



REVIEW OF ENERGY CUSTOMER CONTRACT REGULATIONS

Draft Recommendations Report

Department of Treasury | Public Utilities Office
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Glossary

Term	Definition
AGA Code	Australian Gas Association Natural Gas Customer Service Code AG 755-1998.
ERA	Economic Regulation Authority. The ERA is the independent economic regulator for Western Australia. It provides independent and transparent advice to the State Government.
Bank guarantee	A bank guarantee is a guarantee from a lending institution that provides an assurance that the liabilities of a debtor will be met.
Code of Conduct	When used in the Gas Regulations, see definition of 'Gas Marketing Code'. When used in the Electricity Regulations, see definition of 'Electricity Customer Code'.
Compendium	Compendium of Gas Customer Licence Obligations . It regulates and controls the conduct of retailers and distributors who supply gas to residential and small business customers. It was developed to protect the interests of customers who generally have little or no market power. It is administered by the ERA.
Distributor	For gas, the holder of a gas distribution licence for the distribution system through which gas is supplied to the customer. For electricity, the holder of an electricity distribution licence or an integrated regional licence for the distribution system through which electricity is supplied to the customer.
Electricity Customer Code	Code of Conduct for the Supply of Electricity to Small Use Customers 2018 . It regulates and controls the conduct of retailers, distributors and electricity marketing agents who supply electricity to residential and small business customers. It is administered by the ERA.
Electricity Regulations	Electricity Industry (Customer Contracts) Regulations 2005 . They set out the minimum requirements for electricity standard form contracts and non-standard contracts.
Gas Customer Code	Collectively, the Compendium and the Gas Marketing Code.
Gas Marketing Code	The Gas Marketing Code of Conduct 2017 . It regulates and controls the conduct of the holders of trading licenses and gas marketing agents, with the object of protecting customers from undesirable marketing conduct and defining standards of conduct in the marketing of gas to customers. It is administered by the ERA.
Gas Regulations	Energy Coordination (Customer Contracts) Regulations 2004 . They set out the minimum requirements for gas standard form contracts and non-standard contracts.
Public Utilities Office	A business unit within the Department of Treasury responsible for providing advice regarding energy policy, including consumer protection, to the Minister for Energy.
Refundable advance	Another term used for a security deposit (see below). When used in the Gas Regulations means <i>an amount of money required by a retail supplier from a customer as security against the customer defaulting on a payment due to the retail supplier under a customer contract</i> .
Retailer/Retail supplier	For gas, the holder of a gas trading licence. For electricity, the holder of a retail licence or an integrated regional licence who is selling, or intending to sell, electricity to the customer.
Security deposit	Another term used for a refundable advance (see above). When used in the Electricity Regulations means <i>an amount of money provided as security against the customer defaulting on a payment due to the retailer under a customer contract</i> .
Small-use customer/Customer	For gas, a customer whose consumption of gas is less than 1 terajoule per year. For electricity, a customer who consumes not more than 160 MWh of electricity per year.
Supplier	See definition of 'retailer'.

Executive Summary

The Department of Treasury's Public Utilities Office is conducting a review of energy customer contract provisions within the *Energy Coordination (Customer Contracts) Regulations 2004* (the Gas Regulations) and the *Electricity Industry (Customer Contracts) Regulations 2005* (the Electricity Regulations).

The purpose of the review is to provide a streamlined and consistent framework for delivering customer protections by removing outdated references to the *Australian Gas Association Natural Gas Customer Service Code AG 755-1998* (the AGA Code) within the regulations in addition to removing duplications with other instruments.

This document sets out the Public Utilities Office's draft recommendations following consideration of stakeholder submissions in response to the *Review of Energy Customer Contract Regulations Issues Paper*. Stakeholder submissions were broadly supportive of the findings contained in the Issues Paper.

In summary, the draft recommendations include:

- proposed amendments to address inconsistent terminology, including replacing 'retail supplier' with the term 'retailer';
- removing duplicative references to provisions in the outdated AGA Code in relation to matters such as supply disruptions, tariff variations and billing;
- new security deposit provisions in the gas and electricity customer codes, which are intended to improve customer protections;
- proposed amendments to remove potential overlap with the Australian Consumer Law; and
- addressing additional stakeholder suggestions for regulatory improvement such as broadening the obligation to offer a standard form contract so that it falls on the retailer currently or most recently supplying electricity at a connection point, and on Synergy or Horizon Power (as relevant) for new connection points.

The draft recommendations are discussed in detail in Chapter 2, Chapter 3, Chapter 4 and Chapter 5 of the Draft Recommendations Report. An aggregated list of draft recommendations is contained in Appendix A.

Submissions on the Draft Recommendations Report are welcomed by **5.00 pm (WST) Friday 28 June 2019**.

The Public Utilities Office will consider submissions received in response to this Draft Recommendation Report in preparing a final recommendations report for the Minister for Energy by the end of August 2019.

Recommendations approved by the Minister will then be implemented through amendments to the Gas and Electricity Regulations and related instruments.

1. Introduction

1.1 Purpose

The purpose of the review is to provide a streamlined and consistent framework for delivering customer protections by removing outdated references and duplications with other instruments within the *Energy Coordination (Customer Contracts) Regulations 2004* (the Gas Regulations) and the *Electricity Industry (Customer Contracts) Regulations 2005* (the Electricity Regulations).

This document sets out the Public Utilities Office's draft recommendations following submissions from stakeholders to the Issues Paper released in July 2017.

1.2 Background

The Gas Regulations and Electricity Regulations provide certain customer protections for small-use gas and electricity customers.

The Gas Regulations incorporate references to the *Australian Gas Association Natural Gas Customer Service Code AG 755-1998* (the AGA Code). The AGA Code has not been updated for many years and does not represent regulatory best practice in energy consumer protection. Many of the AGA Code references in the Gas Regulations are duplicated in other regulatory instruments.

Outdated references and duplications can create confusion and unnecessary regulatory burden on retailers who are required to comply with the regulations. They also may not provide a suitable level of protection for energy customers, and make it more difficult for customers to understand what protections they are entitled to.

The July 2017 Issues Paper sought the views of stakeholders on:

- the removal of outdated references; and
- improvements to the Gas Regulations and Electricity Regulations to enhance regulatory certainty, reduce red tape for both regulators and retailers, and provide clarity and a suitable level of protection for consumers.

The Public Utilities Office received submissions from:¹

1. Alinta Energy.
2. Origin Energy.
3. Synergy.
4. Department of Mines, Industry Regulation and Safety – Consumer Protection Division (confidential submission).

Submissions from the retailers (Alinta Energy, Origin Energy and Synergy) broadly supported the proposals outlined in the Issues Paper. All three retailers made additional suggestions for improvements to the Gas Regulations and/or the Electricity Regulations. These additional suggestions are discussed in Chapter 5.

¹ Submissions available on the Department of Treasury's [website](#).

This document sets out the Public Utilities Office's draft recommendations following consideration of stakeholder views.

1.3 Guiding Principles

The guiding principles are to:

1. Minimise inconsistency between the customer protection arrangements for electricity and gas. Unless there is a clear reason for inconsistency, the default position is to recommend changes to ensure consistency between the two regulatory frameworks.
2. Remove unnecessary overlap between regulatory instruments. Where the substance of AGA Code provisions and Compendium provisions overlap but do not perfectly align, the Public Utilities Office considers that the Compendium represents more up-to-date and fit-for-purpose regulation due to the frequent reviews and stakeholder consultation.
3. Evaluate customer protection arrangements in other jurisdictions, such as the National Electricity Market, to ensure recommendations to improve the local regulatory framework deliver proven and up-to-date customer protections.

Where potential changes to the Electricity Customer Code, the Compendium and/or gas licence conditions are flagged, the Public Utilities Office is working with the Economic Regulation Authority (ERA) for those potential changes to be considered in upcoming reviews of those instruments.

1.4 Review Process

The anticipated timetable to complete the review is provided below.

Table 1: Timetable for the review

Activity	Timing
Publish Draft Recommendations Report	31 May 2019
Submissions on Draft Recommendations Report	28 June 2019
Final Recommendations Report to Minister for Energy	Late August 2019
Commence process to amend Gas Regulations and Electricity Regulations	Late 2019

Once the Minister for Energy has approved the Final Recommendations Report, the process to amend the Gas Regulations and Regulations will be undertaken.

1.5 Invitation for submissions

The Public Utilities Office invites submissions on the draft recommendations set out in this paper by **5.00 pm (WST), Friday 28 June 2019**. Electronic submissions are preferred and should be emailed to: PUOSubmissions@treasury.wa.gov.au. However, printed submissions may be mailed to:

Miss Anne Braithwaite
Senior Policy Analyst
Public Utilities Office, Department of Treasury
Locked Bag 11
Cloisters Square WA 6850

Please indicate on the covering page of your submission if you wish part or all of your submission to be treated as confidential. Unless otherwise requested, submissions will be made available at www.treasury.wa.gov.au/Public-Utilities-Office.

