



EnergyAustralia

LIGHT THE WAY

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Alisa Toomey and Conrad Guimaraes
Australian Energy Market Commission
GPO Box 2603
Sydney NSW 2000

Online submission

Dear Ms Toomey and Mr Guimaraes

AEMC Maintaining Life Support customer registration when switching – PUBLIC VERSION

EnergyAustralia welcomes the opportunity to respond to the AEMC's Draft decision on Maintaining Life Support customer registration when switching.

EnergyAustralia is one of Australia's largest energy companies with approximately 2.5 million electricity and gas accounts in NSW, Victoria, Queensland, South Australia, and the Australian Capital Territory. We also own and operate a multi-billion-dollar energy generation portfolio across Australia, including coal, gas, and wind assets with control of over 4,500MW of generation in the National Electricity Market (NEM).

Overall, EnergyAustralia's position is that **if** the AEMC considers the need to make a rule, EnergyAustralia supports the AEMC's More Preferable Rule change.

However, we reiterate that our submission to the AEMC's Consultation Paper supported an alternative to EWON's rule change request, but only where there was evidence of a material issue.

It is still unclear whether there is any substantial evidence (other than anecdotal evidence) that obtaining a medical confirmation form or medical certificate (Medical documents) creates barriers to switching retailers for customers with a life support requirement (Life Support customers).

The AEMC did not consider that churn data (showing higher switching by Life Support customers compared to all customers or non-life support customers) supported a lack of barriers faced by Life Support customers, but the AEMC has not produced other substantial evidence of a barrier to switching issue. The AEMC acknowledges this in its draft decision stating "the materiality of the issue raised remains uncertain".¹ This means that the associated benefit which might be gained from resolving the barrier to switching issue is very unclear, and that the AEMC cannot effectively assess the cost benefit of its More Preferable Rule change.

If the perceived issue is one of customer inconvenience (in having to re-obtain medical confirmation), this also seems theoretical as well and not based in evidence of customer views. We again suggest that the benefits are very unclear and limited, and are outweighed by the implementation cost. While the implementation cost of the more preferred rule is lower than EWON's rule change request, the effort and cost is not negligible. We discuss the changes that would need to be implemented in section 1 below.

¹ https://www.aemc.gov.au/sites/default/files/documents/rrc0038 - life support registration - draft_determination.pdf, p 22

In the absence of evidence, the AEMC should adopt a “wait and see” approach - monitoring complaints on the issue received by ombudsmen across relevant jurisdictions, and then revisiting the issue in the broader review of the life support provisions.

The rest of this submission focusses on the AEMC’s draft decision.

Subject to the above, we agree that the AEMC’s More Preferable Rule change is a better and lower cost option compared to EWON’s rule change request. Our submission focusses on issues the AEMC should consider in the final decision if it were to proceed to make the More Preferable Rule.

1. Commencement date

Inadequate implementation time

The commencement date of 4 March 2021 will present significant challenges for retailers to achieve compliance by, particularly if the final rules are made in February 2021.

Even if energy retailers were to commence implementation on the basis of the draft decision (which retailers are increasingly having to do across all regulatory changes) that would provide only four months to implement the changes (and less time when factoring the end of year holiday shutdown in December to early January).

While there are only a few new rules, several process and people changes will be required to implement the Draft rules. A large retailer with Life Support customers in the thousands cannot deal with these requests on an ad hoc basis without proper process, procedures and compliance monitoring.

The changes for EnergyAustralia include:

- Identifying all customer facing channels and teams which could receive a request from a customer for their Medical documents, and creating processes for accurately receiving and recording those requests (including verifying the person is the customer and is associated with the person with the life support requirement, and confirming email or address the Medical documents are to be sent to).

These channels include call centre front of house and digital channels such as online chat. Even if processes are streamlined to a central team, channels need to know how to deal with a request.

New additions to scripting for different call centre channels (move in customers, change of retailer only customers) and internal reference resources used by staff will need to be updated.

- Processes between customer facing teams to communicate requests to back of house teams which action them. This may be supported by “actions” raised in systems.
- Training all teams on new processes.
- Establishing controls such as SLAs to ensure that the period to send the Medical documents is met.
- Establishing quality assurance or other controls to monitor compliance with all the new rules.
- Ensuring record keeping arrangements allow for customer Medical documents to be traced and retrieved quickly via process changes.
- Changing existing or creating new letter/communication to add the new content required under the rules. A new letter/communication may be required if a variation cannot be done for non-Vic states (Note: this letter will be different to the Victorian equivalent).
- Other discretionary changes to update life support process information on relevant webpages, and terms and conditions.

