ENERGY CONCESSIONS</b>				
Number of residential customers receiving financial assistance (electricity pensioners' concession)	Number of residential customers in receipt of an energy concession	<u>AGL:</u> <ul style="list-style-type: none"> <li>• Of limited value;</li> <li>• Could be interpreted as potential indicators of hardship numbers or customer debt levels;</li> <li>• In order to extract any meaningful data from these results, other than the actual numbers of concession numbers, assumptions would have to be made;</li> <li>• Concession recipients could fit into one or many categories of customer;</li> <li>• Number of concession recipients does not affect retailer compliance and does not assist the Commission to monitor and promote standards and conditions of service of retailers;</li> </ul>	This metric remains important. Minor rewording of requirement to clarify nature of existing reporting requirement.	Number of residential customers in receipt of an energy concession

EXISTING INDICATOR	PROPOSED INDICATOR	SUBMISSIONS	COMMISSION'S RESPONSE	INDICATORS TO APPLY FROM 1 JULY 2010
		<ul style="list-style-type: none"> <li>Commission could source this data more accurately from the entity responsible for administering the Concessions as opposed to energy retailers.</li> </ul>		
	Value of energy concessions	<p><u>AGL:</u></p> <ul style="list-style-type: none"> <li>Of limited value;</li> <li>Not clear whether amount required for reporting purposes is the average value of concession applied, or the sum total of all concessions applied;</li> <li>Come concessions are applied across reporting periods or could be applied retrospectively;</li> <li>Reports may require continuous amendment;</li> <li>Would be very onerous task for retailers;</li> <li>Not proposed in NECF;</li> <li>Not a requirement in any other state.</li> </ul>	The Commission will not introduce this metric at this time.	Nil
<b>SECURITY DEPOSITS</b>				
Number and value of security deposits held by residential customers and small business customers (clause 8.1)	Unchanged	Nil	This metric remains important. Current reporting requirement to remain.	Number and value of security deposits held by residential customers and small business customers (clause 8.1)
Number of security deposits used to offset debts for residential customers and small business	Remove	Nil	The Commission will remove this metric.	Nil

EXISTING INDICATOR	PROPOSED INDICATOR	SUBMISSIONS	COMMISSION'S RESPONSE	INDICATORS TO APPLY FROM 1 JULY 2010
customers (clause 8.7)				
	Number and value of security deposits returned to residential customers and small business customers (clause 8.5)	Nil	The Commission will not introduce this metric at this time.	Nil
<b>DISCONNECTIONS FOR NON-PAYMENT</b>				
Number of disconnections of residential customers and small business customers due to a failure to pay amount due (clause 9)	Unchanged	Nil	This metric remains important. Current reporting requirement to remain.	Number of disconnections of residential customers and small business customers due to a failure to pay amount due (clause 9)
Number of disconnections of residential customers due to a failure to pay amount due and who have been disconnected for non-payment of account on one or more occasion in the previous 24 months (clause 9)	Remove	Nil	The Commission will remove this metric.	Nil
Number of disconnections of residential customers due to a failure to pay amount due and who are, or have been, on an instalment payment plan in the previous 24 months (clause 9)	Unchanged	Nil	The Commission will remove this metric.	Nil
Number of disconnections of residential customers who are concession recipients (clause 9)	Unchanged	Nil	The Commission will remove this metric.	Nil
<b>RECONNECTIONS</b>				
Number of reconnections of residential customers and small business customers at the same	Unchanged	Nil	This metric remains important. Current reporting requirement to	Number of reconnections of residential customers and small business customers at the same

EXISTING INDICATOR	PROPOSED INDICATOR	SUBMISSIONS	COMMISSION'S RESPONSE	INDICATORS TO APPLY FROM 1 JULY 2010
premises in the same name within 7 days of disconnection due to a failure to pay amount due (clause 10.1)			remain.	premises in the same name within 7 days of disconnection due to a failure to pay amount due (clause 10.1)
Number of reconnections of residential customers whose supply was reconnected in the same name at the same premises following a disconnection for non-payment and who have been disconnected for non-payment on one or more occasions in the previous 24 months (clause 9)	Remove	Nil	The Commission will remove this metric.	Nil
Number of reconnections of residential customers who are concession recipients (clause 9)	Unchanged	Nil	The Commission will remove this metric.	Nil
<b>HARDSHIP PROGRAMS</b>				
	Number of residential customers participating in a retailer's hardship program	<u>AGL:</u> <ul style="list-style-type: none"> <li>Understands the benefits to the Commission being able to monitor and improve the success of hardship programs;</li> <li>Proposed metrics would not result in comprehensive understanding of hardship customers;</li> <li>There is no regulation around what constitutes a hardship program in SA;</li> <li>No way of determining the success of a particular</li> </ul>	<p>The Commission is concerned by claims that there is no way to determine the success of a particular customer's program.</p> <p>The Commission notes that requirements under REES are quite separate, but the REES Code does provide further guidance around the minimum requirements for a retailers' 'hardship program'.</p> <p>The Commission will introduce this metric with effect from 1 July 2010.</p>	Number of residential customers participating in a retailer's hardship program

