



26 February 2010

Manager, MCE Secretariat,
Department of Resources, Energy and Tourism,
GPO Box 9839
Canberra ACT 2601
MCEMarketReform@ret.gov.au

Thank you for the opportunity to comment on the National Energy Customer Framework (NECF) Second Exposure Draft.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers.

We have provided additional comments on specific parts of the Law and Rules in the attached table. As EWON will be applying the Law and Rules in our dispute resolution between customers, retailers and distributors, the focus of our comments has been to seek clarification on any sections or issues where we see potential for confusion or misinterpretation.

There are some policy aspects which we wish to address as general observations.

Enhancements to the NECF

Energy Ombudsman Powers

The inclusion of a new section in the National Energy Retail Law, Part 4 *Small customer complaints and dispute resolution*, is very welcome. Part 4 reflects the current situation for ombudsman services rather than extends or changes the current powers of the jurisdictional schemes. It appropriately positions the role of the independent dispute resolution process centrally within the National Energy Retail Law. One minor wording suggestion is included in the attached Table.

Use of the term *disconnection*

EWON is pleased to note that the term *disconnection* will continue to be used for customer communications as a more understandable and accessible term to describe *de-energisation*, and that the term *disconnection* is used frequently throughout the NECF. In the broader community the term *disconnection* is widely understood and it is appropriate that the NECF reflects this.



Hardship provisions

EWON welcomes the strengthening of the hardship provisions especially the greater role given to the Australian Energy Regulator (AER). EWON also welcomes the extension of the payment plan provisions beyond hardship customers, to all customers requesting payment options.

Objective of the National Energy Retail Law

EWON supports the inclusion of 113(2) in the National Energy Retail Law:

The national energy retail objective should not be taken to prevent or restrict the development and application of consumer protections for hardship customers and other small customers, including the development, approval and application of customer hardship policies.

This confirms our view that consumer protection provisions for customers in hardship are an essential feature of an efficient market in the provision of essential services.

Marketing Rules

EWON supports the inclusion of the comprehensive set of marketing rules that are specific to energy consumers into Division 11 of Part 2 of the Rules.

Remaining Issues

In contributing to the further development of the national framework we offer the following comments:

Protections for Small Business Customers

We believe that the reduction of consumer protections and the obligation to supply small business customers needs further consideration, on the basis that many small business customers face similar difficulties in resolving utility disputes as residential customers and therefore need similar consumer protection.

In addition, EWON is aware that the Queensland Government is currently considering arrangements to ensure there is an obligation to supply all customers, and we raise this for further consideration by the Retail Policy Working Group in the context of the NECF.



Meter Reading

We are concerned about the reduced requirement for actual meter reads to at least once in 12 months. EWON believes an actual read at least every six months is essential to provide important information to customers and alert them to any issues about their consumption. This is the current arrangement in NSW.

Shortened Collection Cycle

The proposed shortened collection cycle seems to increase the likelihood of disconnection for customers experiencing financial difficulties while in contrast to this, the hardship provisions seem to be focused on preventing this outcome. EWON believes this is a significant reduction in consumer protections for NSW customers.

Contract Termination

The conclusion of a contractual relationship 10 days after de-energisation seems unduly restrictive with potential adverse consequences for customers. The ending of the contract could be limited to those customers who have not contacted the retailer (see Table for further comments).

Retailer of Last Resort Provisions

In the course of the two RoLR events to date, EWON has received many complaints from customers who have been impacted in various ways. The RoLR events have identified a number of issues where the application of the Law and Rules was not clear, particularly with respect to consumer protection, and the role of the energy ombudsman. We have included specific comments on these issues in the attached Table, together with our concerns about the current proposals for cost recovery.

If you would like to discuss this matter further, please contact me or Emma Keene, Manager Policy and Projects, on 02 8218 5225.

Yours sincerely

Clare Petre
Energy & Water Ombudsman NSW

Energy & Water Ombudsman NSW (EWON) Comments – National Energy Customer Framework (NECF) Second Exposure Draft

