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Dear stakeholders,

AER approval of minimum amount owing for disconnection, r. 116 of the National Energy Retail Rules

Summary

The National Energy Retail Law (Retail Law) and National Energy Retail Rules (Retail Rules) will commence on 1 July 2012.[1]

Part 6 of the Retail Rules sets out the circumstances under which a retailer can arrange for the disconnection of a residential customer's premises. In particular, under r. 116 (1) of the Retail Rules, a retailer cannot disconnect a customer's premises for non payment of a bill, where the amount outstanding is less than an ***amount approved by the AER*** (emphasis added) and the customer has agreed to repay that amount.

For the purposes of r. 116 (1), the amount approved by the AER is **$300 (GST inclusive)**. This amount will apply across all states and territories applying the Retail Law and Rules and to both electricity and gas. This will take effect from 1 July 2012, when the Retail Law and Rules commence.

The AER emphasises that the minimum disconnection amount is only one of a suite of customer protections, prescribed in the Retail Law and Rules, to assist customers who may be struggling to pay their energy bills. Other such protections include the requirement for retailers to offer flexible payment options (including payment plans and Centrepay); to identify customers experiencing payment difficulties due to hardship and to offer assistance under an approved customer hardship policy. The minimum disconnection amount will operate in conjunction with these other protections which aim to ensure customers are not disconnected solely due to an inability to pay their energy bills.

The AER encourages retailers and customers to communicate and engage with one another, particularly when it appears a customer is falling behind with their energy bills. Providing an early response may assisting in preventing larger debts from accruing. Importantly, retailers should not wait for customers to accrue debts above the approved minimum disconnection

[1] The Ministerial Council on Energy agreed on 10 December 2010 that jurisdictions would work towards a common target date of 1 July 2012 for commencement of the new law, rules and regulations.

amount before contacting customers to seek to manage any outstanding amounts. At the same time, customers who think they may be facing difficulties paying their energy bills should contact their retailer to seek out and use the avenues available to assist them at an early stage. The threshold does not remove the obligation on a customer to pay their bills.

Consultation process

The AER held a stakeholder forum in January and published a subsequent consultation letter in February. This sought stakeholder comment on a proposed minimum disconnection amount of $300 (GST inclusive), and views on a range of associated issues, including:

- Whether or not the approved amount should be published by the AER
- Whether or not the amount should be the same for all states and territories applying the Retail Law and Rules
- Whether or not different amounts should apply to gas and electricity
- What other factors (if any) the AER should take into consideration in approving the minimum disconnection amount
- How frequently the AER should review the approved amount.

Thirteen stakeholders provided written submissions to the consultation letter (see Appendix A). The AER also received one informal submission. The views put forward as part of this consultation process have informed the AER's decision. The AER's consideration of each issue is discussed in further detail below.

Publication of the minimum disconnection amount

The AER has decided to publish the minimum disconnection amount on its website and may also include it in information it produces to advise customers of their rights and responsibilities regarding disconnection of their energy service. This is consistent with the approach proposed in our consultation. The AER is not imposing additional requirements for retailers to publish the approved amount on their websites nor is the AER imposing other positive obligations for retailers to proactively communicate the approved amount to customers.

As set out in our consultation letter, the AER considers there are a number of advantages that arise from publishing the amount. In particular, it is consistent with good regulatory practice and will result in greater transparency of this protection across the market generally. The AER considers it important for consumers and advocacy groups to access this information, especially those at risk of disconnection (and those who are providing advice or assisting customers facing disconnection). As residential customers are likely to be most affected by any non-compliance with this obligation, the AER considers that there is greater potential for market intelligence and the reporting of potential breaches if customers and advocacy groups are aware of the approved amount.

Stakeholders at the AER's January forum expressed broad support for the AER to publish the approved amount. Six submissions received in response to the consultation letter supported publication of the AER's approved amount, agreeing that greater transparency in the market

is important and that publication would assist customers to understand their rights relating to disconnection and with compliance monitoring. Several also noted that it was important for those advising customers (for example, consumer groups or financial counselling services) to access this information and that it would assist in empowering customers when negotiating payment plans and seeking other assistance.