Requests for information relating to the review will be treated in accordance with the *Freedom of Information Act 1992* (WA) and Department of Treasury processes (please see <http://www.treasury.wa.gov.au> for further information).

Information on this paper, or the review process, can be obtained from Anne Braithwaite at anne.braithwaite@treasury.wa.gov.au or on (08) 6551 4735.

The Public Utilities Office welcomes all stakeholder comments.

1.6 Consolidated list of recommendations

A consolidated list of the draft recommendations is provided in Appendix A.

2. Fixing inconsistencies in terminology

Preliminary recommendations

The Issues Paper highlighted two inconsistencies in the terminology of the regulatory framework.

- The Gas Marketing Code and the Compendium refer to ‘retailer’, while the Gas Regulations refers to ‘retail supplier’ and the AGA Code to ‘supplier’. As these terms have the same meaning – the holder of a gas trading licence who retails gas to the customer – the Public Utilities Office recommends that the term ‘retail supplier’ within the Gas Regulations is amended to ‘retailer’.
- The Gas Regulations define the ‘Code of Conduct’ as ‘the Gas Marketing Code of Conduct of 2004’. As this version of the Code has since been repealed and replaced, the Public Utilities Office recommends that the definition is updated to refer to the current version of the Code.

Stakeholder submissions

No objections from stakeholders were received in response to the preliminary recommendations.

Draft recommendations

Draft Recommendation 1: Amend the term ‘retail supplier’ within the Gas Regulations to ‘retailer’ (without changing the definition of that term) to improve consistency with the Gas Marketing Code and Compendium.

Draft Recommendation 2: Amend the definition of ‘Code of Conduct’ within the Gas Regulations to refer to the most up-to-date version of the Code. This can be achieved by amending the definition of Code to mean that as defined in section 11ZPL of the *Energy Coordination Act 1994*.

3. Removing references to the AGA Code and associated changes

3.1 Customer disconnection and reconnection

Regulations 12(6) and (7) of the Gas Regulations reference and modify several AGA Code provisions relating to customer disconnection and reconnection. The majority of these provisions are duplicated within the Compendium.

Preliminary recommendation

Delete the references to AGA Code clauses in the Gas Regulations and not replace them, as per Table 2.

Rationale

The majority of these provisions are duplicated within the Compendium.

Table 2: AGA Code Provisions regarding disconnection and reconnection referred to in Regulations 12(6) and (7) of the Gas Regulations

AGA Code Provision	Equivalent clause in Compendium	Draft recommendation for changes to Gas Regulations
5.1.1 Disconnection for unpaid bills	7.1, 7.2; see also 6.11	Delete and do not replace AGA code reference
5.1.2 Disconnection for denying access to meter	7.4	Delete and do not replace AGA code reference
5.1.3 Disconnection for emergencies	7.5	Delete and do not replace AGA code reference
5.1.4 Disconnection for health and safety reasons	N/A, although see 7.5	Delete and do not replace AGA code reference <i>(see Chapter 3.2 for discussion)</i>
5.1.5 Disconnection for planned maintenance	N/A	Request that the Economic Regulation Authority (ERA) insert a requirement into gas distribution licenses for distributors to use best endeavours to minimise interruptions and restore supply as soon as practicable <i>(see Chapter 3.2 for discussion)</i>
5.1.6 Disconnection for unauthorised utilisation	7.6(3)	Delete and do not replace AGA code reference
5.1.7 Disconnection for refusal to pay refundable advances	N/A	Delete and replace with new framework for security deposits <i>(see Chapter 3.3 for discussion)</i>
5.1.8 When a supplier shall not disconnect	7.2, 7.6	Delete and do not replace AGA code reference
5.2.2 Time and response for reconnection	8.1, 8.2	Delete and do not replace AGA code reference

Stakeholder submissions

No objections were received from stakeholders in response to the preliminary recommendation.

Draft recommendation

Draft Recommendation 3: Delete sub-regulations 12(6) and (7) of the Gas Regulations. These sub-regulations refer to AGA Code Clauses relating to disconnection and reconnection which largely duplicate provisions of the Compendium.

3.2 Disconnection for health and safety, and planned maintenance

Issues Paper Question 1. *Is there any reason why the existing protections regarding disconnection for emergencies would not be sufficient to also cover disconnection for health and safety reasons?*

Issues Paper Question 2. *Should the requirement for distributors to use best endeavours to minimise interruptions and restore supply as soon as practicable be retained within the regulatory framework?*

Preliminary recommendation

Subject to stakeholder feedback, delete the reference to:

- clause 5.1.4 and not replace, even though there is no exact equivalent of this provision in the Compendium; and
- clause 5.1.5 and request that the ERA insert a requirement into the Compendium for distributors to use best endeavours to minimise interruptions for planned maintenance or augmentation of the distribution system and to restore supply as soon as practicable.

Stakeholder submissions

Submissions from Alinta Energy and Synergy supported the deletion of clause 5.1.4 on the basis that clause 7.5 of the Compendium sufficiently covers disconnection for health and safety reasons.

Alinta Energy noted that as planned maintenance is conducted by the distributor and not the retailer, the reference to clause 5.1.5 (which refers to maintenance being carried out by the retailer or the distributor) is not suitable for inclusion in customer contract regulations.

Origin Energy's submission supported the deletion of all references to the AGA Code without commenting further on these specific matters.

No submission specifically discussed whether the obligation on a distributor to use best endeavours or similar to minimise interruptions and restore supply as soon as practicable should be moved elsewhere in the regulatory framework.

On further consideration, the Public Utilities Office is of the view that such an obligation should be retained within the regulatory framework, but is more suited to gas distribution licences rather than the Compendium as originally proposed. There is a broadly equivalent obligation

on electricity distributors in clauses 10(1) and 11 of the *Electricity Industry (Network Quality and Reliability of Supply) Code 2005*, which requires a distributor to, 'so far as is reasonably practicable':

- reduce the effect of any interruption on a customer; and
- ensure the length of a planned interruption does not exceed a prescribed length of time.

Draft recommendation

Draft Recommendation 4: That the Public Utilities Office request that the ERA consider inserting a requirement into gas distribution licences for distributors, in so far as is practicable, to:

- minimise interruptions for planned maintenance or augmentation of the distribution system; and
- following an interruption, restore supply as soon as practicable.

3.3 Security deposits

Issues Paper Question 3. *Does there need to be provision in the regulatory framework to allow gas retailers to disconnect customers for refusing to pay a security deposit, provided the retailer has given the customer written notice of its intention to disconnect?*

Issues Paper Question 4. *Do there need to be customer protections in the gas regulatory framework regarding when a retailer may use a customer's security deposit to offset an amount owed, and the return of the balance of the security deposit to the customer?*

Sub-regulation 12(6) of the Gas Regulations refers to clause 5.1.7 of the AGA Code, which permits a retailer to disconnect a customer where the customer refuses to pay a refundable advance (another term for a security deposit²) or a bank guarantee.

Sub-regulations 13(1) and (2) of the Gas Regulations refer to and modify clause 4.4.6 of the AGA Code relating to the use of refundable advances. This clause permits retailers to offset any amount owed by the customer to the retailer under certain circumstances.

There are no equivalent clauses in the Compendium that deal with security deposits. Nevertheless, with increasing competition there is the potential that gas retailers may request security deposits from their residential customers in the future.

In practice, security deposits are not typically required from customers in the Western Australian retail gas market. In 2016-17, no security deposits from residential customers were required by gas retailers. Kleenheat required only six small use gas business customers to provide a security deposit.³

Preliminary recommendation

Delete the references to clauses 5.1.7 and 4.4.6 of the AGA Code in the Gas Regulations and, subject to stakeholder feedback, replace with equivalent provisions within the Regulations.

² The National Energy Retail Rules define a security deposit as 'an amount of money paid or payable, in accordance with the Rules, to a retailer as a security against non-payment of a bill.'

³ Economic Regulation Authority, *2017 Annual Performance Report, Energy Retailers*, page 19.

Stakeholder submissions

Submissions from Alinta Energy and Synergy supported the preliminary recommendation. Alinta Energy and Synergy also proposed that equivalent clauses be replicated within the Electricity Regulations for consistency.

Alinta Energy noted that the ability for gas retailers to collect security deposits and disconnect customers for refusing to pay a security deposit is becoming more important with the recent growth in retail market competition and the increased propensity for customers to transfer from one retailer to another, leaving a succession of debt.

Origin Energy identified that security deposit provisions aligning with rules 40 to 44 of the National Energy Retail Rules could be considered for inclusion in the Compendium and highlighted that this would mean the inclusion of new provisions that would:

- allow a retailer to request a security deposit in certain circumstances (e.g. the customer refuses to supply acceptable identification, has an unsatisfactory credit history or fraudulently used energy in the previous two years); and
- require the retailer to return the security deposit after the customer meets certain requirements (e.g. paying bills by the due dates within a certain period or when the customer vacates the premises).

