

20 March 2015

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Thank you for the opportunity to comment on *New Products and Services in the Electricity Market Consultation on Regulatory Implications*.

The Energy & Water Ombudsman NSW (EWON) has jurisdiction to investigate and resolve complaints from customers of electricity and gas providers in NSW, and some water providers, in accordance with water industry licence conditions.

Under the *Electricity Supply Act 1995 s95B and s96D* and the *Electricity Supply Regulation 2014 s11* EWON also has jurisdiction to investigate and resolve complaints from customers of exempt energy sellers in NSW. Exempt sellers however, are not members of EWON.

EWON welcomes this consultation at a time when the electricity market is entering a period of significant change. The range of new products and services becoming available has the potential to significantly impact how electricity is delivered and consumed by residential and business customers. In this context it is timely to review how regulation can impact the development of this changing market. Regulation needs to facilitate consumer benefits while ensuring adequate consumer protections are retained. It is also critical that regulation does not unfairly favor any participants in the market or place some consumers in a position where protections such as rebates are prevented.

Which Products and Services

Do these three markets cover all new products and services that could be offered to small electricity customers?

The Consultation Paper describes three separate but interrelated categories which could encompass the range of new products and services entering the market. These are the electricity supply market, the demand management market and the energy information market.

This categorisation of three markets is a useful conceptual approach. However we anticipate that some products and services will have aspects that cross more than one of these definitions, and some participants in the market may have offerings in all three categories.

The National Electricity Law and Rules

Are these principles useful for identifying whether a product or service should be drawn into the National Electricity Law and Rules?

The National Electricity Law (NEL) and Rules (NER) provide the framework for the wholesale electricity market and provide for network system security, economic regulation of monopoly services and define metering arrangements. This regulatory structure requires most participants to either register or be accredited by the Australian Energy Market Operator (AEMO). The Consultation Paper seeks views on the key principles for identifying whether a new product or service should be encompassed by the NEL and the NER. We note the principles proposed are:

“...it affects the operation of or confidence in the wholesale electricity market; it is a monopoly activity; or it affects power system quality, safety, reliability and security”

The current requirements to participate in the electricity market as a participant under the NEL and NER are complex, and for small businesses the cost could be a barrier to entry. The proposed principles appear to allow for the ongoing successful operation of the market while ensuring that new innovative products and services are not necessarily excluded. The principles certainly provide a useful starting point from which a review of the NEL and NER could be undertaken.

Consumer Protections

Is this principle useful for identifying whether a product or service should be drawn into the NECF?

The National Energy Customer Framework (NECF) regulates the relationships between retailers, distributors and consumers. It provides for consumer protections around energy supply. The Australian Consumer Law (ACL) provides general consumer protections. A key issue of the Consultation Paper is whether energy specific regulation should apply to new products and services, as opposed to more general consumer protections. We note the principle proposed by the Consultation Paper:

“Energy-specific consumer protections are required when a product or service impacts on a customer’s access to a reliable, safe and high-quality supply of energy on fair and reasonable terms”

EWON supports the proposed principle. It is critical that new energy products and services are developed and operate with alignment to energy specific consumer protection and energy regulation.

Other Questions

Is the NECF flexible enough to allow the AER to ensure customers of alternative energy sellers have appropriate consumer protections?

Under the NECF the Australian Energy Regulators *Exempt Selling Guidelines* provide a model framework which could be adapted to suit relevant new products and services. The Guidelines cover a range of different services with a relevant set of consumer protections for each type, such as when to bill customers, conditions for managing payment difficulty and disconnection of supply, when disconnection of supply is prohibited, arrangements for life support customers and access to dispute resolution. This model allows for flexibility while at the same time ensuring that consumers are adequately protected, depending on the type of arrangement that they enter into with the energy provider. Such an approach for new products and services will achieve the Consultation Paper objectives.

Are there other consumer protection issues we should consider in this market? If so, how could these be addressed?

Access to independent alternative dispute resolution is an important consumer protection that needs to be considered by this consultation process. The current arrangement for dispute resolution under the NECF is for retailers and distributors to be members of an approved industry ombudsman scheme. NSW is the only jurisdiction where exempt retailers and their customers have access to alternative dispute resolution via EWON. However, to date in NSW there is no requirement for exempt retailers to join EWON and no mechanism for these providers to pay for their customer complaints and investigations.

It is important that consumers of new energy products and services are able to access alternative dispute resolution. EWON recommends that the Energy Market Reform Working Group and the AER engage with the individual energy ombudsmen, or collectively via the Australian and New Zealand Energy and Water Ombudsman Network (ANZEWON), about industry ombudsmen jurisdiction and the dispute resolution avenues for consumers.



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Should parties offering direct load control products to customers have similar obligations to retailers and distributors regarding informed consent?

EWON supports the same level of informed consent provisions across market participants. The complexity and consequences of some direct load control products means that there could be significant impacts on reliability, quality or price of the energy supply. Given the potential impact on a customer it is important that the product and the consequences of entering into a contract are clearly understood. Without explicit informed consent provisions there is the potential for significant consumer detriment, particularly for vulnerable customers.

If you would like to discuss this submission further, please contact me or Emma Keene, General Manager Policy and Community Engagement, on 02 8218 5250.

Yours sincerely

A handwritten signature in black ink that reads "Janine Young".

Janine Young
Ombudsman
Energy & Water Ombudsman NSW