Draft National Energy Retail Law		
Section	Subject Matter	Comment
102	Definitions	EWON supports the inclusion of the term ‘disconnection’ into the definition of ‘de-energisation’, and also its inclusion where appropriate throughout the Law and Rules. EWON was particularly concerned that as the term ‘de-energisation’ is not in general use, it would not be an effective way of communicating with customers about the key issue of continuation of supply. We are therefore very pleased to see the inclusion of the term ‘disconnection’ in all documents that are specifically addressed to the customer, such as the <i>Disconnection Warning Notice</i> as described in Part 6 of the Rules, and the <i>Model Terms and Conditions</i> for the deemed standard retail and connection contracts.
113	Objectives	EWON supports the addition of subsection (2) to assist in the interpretation of this section, making it clear that the objective of efficiency is not to restrict the development of consumer protections for customers in hardship.
205/217	Standing offer prices/variation of market retail contracts	The requirement in 205 (3) (c) for publication and notification of any variation in the standing offer price, should be equally extended to variations in market retail prices. In NSW, clause 22 of both the <i>Electricity Supply (General) Regulation 2001</i> and the <i>Gas Supply (Natural Gas Retail Competition) Regulation 2001</i> requires advance notice to customers before any price rise can take effect.
223	Explicit Informed consent	<p>The provisions of 223 (5) appear to suggest that where a customer transfer has happened without the customer’s explicit informed consent, then the customer is only liable to pay the original retailer for the energy charges ‘as if the invalid transaction had not occurred’. We also note the provisions of section 3.10 of AEMO’s MSATS Procedures: CATS Procedure Principles And Obligations which places a time limit of 130 business days on retrospective transfers.</p> <p>We would appreciate clarification of the application of s 223 in the following situation:</p> <ul style="list-style-type: none"> • a customer had his electricity account with Retailer A • in January, Retailer B established an account for him without his explicit informed consent • the NMI transferred to Retailer B, who became the new FRMP • the customer raised the issue of lack of consent with Retailer B in October – 223 (2) (b) allows 12 months for the issue to be raised • Retailer B agreed to transfer the site back to Retailer A <p style="text-align: right;">(continued)</p>

		<ul style="list-style-type: none"> • in accordance with the 130-day time limit in <i>MSATS</i>, the site can only go back as from April • Retailer A can now invoice the customer for energy charges from April onwards. <p>Query: what happens to the energy charges incurred during the period from January to April?</p> <p>It appears from the <i>MSATS Procedures</i> that Retailer A is not able to invoice the customer, as they are not the FRMP during this period. However section 223 (5) appears to suggest that the customer is to be put back in the position 'as if the invalid transaction had not occurred'.</p> <p>To assist in applying this section when investigating customer complaints, we would appreciate some clarification of the interaction of this section of the NERL and the <i>MSATS Procedures</i>.</p>
406	Functions and powers of the ombudsman	<p>EWON supports the inclusion of Part 4 on <i>Small Customer Complaints and Dispute Resolution</i> into the NECF.</p> <p>For clarification, we would like to suggest the inclusion of the phrase '<i>take appropriate action on</i>' into the wording of 406 (1) (e) so that it reads: (e) to identify, take appropriate action on and advise on systemic issues as a means of preventing complaints and disputes.</p>
615	Termination of customer retail contracts.	<p>Subsection (2) provides that when a customer's contract is terminated following a RoLR event, this '<i>does not affect the rights and obligations that have already accrued under the contract</i>'.</p> <p>In the light of RoLR events to date this section requires clarification, particularly regarding the responsibilities of the body that is administering the affairs of the failed retailer in the short term, whether this is the voluntary administrator, the receiver manager or the liquidator.</p> <p>Section 615 appears to suggest that the customer's rights under the contract will continue, which would appear to include the right to the hardship provisions of the NECF, and the right to take complaints to the energy ombudsman. It would assist our investigation of customer complaints - both those that were current complaints prior to the RoLR event, and those that arise following the issuing of the final bill – if the body administering the affairs of the failed retailer is required to comply with the dispute resolution provisions of Part 4 in the same way as the failed retailer would have been.</p> <p>Section 615 (2) also refers to the obligations under the contract, which would appear to refer to the customer's obligation to pay the failed retailer for their energy usage up to the RoLR event. Does this also include the failed retailer's (or their administrator's) obligation to invoice customers in accordance with the applicable energy laws?</p> <p style="text-align: right;">(continued)</p>

		<p>In the RoLR event that occurred in NSW in December 2009, many of the final invoices that were subsequently issued were inaccurate in that they did not include recent payments made on the customers' accounts. It is not clear if section 615 (2) would require the administrator to issue amended bills reflecting the accurate adjusted account balance if the customer requests this.</p> <p>There were some cases where the failed retailer had failed to bill for over 6 months, so eventually a back bill will be issued. It is not clear if section 615 (2) would require the administrator to provide the extended time for payment as applies in the case of undercharging in the NECF.</p> <p>We suggest that section 615 requires some clarification as to how the preserved 'rights' and 'obligations' referred to are to be enforced.</p>
Part 6	Retailer of Last Resort	Further general comments on this scheme are included in our response to Attachment C.

