

7 April 2015

Dr Peter Boxall
Chairman
Review of the Operating Licence for Sydney Water Corporation
Independent Pricing and Regulatory Tribunal
PO Box K35
Haymarket Post Shop NSW 1240

Dear Dr Boxall

Thank you for the opportunity to comment on IPART's *Review of the Operating Licence for Sydney Water Corporation: Water – Draft Operating Licence February 2015*.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers. Our submission will focus on the proposed changes to the Customer Contract. In preparing for this submission EWON liaised with Sydney Water to clarify our understanding of Sydney Water's policies and proposed changes to the Customer Contract.

We have also considered the proposed changes with reference to the *National Energy Customer Framework* (NECF). We consider that the NECF sets a benchmark in offering strong protections for utility customers and we support consistent customer protections across the water, electricity and gas industries.

For clarity, we will refer to the Customer Contract under the current operating licence as the current Customer Contract and the Customer Contract under the draft operating licence as the draft Customer Contract.

Introduction of late payment fees

Clause 4.4.5 of the draft Customer Contract allows Sydney Water to charge a late payment fee on overdue accounts, provided that IPART has specified a maximum late payment fee in a regulatory review of prices. EWON understands that the requirement for IPART approval of the late payment fee prevents Sydney Water from charging this fee by virtue of introducing a late payment clause in the draft Customer Contract. We consider that the next regulatory review of

prices is an appropriate forum for discussion of this issue and we will provide comments on any proposals to charge a late payment fee.

EWON also notes that Clause 4.4.5 provides some exemptions from being charged a late payment fee, namely:

- if the customer has been given a payment extension
- if the customer has agreed to a payment plan
- if the customer has entered into a 'payment assistance arrangement' with Sydney Water, which we note is encompassed by Clause 5 to also include bill smoothing and payments made with Payment Assistance Scheme (PAS) credits.

Based on EWON's discussion with Sydney Water, it is our understanding that Sydney Water does not intend to charge a late payment fee where:

- customers are disputing their bills either with Sydney Water or EWON
- where customers are seeking payment assistance via a PAS credit
- where customers are on Sydney Water's hardship program.

EWON welcomes this broad range of exemptions. However, we suggest that Clause 4.4.5 be amended to list all of these exemptions and mirror all of the exemptions available to energy customers under the NECF in NSW¹. We consider that this provides clarity for customers and community welfare advocates, as well as consistency in customer protection within the utilities industry.

Our experience with vulnerable customers is that hardship is not an isolated occurrence. Hardship is circumstantial and customers may fall in and out of financial difficulty as their personal circumstances change. Some customers experiencing chronic hardship may require ongoing assistance while others experiencing a lesser degree of vulnerability may only require assistance once. We therefore support broad exemptions to the late payment fee to ensure that customers across the range of vulnerability are not adversely impacted by the fee.

In summary, we propose the following additions to the list of exemptions provided at the end of Clause 4.4.5:

- the customer receives a government concession
- the customer is participating in Sydney Water's BillAssist program
- the customer is disputing a bill with Sydney Water or EWON
- any part of the bill is paid via a PAS credit
- Sydney Water is aware that the customer has sought assistance to pay the bill from a community welfare organisation that delivers emergency relief assistance.

¹ *National Energy Retail Law (Adoption) Regulation 2013*, clause 10.

Dishonoured or declined payments

Unlike the current Customer Contract, Clause 4.11.1 of the draft Customer Contract does not make reference to IPART setting the dishonoured or declined payment fee. EWON supports the inclusion of this reference to IPART for transparency and to minimise customer disputes about how the fee is set.

Payment assistance for private residential tenants

EWON notes that the section on assistance for private residential tenants in Clause 5.1 is a new addition to the draft Customer Contract. We support the provision of assistance to tenants who pay their water usage charges but who are not eligible for the full range of payment assistance measures because of their status as non-account holders. However, we query the reference to 'payment assistance' in this section, which is defined in Clause 15.1 to mean 'any of the types of assistance described in clause 5'. This appears to imply that tenants can access the full range of payment assistance, including hardship programs and payment plans.

EWON understands Sydney Water offers a limited range of assistance to tenants as they are not account holders, including PAS credits, and referrals to community welfare organisations (CWOs) and the NSW Civil and Administrative Tribunal. We therefore suggest amending the draft wording of Clause 5.1 to ensure consistency with Sydney Water's policy.