- Arranging for the above to apply to all customers – including mass market, Large Customers (Commercial and Industrial), embedded network customers and potentially multisite customers.

The pipeline of regulatory changes this year is exceedingly constrained with regulatory changes that have already been made and scheduled in the pipeline. Project staff, front of house training capacity, and system changes are shared resources across all regulatory changes.

We urge the AEMC to adopt an implementation date of 1 August 2021, which would provide about 5 months of implementation time from the date when the final rules are made.

Operation of commencement date for specific obligations

There are two obligations which cause issues and confusion around the commencement date:

- The obligation to provide Medical documents on request by a customer (draft rule 124B(1A) and (2A)); and
- The supporting requirement for the retailer to keep a copy of those documents under draft rule 126(2) for the period the person is a customer and 110 business days after the person is no longer a customer.

The proposed commencement date is 4 March 2021 for both obligations (and all the new draft rules).

This would mean that the obligation to provide the documents on request will commence on the same day as the supporting obligation to keep a copy of them. Further, this would require the documents to be kept back to 1 October 2020 (110 business days before 4 March 2021).

The other way to interpret the obligation to keep the documents is that it commences on 4 March 2021 and only requires future keeping of the documents received from that date. Accordingly, retailers only have to meet requests to provide customer's Medical documents for documents kept from 4 March 2021 onwards. That is, there would be no retrospective application at all across either obligation. We would support this interpretation as the simplest and clearest approach of no retrospective application at all.

In the alternative, to increase the benefit of the rules, the AEMC could make the obligation to provide the Medical documents on request commence on the commencement date (4 March 2021 or as changed) and that this only applies for documents obtained from the customer after 1 January 2021. A 1 January 2021 date would be reasonable given the draft decision was released in November 2020. The obligation to keep a copy of the documents should also reflect this 1 January date (with no extension backwards of 110 business days).

2. 10 business day timeframe

We ask the AEMC to increase the 10 business day timeframe to 15 business days to provide a copy of Medical documents (under proposed subrule 124B(1A)).

While 10 business days is sufficient for low numbers of customer requests and retailers would likely send the form well within that period, the AEMC should recognise possible resource constraints if a high volume of requests over multiple days are made, particularly for large retailers. It is very difficult to estimate how many customers would request medical documents– as this depends on Life Support customer churn and number of requests - but the below general numbers may provide an idea of the scale of Life Support customers for a large retailer – in the order of a few tens of thousands.

[Confidential information has been omitted for the purposes of section 24 of the Australian Energy Market Commission Establishment Act 2004 (SA) and sections 223 and 268 of the National Energy Retail Law]

If high volumes of customer requests are experienced, bottlenecks would develop at any step in the process from retrieval to mail house sending.

The AEMC should also recognise that 15 business days falls well within the timeframe of 50 business days for the customer to provide medical confirmation to the new Retailer, during which the customer is registered with the life support requirement so there is no risk of deregistration. The customer can also extend this 50 business day period by 25 business days.

3. Other Issues

Person who has the life support requirement is not the customer

The life support rules under Part 7 of the *National Energy Retail Rules* are based on a customer advising that a person residing or intending to reside at the customer's premises requires life support equipment.

There are therefore scenarios where a customer could continue to misuse Medical documents that:

- contain out of date and incorrect information about the customer's own life support requirement, or
- contain the life support requirement information for a person other than the customer where that person no longer resides at the customer's premises. This could be quite a common scenario. For example, former partners and people that leave share houses.

This above misuses of Medical documents can happen today under the current rules (where the customer fails to advise that they no longer require life support registration); but the ability to re-use old Medical documents (potentially across many retailer switches up to four years) increases the extent of this issue significantly.

Customers may have the incentive to misuse Medical documents to fraudulently claim a life support requirement because Life Support customers cannot be disconnected including for non-payment. This misuse issue needs to be balanced against the benefits of making the More Preferred rule.

In addition, where the person with the life support requirement no longer resides at the customer's premises, there are privacy issues around that information being shared by the customer with the new retailer without the consent of the person. We cannot identify a simple and effective way to mitigate this privacy issue and so again, this issue needs to be carefully balanced against the benefits of making the More Preferred rule.

Embedded networks

Embedded networks are private electricity networks which serve multiple premises ("child connections") and are only connected to the distribution network and national electricity grid, through a "parent meter" connection point.

Our interpretation is that the new obligations would apply to authorised retailers selling to child connections that are "off market" (where they are selling energy on-supplied from the parent meter) and to customers who move "on market" to a different retailer. This does not necessarily have to be clarified in the rules, but we suggest that this should be clarified in the AEMC's final decision.