Three submissions—all from retailers—did not support publishing the amount, stating that the only stakeholders who need to know the approved minimum disconnection threshold are industry representatives, consumer advocates, and Ombudsman schemes, as well as retailers who use the amount in developing and implementing their disconnection procedures.

Two retailers argued that publishing the amount widely may encourage customers to not pay their bill in full or if it is set too high, to 'game' retailers and switch to avoid disconnection. The AER's consultation letter noted the potential risk that publication could provide an incentive for customers to consistently maintain their debt level below the minimum amount in order to avoid disconnection. The AER considers this potential risk to be very small with one retailer noting that the amount is currently publicly available (in some jurisdictions) with no adverse impact. The AER notes that in Victoria the amount was previously confidential then published in 2008, and there is no evidence to suggest that this had lead to changes in customer behaviour. One retailer recognised that, even if customers did act upon this incentive, the number would likely represent a small percentage of its customer base. Finally, some stakeholders argued that this type of 'gaming' would require an unlikely level of sophistication from customers and 'a degree of financial capacity and control not generally experienced by households in hardship.'

The AER considers that the broader benefits that arise from publishing the approved amount and increasing transparency in this area outweigh the risk that a small number of customers may act upon the perceived incentive to maintain their arrears below the minimum disconnection threshold. Further, the AER notes that the Retail Rules require customers to agree to repay outstanding amounts and we consider that this assists to mitigate this potential risk.

Consistent amounts across jurisdictions, and for gas and electricity

The AER has decided that the approved amount of $300 (GST inclusive) will apply across all jurisdictions implementing the Retail Law and Rules, and to both electricity and gas. This is consistent with the approach proposed in the AER's consultation letter.[2]

The AER considers that a single national amount for gas and electricity will provide consistency across both fuel types and across states and territories, minimising confusion and making it easier for customers to understand their rights. It will also be easier for retailers to implement and maintain across their businesses, particularly for those who operate across multiple jurisdictions. The adoption of a single amount is also consistent with a national approach to energy retail regulation, which underpins the Retail Law and Rules and will ensure that customers receive the same treatment and level of protection regardless of where they live.

At the January forum and in submissions, stakeholders expressed overwhelming support for a nationally consistent amount, agreeing that it lead to national consistency, minimised the risk

[2] Noting that r. 117 already provides guidance for disconnecting customers on dual fuel contracts.

of potential confusion and reduced complexity for customers and retailers. Many retailers noted that this approach would also reduce regulatory compliance costs and promote operational efficiencies in systems, processes and training.

The majority of stakeholders who commented expressed a preference for setting the same amounts for gas and electricity. One retailer did not support having consistent amounts for gas and electricity, citing the large differences in gas and electricity bills, arguing that the national amount for gas should be lower and that this would not confuse customers. Another retailer stated that it only supported consistent amounts for electricity and gas if the national amount was set at a level lower than the AER's proposed amount of $300 (GST inclusive).

The AER highlighted these issues in its consultation letter, in particular the low penetration of gas in the Queensland and Tasmanian retail markets and that for many, gas bills are typically lower than electricity bills (at least for part of the year). A consumer organisation noted that whilst for some jurisdictions an amount that is appropriate for electricity may be 'generous' for gas but this may not be the case in all jurisdictions and that it was more important the amount be set in such a way that customers can easily understand what it is and how it applies to their energy account.

Overall, most stakeholders supported the view that it was appropriate to prioritise national consistency and a simple approach for both customers and retailers, over a more administratively complex and confusing regime that may better account for differences between jurisdictions, fuel mixes and seasonal bills.

As such, the AER has decided that a single, consistent amount ($300 GST inclusive) will apply across all states and territories, and for electricity and gas. In light of the concerns raised by some stakeholders about the appropriateness of having the same amount for gas as for electricity, the AER will review the minimum disconnection amount after it has been in operation for 18-24 months to ensure it is appropriate and effective. This will also enable any issues that may arise to be promptly identified and addressed.