Synergy also noted that both the Gas Regulations and Electricity Regulations could provide greater clarity as to the circumstances in which a security deposit is to be returned to the customer.

Discussion

The Public Utilities Office considers that the current framework for security deposits contained in clauses 5.1.7 and 4.4.6 of the AGA Code does not provide adequate customer protections. Adopting security deposit requirements, broadly equivalent to the security deposit provisions of the National Energy Retail Rules will provide a more comprehensive framework for customer protections.

Appendix B contains a comparison of Western Australian requirements related to security deposits with the relevant provisions of the National Retail Rules. Stakeholder feedback also indicated support for greater clarity being provided around security deposit provisions.

Draft recommendations

The Public Utilities Office recommends the adoption of requirements, broadly equivalent to National Energy Retail Rules 39 to 45 and 112 for customer contracts.⁴

The Gas Regulations should contain an overarching requirement that customer contracts contain certain types of information about security deposits, specifically that a customer contract must set out:

- the circumstances in which a retailer may ask the customer to pay a security deposit;
- how the amount of the security deposit is calculated;

⁴ Noting the Rules 41(3), 43, 44(1), 44(3), 45(1) and 112 are broadly equivalent to the requirements of clauses 5.1.7 and 4.4.6 of the AGA Code

- the maximum amount that the retail supplier may ask the customer to pay as a security deposit;
- under what circumstances the retailer may apply the security deposit against amounts owed by the customer; and
- the circumstances in which a retailer must repay a security deposit.

The Public Utilities Office is of the view that the Compendium is better suited to contain detailed obligations about these matters, equivalent to the abovementioned National Energy Retail Rules.

Consistency between electricity and gas

The Electricity Regulations do not contain comprehensive or up to date provisions regarding the treatment of security deposits.

- The Electricity Regulations incorporate provisions of the *Energy Operators (Powers) Act 1979* which have caused some practical difficulties for stakeholders in interpreting and incorporating these requirements into standard form contracts.⁵
- Some elements of the existing security deposit provisions in the Electricity Regulations also impose different requirements for the government owned retailers (Synergy and Horizon Power) compared to other electricity retailers (e.g. regarding the retailer to pay interest on a security deposit).

It is the Public Utilities Office's opinion that the customer protection arrangements in relation to security deposits should be the same, irrespective of the retailer or fuel type, to the extent possible under existing heads of power.⁵ It is therefore recommended that the security deposit provisions for electricity are updated to be consistent with the recommended requirements for gas. This will provide consistency for retailers and customers of both fuel types.

⁵ Noting that Synergy and Horizon Power remain subject to these provisions of the *Energy Operators (Powers) Act 1979* through the operation of that Act.

Draft Recommendation 5:

For gas: That the Public Utilities Office request the ERA consider inserting new requirements into the Compendium broadly equivalent to rules 39 to 45 and 112 of the National Energy Retail Rules. If the new requirements are:

- Inserted into the Compendium, it is recommended that regulations 13 and 37 of the Gas Regulations be deleted.
- Not inserted into the Compendium, it is recommended that requirements equivalent to rules 39 to 45 and 112 be incorporated into the Gas Regulations instead.

For electricity: That the Public Utilities Office request the ERA consider inserting new requirements into the Electricity Customer Code broadly equivalent to rules 39 to 45 and 112 of the National Energy Retail Rules. If the new requirements are:

- Inserted into the Electricity Customer Code, it is recommended that regulations 12 and 30 of the Electricity Regulations be deleted.
- Not inserted into the Electricity Customer Code, it is recommended that requirements equivalent to rules 39 to 45 and 112 be incorporated into the Electricity Regulations instead.

Draft Recommendation 6:

That both the Gas Regulations and Electricity Regulations are amended to require that a customer contract must set out:

- the circumstances in which a retailer may ask the customer to pay a security deposit;
- how the amount of the security deposit is calculated;
- the maximum amount that the retail supplier may ask the customer to pay as a security deposit;
- under what circumstances the retailer may apply the security deposit against amounts owed by the customer; and
- the circumstances in which a retailer must repay a security deposit.

3.4 Notice of tariffs and tariff variations

Sub-regulations 14(3) and (4) of the Gas Regulations reference clauses 4.1.2 and 4.1.3 of the AGA Code, which require retailers to give notice:

- of its tariffs or any variation in its tariffs in the government Gazette, newspaper, directly to each customer or as otherwise agreed; and
- to customers affected by any variations as soon as practicable, however, no later than the customer's next bill.

Preliminary recommendation

Delete and not replace the references to clauses 4.1.2 and 4.1.3 of the AGA Code in the Gas Regulations.

Rationale

The requirements under the AGA Code are largely equivalent to the requirements of clause 10.1 of the Compendium, noting that the AGA Code provisions are more prescriptive about 'how' notice of tariffs or variation in tariffs is to be given.

Stakeholder submissions

All retailer submissions were supportive of deleting references to the AGA Code and none raised any objection to the preliminary recommendation.

Draft recommendations

It is the Public Utilities Office's opinion that the preliminary recommendation be extended to ensure that the customer contract describes how the retailer will publish its tariffs and how it will give notice of any variations to those tariffs (without being prescriptive about what form that notice will take). This will have the benefit of clarifying that the customer contract does not need to contain the tariff rate itself, just a description of the fees and charges payable and how and where those fees and charges will be published.

Consistency between electricity and gas

Regulation 13 of the Electricity Regulations requires a customer contract to:

- describe the prices payable by the customer and the circumstances in which those prices are payable; and
- detail the retailer's obligation to provide reasonable information on tariffs including any alternative tariffs that may be available to that customer.

The Public Utilities Office recommends that regulation 13 be amended to include a requirement that the customer contract describes how the retailer will publish its tariffs and how it will give notice of any variations to those tariffs. This amendment will align the Electricity Regulations with the recommended approach for the Gas Regulations.

Draft Recommendation 7:

For gas: Delete sub-regulations 14(3) and (4) of the Gas Regulations and replace with a requirement that a customer contract must describe how the retailer will publish its tariffs and how it will give notice of any variations to those tariffs.

For electricity: Amend regulation 13 of the Electricity Regulations to include a requirement that the customer contract describes how the retailer will publish its tariffs and how it will give notice of any variations to those tariffs.

Expiry of offers and benefits

Further, the Public Utilities Office is of the view that where a gas or electricity customer contract provides a temporary benefit or incentive (such as a temporary price discount on energy consumption charges for a set period), retailers should notify customers, in writing, no earlier than 40 business days and no later than 20 business days before the benefit or incentive expires, that the benefit is due to expire and include detail of the options for supply that are available to the customer after the expiry of the benefit.

This recommendation is consistent with a recent change to the National Energy Retail Rules where new rules 48A (and 48B) were introduced to address a concern where customers on 'special offer' contracts were unaware that their benefits had expired and were paying rates higher than those available under other contracts.

Draft Recommendation 8: Include a requirement in the Gas Regulations and Electricity Regulations, similar to Rule 48A of the National Energy Retail Rules, whereby retailers are to notify customers, in writing, no earlier than 40 business days and no later than 20 business days before the end of benefits provided under the initial portion of an ongoing contract, that the benefits are due to expire and include detail of the options for supply that are available to the customer after the expiry of the benefit.

3.5 Billing

Regulation 15 of the Gas Regulations references and modifies provisions of the AGA Code that relate to billing.

Preliminary recommendation

Delete the references to the AGA Code from regulation 15 and replace them with a general requirement for a customer contract to describe the procedures for the preparation, issue and review of customer billing to be followed by the retailer. The proposed replacement requirement is equivalent to the requirement under regulation 14 of the Electricity Regulations.

Rationale

Regulation 15 refers to AGA Code clauses relating to billing, which are duplicated in the Compendium.

Table 3: AGA Code Provisions regarding disconnection and reconnection referred to in Regulation 15 of the Gas Regulations

AGA Code Provision	Equivalent clause in Compendium	Draft recommendation for changes to Gas Regulations
4.2.1 When bills are issued	4.1	Delete and do not replace AGA Code reference.
4.2.3 Contents of a bill	4.5, 10.2	Delete and do not replace AGA Code reference
4.2.4 The basis of a bill	4.6, 4.7, 4.8, 4.9, 4.10	Delete and do not replace AGA Code reference
4.2.10 Calculation of consumption	N/A	Delete and do not replace AGA Code reference
4.3.2 Methods of making payment	5.2, 5.3, 5.4, 5.5	Delete and do not replace AGA Code reference

Stakeholder submissions

All retailer submissions were supportive of deleting references to the AGA Code and none raised any objection to the preliminary recommendation.

Synergy was supportive of aligning the Gas Regulations with regulation 14 of the Electricity Regulations.

