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10 February 2012

Dear stakeholders,

Re: AER approval of minimum amount owing for disconnection, r. 116 of the National Energy Retail Rules

Summary

The National Energy Retail Law (Retail Law) and National Energy Retail Rules (Retail Rules) are expected to commence on 1 July 2012.

Part 6 of the Retail Rules sets out the circumstances under which a retailer can arrange for the disconnection of a residential customer's premises. In particular, under r. 116 (1) of the Retail Rules, a retailer cannot disconnect a customer's premises for non payment of a bill, where the amount outstanding is less than an amount approved by the AER.

The AER is consulting on the minimum disconnection amount to be approved under the Retail Rules. This letter sets out the key factors the AER has had regard to when considering what amount should be set as the minimum disconnection amount. It seeks stakeholder comment on those factors and views on setting the amount at \$300 (GST inclusive) for both gas and electricity for all participating jurisdictions.

Written comments are invited by **9 March 2012**.

Background

Part 6 of the Retail Rules sets out the circumstances under which a retailer can arrange for the disconnection of a residential customer's premises. Such circumstances include:

- Where a customer has failed to pay a bill or security deposit;
- Where a customer denies access to the meter;
- Where a customer has illegally used energy.

In particular, r. 116 (1) of the Retail Rules states that:

Despite any other provisions of this Division but subject to sub rules (2), (3) and (4), a retailer must not arrange for the de-energisation of a customer's premises to occur—

.....

(h) for non-payment of a bill where **the amount outstanding is less than an amount approved by the AER** and the customer has agreed with the retailer to repay that amount; (emphasis added).

While this applies to both gas and electricity, r. 117 of the Retail Rules provides that where the customer has a dual fuel contract and the retailer wishes to arrange de-energisation, the retailer must first de-energise the customer's gas supply, rather than electricity (or both simultaneously). The retailer can only de-energise the customer's electricity supply 15 business days after de-energisation of the gas supply.

The AER emphasises that the minimum disconnection amount is only one of a suite of consumer protections provided in the Retail Law and Rules to assist customers who may be struggling to pay their energy bills. Other such protections include the requirement for retailers to offer payment plans and to offer hardship assistance to those who identify (or who are identified by the retailer or other third party) as experiencing payment difficulties or financial hardship. Retailers are required to offer these customers assistance irrespective of any minimum disconnection amount approved by the AER. Furthermore, those customers who are adhering to a payment plan or participating in a retailer's hardship program are protected from disconnection, regardless of the amount they owe. The minimum disconnection amount will operate in conjunction with these other protections prescribed in the Retail Law and Rules and is the focus of this consultation process.

The AER's role

The AER must approve an amount in accordance with r. 116 (1), in anticipation of the Retail Law and Rules commencement on 1 July 2012. The AER is currently consulting on the minimum disconnection amount in anticipation of the expected 1 July 2012 commencement date.

The AER held a stakeholder forum on 24 January 2012 in Melbourne, with video links to all other capital cities and Townsville. That forum presented a range of issues associated with approval of a minimum amount owing for disconnection. A wide range of stakeholders participated including energy retailers, consumer advocacy groups, representatives from energy ombudsman schemes and from jurisdictional departments. Stakeholder views put forward in that forum have informed the issues and considerations set out below.

Overall, stakeholders considered that the methodology for setting the minimum amount owing for disconnection should be relatively simple, for both retailers and the industry, and for consumers and organisations representing consumers. The AER agrees with this principle, recognising that an amount that is easy to understand and simple to administer (and communicate) will be of benefit to all stakeholders.

Publication of minimum disconnection amount

The AER proposes to publish the minimum disconnection amount it approves in accordance with r. 116 of the Retail Rules.

Current jurisdictional approaches to the publication of minimum disconnection amounts are varied. Some jurisdictions do not formally publish the amount (though it appears to be known among some stakeholders). In Victoria, the amount is public (\$120) and set out in the *Energy Retail Code*.

The AER considers that there are several advantages of publishing the amount, or otherwise making the amount available. The publication of the approved amount owing for disconnection will result in greater transparency across the market, and is consistent with good regulatory practice. In particular, it is important for consumers and advocacy groups to access this information, especially those at risk of being disconnected (or those who are assisting customers at risk of disconnection).

Residential customers are most likely to be affected by any potential non-compliance with r. 116. There is greater potential for market intelligence and information to give rise to the reporting of potential breaches of r. 116 if customers and consumer groups are aware of the relevant minimum amount for disconnection.

Stakeholders at the AER's public forum expressed broad support for the AER to publish the approved amount, noting that a potential disadvantage of publishing the amount is an increased risk of bad debt or increased costs for retailers. Some stakeholders noted that if customers are generally aware of the minimum disconnection amount, a potential incentive for customers to maintain debt at or just below minimum disconnection amount (to avoid payment and disconnection) may arise.

Retailers argued that any resulting increased costs would then be recovered from those customers who do pay their bills on time, and that retailers would be likely to increase their reliance on security deposits.

