

Final Water Industry Rule No. 1 - Excluded Retail Services

December 2013

The Essential Services Commission (ESCOSA) is the independent economic regulator of the electricity, gas, ports, rail and water industries in South Australia. ESCOSA's primary objective is the protection of the long-term interests of South Australian consumers with respect to the price, quality and reliability of essential services.

BACKGROUND

ESCOSA's 2013/14-15/16 SA Water Revenue Determination (**Determination**) separates the water and sewerage retail services provided by SA Water into two classes: direct control services (subject to revenue regulation); and, excluded retail services (the prices of which must be set by SA Water with reference to specific pricing principles).

In broad terms, that segregation is based on the nature of the customer (or customer class) seeking the service and the reason for which the service is sought. Those services which are generally sought by all customers are **direct control**; those sought by individual customers of discrete customer classes are **excluded**. The specific services which are defined as excluded retail services are set out in Chapter 8 of the Determination.

In its Statement of Reasons for Determination (Chapter 12), ESCOSA recognised that there is the potential for disputes over fees and charges across the full range of excluded retail services (including developer charges) to occur from time to time. ESCOSA committed to acting as an independent dispute resolution body in these areas.

To facilitate understanding of the process for raising disputes and ESCOSA's determination of any disputes, pursuant to section 28 of the Essential Services Commission Act 2002, ESCOSA has prepared an industry rule on those matters.

The Commission sought feedback on a draft version of this rule in September 2013. This industry rule will take effect from 1 January 2014.

WHAT "DISPUTES" ARE WITHIN THE SCOPE OF THE INDUSTRY RULE?

While ESCOSA has stated that it will have a "dispute resolution" role in relation to excluded retail services prices, it is important to understand what that means/does not mean:

- It does not mean that ESCOSA will sit in judgment as to the relative merits of two parties' opposing cases as to the "best" price of an excluded retail service.
- Instead, what it means is that, on application in the event of a true dispute (discussed further below), ESCOSA will review and assess whether or not the particular excluded retail service charge in dispute meets (or does not meet) the requirements of the Determination. This will be the sole test.

If ESCOSA decides that the price does meet the requirements, it does not matter that a complainant has a "better" outcome which also meets the requirements – that is not the test.

If the price does not meet the requirements, then a number of potential issues flow: for example, SA Water will be in breach of the Determination (which is a breach of section 27 of the ESC Act) and will need to change the price.

In summary, the industry rule deals with the following matters:

1. *What constitutes a dispute?*

- SA Water must handle complaints in relation to prices for services in accordance with the dispute resolution procedures approved by ESCOSA in the Water Retail Code; and
- ESCOSA may decide that a dispute exists where there is no satisfactory resolution of the complaint, or there is no timely progress towards resolution of the complaint.

2. *ESCOSA's role if a dispute arises*

- Where ESCOSA decides that a dispute exists between SA Water and a customer, in relation to the service charge, ESCOSA will decide whether SA Water is compliant with the relevant pricing principles in the Determination; and
- Where relevant, ESCOSA may provide advice as to the application of a compliant price, or pricing principle.

3. *Information that may be required from SA Water and complainants, including:*

- Written history of the dispute; and
- Information to support why the prices are either non-compliant, or are compliant with the relevant pricing principles.

4. *Procedures for determination*

If you have any questions or would like to discuss any matter relating to the industry rule, please contact:

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