Draft National Energy Retail Rules

Rule	Subject Matter	Comment
209	Basis for bills	<p>EWON is concerned that 209 (2), which only requires an actual meter reading once every 12 months, may have unintended negative consequences for some customers.</p> <p>If a customer receives 4 consecutive estimated bills, and it turns out that the reads on which these had been based were significantly under-estimated, this customer will be issued with a large 'catch up' bill. This will lead to payment difficulties for some customers who would otherwise manage payment of their bills on a regular basis.</p> <p>Actual reads deliver vital information about the customer's actual usage, and provide an early warning of issues such as a leaking hot water service, or the cost of running a new appliance. If the customer has had to wait 12 months until an actual read is obtained, they have been denied the opportunity to act more quickly on this information to repair leaks, or adjust their usage of specific appliances to reduce their overall bill.</p> <p>In NSW, clause 36 of the <i>Electricity Supply (General) Regulation 2001</i> restricts the period of estimated bills to 6 months. EWON considers the extension of this time limit to 12 months goes against best industry practice, and has the potential to significantly disadvantage many customers by denying them important information about their energy usage in a timely manner.</p>
210	Estimation	<p>The use of the term 'adjustment' in subsection (4) (a) appears to suggest a specific line item on the bill, whereas this does not currently appear to be the case in practice.</p> <p>In EWON's experience, the invoice based on an actual read following an estimated invoice has nothing on it to indicate any adjustment – it is simply based on the meter reads. If the estimated read for the first billing period had been under-estimated, the usage recorded by the actual read in the second billing period will appear correspondingly higher than normal (and vice versa). This is a natural consequence of applying the meter reads in the normal way, and no additional line item is required. The use of the noun 'adjustment' in 210 (4) (a) suggests something concrete that can be viewed on an invoice, and this ambiguity may lead to problems when applying this section.</p> <p>EWON suggests that customers would benefit from a short statement advising them that the previous bill had been based on an estimated read and the present bill is based on an actual read – in the same way that subsection (3) requires retailers to indicate on the bill when it has been based on an estimated read.</p>

Draft National Energy Retail Rules																																																		
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213	Contents of Bills	<p>Subsection (1) (j) refers to 'metering data', though this term is not defined.</p> <p>Customers with interval meters have frequently complained to EWON about the absence of a start and end read on their electricity invoices. All they receive is totals for their energy usage in the various time bands. If they wish to verify the metered consumption, they are unable to compare any measurement on their bill with what they can physically see on their meter. Customers who have complained about this to their retailers report that they have been told the reads are taken electronically so they should trust them.</p> <p>To illustrate the situation, we have enclosed a typical sample of a NSW customer's invoice based on interval data. None of this data corresponds to anything the customer can see on their meter. The values for 'current reading' are the totals of usage in each time band for that period, and the values for 'previous reading' show as a zero value.</p> <div><p>TOTAL OF CURRENT CHARGES (GST Exclusive Rates): RESIDENTIAL SUPPLY for the period 9 Jun 2008 - 5 Sep 2008</p><table><tr><th>Tariff Description</th><th>Meter Id</th><th>Bill Days</th><th>Current Readings</th><th>Previous Readings</th><th>Kilowatt Hour Usage</th><th>kWh/Rate</th><th>Your Account Calculations \$</th></tr><tr><td colspan="8">Peak Use</td></tr><tr><td>4A Domestic Supply</td><td>697810</td><td>88</td><td>00000179</td><td>00000000</td><td>179</td><td></td><td></td></tr><tr><td>4A Domestic Supply</td><td>697810</td><td>88</td><td>00000272</td><td>00000000</td><td>272</td><td></td><td></td></tr><tr><td>4A Domestic Supply</td><td>697810</td><td>88</td><td>00000584</td><td>00000000</td><td>584</td><td></td><td></td></tr><tr><td>Total</td><td></td><td></td><td></td><td></td><td>1035</td><td>1035.00@ 12.019¢</td><td>\$124.40</td></tr></table></div> <p>EWON considers it a basic principle of fair trading that if a customer is being billed on the basis of a measured quantity of a product, then this measurement should be able to be independently verified. It is EWON's understanding that interval meters have an 'accumulation register' which is visible to customers, which records the total consumption since the meter was installed.</p> <p>EWON strongly recommends the specific requirement for a 'start' and 'end' read on all customer bills, which in the case of an interval meter, could be satisfied by including the reading from the accumulation register, in addition to the 'time of use' totals.</p>	Tariff Description	Meter Id	Bill Days	Current Readings	Previous Readings	Kilowatt Hour Usage	kWh/Rate	Your Account Calculations \$	Peak Use								4A Domestic Supply	697810	88	00000179	00000000	179			4A Domestic Supply	697810	88	00000272	00000000	272			4A Domestic Supply	697810	88	00000584	00000000	584			Total					1035	1035.00@ 12.019¢	\$124.40
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213	Contents of Bills	<p>In the case of interval meters, if any of the half hourly reads has been substituted, it is important that an accurate indication of this is provided on the customer's bill. This issue was raised in the MCE's Issues paper: <i>Smart Meter Review of Customer Protection and Safety</i> in Draft Policy Position 6. EWON supported the proposal that the proportion of the bill that was estimated should be clearly shown, whether as a percentage, in literal or in monetary terms.</p>																																																