Draft recommendation

Draft Recommendation 9: Delete all the text from regulation 15 of the Gas Regulations and replace with a requirement that the customer contract must describe the procedures to be followed by the retailer in relation to the preparation, issue and review of a customer's bills.

3.6 Payment difficulties

Sub-regulation 20(2) of the Gas Regulations references clause 4.3.5.1 of the AGA Code that requires the retailer to:

- offer instalment plan options;
- redirect a bill to a third person;
- provide information about Government assistance programs; and
- provide information on independent financial counselling services for residential customers experiencing payment difficulties.

Preliminary recommendation

Delete references to clause 4.3.5.1 of the AGA Code from the Gas Regulations.

Rationale

The requirements under the AGA Code are largely equivalent to those under clauses 6.7 and 6.8 of the Compendium. Part 6 of the Compendium also provides additional protections to customers experiencing payment difficulties or financial hardship. Sub-regulation 20(1) also ensures that there is information in a customer contract about the procedures that the retailer must follow if the customer has difficulty paying a bill.

Stakeholder submissions

All retailer submissions were supportive of deleting references to the AGA Code and none raised any objection to the preliminary recommendation.

Draft recommendation

Draft Recommendation 10: Delete sub-regulation 20(2) of the Gas Regulations.

3.7 Dispute resolution

Regulation 21 of the Gas Regulations references clauses 2.5.1 and 2.5.2 of the AGA Code, which place obligations on a retailer regarding its complaints handling process.

Preliminary recommendation

Delete references to clauses 2.5.1 and 2.5.2 of the AGA Code from the Gas Regulations and replace them with a general requirement that customer contracts must describe the

procedures to be followed by the retailer when responding to a complaint made by the customer.

Rationale

Clause 12.1 of the Compendium contains comprehensive provisions for complaints handling. The proposed replacement requirement is also equivalent to the general requirement under regulation 18 of the Electricity Regulations that the customer contract must describe the complaint handling procedures to be followed by retailers.

Stakeholder submissions

All retailer submissions were supportive of deleting references to the AGA Code and none raised any objection to the preliminary recommendation.

Synergy was supportive of aligning the Gas Regulations with regulation 18 of the Electricity Regulations.

Draft recommendation

Draft Recommendation 11: Delete all the text from regulation 21 of the Gas Regulations and replace with a requirement that customer contracts must describe the procedures to be followed by the retailer in responding to a complaint made by the customer. This regulation would replicate regulation 18 of the Electricity Regulations.

3.8 Retailer's obligations in relation to supply

Sub-regulation 28(2) of the Gas Regulations references clauses 3.1.1, 3.1.2 and 3.1.3 of the AGA Code that relate to a retailer's obligations regarding the supply of gas. This sub-regulation only applies to supply under a standard form contract.

3.8.1 Supply and metering equipment

Clause 3.1.1 of the AGA Code requires a retailer or a distributor to provide, install and maintain:

- equipment for the supply of natural gas up to the point of supply; and
- metering equipment at the supply address.

Preliminary recommendation

Delete the reference to clause 3.1.1 of the AGA Code from the Gas Regulations (sub-regulation 28(2)).

Rationale

Existing regulatory instruments contain equivalent obligations, for instance clause 134 of the *Retail Market Procedures (WA)* requires a gas network operator to provide, install, operate and maintain a meter at each delivery point.

Stakeholder submissions

All retailer submissions were supportive of deleting references to the AGA Code and none raised any objection to the preliminary recommendation.

3.8.2 Existing connections

Clause 3.1.2 of the AGA Code requires the retailer to use best endeavours to connect a customer at an existing supply address within one business day or a period agreed with the customer, subject to certain conditions being met (e.g. the customer making an application, agreeing to pay relevant fees and charges and providing contact details).

The AGA Code further requires the retailer or distributor to connect the address in accordance with distribution standards.

Preliminary recommendation

Delete reference to clause 3.1.2 of the AGA Code from the Gas Regulations (sub-regulation 28(2)).

Rationale

Other regulatory instruments reflect the requirements of this clause:

- Part 3 of the Compendium contains an obligation on retailers to forward connection applications to the distributor within prescribed timeframes; and
- the Gas Retail Market Procedures (WA) place obligations on distributors in relation to connections (e.g. clause 119 requires a distributor to reconnect a delivery point within two business days on receipt of a valid reconnection notice).

Stakeholder submissions

All retailer submissions were supportive of deleting references to the AGA Code and none raised any objection to the preliminary recommendation.

3.8.3 New connections

Issues Paper Question 5. *It is proposed that a requirement for gas distributors to make supply available at new connections within 20 business days will be retained within the regulatory framework. What conditions should this requirement be subject to?*

Clause 3.1.3 of the AGA Code requires the retailer and distributor use best endeavours to supply a new supply address at a date agreed with the customer or otherwise within 20 business days. This obligation is subject to certain conditions. Some of the conditions relate to the supply point, while other conditions relate to the customer complying with certain requirements.

Preliminary recommendations

Delete the reference to clause 3.1.3 of the AGA Code from the Gas Regulations (sub-regulation 28(2)) and request that the ERA insert new requirements into the Compendium (or Schedule 3 of gas distribution licences) that necessitate distributors to make supply available at new connections within 20 business days, subject to:

- adequate supply being available at required volume and pressure at the boundary of a new supply address;
- the natural gas installation at the supply address complying with regulatory requirements; and
- the customer providing safe, convenient and unhindered access to the supply address.

Rationale

The Compendium contains an obligation on retailers to forward connection applications to the distributor within prescribed timeframes, while Schedule 3 of distribution licences places an obligation on distributors to connect residential premises if requested to do so by a retailer. However, there is no equivalent requirement in the Compendium or elsewhere for supply to be made available within 20 business days. Also, there is no equivalent condition on the obligation to make supply available at new gas connections that would require the customer to provide necessary safe, convenient and unhindered access to the supply address.

Stakeholder submissions

Alinta Energy and Synergy supported the preliminary recommendation. Origin Energy's submission supported the deletion of references to the AGA Code.

- Synergy also recommended that the connection requirements specified within the *Electricity Industry (Obligation to Connect) Regulations 2005* be considered.

Draft recommendations

The Public Utilities Office considered the relevance to the connection requirements within the *Electricity Industry (Obligation to Connect) Regulations 2005*. These requirements include an obligation to:

- Attach or connect premises to an electricity distribution system on request within prescribed timeframes, provided that:
 - the distribution system would not need to be extended by more than 100 metres (sub-regulation 5(1)(a)); and
 - if required by the distributor:
 - agreement is obtained from the owner of any land through which the extension of the distribution system would pass or on which any part of the distribution system would be installed (sub-regulation 5(4)(a));
 - a contract be entered into to pay the distributor for the costs of making the connection (sub-regulation 5(4)(b)); and/or
 - a contract be entered into with the distributor for the transportation of electricity supplied through the connection (sub-regulation 5(4)(c)).
- Energise a premises that is already attached to the distribution system on request within prescribed timeframes provided that, if required by the distributor, a contract is entered into with the distributor (sub-regulation 7(2)).

The Public Utilities Office does not consider the obligation to extend the distribution system by up to 100 meters (from the current 20 meters) is relevant to gas distributors. Gas appliances can be largely replaced by equivalent electricity appliances at a new connection if a gas connection is not available or cost effective. The preliminary recommendation to make gas available at new connections is conditional on adequate supply being available at required volume and pressure at the boundary of a new supply address. Gas distributors are not prohibited from extending the distribution system further to connect new premises.

The remaining requirements in the *Electricity Industry (Obligation to Connect) Regulations 2005* relate to requirements that a distributor may choose to impose. These may be relevant to gas connections as well as electricity connection, however the Public Utilities Office is not aware of any problems that the lack of these requirements has caused gas distributors. The Public Utilities Office does not support incorporating any of the optional distributor requirements into gas distribution licences at this stage unless stakeholder feedback indicates that they are justified.

Draft Recommendation 12: Delete sub-regulation 28(2) of the Gas Regulations.

Draft Recommendation 13: That the Public Utilities Office request that the ERA consider inserting a requirement into gas distribution licences for distributors to make supply available at new connections within 20 business days, subject to:

- adequate supply being available at required volume and pressure at the boundary of a new supply address;
- the natural gas installation at the supply address complying with regulatory requirements; and
- the customer providing necessary safe, convenient and unhindered access to the supply address.

3.9 Access to supply address

Issues Paper Question 6. *Does the Energy Operators (Powers) Act 1979 provide sufficient customer protections regarding (a) a retailer and/or distributor giving notice prior to accessing the supply address; and (b) the retailer and/or distributor's representative carrying identification when seeking access to a customer's supply address?*

Sub-regulation 33(3) of the Gas Regulations references clause 3.5.2 of the AGA Code regarding a retailer's or distributor's obligations when seeking access to a supply address. This regulation only applies to standard form contracts.