Notice requirements for restriction/disconnection of supply

Clause 6.2 of the draft Customer Contract no longer requires the disconnection notice to state upfront that customers must pay their bill within seven days. Instead, the disconnection notice requests immediate payment. EWON notes that this is a departure from current practice in which Sydney Water is required to advise customers of the seven-day warning period, as specified in the current Customer Contract. We further note that this proposed change is in spite of there being no changes to Sydney Water's obligation to not restrict a customer's supply until at least seven days after issuing a disconnection notice.

As stated in our submission² to IPART's *Review of the Operating Licence for Sydney Water Corporation: Water Licensing – Issues Paper June 2014*, we consider that the removal of the seven-day warning period is a step backward from current practice in the energy industry. Under the NECF³, both the reminder and disconnection warning notices must state the date on which each warning period ends (six business days from the date each notice is issued).

² EWON submission

<<http://www.ewon.com.au/ewon/assets/File/Submissions/2014/EWON%20Submission%20-%20IPART%20Review%20of%20Operating%20Licence%20for%20Sydney%20Water.pdf>>

³ *National Energy Retail Rules*, Rules 109 and 110.

EWON reiterates that Sydney Water adopt a similar approach to the NECF. While we acknowledge Sydney Water's concern that customers may find multiple pay-by dates on different bills and notices confusing, we suggest that Sydney Water could instead add a seven-day warning period to the reminder notice while retaining the same in the disconnection notice. This means that instead of providing further pay-by dates, customers are notified that they have another seven days to pay after each notice. This provides customers, particularly those who are financially stressed or otherwise vulnerable, with clear notice of the amount of time they have to organise their finances or seek assistance before their supply is restricted.

We consider that a disconnection notice requesting immediate payment without upfront notice of the seven-day warning period could encourage customers in hardship to seek urgent assistance from short-term loan providers such as payday lenders, and therefore exacerbate their financial vulnerability.

Requirement for personal contact before restriction/disconnection

EWON notes while Sydney Water is required to attempt further contact with customers after issuing a disconnection notice, Clause 6.2 of the draft Customer Contract does not specify the methods of contact. This is a change from the current Customer Contract, which provides that Sydney Water may make further contact by a telephone call, mail or visit.

Based on EWON's discussion with Sydney Water, our understanding is that Sydney Water's policy is to make one successful contact with the customer, either by a telephone, mail or visit, and that there is flexibility in how they successfully reach a customer. For example, if a customer's phone is disconnected Sydney Water may conduct a field visit. We support Sydney Water's flexible approach to ensuring that customers are successfully contacted in person prior to a restriction or disconnection. We consider that Sydney Water's policy is a step towards the 'best endeavours' approach⁴ under the NECF, which we consider provides industry best practice.

Under Rule 111(1) of the NECF, after issuing the disconnection notice a retailer must use its 'best endeavours' to make personal contact, either in person, by phone, fax or email. Contact is taken to have occurred only if the customer acknowledges receipt of the message. The retailer must keep records of all contact attempts.

Best endeavours is not defined in the NECF, but it is EWON's view that the use of the plural 'endeavours' suggests that more than one attempt should be made if the first was unsuccessful. We understand that Sydney Water's policy has a similar requirement. To provide some additional guidance, EWON has taken a view on the following situations:

⁴ *National Energy Retail Rules*, Rule 111(1).

- where the contact number provided by the customer has been disconnected, EWON considers that the retailer should arrange for another avenue of contact, but does not specify what that should be. Some retailers send a lettergram by registered post, and some arrange for a personal visit, both of which are acceptable options.
- where voicemail is available and the retailer leaves a message, whether or not this is acceptable depends on the nature of the message. EWON considers that where the purpose of the call is made clear, and potential disconnection is specifically referred to, this is an acceptable contact. If the retailer only leaves a phone number asking for a call back, EWON considers this does not amount to a 'best endeavour' and the retailer should make further attempts at contact.
- where the number is still connected but there is no voicemail, EWON considers that further attempts at contact should be made on different days and ideally at different times of day.

EWON's view is that restriction or disconnection should be a last resort and customers should be provided with every opportunity to engage with Sydney Water prior to restriction, so it can be avoided if possible. On this basis, we suggest that Clause 6.2 of the draft Customer Contract be amended to encompass the 'best endeavours' approach in line with industry best practice.

If you would like to discuss this matter further, please contact me or Emma Keene, General Manager Policy and Community Engagement, on 8218 5250.

Yours sincerely



Janine Young
Ombudsman
Energy & Water Ombudsman NSW