AER's approved minimum disconnection amount

The AER has decided to approve an amount of $300 (GST inclusive) as the minimum amount owing for disconnection for the purposes of r. 116 (1) of the Retail Rules. This is consistent with the amount proposed in the AER's consultation letter.

In reaching this decision, the AER has considered a number of factors including:

- The current levels of existing minimum disconnection amounts in each of the jurisdictions, noting there is no defined methodology or accepted consistent approach for setting these amounts
- The costs incurred by retailers for disconnecting and reconnecting customers, including the cost to retailers of servicing larger amounts of uncollected revenue
- The level of arrears that a customer is likely to owe at the time they are disconnected, given that this will exceed the threshold amount (in addition to the original debt for which they were disconnected, customers will also have to pay any disconnection and reconnection fees charged, any further bills that become have payable, as well as manage their ongoing energy bills)

- The need to avoid exacerbating hardship issues for customers experiencing financial difficulty
- That principle customers should not be disconnected from an essential service for trivial amounts or for being one quarterly bill behind, nor should they be disconnected solely due to an inability to pay, and
- Striking an appropriate balance between the interests of customers and retailers.

Most stakeholders supported the proposed $300 (GST inclusive) minimum disconnection amount agreeing that it struck an appropriate balance between protecting customers' interests (and their access to an essential service) and those of retailers, who should not bear excessive risk and who should rightly expect their customers to pay their energy bills. One stakeholder noted that whilst it did not have a firm position on an appropriate amount, it would not support a figure less than $300, as this would result in a reduction in the current protections in one jurisdiction.

Five respondents did not support the proposed amount. One argued it was too low and proposed an alternative amount of $500 (GST inclusive) which would roughly reflect a typical quarterly electricity bill in that jurisdiction. They argued this would give better effect to the principle that a customer should not be disconnected for being one bill behind. Four retailer submissions argued the proposed amount was too high and suggested amounts ranging from $110 through to $200 (GST inclusive).

The AER considers that setting the minimum disconnection threshold at $500 is likely to exacerbate hardship issues and result in debt levels far beyond what most customers can reasonably manage. This is particularly the case for customers experiencing payment difficulties, who may also be facing other aspects of financial hardship in addition to their energy bills. Although this may better reflect a typical quarterly bill in some jurisdictions and for some customers, the ultimate level of arrears faced by a customer disconnected for non payment will likely be significantly greater than the original $500 debt when other costs (such as reconnection and disconnection fees, and ongoing consumption costs, etc) are considered.

The AER is of the view that an amount as high as $500 is more likely to lead to unmanageable debt levels for customers, particularly if a customer has fallen behind with both their electricity and gas bills as they would owe more than $1,000 prior to being disconnected. They would also be liable for their ongoing energy costs and any disconnection and reconnection fees payable and as such could owe significantly more by the time they were disconnected. It is highly likely that most customers would find it difficult to repay this level of arrears, in addition to managing their ongoing energy bills. The AER is therefore of the view that setting the minimum disconnection amount at $500 is likely to create or exacerbate hardship issues for many customers. We also consider that setting the minimum disconnection amount at $500 would significantly increase the level of risk and cost exposure faced by retailers. If customers owe more prior to being disconnected, the cost to retailers of servicing this debt will also increase. Retailers have noted that these increases would be reflected in higher energy prices for customers and a greater reliance on security deposits to mitigate this risk of non-payment.

The AER supports the general principle that a customer should not be disconnected for being one quarterly bill behind, however, we also note that it is difficult to strictly apply this

principle and also have a simple, single, consistent, national amount which was strongly supported by stakeholders. The AER must consider this alongside the principles of ensuring customers are adequately protected and are not accruing unmanageable debt levels which could exacerbate hardship issues.

In contrast, a number of retailers argued that the AER's proposed amount of $300 (GST inclusive) was too high, stating that it was too far removed from current limits; there is no evidence exists to suggest the current levels are inappropriate; and that at this level it would still enable customers to accrue unmanageable debt levels. These retailers were also concerned with the potential level of debt that could be accrued across their customer base and their resultant cost exposure.