The obligations under clause 3.5.2 of the AGA Code include providing a certain amount of prior notice to undertake inspections, repairs, testing or maintenance (except in the case of emergency, suspected illegal use, or a routine meter replacement). The clause also obliges the retailer or distributor's representative to wear identification (e.g. a name tag with photo) when seeking access to a customer's supply address.

Preliminary recommendation

Delete the reference to clause 3.5.2 of the AGA Code from the Gas Regulations and request that the ERA considers inserting new requirements into the Compendium or Schedule 3 of the gas distribution licence that requires a retailer or distributor's representative wear identification, including a name tag and photo, when seeking access to a customer's supply address.

Rationale

Section 46 (11) of the *Energy Operators (Powers) Act 1979*, contains requirements for an energy operator to give notice of its intention to enter onto land, while Section 48 gives entry rights to the energy operator in an emergency.

Section 46(16) requires an energy operator's representative to 'produce evidence of their appointment and the authority under which the energy operator claims a right of entry'⁷, however this requirement is less clear than the requirements in the AGA Code.⁶

Stakeholder submissions

Alinta Energy's submission supported the preliminary recommendation.

Synergy's submission stated that it was not aware of any issues relating to a distributor accessing a customer's supply address and considered the *Energy Operators (Powers) Act 1979* provided sufficient customer protections.

Origin Energy's submission was supportive of deleting references to the AGA Code, without commenting further on this matter.

Draft recommendations

The Public Utilities Office is of the view that there is no demonstrated need to further clarify the identification requirements of the *Energy Operators (Powers) Act 1979*.

Draft Recommendation 14: Delete sub-regulation 33(3) of the Gas Regulations.

3.10 Customer leaving supply address

Sub-regulation 35(2) of the Gas Regulations references clause 4.3.10 of the AGA Code that states a customer contract may require the customer to give the retailer at least three business days' notice prior to vacating and a forwarding address for the final bill. This regulation only applies to standard form contracts.

Preliminary recommendation

Delete the reference to clause 4.3.10 of the AGA Code from the Gas Regulations sub-regulation 35(2).

Rationale

The requirements under the AGA Code are largely equivalent to those under clause 5.7 of the Compendium, which also contains further customer protections regarding a customer vacating a supply address. Sub-regulation 35(1) of the Gas Regulations also ensures that the customer contract contains relevant information in regard to a customer leaving a supply address.

Stakeholder submissions

All retailer submissions were supportive of deleting references to the AGA Code and none raised any objection to the preliminary recommendation.

Draft recommendation

Draft Recommendation 15: Delete sub-regulation 35(2) of the Gas Regulations.

⁶ Schedule 2 of the *Energy Coordination Act 1994* applies Sections 46 (11) and (16), and Section 48 of the *Energy Operators (Powers) Act 1979* to gas retailers and distributors.

4. Removing overlap with the Australian Consumer Law

4.1 Cooling off periods – unsolicited consumer agreements

Issues Paper Question 7. *Should any part of regulation 27 of the Gas Regulations be retained, given that the Australian Consumer Law contains more comprehensive protections regarding unsolicited consumer agreements?*

Issues Paper Question 9. *Should any part of regulation 22 of the Electricity Regulations be retained, given that the Australian Consumer Law contains more comprehensive protections regarding unsolicited consumer agreements?*

Regulation 27 of the Gas Regulations and Regulation 22 of the Electricity Regulations provides for a cooling off period for standard form contracts entered into as a result of door-to-door sales.

Preliminary recommendation

Delete regulation 27 of the Gas Regulations and regulation 22 of the Electricity Regulations.⁷

Rationale

Part 3-2, Division 2 of the Australian Consumer Law contains more comprehensive customer protections for unsolicited agreements than regulation 27 of the Gas Regulations and regulation 22 of the Electricity Regulations.

There are also differing requirements imposed by the Gas Regulations and Electricity Regulations and the Australian Consumer Law. For instance the regulations impose a cooling off period of 10 days after a door to door (unsolicited) contract has been entered into, whereas section 82 of the Australian Consumer Law imposes a termination period (equivalent to a cooling off period) of at least 10 *business* days.

Stakeholder submissions

Submissions from Alinta Energy and Synergy supported the removal of the two regulations. Origin Energy's submission was supportive of the proposed approach to consolidate provisions and remove redundant requirements.

Draft recommendation

Draft Recommendation 16: Delete regulation 27 of the Gas Regulations and regulation 22 of the Electricity Regulations.

⁷ Regulation 27 of the Gas Regulations also refers to clause 13(4) of the 2004 version of the Gas Marketing Code, which has since been repealed and does not exist in the current Gas Marketing Code. Regulation 22 of the Electricity Regulations also refers to clause 2.5(4) of the outdated (2006) Electricity Customer Code. The current Electricity Customer Code does not contain a clause 2.5(4). Clause 2.5(4) of the Electricity Customer Code was renumbered as clause 2.2(5) in the 2007 review of the Code).

4.2 Other overlaps

Issues Paper Question 8. *Are there any other regulations within the Gas Regulations that create undue regulatory burden for retailers by duplicating or overlapping with requirements under the Australian Consumer Law?*

Issues Paper Question 10. *Are there any other regulations within the Electricity Regulations that create undue regulatory burden for retailers by duplicating or overlapping with requirements under the Australian Consumer Law?*

4.2.1 Cooling off periods – non-standard contracts

Stakeholder submissions

Alinta Energy suggested a review of regulation 40 of the Gas Regulations and regulation 32 of the Electricity Regulations which specify cooling off periods for non-standard contracts to ensure there is no overlap with the Australian Consumer Law.

Synergy suggested that the Gas Regulations and the Electricity Regulations should be assessed against relevant consumer protection legislation consistent with the approach taken by the ERA to remove duplication within relevant codes.

Draft recommendations

The Public Utilities Office considered regulation 40 of the Gas Regulations and regulation 32 of the Electricity Regulations, both of which detail cooling-off periods for non-standard contracts, for overlap with Part 3-2, Division 2 of the Australian Consumer Law.

As identified above, the Australian Consumer Law has a ‘10 business day’ cooling off period for non-solicited contracts, whereas regulation 40 of the Gas Regulations and regulation 32 Electricity Regulations stipulate a ‘10 day’ cooling off period (whether solicited or unsolicited). As such, the Public Utilities Office is of the view that there is some, but not full, overlap between the requirements of the Australian Consumer Law and the Gas and Electricity Regulations.

To minimise inconsistency, it is recommended that the cooling off period in regulation 40 of the Gas Regulations and sub-regulation 32(2) of the Electricity Regulations be amended to 10 ‘business’ days to align with the provisions of the Australian Consumer Law.

Draft Recommendation 17: Amend the cooling off period in sub-regulation 40(2) of the Gas Regulations and sub-regulation 32(2) of the Electricity Regulations to 10 ‘business’ days. This aligns with the cooling-off period for unsolicited consumer agreements under the Australian Consumer Law.

4.2.2 Amending contracts

The Public Utilities Office suggests clarifying the application of sub-regulations 17(1) and 18(2) of the Gas Regulations and sub-regulations 16(1) and 17(2) of the Electricity Regulations.

- Sub-regulation 17(1) of the Gas Regulations and sub-regulation 16(1) of the Electricity Regulations require that a customer contract inform the customer that the provisions of the contract may be amended without the customer’s consent.

- Sub-regulation 18(2) of the Gas Regulations and sub-regulation 17(2) of the Electricity Regulations require that a customer contract ‘set out the circumstances in which the customer’s rights and obligations under the contract may be assigned without the customer’s consent.’

These regulations use terms that potentially allow unilateral amendment or assignment of contracts. These terms may be considered unfair under section 25 of the Australian Consumer Law. Section 26(1)(c) of the Australian Consumer Law limits the application of the Australian Consumer Law’s unfair contracts protections to the extent that a contract term is ‘required, or expressly permitted, by a law of the Commonwealth, a State or a Territory’.

Draft recommendation

The Public Utilities Office is of the view that it is acceptable for standard form contracts to be amended without the customer’s consent as standard form contracts are subject to approval by the ERA.

It is recommended that sub-regulation 17(1) of the Gas Regulations and sub-regulation 16(1) of the Electricity Regulations be amended to require that, in relation to non-standard contracts, the contract may be amended without the customer’s consent to the extent that the amendment is required to maintain consistency with applicable legislation or regulation. This will permit, for instance, retailers to amend their non-standard contracts to reflect changes to the Compendium or the Gas Regulations without needing to obtain customer’s consent.

The Public Utilities Office is of the view that no change to sub-regulation 18(2) of the Gas Regulations or sub-regulation 17(2) of the Electricity Regulations is required, as customer contracts can only be assigned to another licenced retailer and this sub-regulation already requires the customer contract to set out the circumstances in which assignment can occur without the customer’s consent.

