



Listen Assist Resolve

28 July 2011

Australian Energy Regulator
General Manager Markets Branch
GPO Box 520
Melbourne VIC 3001

By email: AERInquiry@aer.gov.au

Dear Australian Energy Regulator

Re: The Australian Energy Regulator's Draft Exempt Selling Guideline

Thank you for the opportunity to comment on the Australian Energy Regulator (AER)'s *Draft Exempt Selling Guideline* (the draft guideline).

The Energy and Water Ombudsman (Victoria) (EWOV)'s comments are in addition to our previous submissions on the AER's *Approach to Retail Exemptions Issues Paper* and *Draft Exempt Selling Guideline*. Our comments are based on our extensive case handling experience.

Hardship policies and flexible payment plans

In previous submissions EWOV made during this consultation process, we stated our position that protections for customers buying electricity from an exempt onseller should be the same as customers buying from authorised retailers.

The draft guideline does not place an obligation on exempt retailers to develop a specific hardship policy. It is the AER's view that '*hardship policies are difficult to enforce for exempt sellers and may not be particularly effective in assisting hardship customers who obtain their accommodation from the onsellers.*' While EWOV appreciates this view, we believe that exempt onsellors should still provide customers with the key supportive elements of a hardship program. This includes:

- Flexible payment plans in line with a customer's capacity to pay
- Information on government concessions, grants and rebates, including sending a customer the relevant application forms
- Energy efficiency advice to help reduce consumption costs
- Referrals to a financial counsellor.

It appears from the draft guidelines that none of the above elements are mandatory requirements for the classes of exempt onsellors, however when the AER considers an application for an exemption, it will turn its mind to these issues on a case-by-case basis. It is EWOV's view that this does not go far enough in providing customer protection, and it would not be overly onerous for exempt onsellors to provide this type of support.

The AER draft guideline also states that hardship support may be ineffective when the exempt onseller is also billing the customer for accommodation charges. A clear distinction can be made between energy costs and rental costs. With the right hardship support, such as proper energy efficiency advice and government assistance, there is much more room for a customer to reduce their energy costs. Failing moving property, there may be no way of reducing a customer's liability to pay rent. This illustrates the importance of exempt onsellors providing customers with the right hardship assistance to help them pay their energy bills, and consequently help them pay rent.

Late payment fees

The AER draft guideline states that *'the AER does not support the concept of exempt sellers passing on to their customers an 'administration' or similar fee in an attempt to circumvent the requirement that residential customers are charged no more than the relevant standing offer price.'* On EWOV's reading of the draft guideline we can see no explicit mention of 'late payment fees'.

The legal instruments for *the National Energy Customer Framework* include *The National Energy Retail Rules (NERR)*. Rule 73 of NERR states:

73. Waiver of late payment fee for hardship customer

A retailer must waive any fee payable under a customer retail contract with a small customer who is a hardship customer for late payment of a bill for customer retail services.

EWOV believes that any late payment fee should be no more than the onseller's administrative costs caused by the late payment, and is concerned that there is nothing in the draft guideline that explicitly addresses this point.

Retailer of Last Resort (ROLR)

EWOV accepts the AER's view that a ROLR event is beyond the scope of the AER's exempt selling guideline, and is a matter to be considered by policy makers. However, this does potentially leave customers of onsellors in a vulnerable position. Any financial insolvency of exempt onsellors will likely affect all aspects of its business, including the provision of accommodation. It is hoped that any appointed administrator will quickly seek a suitable alternative energy provider without affecting the exempt customer's continuity of energy

supply. EWOV is concerned that any exempt onseller or network that becomes insolvent may decide to disconnect an exempt customer.

Life support customers

The draft guideline puts an obligation on exempt onsellors to maintain records of customers who have life support equipment and advise the distribution company of this. The guideline however, does not place any timeframes within which this should occur. Due to the potentially tragic consequences of disconnecting a customer using life support equipment, EWOV recommends that the onseller provide such details to the distributor (exempt body or otherwise) within two business days. The AER could also consider whether the conditions about life support should mirror that of Part 7 of the NERR.

Communications campaign

EWOV welcomes the AER's advice that it will undertake a broad communications campaign to help exempt bodies understand their obligations under the draft guidelines and the law, and to inform customers of their rights and responsibilities. EWOV would like the communications to have an educational focus to help customers build their own capacity to resolve complaints directly with their energy providers. EWOV encourages the use of a variety of information delivery methods, with a particular focus on more vulnerable and older people who may be best reached through radio, local newspapers and community publications.

We trust that the above comments are helpful. Should you require further information or have any queries, please contact Justin Stokes, Senior Research and Communications Officer on (03) 8672 4272.

Yours sincerely

A handwritten signature in cursive script that reads "Fiona McLeod".

Fiona McLeod
Energy and Water Ombudsman (Victoria)