The AER considers that a threshold between $110 and $200, as suggested by retailers, would be too low. In particular, some stakeholders argued that similar amounts—such as those currently in place in Victoria ($120) and South Australia ($100) —are too low and out of date being last set in 2008 and 2002 respectively. Concerns were raised that these protections have been eroded over time as they have not kept up with recent increases in energy prices. Furthermore, these proposed amounts would represent a reduction in customer protections from the current status quo, particularly in Queensland and the ACT, where the current amounts are higher. In particular, approving an amount of $110 (GST inclusive), as proposed by one retailer, would result in a lower level of consumer protection in all jurisdictions than is currently available with the exception of South Australia, and NSW which does not have a threshold.

Another retailer suggested setting different minimum disconnection amounts for each jurisdiction based on the highest disconnection and reconnection fees charged by distributors. The AER does not support this approach, given that it would be administratively difficult and complex for both retailers to implement and ensure compliance and for customers to understand their rights and responsibilities. It is also contradictory to having a simple, single, consistent, national approach which is strongly supported by stakeholders.

The AER recognises that the proposed minimum disconnection amount of $300 (GST inclusive) is higher than some current jurisdictional thresholds and notes the concerns that customers may find it difficult to repay this level of arrears. This is especially so if they are experiencing hardship and do not communicate their circumstances to their retailer prior to the disconnection. The AER is also mindful that the amount must be set at a level that provides adequate protection for customers so they are not disconnected for trivial amounts and that these protections should not be quickly eroded by increases in energy prices. The AER considers that whilst an approved amount of $300 (GST inclusive) will not in all cases be equivalent to a quarterly bill it does provide an appropriate level of protection for customers. Setting the amount at this level, rather than the lower amounts suggested by retailers, will also help to ensure that the threshold remains appropriate for some time given the upwards pressure on energy prices.

The AER considers it important to emphasise that even though a retailer would be prohibited from disconnecting a customer when they owe less than the minimum disconnection amount and have agreed to repay it, this does not prevent them from engaging with customers with arrears to seek repayment of the outstanding amounts; or to establish a payment arrangement; or offer hardship assistance if the customer is experiencing payment difficulties. Retailers

should be proactively communicating with these customers so that any debts are addressed before they reach unmanageable levels (regardless of the approved minimum disconnection amount). Customers should also be offered appropriate assistance with paying their bills to ensure that no one is disconnected solely due to an inability to pay. Some stakeholders raised concerns about the performance of retailers in this area. This will form a key element of the AER's retail market performance reports, particularly monitoring the performance of retailers' handling of customers experiencing payment difficulties and through the hardship program indicators.

In light of the above, and given the broad stakeholder support received, the AER has approved $300 (GST inclusive) as the minimum amount owing for disconnection under the Retail Rules. This amount would apply to both gas and electricity and to all jurisdictions applying the Retail Law and Rules. The AER considers this reflects the principle that energy is an essential service and so customers should be adequately protected from disconnection whilst also providing an appropriate balance with the level of debt that customers can afford to repay.

Given the concerns raised by some stakeholders about setting the amount at this level, the AER will review the amount after it has been in operation for 18-24 months to ensure it is appropriate and working effectively.

Review period

The AER's consultation letter sought stakeholder comment on how frequently the AER should review the minimum disconnection threshold. Responses were varied, with some stakeholders supporting an annual review and indexation of the amount, and others proposing up to five years before undertaking further review.

Consumer groups largely advocated for the amount to be reviewed or indexed annually to ensure the level of protection increased relative to increases in energy bills and to ensure its 'value' was not eroded over time. Energy ombudsman schemes suggested an initial review after the first 12 months and thereafter every two years. Retailers mostly argued against annual reviews or indexation and suggested that reviews should occur no more than every 3-5 years. Some also suggested that the AER could then initiate earlier reviews should evidence come to light that this was required (for example, through the AER's performance and compliance monitoring).