Draft National Energy Retail Rules

Rule	Subject Matter	Comment
217	Billing disputes	<p>Subsection (5) (c) refers to the potential for a meter to be 'faulty' but this term is not defined. EWON considers that meter accuracy should be clearly defined in the NECF, to ensure that the key consumer protection measures associated with having a faulty meter are uniform across all jurisdictions.</p> <p>In NSW, clause 36 (4) in both the <i>Electricity Supply (General) Regulation 2001</i> and the <i>Gas Supply (Natural Gas Retail Competition) Regulation 2001</i> specifies that a meter is regarded as not registering correctly if the percentage of error is 2%. To support the aims of uniformity and predictability in the national energy market, we suggest that a measure of meter accuracy should be included in this section.</p>
218	Undercharging	<p>EWON has investigated a large number of customer complaints where the retailer has failed to bill the customer for long periods, sometimes over a year, due to failures within their billing systems. Failure to issue regular bills to customers deprives them of real information about their usage, and therefore the opportunity to identify and repair leaks, or to monitor the running costs of new appliances.</p> <p>Failure to bill regularly also reduces the customer's ability to budget appropriately for their ongoing energy costs. When the back bill is eventually issued, it can cause significant financial stress on customers who would otherwise have been able to manage their bills on a regular basis. We submit that the consumer protections against undercharging should also apply clearly and equally to failure to charge.</p> <p>For the sake of clarity, EWON would like to see the words "<i>or not charged</i>" in subsection (1) and (2), so that they read:</p> <p>(1) Subject to sub rule (2), where a retailer has undercharged <i>or not charged</i> a small customer, it may recover from the customer the amount undercharged <i>or not charged</i>.</p> <p>(2) Where a retailer proposes to recover an amount undercharged <i>or not charged</i> the retailer must: (etc)</p> <p>We also suggest an additional subsection limiting the time for recovery of undercharged amounts to 9 months, "<i>if the undercharging resulted from a failure of the retailer's billing systems</i>".</p> <p>This change would be in line with both clause 6.2 of the <i>Victorian Retail Code</i>, and with the recent recommendation from the Independent Pricing and Regulatory Tribunal of NSW in the <i>Energy distribution and retail licences Compliance Report for 2008/09</i>.</p> <p>In that Report, the change to a 9 months time limit was recommended "<i>to strengthen incentives for retail suppliers to maintain their billing systems and ensure ontime billing</i>".</p>

Draft National Energy Retail Rules		
Rule	Subject Matter	Comment
220	Payment Methods	<p>EWON submits that there should be a prohibition against charging customers on standard retail contracts for their choice of payment methods. Such a prohibition is currently the case in NSW, where clause 30 (3) of both the <i>Electricity Supply (General) Regulation 2001</i> and the <i>Gas Supply (Natural Gas Retail Competition) Regulation 2001</i>, states:</p> <p style="text-align: center;"><i>'The supplier may not impose any charge in connection with, or resulting from, a method of payment used by the customer.'</i></p> <p>The application of additional fees for some forms of payment has been increasing, and is a concern for those on fixed incomes who may be already experiencing difficulties in paying their bills.</p> <p>As electricity (and arguably gas) is an essential service, EWON considers that standard retail contracts should prohibit any additional fees linked to the choice of payment method.</p>
222	Shortened Collection Cycle	<p>Subsection (2) (a) provides that a retailer can only place a customer on a shortened collection cycle if <i>"the customer is not experiencing payment difficulties"</i>. We note that this does not necessarily mean the customer is on the retailer's hardship program, so may not be formally flagged in the retailer's system in any way.</p> <p>In EWON's experience of customer complaints, where a customer has struggled to pay two consecutive bills on time, (thus receiving reminder and warning notices), this is usually a clear indication that they are <i>"experiencing payment difficulties"</i>. These customers do not necessarily make contact with the retailer or EWON while they are trying to gather sufficient resources together to make the payment. They may only make contact when disconnection is imminent or has just happened.</p> <p>EWON is concerned about the retailers' ability to identify these customers, and to flag them in their system as not being appropriate for the shortened collection cycle. Without being flagged in some way, their automated systems may place the customer on a shortened collection cycle without further review, which will only exacerbate the situation for a customer already experiencing payment difficulties.</p> <p>While EWON welcomes the expansion of the notice requirements included in the 2nd Exposure Draft, we remain opposed to the introduction of a shortened collection cycle, and we are concerned that there may be an increase in the rate of disconnections in NSW if retailers start to apply this process.</p>