Draft Recommendation 18: Amend sub-regulation 17(1) of the Gas Regulations and sub-regulation 16(1) of the Electricity Regulations to require that:

- a standard form contract informs the customer that the provisions of the contract may be amended without the customer’s consent, and
- a non-standard contract informs the customer that the provisions of the contract may be amended without the customer’s consent to the extent that the amendment is required to maintain consistency with applicable legislation or regulation.

5. Other amendments

Issues Paper Question 11. *Are there any further amendments to either the Gas Regulations or the Electricity Regulations that should be considered by the Public Utilities Office?*

5.1 Components of the gas supply charge

Stakeholder submission

Alinta Energy suggested a review of sub-regulation 14(2)(c) of the Gas Regulations, which refers to a supply charge with a fixed component and a usage component related to the quantity of gas consumed by the customer. Alinta Energy submitted that this inflexible structure restricts gas retailers developing and offering a wider range of retail products to customers.

Discussion

The Public Utilities Office considers that regulatory requirements should not limit innovation that may benefit consumers.

Subject to stakeholder feedback, the Public Utilities Office supports amending sub-regulation 14(2)(c) to 'ensure that the supply charge includes a fixed component and a usage component, unless agreed otherwise by the retailer and the customer'. The Public Utilities Office also notes that this approach is similar to that of the National Energy Retail Rules where rule 20(1)(iv) allows retailers the option of basing a customer's consumption of gas on a method agreed to by the retailer and customer.

Draft recommendation

Draft Recommendation 19: Amend sub-regulation 14(2)(c) of the Gas Regulations to ensure that the supply charge includes a fixed component and a usage component, unless agreed otherwise by the retailer and the customer.

5.2 Gas customer service charter

Stakeholder submission

Origin Energy's submission suggested that Regulation 45 of the Gas Regulations be amended to remove the requirement to develop a customer service charter. The ERA removed the requirement for a retailer to develop a customer service charter from gas trading licences in 2010.⁸

Discussion

The Public Utilities Office agrees that regulation 45 is out of date and should be removed.

Further, the Public Utilities Office considers that sub-regulation 19(a) of the Gas Regulations, which requires a retailer to make a physical copy of the retailer's customer service charter available to a customer on request, should be removed.

⁸ <https://www.erawa.com.au/gas/gas-licensing/document-archive/customer-service-charters>

Draft recommendation

Draft Recommendation 20: Delete regulation 45 and sub-regulation 19(a) from the Gas Regulations.

5.3 Electricity supply under a deemed standard form contract*Stakeholder submission*

Synergy's submission suggested changes to regulation 37 of the Electricity Regulations that deals with the supply of electricity under a standard form contract with the default supplier.

Regulation 37 provides for a standard form contract when a customer 'commences to take a supply of electricity' at a premises without entering into a contract with a retailer.

Synergy noted that the current drafting does not provide for a situation where an active connection point exists, but consumption does not occur (e.g. premises is connected and de-energised). Synergy notes that in this situation, the retailer is liable to pay network charges; however, it does not have the ability to recover costs from the customer. Synergy recommended that regulation 37 of the Electricity Regulations be amended to include the situation where a customer is 'capable of taking a supply of electricity'.

Discussion

The Public Utilities Office acknowledges that Synergy and other retailers have some financial exposure from unrecoverable or difficult-to-recover daily supply charges associated with vacant premises.

However, in the non-contestable market, Synergy is already able to recover such charges via the regulated tariff. Exposure to these unrecoverable or difficult-to-recover daily supply charges is therefore small, being limited to the contestable small use customer market.⁹

Daily fixed charges associated with vacant premises in the supply of electricity to contestable customers could also be considered as an underlying cost of a retailer's business and predicted as part of the retailer's budget cycle. Retailers in the contestable small use market are able to determine how their business costs are recovered, such as by adjusting tariffs. To avoid these charges, retailers can also pursue the removal of unused meters, noting that in these circumstances, the retailer would become liable for the removal costs.

Synergy's proposed amendment to expand a customers' financial liability to situations where a customer is 'capable' of taking a supply transfers the financial risk associated with vacant premises from the retailer to contestable small-use customers. The Public Utilities Office considers this to be an inappropriate transfer of risk, however small.

The request to amend regulation 37 of the Electricity Regulations is not supported by the Public Utilities Office.

⁹ There are around 57,400 contestable small use customers in Western Australia, representing around 5% of the total small use market (Source: Economic Regulation Authority 2017 Annual Performance Report – Energy Retailers, Table 4, page 8)

5.4 Obligation to offer supply of electricity under a standard form contract

Stakeholder submission

Synergy submitted that sub-regulation 40(1) of the Electricity Regulations is no longer appropriate. Sub-regulation 40(1) places an obligation on Synergy and Horizon Power to offer supply of electricity under a standard form contract following a customer request for supply.

Synergy considers that the obligation should apply equally to all retailers who supply small use customers or be removed on the basis that:

- the obligation has been in existence for 12 years and during that time there has been significant retail market activity, new retailer entry and churn;
- it is the only retailer in the contestable electricity market in the South West Interconnected System that has an obligation to offer to supply under a standard form contract. Given the level of market maturity and the need to provide a level playing field, this obligation should be removed;
- Synergy's market share of contestable small-use customers within the South West Interconnected System has reduced from 90% in 2007-08 to 64% in 2015-16; and
- the Electricity Reform Task Force originally recommended that the obligation to supply apply to all licensed retailers that supply tariff customers. Synergy claims, however, that the obligation ultimately only applied to Synergy.

Discussion

The Public Utilities Office considers the obligation to supply is an important protection for small-use customers and should be retained. Therefore, the obligation should be extended to all retailers.

Section 22 of the National Energy Retail Law, requires a designated retailer to make offers to customers at the standing offer prices and under the retailer's standard form contract. The designated retailer means the retailer currently or most recently supplying the premises for existing connections, and a designated 'local area retailer' for new connections.

In Western Australia, for existing connections, the designated retailer would be the equivalent of the 'default supplier' identified under regulation 36 of the Electricity Regulations. For new connections, Synergy would be the designated retailer within the SWIS and Horizon Power would be the designated retailer for other areas of the State.

The Public Utilities Office considers that the approach taken within the National Energy Retail Law is suitable for Western Australian circumstances, and is fair and equitable.

Draft recommendation

Draft Recommendation 21: Extend the requirement in regulation 40 of the Electricity Regulations to supply electricity under a standard form contract to a customer who requests supply from retailers other than Synergy and Horizon Power.

- For existing connections, the obligation would fall on the default supplier identified under regulation 36 of the Electricity Regulations.
- For new connections, the obligation would continue to fall on Synergy for areas within the South West Interconnected System and on Horizon Power for other areas of the State.

5.5 Limitations on obligation to offer supply of electricity under a standard form contract

Stakeholder submission

Synergy considered that amendments to sub-regulations 40(2) and (3) of the Electricity Regulations are required to reduce Synergy's financial risk from customers using electricity, but not paying for it.

Synergy requested that the obligation to offer supply under a standard form contract when a customer declines to provide either a security deposit or identification be suspended.

Discussion

The Public Utilities Office acknowledges the financial risk this situation poses retailers. Under rule 18(3) of the National Energy Retail Rules, a retailer who is obliged to make a standing offer may require acceptable identification from the customer as a pre-condition to forming a standard retail contract. However, under rule 40(7), the payment of a security deposit is not a pre-condition to forming a standard retail contract.

The Public Utilities Office considers that the approach taken within the National Energy Retail Law is suitable for Western Australian circumstances, and is fair and equitable.

The Public Utilities Office notes that such an amendment would not affect the formation of a deemed standard form contract under regulation 37 as a result of a customer commencing to take electricity without entering into a contract with a retailer.

Draft recommendation

Draft Recommendation 22: Amend regulation 40 of the Electricity Regulations to permit a retailer to require a customer to provide acceptable identification as a pre-condition of forming a standard form contract with the retailer.

5.6 Electricity retailer contracting with multiple parties

Stakeholder submission

Synergy noted that the Electricity Regulations do not explicitly permit a retailer to contract with multiple parties. Synergy considers that the current obligation to supply is subject to abuse in situations where multiple persons residing at the same property enter into individual electricity contracts and then terminate them without paying their final accounts. As a consequence,

Synergy is left with arrears from multiple persons residing at the same address, but the premises cannot be disconnected for non-payment. Synergy considers that the ability to enter into joint and several contracts would assist it to mitigate this risk.

Discussion

It is not the norm within Australia for electricity to be supplied under joint contracts. There are risks to consumers from entering into such an arrangement, as each consumer in a joint contract would be accepting liability for the electricity consumption of all others on the contract.

Permitting joint contracting would not necessarily solve Synergy's concerns. In a situation where customers are potentially seeking to game the system to avoid paying for electricity supply, it does not seem likely that they would agree to enter into a joint contract with their electricity retailer.

Electricity retailers already have various means to seek repayment of arrears, including disconnection of the property, coming to an agreement with the customer for repayment of debt via an instalment plan, or commencing debt collection proceedings.