The AER will review this amount after it has been in operation for 18-24 months to ensure the appropriateness of the amount, particularly as it applies to gas. This will provide an opportunity to examine any data or evidence on specific aspects of the minimum disconnection amount given that by then it will have been in effect for a sufficient period of time. The AER is of the view that annual reviews or indexation of the minimum disconnection amount are not preferred as this adds unnecessary complexity to the approach and is likely to be difficult to do on a national basis, particularly where movements in energy prices may not be uniform across jurisdictions. It also makes it more difficult for retailers to manage, implement and ensure compliance as well as making it more difficult to communicate to customers their rights in this area. The AER agrees that it is important to ensure that the 'value' of, and protection afforded by, the approved minimum disconnection amount is not eroded over time by increases to energy prices. The AER considers that this

can be achieved through the review as proposed above, as well as reserving the ability to initiate a review earlier than this should the particular circumstances warrant it.

Other issues

A number of stakeholders raised other issues in their submissions, seeking further clarification of the Retail Law and Rules in relation to disconnection. These issues, and the AER's response, are set out in Appendix B.

If you have any questions on this letter, or enquiries on minimum disconnection thresholds more generally, please contact Angela Bourke on 03 9290 1910.

Yours sincerely

Sarah Proudfoot
General Manager, Retail Markets Branch
Australian Energy Regulator

Appendix A: Stakeholder submissions

- AGL
- Australian Power and Gas (APG)
- Consumer Utility Advocacy Centre (CUAC)
- Dodo Power and Gas
- Energy Ombudsman of NSW (EWON)
- Energy Ombudsman of Victoria (EWOV)
- Ergon Energy
- Origin Energy
- Public Interest Advocacy Centre (PIAC)
- Queensland Council of Social Services (QCOSS)
- South Australian Department for Manufacturing, Innovation, Trade, Resources and Energy: Energy Markets and Programs Division
- TRUenergy
- Victorian Council of Social Services (VCOSS)

Copies of these submissions are available on the AER's website:
http://www.aer.gov.au/content/index.phtml/itemId/751519

Appendix B: AER responses to other issues raised in submissions

Stakeholder	Issue	AER response
CUAC	Sought clarity as to whether a retailer can send disconnection notice when the outstanding amount is less than the minimum disconnection threshold (given that the retailer is prohibited by r. 116 from disconnecting that customer if they have agreed to repay the amount), and suggested that this practice would be misleading and deceptive.	A retailer cannot disconnect a customer for non payment where that customer owes less than the AER's approved disconnection amount and the customer has agreed to repay that amount. However, as noted in the AER's letter, this does not prevent retailers from contacting and engaging with their customers to seek repayment of any amount of outstanding arrears including where this is less than the approved amount, for example, through reminder notices or making other direct contact with the customer. Further, and as noted above, an important distinction of r. 116 (1) (h) is that the customer has agreed to repay the outstanding amount. In this context, the AER considers that where a customer has refused to repay any outstanding amount, the retailer would be entitled to proceed with disconnection, as long as they met all the requirements and procedures set out in r.111. Notwithstanding this, the AER expects that a retailer would only send a disconnection warning notice where it is permitted to disconnect a customer in accordance with the provisions in r.111 of the Retail Rules.
CUAC, VCOSS	Noted concerns with the drafting of r. 116 (1) (h), stating it differs from the existing provisions in the Victorian Energy Retail Code which does not require a customer to have agreed to pay the outstanding amount. Noted concerns with the current wording of r. 116 (1) (h), arguing it renders this clause superfluous as customers who are adhering to an agreed payment plan are already protected from disconnection by r. 116 (1) (d). CUAC requested that the AER submit a rule change to the AEMC on this matter.	The AER sought clarification from the Joint Implementation Group (JIG) on the policy intent underlying this clause and specific confirmation from the Department of Primary Industries that the departure from current protections in Victoria was intended. The JIG noted that the inclusion of the requirement for customers to have agreed to repay the amount under r. 116 was to balance the rights and obligations afforded under this