Draft National Energy Retail Rules		
Rule	Subject Matter	Comment
225	Security deposits	<p>Subsection (3) (a) provides that a retailer cannot require a security deposit unless they have offered the option of a payment plan, and the customer has declined the offer. EWON suggests that the reference to payment plans should be expanded to specifically include Centrepay arrangements.</p> <p>We note that Rule 304 provides that a retailer must allow hardship customers to make payments using Centrepay, but Rule 225 (3) (a) appears to refer to customers who are not hardship customers, as these are separately covered in subsection (2).</p>
234	Termination	<p>Rule 234 (1) (e) provides that the 10-day time limit for termination of a contract following de-energisation is to apply “<i>if there is no contractual right to re-energisation</i>”: The rules for re-energisation in Rule 615 require the customer to have “<i>rectified the matter that led to the de-energisation</i>”.</p> <p>In EWON’s experience, many customers are unable to pay their outstanding arrears in full within 10 days of de-energisation, however most will try to make contact with their retailer during this period and attempt to negotiate a realistic payment plan so that supply can be restored. This is in accordance with their entitlement to a payment plan in accordance with Rule 221 (1) (b).</p> <p>As part of the negotiation, customers may be required to make an appointment with a community welfare organisation or a financial counsellor. EWON has been advised that the current waiting list for an appointment with a financial counsellor in parts of New South Wales can be up to 6 weeks.</p> <p>If the contract is terminated while a customer is still trying to obtain assistance as part of the negotiation for a payment arrangement, this can have negative consequences for the customer. This may have been unintended in the drafting of this section. Closure of the account at this stage means that when the customer is eventually in a position to meet the requirements for re-energisation, they have to open a new account. This can involve them in the payment of an additional security deposit, and re-establishing a range of other procedures such as their pensioner rebate, and Centrepay or direct debit arrangements.</p> <p>EWON suggests that the wording in 234 (1) (e) is changed to refer to the customer making contact with the retailer to remedy the cause of the disconnection. If the customer does not make contact during this time, the retailer would have a right to terminate the contract.</p>

Draft National Energy Retail Rules

Rule	Subject Matter	Comment
246	Required Information for market contracts	<p>Subsection (1) (a) requires disclosure of:</p> <p style="text-align: center;"><i>“...all applicable process, charges, early termination payments and penalties security deposits, service levels, concessions or rebates, billing and payment arrangements...”</i></p> <p>EWON suggests an additional provision that if specific fees are not separately disclosed, then they are unenforceable. For example, EWON has received many complaints from customers about charges for disconnection of supply when they move premises and close their account. As these charges can be substantial (up to \$100) customers say that if they had been aware of them they would not have agreed to a market contract, as the amount of the charge negates any savings on the contract.</p>
304	Payment by Centrepay	<p>EWON supports the provision that a retailer must permit a hardship customer to make payments using Centrepay as a payment option.</p> <p>We suggest that this provision should apply to <i>all</i> customers. There are many customers receiving benefits who, while they may not qualify as hardship customers, use Centrepay deductions as an effective means of budgeting for their utility bills.</p>
603/604	Reminder Notices and Disconnection Warning Notices	EWON recommends that it is a requirement that both these notices advise customers of the existence of their hardship programs if they are experiencing payment difficulties.
604	Disconnection Warning Notices	As noted earlier in our comment on the definition section in the Law, EWON supports the use of the more common term ‘disconnection’ in any document that communicates directly with a customer.
610	When retailer must not arrange de-energisation	<p>We note the provisions of 610 (1) (b) restricting the retailer’s ability to de-energise a customer’s premises when there is still an unresolved complaint with the ombudsman.</p> <p>For consistency, we suggest that this subsection should also include the situation when the customer has raised a complaint directly with the retailer, and this is not yet resolved</p>
615	Re-energisation	Our concerns about the 10-day limit in this section are covered in more detail in our comments on Rule 234. We suggest that the requirement should be that the customer <u>makes contact</u> with the retailer to remedy the cause of the disconnection, rather than having to totally rectify the matter which led to the de-energisation within the 10 day period.