The Public Utilities Office does not consider that there is sufficient demonstrated need to amend the regulations to permit joint contracting, or that joint contracting is likely to resolve the problem of successive residents accruing debt.

The Public Utilities Office does not support an amendment to the Electricity Regulations to permit joint contracting.

5.7 Confidential customer information

The Public Utilities Office notes that regulation 22 of the Gas Regulations and regulation 19 of the Electricity Regulations may require unnecessary duplication between a retailer's privacy policy and the customer contract. These regulations require a customer contract to 'specify the steps that are to be taken' by the retailer to ensure that information held by the retailer about the customer is dealt with in a confidential manner.

Discussion

This wording implies that the customer contract must describe the measures the retailer will take to ensure customer information is kept confidential. This may include a description of who will have access to the information, software used to keep the information confidential, and use of passwords. This kind of information is more suitable to a privacy policy than a customer contract.

The Public Utilities Office considers that the regulations should be clarified to permit the customer contract to refer to the retailer's privacy policy, as long as the customer contract also sets out how the customer may obtain a copy of the retailer's privacy policy free of charge.

Draft recommendation

Draft Recommendation 23: Amend regulation 22 of the Gas Regulations and regulation 19 of the Electricity Regulations to set out that the customer contract meets the requirements of this regulation if the contract specifies:

- That the retailer's privacy policy sets out the steps that are to be taken by the retailer to ensure that information that it holds about a customer is dealt with in a confidential manner; and
- How the customer can obtain a copy of the retailer's privacy policy free of charge.

5.8 Proposed amendments to instruments other than the Gas Regulations or Electricity Regulations

Origin Energy's submission proposed amendments to other elements of the gas regulatory framework, including the gas trading licence, the Compendium and the Gas Marketing Code. These instruments are administered by the ERA, which is independent of government. The Public Utilities Office has liaised with the ERA to draw its attention to the suggestions made in Origin Energy's submission, and has suggested that Origin Energy pursue changes to these instruments with the ERA.

Appendix A : Consolidated list of draft recommendations

Draft Recommendation 1: Amend the term ‘retail supplier’ within the Gas Regulations to ‘retailer’ (without changing the definition of that term) to improve consistency with the Gas Marketing Code and Compendium.

Draft Recommendation 2: Amend the definition of ‘Code of Conduct’ within the Gas Regulations to refer to the most up-to-date version of the Code. This can be achieved by amending the definition of Code to mean that as defined in section 11ZPL of the *Energy Coordination Act 1994*.

Draft Recommendation 3: Delete sub-regulations 12(6) and (7) of the Gas Regulations. These sub-regulations refer to AGA Code Clauses relating to disconnection and reconnection which largely duplicate provisions of the Compendium.

Draft Recommendation 4: That the Public Utilities Office request that the ERA consider inserting a requirement into gas distribution licences for distributors, in so far as is practicable, to:

- minimise interruptions for planned maintenance or augmentation of the distribution system; and
- following an interruption, restore supply as soon as practicable.

Draft Recommendation 5:

For gas: That the Public Utilities Office request the ERA consider inserting new requirements into the Compendium broadly equivalent to rules 39 to 45 and 112 of the National Energy Retail Rules. If the new requirements are:

- Inserted into the Compendium, it is recommended that regulations 13 and 37 of the Gas Regulations be deleted.
- Not inserted into the Compendium, it is recommended that requirements equivalent to rules 39 to 45 and 112 be incorporated into the Gas Regulations instead.

For electricity: That the Public Utilities Office request the ERA consider inserting new requirements into the Electricity Customer Code broadly equivalent to rules 39 to 45 and 112 of the National Energy Retail Rules. If the new requirements are:

- Inserted into the Electricity Customer Code, it is recommended that regulations 12 and 30 of the Electricity Regulations be deleted.
- Not inserted into the Electricity Customer Code, it is recommended that requirements equivalent to rules 39 to 45 and 112 be incorporated into the Electricity Regulations instead.

Draft Recommendation 6: That both the Gas Regulations and Electricity Regulations are amended to require that a customer contract must set out:

- the circumstances in which a retailer may ask the customer to pay a security deposit;
- how the amount of the security deposit is calculated;

- the maximum amount that the retail supplier may ask the customer to pay as a security deposit;
- under what circumstances the retailer may apply the security deposit against amounts owed by the customer; and
- the circumstances in which a retailer must repay a security deposit.

Draft Recommendation 7: *For gas:* Delete sub-regulations 14(3) and (4) of the Gas Regulations and replace with a requirement that a customer contract must describe how the retailer will publish its tariffs and how it will give notice of any variations to those tariffs.

For electricity: Amend regulation 13 of the Electricity Regulations to include a requirement that the customer contract describes how the retailer will publish its tariffs and how it will give notice of any variations to those tariffs.

Draft Recommendation 8: Include a requirement in the Gas Regulations and Electricity Regulations, similar to Rule 48A of the National Energy Retail Rules, whereby retailers are to notify customers, in writing, no earlier than 40 business days and no later than 20 business days before the end of benefits provided under the initial portion of an ongoing contract, that the benefits are due to expire and include detail of the options for supply that are available to the customer after the expiry of the benefit.

Draft Recommendation 9: Delete all the text from regulation 15 of the Gas Regulations and replace with a requirement that the customer contract must describe the procedures to be followed by the retailer in relation to the preparation, issue and review of a customer's bills.

Draft Recommendation 10: Delete sub-regulation 20(2) of the Gas Regulations.

Draft Recommendation 11: Delete all the text from regulation 21 of the Gas Regulations and replace with a requirement that customer contracts must describe the procedures to be followed by the retailer in responding to a complaint made by the customer. This regulation would replicate regulation 18 of the Electricity Regulations.

Draft Recommendation 12: Delete sub-regulation 28(2) of the Gas Regulations.

Draft Recommendation 13: That the Public Utilities Office request that the ERA consider inserting a requirement into gas distribution licences for distributors to make supply available at new connections within 20 business days, subject to:

- adequate supply being available at required volume and pressure at the boundary of a new supply address;
- the natural gas installation at the supply address complying with regulatory requirements; and
- the customer providing necessary safe, convenient and unhindered access to the supply address.

Draft Recommendation 14: Delete sub-regulation 33(3) of the Gas Regulations.

Draft Recommendation 15: Delete sub-regulation 35(2) of the Gas Regulations.

Draft Recommendation 16: Delete regulation 27 of the Gas Regulations and regulation 22 of the Electricity Regulations.

Draft Recommendation 17: Amend the cooling off period in sub-regulation 40(2) of the Gas Regulations and sub-regulation 32(2) of the Electricity Regulations to 10 'business' days. This aligns with the cooling-off period for unsolicited consumer agreements under the Australian Consumer Law.

Draft Recommendation 18: Amend sub-regulation 17(1) of the Gas Regulations and sub-regulation 16(1) of the Electricity Regulations to require that:

- a standard form contract informs the customer that the provisions of the contract may be amended without the customer's consent, and
- a non-standard contract informs the customer that the provisions of the contract may be amended without the customer's consent to the extent that the amendment is required to maintain consistency with applicable legislation or regulation.

Draft Recommendation 19: Amend sub-regulation 14(2)(c) of the Gas Regulations to ensure that the supply charge includes a fixed component and a usage component, unless agreed otherwise by the retailer and the customer.

Draft Recommendation 20: Delete regulation 45 and sub-regulation 19(a) from the Gas Regulations.

Draft Recommendation 21: Extend the requirement in regulation 40 of the Electricity Regulations to supply electricity under a standard form contract to a customer who requests supply from retailers other than Synergy and Horizon Power.

- For existing connections, the obligation would fall on the default supplier identified under regulation 36 of the Electricity Regulations.
- For new connections, the obligation would continue to fall on Synergy for areas within the South West Interconnected System and on Horizon Power for other areas of the State.

Draft Recommendation 22: Amend regulation 40 of the Electricity Regulations to permit a retailer to require a customer to provide acceptable identification as a pre-condition of forming a standard form contract with the retailer.

Draft Recommendation 23: Amend regulation 22 of the Gas Regulations and regulation 19 of the Electricity Regulations to set out that the customer contract meets the requirements of this regulation if the contract specifies:

- That the retailer's privacy policy sets out the steps that are to be taken by the retailer to ensure that information that it holds about a customer is dealt with in a confidential manner; and
- How the customer can obtain a copy of the retailer's privacy policy free of charge.

Appendix B : Comparing security deposits requirements

The tables in this Appendix contains provisions summarised from the relevant legislative instruments at the time of writing this document and are not an authoritative statement of those provisions. No assurance is given as to the accuracy of this information and it is the responsibility of the reader to verify and made his or her own decision on the accuracy and correctness of this information for themselves. The State of Western Australia, nor any of its employees or agents shall be responsible or liable for any loss or damage of any kind howsoever arising from the use or reliance of this information.