4. Classification as civil penalty provisions

This issue was not canvassed in the AEMC's paper, but we anticipate that the AEMC may consider whether the new rules should be classified as civil penalty provisions (CPPs).

All the existing life support obligations in Part 7 of the *National Energy Retail Rules* are CPPs.

The existing obligations - from the initial communications sent which requests medical confirmation through to registration upon receipt of it, obligations to update registers and notify the distributor or retailer, and deregistration with notice - relate to the integrity and accuracy of life support

registers. If there is a breach or failure point in that process the implications for the safety of persons requiring life support equipment could be very serious. The classification of the existing obligations as CPPs is understandable.

In contrast, some of the new proposed rules are administrative in nature and the customer harm is one of inconvenience at most. Specifically, proposed subrule 124B(1A) and 124B(2A) require a retailer to provide Medical documents on request of a customer. Similarly rule 126(2) is a record keeping rule to support this requirement so that the retailer has the documents when they are requested.

While customer inconvenience is a problem that retailers care about, these administrative obligations do not pose any safety risk to customers and are unlike the existing breaches of the existing obligations in Part 7. Further, other obligations which relate to providing a customer information or data about them, such as energy consumption information (rule 56A) and historical billing information (rule 56B), are not classified as CPPs and we encourage the Commission to take a consistent approach and not classify these obligations as CPPs.

If the AEMC were to make these administrative obligations CPPs, then we urge the Commission to ensure that they are classified as "Tier 3" obligations under the pending changes to the maximum penalty amounts that will commence this year. It would be grossly disproportionate for these administrative obligations to attract maximum penalties of 10% annual turnover or \$1.435 million per breach (which apply to "Tier 1" and "Tier 2" obligations). There is a risk that these administrative obligations could be "lumped" in with more critical life support obligations when this is not appropriate.

5. Review of other provisions

EnergyAustralia agrees with the AEMC that a review of the life support obligations in Part 7 is required. However, given Part 7 only commenced on 1 February 2019 and the increasingly high pace of major regulatory change in 2021 and 2022, we would suggest that the implementation date for any resulting changes to the rules be deprioritised against other regulatory changes. That is, a review can occur in 2021, but any compliance date for resulting changes should be deferred to at least H2 2022.

We are agnostic as to which form the review should take – whether it be a complete review or a collection of rule change requests. However, our position is that the life support rules do not require fundamental changes, and only targeted changes to adjust rules that are not working well in practice are required.

6. Additional issues for review

Circumstances where customer's life support requirement is not genuine

We wish to highlight one issue that we raised in our previous submission and which should be included in any review (but does not appear to have been noted in the AEMC's Draft decision paper).

In our experience, some customers appear to be trying to remain flagged with a life support requirement, when they have not provided medical confirmation despite cycling through the medical confirmation process (including reminder notices) multiple times. The initial life support registration and process to obtain medical confirmation, can continue to operate in perpetuity, should a customer keep contacting the retailer to notify a life support requirement at the end of the process (and where there are serious doubts over whether the customer's life support requirement is genuine). Dealing with this situation takes additional resources and involves costs for retailers, and there is no means for a retailer to address these customer interactions under the NERR. While this is largely uncommon and limited to a few exceptions, we wish to flag these with the AEMC and industry as an issue for any future review.

The AEMC's draft decision refers to EnergyAustralia supporting an idea of requiring Life Support customers to update medical confirmation periodically on page 33 of the Draft Decision. We wish to

clarify that this is **not correct, and it may have been a mischaracterisation of the above issue** – which we have not proposed any solutions for. The more likely solution is to allow retailers to not register a customer where their life support requirement does not appear genuine.

Waiving 15 day wait period for deregistration when consumer provides consent

We agree with Simply Energy and other stakeholders' proposals to amend the rules to allow waiving of the 15 day wait period for deregistration of a premises when the consumer provides explicit informed consent. The inability to deregister a site creates inaccuracies in the life support register, and potentially significant inconvenience and cost to customers where they need to wait the 15 days before commencing works e.g. meter replacement. The Essential Services Commission of Victoria adopted an approach to resolve the same issue under the Energy Retail Code (Rule 128(7)(a)(ii)) which is a precedent that is understood and is operating well.²

If you have any questions in relation to this submission, please contact me (Selena.liu@energyaustralia.com.au or 03 8628 1548).

Regards,

Selena Liu
Regulatory Affairs Lead

² That is, de-registration is permitted on a date that is less than 15 *business days* from the date of written notification, if the *customer* or their authorised representative gives *explicit informed consent* to the *premises* being *deregistered* on that date