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Thank you for the opportunity to comment on the *AER - Retailer Authorisation Guidelines Issues Paper*.

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

EWON believes that for the most part the draft Guidelines provide a rigorous approach to the authorisation of energy retailers, and that this should help to avoid the disruption to customers that can occur in the event of a retailer failure.

We have some concerns about the protection provided for customers in the event of transfer or revocation of a retailer authorisation, and we have provided some additional information on this topic to assist in the AER's consideration of this issue.

For ease of reference we have adopted the same numbering as the *AER - Retailer Authorisation Guidelines Issues Paper*.

If you would like to discuss this matter further, please contact me or Emma Keene, Manager Policy & Projects on 02 8218 5250.

Yours sincerely



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Energy & Water
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Response to Australian Energy Regulator

Retailer Authorisation Guidelines

Submitted by the

Energy & Water Ombudsman NSW

29 April 2010

Introduction

The Energy & Water Ombudsman NSW (EWON) is pleased to respond to the *Retailer Authorisation Guidelines Issues Paper*.

Established in 1998, EWON is the approved independent dispute resolution mechanism for customers of electricity and gas providers in NSW, and some water providers. Our aim is to provide fair and independent investigation and resolution of customer complaints. We also work with key stakeholders – providers, community, government, regulators – to raise service delivery standards for the benefit of NSW consumers.

General Comment

We note that the draft guidelines require retailer applicants to have taken steps to participate in the relevant jurisdictional energy ombudsman scheme. EWON strongly supports this requirement, as membership of an ombudsman scheme will be a requirement under s 408 of the proposed National Energy Retail Law.

A similar requirement currently exists in NSW. EWON takes pains to ensure that the procedure for applying for membership is explained clearly to applicants, and every assistance is provided to ensure the procedure is not unduly burdensome.

5. Issues subsequent to the grant of a retailer authorisation

5.3 What issues may arise, if any, in requiring the holder of the retailer authorisation to demonstrate that customers will remain on the same or better terms following a transfer or surrender of the retailer authorisation?

When a retailer either transfers or surrenders their authorisation, EWON is concerned that their customers are able to retain access to an independent dispute resolution service for any complaints that may have been current at the time of the surrender or transfer.

(i) Surrender

It is possible that a retailer deciding to surrender its authorisation may not have any customers, in which case no customer-related problems arise. If there are existing customers, the proposed process of surrender appropriately involves making arrangements for their transfer to another retailer to guarantee continuity of supply for them.

In the only case of surrender of a license in NSW to date¹, this triggered a RoLR event and all the customers were transferred to the standard retailer in their area. These customers started with the new retailer with a ‘clean slate’ and the surrendering retailer retained all the customer billing and contact records, including those relating to ongoing disputes. EWON was able to continue dealing with that retailer’s staff to resolve the remaining customer complaints over the course of several months following the surrender.

This process only worked satisfactorily because the surrendering retailer retained staff to liaise with the ombudsman’s office to assist in the resolution of complaints. Problems could arise if a surrendering retailer does not retain any staff to do this, particularly if any debt recovery action is commenced in relation to bills that are still the subject of an ongoing dispute. This could significantly disadvantage customers.

The ongoing membership of an ombudsman scheme is a significant issue in the period immediately following a transfer of customers away from a surrendering retailer. Clause 4.1 of [EWON’s Constitution](#) states:

Any member may withdraw from EWON Limited by giving to the Secretary not less than 12 months notice to that effect and its membership shall cease on expiry of such notice.

While it is a requirement under s 408 of the proposed *National Energy Retail Law* that retailers are members of an energy ombudsman scheme, it is not clear how this affects their obligations to the relevant scheme once they have surrendered their authorisation. We note the suggestion that the AER may impose conditions which could require the surrendering retailer to continue with their ‘obligations associated with participation’ in an ombudsman scheme.

This raises the following questions:

1. Is it anticipated that there would be a timeframe on this participation, for example for a given period, or until the ombudsman confirms the last remaining complaint has been resolved? EWON would suggest that a period of 12 months would be appropriate, and in line with the terms of EWON’s Constitution.

¹ Energy One in June 2007

2. Is the expression ‘*obligations associated with participation*’ intended to mean the same as ‘*membership*’? This can be relevant to how Clause 4.1 of EWON’s Constitution is interpreted, particularly in terms of the ongoing financial obligations of membership.
3. Has the AER considered what enforcement action would be available if a surrendering retailer refused to cooperate with an energy ombudsman to resolve outstanding customer complaints after the date of surrender?

The Guidelines also require that:

“...appropriate arrangements have been made for each of your customers and that all customers will be transferred to another retailer on the same or better terms and conditions as their contract with you”.