Summary of relevant National Energy Retail Rules	Summary of Western Australian requirements
<p>Rule 25(1)(q) Requires that the amount of any security deposit provided is part of the minimum information is to be included on a retail bill.</p>	<p>Clause 4.5 of the Electricity Code of Conduct specifies the information that must be contained on customer bills.</p> <ul style="list-style-type: none"> 4.5(1)(i) requires the amount of 'any other fees or charges and details of the service provided' to be included on the bill <p>Clause 4.5 of the Gas Compendium specifies the information that must be contained on customer bills.</p> <ul style="list-style-type: none"> 4.5(1)(g) requires the amount of 'any other fees or charges and details of the service provided' to be included on the bill
<p>Rule 39 ¹⁰ Before requiring a security deposit, a retailer must seek the customer's permission to obtain a credit check and other information relating to the credit history of the customer. The retailer must take into consideration any information on the customer's credit history to assess the ability of the available customer to meet its financial obligations under a customer contract.</p>	

¹⁰ This rule applies to standard retail contracts and market retail contracts but only to the extent market retail contracts provide for payment of a security deposit.

Summary of relevant National Energy Retail Rules	Summary of Western Australian requirements
<p>Rules 40(1)¹¹ and (4A)</p> <p>A retailer may require that a customer provide a security deposit:</p> <ul style="list-style-type: none"> • In the case of residential customers – only when the customer <i>requests a customer contract</i>, and <i>not during the term of the customer contract</i> (with an exception for when a security deposit is returned to the customer in relation to a voided transfer to another retailer). • For business customers – when the customer requests a customer contract or during the term of the customer contract. 	
<p>Rule 40(2)¹²</p> <p>A retailer cannot require a customer to provide a security deposit unless the customer:</p> <ul style="list-style-type: none"> • owes money to that retailer for the sale and supply of energy at any premises, unless the bill for the amount owed is disputed; • has fraudulently acquired or intentionally consumed energy other than in accordance with energy laws within the past 2 years; • has refused or failed to provide acceptable identification; • is reasonably considered by the retailer to have an unsatisfactory credit history; • has refused or failed to provide the retailer with permission to obtain a credit check or other credit history information; • is considered by the retailer to have no history or an unsatisfactory record of paying energy accounts. This applies to business customers only. 	
<p>Rule 40(3)¹³</p> <p>A retailer cannot require a residential customer to provide a security deposit if the customer is, or was, a hardship customer.</p>	

¹¹ This rule applies to standard retail contracts and market retail contracts but only to the extent a market retail contract provides for a security deposit.

¹² Ibid.

¹³ Ibid.

Summary of relevant National Energy Retail Rules	Summary of Western Australian requirements
<p>Rule 40(4) ¹⁴</p> <p>A retailer cannot require a residential customer to provide a security deposit unless the retailer has offered the customer an option of a payment plan and the customer has either declined the offer or failed to pay an instalment having accepted the offer.</p>	
<p>Rule 40(5) ¹⁵</p> <p>If a retailer requires a security deposit on the basis of an unsatisfactory credit history, the retailer must inform the customer of that decision, the reasons for the decision and the customer’s rights to dispute the decision.</p>	
<p>Rules 40(6) and (7) ¹⁶</p> <p>A retailer must not refuse to sell energy on the ground of non-payment or partial payment of a security deposit, but may arrange de-energisation of the premises or refuse to re-energise premises. Payment or partial payment of a security deposit is not a precondition to the formation of a standard retail contract.</p>	
<p>41(1) and (2) ¹⁷</p> <p>A customer who is required to pay a security deposit must do so on request of the retailer, and the retailer may refuse to arrange re-energisation of a customer’s premises if a customer has been de-energised for not paying a security deposit and the security deposit remains unpaid.</p>	
<p>Rule 41(3) ¹⁸</p> <p>A retailer must keep security deposits in a separate account and separately identify in its company accounts the value of security deposits that it holds for customers.</p>	<p>This rule is broadly equivalent to:</p> <ul style="list-style-type: none"> • Regulation 13(3) of the Gas Regulations • Regulation 12(1) of the Electricity Regulations

¹⁴ This rule applies to standard retail contracts and market retail contracts but only to the extent market retail contracts provide for payment of a security deposit.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ This rule applies to standard retail contracts but does not apply to market retail contracts.

¹⁸ This rule applies to both standard and market retail contracts.

Summary of relevant National Energy Retail Rules	Summary of Western Australian requirements
<p>Rule 42¹⁹</p> <p>A retailer must ensure that the amount of a security deposit is not greater than 37.5 percent of the customer’s estimated bills over a 12 month period, based on the customer’s billing history or the average use by a comparable customer over a comparable period.</p>	<p>Synergy and Horizon Power are required to comply with the <i>Energy Operators (Powers) Act 1979</i>.</p> <p>Section 62(11) of this Act provides for the calculation of security and the maximum amount that can be required.</p> <p>This requirement is extended to other electricity retailers under regulation 30(2) of the Electricity Regulations.</p>
<p>Rule 43²⁰</p> <p>If a retailer has received a security deposit, the retailer must pay interest to the customer on the deposit at the bank bill rate. Interest is to accrue daily and be capitalised (if not paid) every 90 days.</p>	<p>This rule is broadly equivalent to:</p> <ul style="list-style-type: none"> • Regulation 13(4)-(5) of the Gas Regulations • Regulation 12(2)-(4) of the Electricity Regulations
<p>Rule 44(1)²¹</p> <p>A retailer may only apply a security deposit to offset amounts owed if:</p> <ul style="list-style-type: none"> • the customer fails to pay a bill, the failure results in the retailer de-energising the customer’s premises and there is no contractual right to re-energisation; or • for a final bill, the customer vacates the premises, requests de-energisation of the premises or transfers to another retailer. 	<p>This rule is broadly equivalent to the AGA Code provision 4.4.6.1.</p> <p>Section 62(14) of this <i>Energy Operators (Powers) Act 1979</i> provides for the application of security ‘if default occurs for any reason’.</p> <p>This provision is extended to other electricity retailers under regulation 30(2) of the Electricity Regulations</p>
<p>Rule 44(2)²²</p> <p>If a final bill includes amounts payable for goods and services other than the sale of energy, the retailer must apply the security deposit first against charges for the sale of energy, unless the customer directs or agrees otherwise.</p>	
<p>Rule 44(3)²³</p> <p>A retailer must account to the customer regarding the application of a security deposit amount within 10 business days after the application of the security.</p>	<p>AGA Code provision 4.4.6.2</p> <p>Where a supplier uses a refundable advance it is to provide to the customer <i>an account of its use</i> and pay the balance it any to the customer <i>within 10 business days</i></p>

¹⁹ This rule applies to standard retail contracts but does not apply to market retail contracts.

²⁰ This rule applies to standard retail contracts and market retail contracts but only to the extent market retail contracts provide for payment of a security deposit.

²¹ This rule applies to standard retail contracts but does not apply to market retail contracts.

²² Ibid.

²³ Ibid.

Summary of relevant National Energy Retail Rules	Summary of Western Australian requirements
<p>Rule 44(4) ²⁴</p> <p>A reference to a security deposit under rule 44 includes a reference to any accrued interest on the security deposit</p>	
<p>Rule 45(1) ²⁵</p> <p>A retailer must repay a security deposit (and accrued interest) in accordance with a customer's reasonable instructions within 10 business days after the customer:</p> <ul style="list-style-type: none"> • completes one year's payment (for a residential customer) or two years' payment (for a business customer) by the pay-by dates on the retailer's bills; or • vacates the premises, requests de-energisation of the premises or transfers to another retailer. 	<p>This rule is broadly equivalent to the AGA Code provision 4.4.6.2</p> <p>Where a supplier uses a refundable advance it is to provide to the customer an account of its use and <i>pay the balance if any</i> to the customer <i>within 10 business days</i></p>
<p>Rule 45(2) ²⁶</p> <p>If a customer has not given reasonable instructions for the repayment of a security deposit, a retailer must credit the amount of the security deposit and accrued interest on the customer's next bill (if the customer has completed the necessary period of payment on time) or to the customer's final bill (if the customer is vacating, requests de-energisation or transfers to another retailer)</p>	
<p>Rule 112 ²⁷</p> <p>A retailer may arrange to de-energise a customer's premises if the customer has failed to pay a security deposit, and the retailer gives the customer notice of its intention to de-energise after a notice period of at least five business days, and the retailer gives the customer a disconnection warning notice after the expiry of the period referred to in its notice of intention to de-energise.</p>	<p>This rule is broadly equivalent to the AGA Code provision 5.1.7</p>

²⁴ This rule applies to standard retail contracts but does not apply to market retail contracts.

²⁵ Ibid.

²⁶ Ibid.

²⁷ This rule applies to standard retail contracts and market retail contract but only to the extent the market retail contract provides for payment of a security deposit.

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