Draft National Energy Retail Rules		
Rule	Subject Matter	Comment
1002	Retail Market Performance Reports	<p>EWON notes that Rules 1002 and 1003 specify a range of indicators to be included in the performance reports and the Law states these reports must be in accordance with the AER procedures and guidelines. However EWON is concerned that items 1003(a) - (g) present a limited range of indicators for reporting purposes.</p> <p>EWON suggests that the list of indicators in Rule 1003 is expanded to include the current NSW and Victorian indicators such as the percentage of customers using Centrepay, on payment plans prior to disconnection, the number of payment plans offered per retailer, number of security deposits/refundable advances, direct debit defaults, and the number of estimated accounts per year.</p>
1123	Minimum publication requirements	<p>Rule 1123 provides for minimum publication requirements for RoLR events, largely on web-sites or messages on call centre telephones, with a possibility of advertisements in the media.</p> <p>We note there is no obligation for direct written communication to the customers of the failed retailer.</p> <p>EWON believes it is reasonable that the RoLR should be required to communicate directly with the new customers, explaining both the event, the terms of the current arrangement with the RoLR, and the customer's options, including the right to a new retail contract with a retailer of their choice. If the start read with the new retailer is to be based on an estimated read, this should also be explained. Direct communication with the customer will reduce the confusion when the customer receives the first invoice from a retailer with which they had no relationship.</p>
Part 11	Retailer of Last Resort	Further comments on this scheme are included in our response to Attachment C.

Model terms and conditions for deemed standard retail contracts		
Clause	Subject Matter	Comment
5	What is not covered by the contract	<p>EWON notes that the responsibility for meter reading is not made clear. There is no reference in either clause 5.1 or 5.2, though clause 11 requires the retailer to ‘use best endeavours’ to ensure meter readings are carried out. Clause 8 of the Terms and Conditions for deemed standard connection contracts refers to meter reading as one of the purposes for which access is required.</p> <p>We understand that there has been a concern not to duplicate information that already exists in other instruments relating to metrology procedures. However this is a customer contract, and the standard customer does not have access to the range of supporting documentation where this additional information may be contained.</p> <p>The concept of “responsible person” as defined in Rule 103 is not necessarily intuitive to the average customer. EWON suggests that the responsibility for meter reading should be clearly stated, and that both the retail and connection contract terms should be consistent on this. This would greatly assist the investigation of customer complaints regarding meter reading issues.</p>
10	Paying your bill	<p>Clause 10.4 refers to a late payment fee, but this is not otherwise provided for in the Law or the Rules. The same comment applies to charges for dishonoured cheque or credit card payments in Clause 10.2. EWON suggests that further clarification is required as to the application of these fees. If these issues are to be a matter for individual jurisdictions, this may need to be specifically stated.</p> <p>While we support the waiver of late payment fees for hardship customers set out in Rule 304, we are concerned that there appears to be no mechanism for ensuring these or the dishonour fees are kept at a reasonable level. (The application of these fees is currently regulated in NSW by IPART.)</p>
13	Security Deposits	<p>EWON notes that clause 3.1 provides that the retailers’ right to require a security deposit is ‘<i>governed by the Rules</i>’.</p> <p>These Rules, at 225 (5), refer to the customer’s right to dispute the decision of the retailer that the customer’s credit history is ‘unsatisfactory’.</p> <p>EWON suggests that it would be appropriate to include this right in the deemed contract, as otherwise the customer is very unlikely to have any notice that this right exists at all.</p>
14	Disconnection of Supply	<p>As noted earlier in our comment on the definition section in the Law, EWON supports the use of the more common term ‘disconnection’ in any document that communicates directly with a customer.</p>
22	RoLR	<p>We note the requirement in section 652 of the Law that all customer retail contracts must include a notice relating to RoLR events, and that under Rule 1124 the AER will provide a standard form for this. It is not clear whether the wording used in this current section reflects the form of words provided by the AER.</p>