EXISTING INDICATOR	PROPOSED INDICATOR	SUBMISSIONS	COMMISSION'S RESPONSE	INDICATORS TO APPLY FROM 1 JULY 2010
		<p>customer's program, other than via the retailer's own criteria;</p> <ul style="list-style-type: none"> <li>Statistics collected could not be used as a comparison tool given the vast differences between hardship programs of different retailers;</li> <li>Currently no obligation to report upon hardship in SA;</li> <li>Retailers are already required to comply with schemes such as the REES and its equivalent in other states;</li> <li>In Victoria, retailers only required to report on the number of residential electricity customers in hardship only;</li> <li>Considers addition of reporting metrics proposed would pose onerous systems and reporting requirements on retailers.</li> </ul>	Refer section 2.6 of Final Decision for further information.	
	Number of new hardship program customers	<p><u>AGL:</u></p> <ul style="list-style-type: none"> <li>It is common for customers to enter and exit AGL's hardship program on more than one occasion;</li> <li>Depending on the scope of 'new', some customers may be reported multiple times quarterly or annually;</li> <li>Not proposed in NECF;</li> <li>Not required in any other</li> </ul>	The Commission will not introduce this metric at this time.	Nil

EXISTING INDICATOR	PROPOSED INDICATOR	SUBMISSIONS	COMMISSION'S RESPONSE	INDICATORS TO APPLY FROM 1 JULY 2010
		state.		
	Number of hardship customers removed from a retailer's hardship program – unsuccessful	Nil	The Commission will not introduce this metric at this time.	Nil
	Number of hardship customers removed from a retailer's hardship program – successful	Nil	The Commission will not introduce this metric at this time.	Nil
<b>DEBT LEVELS</b>				
	Average debt levels (in dollars) per customer of residential customers and small business customers	<p><u>AGL:</u></p> <ul style="list-style-type: none"> <li>• Very broad requirement. Value of this information extremely limited without further narrowing the scope of 'debt';</li> <li>• Could include customers who: <ul style="list-style-type: none"> <li>- have only just been issued bills;</li> <li>- are on payment plans; or</li> <li>- have longer term debt.</li> </ul> </li> <li>• Reports may require disclosure of quite sensitive business data.</li> </ul> <p><u>ERAA:</u></p> <ul style="list-style-type: none"> <li>• Regard as being highly sensitive commercial information and would object to being required to disclose, especially in an identified format;</li> <li>• Compiles state by state data on behalf of its members for use in de-identified format for</li> </ul>	The Commission will not introduce this metric at this time.	Nil

EXISTING INDICATOR	PROPOSED INDICATOR	SUBMISSIONS	COMMISSION'S RESPONSE	INDICATORS TO APPLY FROM 1 JULY 2010
		<p>internal policy purposes – would inform public policy makers of any significant trends of concern.</p> <p><u>Simply Energy:</u></p> <ul style="list-style-type: none"> <li>• The Commission's policy rationale for inclusion of this KPI is not clear;</li> <li>• This is a commercial metric for businesses and benefits to Commission collecting this information and making meaningful and robust industry-wide comparisons was not established in the Draft Decision;</li> <li>• Strongly opposes inclusion of this KPI.</li> </ul> <p><u>TRUenergy:</u></p> <ul style="list-style-type: none"> <li>• Not supported;</li> <li>• Given the commercial sensitivity of such data, Commission has not given sufficient explanation about the purpose of collecting this data;</li> <li>• Not collected in other energy jurisdictions or in industries;</li> <li>• Level of customer debt influenced by many factors, including the broader economic environment, the level of community service obligations and other costs in the energy supply chain;</li> </ul>		



EXISTING INDICATOR	PROPOSED INDICATOR	SUBMISSIONS	COMMISSION'S RESPONSE	INDICATORS TO APPLY FROM 1 JULY 2010
		<ul style="list-style-type: none"> <li>Concerned about the possible conclusions the Commission could draw about a retailer's performance in collecting these data.</li> </ul>		
	Average debt levels (in dollars) per customer of residential customers who are concession recipients	<u>AGL:</u> <ul style="list-style-type: none"> <li>As above.</li> </ul>	The Commission will not introduce this metric at this time.	Nil