		provision. That is, the rule seeks to ensure that customers are not disconnected for owing trivial amounts but that they also cannot avoid their obligations to their retailer to pay their energy bills. Given this policy intent is reflected in the wording of r.116, the AER does not consider an amendment to the rule is required.
Dodo Power and Gas	Considered that the minimum disconnection amounts should not apply where a customer denies access to the meter, or where a customer has used energy illegally.	The AER agrees that minimum disconnection amounts should not apply where a customer has illegally used energy or has denied access to the meter. The Retail Rules expressly allow retailers to disconnect customers without regard to the minimum disconnection threshold in these circumstances. Sub rules 116 (2), (3) and (4) deal with disconnection due to: • failure to provide access to the meter • the request of the customer • illegal use of energy – that is – through the fraudulent acquisition of energy or through the intentional consumption of energy at those premises otherwise than in accordance with the energy laws. Each of those sub rules directs that the limitations set out in r. 116 (1) do not apply. This includes the prohibition on disconnection where a customer owes less than the minimum amount approved by the AER.
Energy Markets and Programs Division of DMITRE (SA Government)	Sought further clarification on the application of the AER's minimum disconnection threshold to dual fuel contracts (noting that r. 117 already defines what a duel fuel contract is and provides some guidance on the timing of dual fuel disconnections).	Where a customer contracts separately for the supply of electricity and gas (i.e. not a dual fuel customer), the minimum disconnection threshold applies separately to each fuel—that is, a customer must owe $300 on either their gas or electricity account (and fail to agree to its repayment) before the retailer may disconnect them for non payment in respect of the relevant fuel. The Rules should not be read to afford a lower level of protection to a customer simply because they

		choose to purchase electricity and gas under a dual fuel contract in preference to separate contracts. Should a customer with a dual fuel account owe more than $300 on either fuel and fail to agree to its repayment, a retailer would (subject to procedural requirements of the Retail Law and Rules) be permitted to disconnect the customer's supply for that fuel only. Unless the amount owing exceeds $300 for both fuels, the order of disconnection under r. 117 will not apply. (Note r. 117(5), which provides that nothing in r. 117 affects the operation of r. 116.) Where the amount owing does exceed $300 for both fuels, r. 117 will have its normal operation so that gas supply is to be disconnected first, and electricity supply disconnected at least 15 days later.
Ergon Energy	Sought clarification that, if the AER publishes the minimum disconnection threshold, it would not require retailers to publish the amount or otherwise make it available to customers.	The AER will publish the amount on its website, and may make it available through general information about customers' rights and obligations when facing disconnection. The AER does not require retailers to publish the amount on their websites or impose any other positive obligations on retailers to proactively communicate the amount with their customers.
EWON	Sought clarity about the intended meaning of "has agreed" (see r. 116 (1) (h) of the Retail Rules). Sought clarification particularly on whether or not compliance with 116 (1) (h) requires a formal payment arrangement to be agreed, or whether verbal commitments etc would suffice.	The Retail Rules do not prescribe what may constitute an 'agreement' for the purposes r. 116 (1) (h). Nor does the Retail Law provide a definition in this context. The AER notes that an agreement between a retailer and a customer could potentially take many forms, depending on the circumstances. The AER considers that a verbal commitment or agreement reached between the customer and their retailer to repay the amount would satisfy r. 116 (1) (h). The AER expects that retailers will keep appropriate

		records to allow the independent verification of any such agreements made. For example, through notes on customer management or billing systems, or in a letter to the customer confirming the agreement. The AER notes that where a formal payment plan has been agreed, there are a number of specific requirements in the Retail Rules that the retailer must adhere to regarding informing customers of the details of the plan (see Retail Rules, r. 72).
	Sought clarity where a payment arrangement for a sum under $300 has been agreed with the retailer, but the customer does not adhere to the payment plan. Asked whether or not a retailer can then proceed with disconnection with no further notice.	The Retail Rules (r.111) provide direction on when a customer may be disconnected, including where the customer has not adhered to a payment plan. Rule 116 (1) (h) requires the customer to have agreed to repay any outstanding amounts to be protected from disconnection action. Where a customer has not maintained an agreed payment plan, and has not agreed to enter into a new payment plan (or made attempts or acted to remedy arrears), the retailer could proceed with disconnection in accordance with the procedures set out in r. 111 (that is, through sending a reminder notice, a disconnection note, and having used best endeavours to contact the customer).