Model terms and conditions for deemed standard connection contracts		
Clause	Subject Matter	Comment
5.1	What services do we provide	<p>This section refers to ‘customer connection services’ – this is a term that would not convey any specific meaning to the average customer, but is not defined in the dictionary in Schedule 1.</p> <p>It does not specify whether these services include activities such as meter reading or vegetation management, for instance, although these are two of the activities where the distributor or its representatives have the most direct impact on the average customer.</p> <p>The concept of ‘responsible person’ as defined in Rule 103 is not necessarily intuitive to the average customer. EWON suggests that the responsibility for meter reading should be clearly stated, and that both the retail and connection contract terms should be consistent on this. This would greatly assist the investigation of customer complaints regarding meter reading issues.</p>
5.5	Quality of energy	<p>In EWON’s view, the expression <i>‘the technical limitations of the distribution system’</i> is unclear.</p> <p>All the other items in the list refer to external factors that could be reasonably described as ‘beyond our control’, but this term appears to be different.</p> <p>In EWON’s experience of customer claims for compensation for damage resulting from an event on the distribution system, the issue often arises as to the role of the distributor in maintaining their system. Some typical examples include:</p> <ul style="list-style-type: none"> • a customer advises that a power pole is leaning at a dangerous angle. A field officer from the distributor inspects it and confirms it needs replacement. Nothing further is done, possibly due to staff or equipment shortages, and three months later the pole falls over causing property damage. • a tree trimming program planned by the distributor is not carried out. Trees fall across the power lines resulting in livestock being electrocuted. <p>We would appreciate clarification as to whether the term <i>‘the technical limitations of the distribution system’</i> includes maintenance issues (which are within the control of the distributor) or whether these are specifically excluded.</p>
11	Disconnection of Supply	As noted earlier in our comment on the definition section in the Law, EWON supports the use of the more common term ‘disconnection’ in any document that communicates directly with a customer.

Attachment A: Connections Frameworks

The contractual model

EWON welcomes the new connection framework, with the terms and conditions of the contract for a new or altered connection becoming part of the deemed standard connection contract.

We suggest clarification is required around the issue of 'successor in title' – for example if a customer moves into a property that has an embedded solar installation. How do the terms of the previous customer's new or altered connection contract become part of the terms of the new customer's deemed contract?

It is possible that clause 6.8 of the deemed contract covers most of the issues that may arise in this situation, but the contractual situation for the carry-over of any terms is not totally clear.

Attachment B: Customer Registration and Transfer

Cooling off

We note the proposal to allow transfers to be initiated and completed prior to the completion of the cooling off period on the basis that '*only a small minority of customers seek to exercise their cooling off right*'.

EWON only sees a small proportion of overall customer complaints as customers are required to contact their retailer in the first instance to try to resolve their complaint, and only come to EWON if they are dissatisfied with the retailer's response. In this context, EWON has received the following complaints from customers that their cooling off rights were not exercised by the retailer:

- 2007 – 67 complaints
- 2008 – 209 complaints
- 2009 – 154 complaints

Customers exercise their cooling off rights for a range of reasons – some after careful reconsideration of the terms and conditions, but a number of customers, particularly elderly people or people living on their own, will agree to a contract as a means of getting rid of a persistent marketer, knowing they have the right to cancel in the cooling off period.

Allowing transfers to go through before the cooling off period has elapsed, appears to switch the balance of this process in favour of the retailer. Previously, we understand the transfer could not be processed until the cooling off period had elapsed, so if it was cancelled in that time there was nothing further to be done.

With the proposed change, if the customer exercises their cooling off rights, then the transfer process has to be 'undone' – a process that may be prone to more error. EWON is concerned that this may result in more transfers in error being reported.

Attachment C: Retailer of Last Resort Scheme

In the course of the two RoLR events in NSW (and elsewhere) to date, EWON has received complaints from customers who have been impacted by the event in various ways. We would like to raise the following issues as a matter for further clarification in the Law or the Rules:

1. Section 615 of the NERL provides that in a RoLR event, the customer retail contracts between the failed retailer and its customers will be terminated, but this '*does not affect any rights and obligations that have accrued under the contract*'. At the time of each event, EWON was in the process of investigating a number of complaints against the retailer before it failed (in the case of the second event the number of complaints was significantly higher because the failed retailer had a large number of customers in NSW). The continuation of the rights and obligations appear to have implications for the body that is administering the affairs of the failed retailer in the short term, in particular to comply with the consumer protections offered in the NECF. This includes specific protection for hardship customers, any customer's right to a payment plan rather than having the debt referred immediately to a debt collection agency, and the customer's right to dispute resolution of any complaints by the energy ombudsman. EWON suggests that this section should clarify the customer's ongoing rights in this respect, and the obligation of the administrator/receiver/liquidator to comply with existing energy laws, both in how they administer the issuing of the final bills, hardship provisions, and in their availability to respond to customer complaints.