Forum attendees largely agreed that this potential risk was very small (provided the minimum amount was not set too high) and that there was no evidence to suggest that publishing the amount in Victoria had resulted in customers consistently maintaining their debt levels just below the minimum disconnection amount.

The AER is seeking stakeholder feedback on its proposal to publish the approved minimum disconnection amount, and is seeking stakeholder feedback on its considerations above.

Question 1: Should the AER publish the approved minimum disconnection amount? Why / why not?
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Separate amounts for gas and electricity

The AER proposes to approve the same minimum disconnection amount for both gas and electricity, (noting that r. 117 already provides guidance for disconnecting customers on dual fuel contracts, as noted above).

Currently, the AER understands that all jurisdictions (that apply a minimum disconnection amount) have the same disconnection amount for gas as for electricity, with the exception of Queensland, which does not set a minimum amount owing for gas disconnection. Therefore, the AER's proposed approach is consistent with current practice (in those jurisdictions that have set a minimum disconnection amount).

The AER considers that a single amount for gas and electricity will provide consistency across both fuel types, making it easier for residential customers to understand their rights. We also consider that this will be easier for retailers to implement and maintain across their businesses, avoiding potential confusion in meeting regulatory obligations under the r. 116.

The stakeholder forum on 24 January stakeholders expressed broad support for consistent amounts for both gas and electricity.

The AER recognises that applying the same minimum disconnection amounts for electricity and gas may not take account of differing circumstances across jurisdictions, for example, relatively few customers have access to gas in Queensland and Tasmania. Also, for the majority of customers, average electricity bills are typically higher than gas bills. On this basis, some may consider that the minimum disconnection amount for gas should be lower than the minimum disconnection amount for electricity. However, the AER notes the particularly strong views from stakeholders of the benefits of having a simple approach and consistency across gas and electricity.

The AER is seeking stakeholder comment on its proposal to approve the same minimum disconnection amount to apply to both electricity and gas, and on its considerations above.

Question 2: Should the minimum disconnection amount should be the same for both gas and electricity? Why / why not?

Nationally consistent amount

The AER notes that the current minimum amounts owing for disconnection in each jurisdiction are different. However, the AER proposes to approve a single national amount owing for disconnection under r. 116.

The AER considers that a single, national minimum disconnection amount is appropriate, and is consistent with the national approach to energy retail regulation set out in the Retail Law and Rules. This approach is likely to be simpler to communicate to customers and for customers to understand their rights. It may also be easier for retailers to implement, maintain and monitor, especially for those retailers who operate across several jurisdictions.

Stakeholders at the forum expressed strong support for a single, nationally consistent figure. They agreed that this would be easier to understand and implement, and would minimise unnecessary confusion.

The AER recognises that there may be some disadvantages to this approach. For example, it may not take account of jurisdictional factors such as differences in climate, the prevalence of gas as a form of energy and whether or not a minimum amount has been historically imposed. Some may consider that the application of different figures across states and territories

provides better transitional arrangements, particularly where a minimum disconnection amount has not been previously set.

Whilst the AER is mindful of these factors, it considers that the stakeholder benefits of a single national figure outweigh potential benefits from having different amounts for each jurisdiction. The AER also notes the strong stakeholder support for this approach at its recent forum. It is important that the minimum disconnection amount is clear and simple and easy to communicate to customers so they are aware of and understand their rights. A single, national amount will also be simpler for retailers to implement and maintain in their businesses as well as easier for the AER to monitor retailer compliance.

The AER is seeking stakeholder comment on its proposal to approve a single, nationally applicable amount.

Question 3: Should the AER apply the same minimum disconnection amounts to all states and territories applying the Retail Rules? Why / why not?

Factors relevant in setting the minimum disconnection amount

The AER proposes to approve a minimum disconnection amount of \$300 (GST inclusive) and seeks views from stakeholders on this proposal.

There is no defined methodology or accepted consistent approach for setting a minimum disconnection amount. Some jurisdictions appear to have used guiding principles to set minimum amounts in the past. For example, some jurisdictions set the minimum disconnection amount to reflect the level of a low consumption customer's 'average quarterly bill.' This ensures that customers are not disconnected for being one bill behind. The AER does see merit in such an approach; however, such an approach may be impractical on a national level. This is mainly due to variations in prices, consumption levels and fuel mixes across jurisdictions which would ultimately impact on a customer's quarterly bill. The AER considers that using any precise formula or methodology (such as accurately trying to reflect an average quarterly bill) will likely produce significantly different amounts across jurisdictions. This conflicts with the principles of a consistent, simple national figure, which generated significant stakeholder support. However, the AER does accept the guiding principle that a customer should not be disconnected for being one quarterly bill behind.

The following points were made by stakeholders on general approaches to approving a minimum disconnection amount:

- The AER's approved minimum amount for disconnection should be GST inclusive, as this will avoid confusion for both customers and retailers
- The AER may have reference to how current jurisdictional amounts were derived and to consider whether that remains applicable on a national basis
- The AER should be aware that an amount that is lower than current jurisdictional amounts may be perceived as winding back protections for customers in that jurisdiction
- The AER should consider the costs incurred by retailers in disconnecting and reconnecting a customer, and the total amount the customer will have to re-pay

- The AER needs to consider how frequently it reviews the minimum disconnection (including for whether or not it will be indexed annually by CPI, for example), and what process should be followed.

In addition to the above, some stakeholders made specific suggestions on the appropriate minimum disconnection amount. These included:

- No more than \$150 (proposed by some retailers). This amount would broadly reflect what it costs to disconnect and reconnect a customer. Retailers noted that once the customer had been disconnected and reconnected, they would likely owe significantly more than this amount, as customers will continue to consume energy up until they are disconnected (as well as any disconnection and reconnection fees applied to the customer's account).
- Between \$300 and \$500 (proposed by a consumer advocacy group), although there was little support for setting the amount as high as \$500 from other forum attendees
- Between \$200 and \$300. This range gained support from a number of forum attendees (including one retailer, who also supported an amount between \$200 and \$300).

Having regard to the broad range of current jurisdictional amounts, the points made at the stakeholder forum, and the various research that has been undertaken on consumer experiences of disconnection, the AER's proposes an amount of \$300, for the following reasons:

An overly high amount (such as \$500) may exacerbate any hardship issues that a customer may be experiencing, particularly where the disconnection action is what prompts the customer to approach a retailer for assistance. An amount in the range of \$500 (as proposed by one stakeholder) represents a level of debt that is potentially difficult for most customers who have been disconnected to repay, especially when considered in conjunction with any reconnection and disconnection fees and charges for ongoing usage that the customer may also be liable for.

The AER also notes that, in NSW, of customers who were disconnected in 2008, over half owed between \$201 and \$500 to their retailer at the time of disconnection.¹

However, it is equally important that any amount set is not too low as it must afford an appropriate level of protection to customers. The AER considers that \$150, proposed by some stakeholders, is too low. For many customers in most jurisdictions, this amount is well below 'a typical low consumption quarterly bill,' and is inconsistent with the principle that customers should not be disconnected for being one quarterly bill behind.

The AER acknowledges that this represents an increase from the current South Australian and Victorian figures. However, these amounts have not been recently reviewed, and may not reflect recent increases in electricity and gas prices.

Moreover, setting the national amount at this level may be perceived diminishing customer protections in jurisdictions that have higher limits already in place.

The AER notes stakeholder comments that any minimum amount owing for disconnection should also take account of disconnection and reconnection costs that customers may be

¹ PIAC, *Cut It Off: II*, January 2009, p. 21-22.

liable for if they are disconnected. The AER acknowledges that this is a relevant consideration. The AER notes that the charges for disconnection and reconnection for electricity range between approximately \$38 and \$123, depending on where the customer lives, and the extent to which retailers pass those charges on to customers.² For gas, the charges for disconnection and reconnection range between approximately \$114 and \$180, again, depending on where the customer lives and their retailer. The AER understands that, in some cases, retailers may waive these fees for customers who are experiencing financial difficulties or hardship, depending on their individual circumstances.

In light of the above considerations, the AER considers that a figure of **\$300 (GST inclusive)** may be appropriate. The AER considers that this amount provides an appropriate balance between the level of debt that most customers can afford to repay (and the level of debt that retailers can be expected to manage) and the principle that energy is an essential service (and that disconnection can have significant impacts on households). This amount would apply across all jurisdictions and to both electricity and gas accounts.

The AER is seeking stakeholder views on whether this amount is appropriate. The AER also welcomes stakeholder views on whether there are other alternative amounts that stakeholders consider more appropriate (and why).

At this stage, the AER is not proposing to review or index the amount annually, but considers that periodic reviews are important to ensure that the amount remains appropriate over time. On this basis, the AER is also seeking stakeholder views on how frequently it should review the minimum amount.

Question 4: What other factors (if any) should the AER should consider when approving a minimum amount owing for disconnection?

Question 5: Do stakeholders consider a minimum disconnection of \$300 (GST inclusive) to be appropriate? Why / why not?

Question 6: If no, what alternative amount do you consider would be more appropriate and why? Please ensure all amounts are GST inclusive in your response.

Question 7: How often should the AER review the minimum amount owing for disconnection?

The AER is seeking submissions to the above questions, and also any other general comments from stakeholders in relation to the approval of the minimum disconnection amount. Written comments are invited by **9 March 2012**.

Electronic submissions should be sent to AERInquiry@aer.gov.au with the subject line 'AER's minimum disconnection amount' or by mail to:

² This range does not take account of AMI remote energisations in Victoria which are significantly cheaper. The extent to which retailers pass on these costs varies from retailer to retailer. For example, some retailers may charge a small 'administrative fee' in addition to the regulated reconnection and disconnection fees charged by distributors in some jurisdictions.

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The AER will make a final decision on the amount in April 2012, ahead of the commencement of the Retail Law and Rules on 1 July 2012. The AER considers this provides retailers with adequate time prior to 1 July 2012 to identify and implement any changes required before this obligation takes effect.

If you wish to discuss this matter further, please call Angela Bourke on 03 9290 1910.

Yours sincerely

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