For example, with the current RoLR event some customers are receiving final bills that they dispute and the dispute often relates to systems and process failures that occurred prior to the RoLR event. These matters include failure to bill and delayed bills, high bill disputes, debt transfer issues, transfer in error matters and failure to close an account upon request. EWON would normally investigate these matters and arrive at a resolution. This process of investigation is significantly hindered by the RoLR event. The following EWON case examples highlight customer issues:

Case Study A: The customer said her account was with her preferred retailer, however she then received two bills from Jackgreen in late 2007 and early 2008 addressed to "The Occupant" and with a slightly different address. She said that when she contacted her preferred retailer they advised that they had spoken to Jackgreen and that Jackgreen had the wrong NMI for the customer's premises. However the customer advised that she had now received a debt collection letter for \$967 from Jackgreen and does not believe she should have to pay this amount.

Case Study B: The customer was a Jackgreen customer and transferred to another retailer in early 2009. The customer said that he was advised that his account was \$270 in credit at the time of closure. The customer then received a bill from Jackgreen in November 2009 for approx \$700. He contacted Jackgreen and was advised that the bill was issued in error. The customer is now receiving calls from collection agents for Jackgreen to recover \$700.

2. Rule 1123 provides for minimum publication requirements for RoLR events, largely on web-sites or messages on call centre telephones, with a possibility of advertisements in the media. We note there is no obligation for direct written communication to the customers of the failed retailer. We suggest that the RoLRs should have an obligation to communicate directly with the new customers, explaining both the event, the terms of the current arrangement with the RoLR, and the customer's options, including the right to a new retail contract with a retailer of their choice. If the start read with the new retailer is based on an estimated read, it is reasonable for this to be explained as well. Direct communication with the customer could eliminate a lot of confusion when the customer receives the first invoice issued from a retailer with which they have no relationship.

3. Cost recovery. EWON notes the role of the AER in determining a cost recovery scheme on application by a RoLR. EWON opposes the imposition of any fee by the RoLR levied on the customers of the failed retailer they acquire under the scheme or on the general customer base. Any additional fee, particularly on hardship customers, does not seem reasonable given the disruption and inconvenience that customers experience as the result of a RoLR event in any case.

EWON acknowledges that Retailers of Last Resort will incur costs in absorbing customers displaced following a RoLR event. However, we believe that small retail customers, whether residential or small business, should not be penalised by way of a fee for the business failure or withdrawal from the market of their retailer of choice.

Customers transferred to a RoLR in such events are already inconvenienced by receiving an out-of-schedule, estimated final bill from the failed/withdrawn retailer. In some cases the customers may have deliberately chosen to leave the RoLR, only to find themselves transferred back to their former retailer which is the RoLR for their area. Customers may pay more for their energy with the RoLR than under their market contract with the failed/withdrawn retailer.

A charge to customers by the RoLR could result in complaints, both to the RoLR and possibly to EWON, with the costs of complaints outweighing any gain of the administrative fee.

Where a retailer collapses, as anticipated by the RoLR provisions, we suggest that consideration might be given to recovery of the costs of customer transfers through an industry-wide insurance scheme or other type of fund. This would allow a spread of costs rather than the proposed regulatory arrangement that potentially penalises customers by requiring them to pay a fee because a retailer has failed or withdrawn from the market.

In the event of a retailer voluntarily choosing to withdraw from the market, the AER might consider that a condition of withdrawal should be for the retailer to pay all or part of the relevant RoLR costs.

Attachment D: Future smart meter customer protections

EWON notes that there will be further consultation during 2010 on the smart metering framework and we will continue to contribute as appropriate.

With regard to the policy positions presented in this Attachment:

1. D1: How energy information is presented to customers

We have already noted in our response to Rule 213 the importance of having some metering information on the bill that the customer is able to check against the display they can see on the meter at their premises. EWON understands that the rolling accumulated total is always visible on interval meters, but this is not currently provided to NSW customers on their bills. It would greatly assist customers, and boost confidence in the accuracy of these meters, if the inclusion of this figure was a specific requirement under the NECF. Without any verifiable read, the customer is being asked to take the usage information 'on trust', which can make resolution of complaints about billing problematic.

2. D3 : Notifying customer that disconnection may be effected remotely

We note that there are two mechanisms proposed:

- a new clause in the model standard connection contract that informs customers that they may be disconnected remotely; and/or
- a warning in the disconnection warning notice that if their meter has remote capability, they will be disconnected without a person visiting their premises.

EWON believes these two mechanisms should be presented as 'and' – not 'and/or'.

While inclusion of a clause of this nature in the customer contract is important for describing the process to all customers, in EWON's experience, if this document is read at all at the start of a contract, its provisions will not necessarily be recalled for long.

The warning notice advising of impending disconnection provides information of immediate relevance to the affected customer, and is much more likely to be read carefully.

It seems reasonable to include the information in both the contract and the notice, to ensure customers are aware of the process.