If the proposed transferee retailer already offers the same or better terms than the surrendering retailer, this should not present a problem. However if the surrendering retailer had offered unusually discounted tariffs significantly less than the standard retailer’s terms and conditions, this would appear to place an unfair burden on the transferee retailer.

In a Retailer of Last Resort (RoLR) situation, we understand that customers are transferred to the RoLR on the terms and conditions relevant to its standard supply contract. We suggest that a similar provision may be appropriate in the case of a surrendering retailer, rather than for the transferee retailer to be obliged to offer the same or better terms as those offered by the surrendering retailer.

(ii) Transfer

In EWON’s experience of transfers in the past², the new retailer took on all the existing obligations of the old retailer, so any disputes that were current with the old retailer at the time of the transfer could be resolved by the new retailer. All these transfers involved a transfer of customers (including their billing and customer contact history) to one existing licensed retailer. These customers did not start with a ‘clean slate’ but with their account balance at the time of transfer, and their account history intact.

² Northpower, Great Southern Energy and Advance Energy to Country Energy in 2001.
Australian Inland to Country Energy in 2005.

While there was some obvious disruption for customers, this appeared to work satisfactorily, as the new retailer had the information at hand, and the staff and processes in place for resolving complaints. In this situation, there was no need for the transferor retailer to continue to participate in the ombudsman scheme.

If the terms of a transfer required the transferor retailer to retain responsibility for resolving any outstanding customer complaints prior to the date of transfer, we suggest the transferor retailer should continue their membership of the relevant ombudsman scheme until all outstanding complaints have been resolved. Unresolved complaints could be not only with current customers who are directly involved in the transfer, but also with previous customers who had churned to another retailer prior to the transfer date.

The draft guidelines raise several questions, some of which are similar to those raised for surrenders:

1. For additional clarity, would the AER consider placing an obligation on all transfers that the transferee retailer takes on the responsibility for all ongoing disputed matters? As the transferee retailer will normally inherit the billing and customer contact history, they should be in a position to resolve any outstanding complaints against the transferor retailer, even if the customer subsequently transfers to another retailer of their choice.
2. EWON notes the suggestion that the AER may place conditions on an approval of an application to transfer an authorisation, requiring the transferor to continue to participate in an energy ombudsman scheme. This may only be necessary if the terms of the transfer required the transferor retailer to retain responsibility for resolving any outstanding customer complaints prior to the date of transfer. Is a timeframe for this anticipated, for example for a given period, or until the ombudsman confirms the last remaining complaint has been resolved?

5.4 Is it appropriate for the AER to require applicants to develop procedures for customers to take action against them following the revocation or surrender of the retailer authorisation? If not, what other protections for customers are / could be provided?

The consequences for customers when a retailer's licence is revoked appear very similar to the situation in a RoLR event. Following the recent event triggered by Jackgreen in December 2009, EWON was contacted by a significant number of their customers for assistance in resolving a range of disputes.

In the course of attempting to assist these customers when the retailer had been suspended from the market, a number of difficulties arose which may be relevant to the issue of revocation.

The issues encountered in attempting to assist these customers can be broadly classified into six categories. The case studies provided are complaints to EWON related to the recent RoLR event, but we believe these would apply equally to a revocation.

1. Pre-existing billing disputes prior to the RoLR event

EWON had been investigating a number of complaints from customers that had arisen in the months prior to the RoLR event. These included disputes as to the start and end date of occupation at premises, failure to bill, debt transfer, high bill disputes, failure to apply an energy rebate and incorrect transfers. Customers with unresolved complaints will be disadvantaged unless the retailer continues participating in the ombudsman scheme to allow for resolution of these disputed matters.

RoLR Case Study 1

The customer was a Jackgreen customer and transferred to another retailer in early 2009. He was advised that his account was \$270 in credit at the time of closure. He then received a bill from Jackgreen in November 2009 for around \$700. He contacted Jackgreen and was advised that the bill was issued in error. He is now receiving calls from a collection agent for Jackgreen to recover \$700. (84780)

RoLR Case Study 2

The customer moved out of her property on 19 October 2009 and rang Jackgreen to close the account. However she continued to receive bills from Jackgreen for billing period 16 Sept 2009 to 14 Dec 2009 for \$109 and 15 Dec 2009 to 18 Dec 2009 for \$131.88. The customer is anxious as she does not know how to resolve the situation. (84759)

RoLR Case Study 3

The customer advised that Jackgreen had not applied the pension rebate to her account, despite her providing her pension details on the contract she signed on 13 August 2008. Jackgreen responded to EWON on 23 February 2010:
“Pension number on contract [number supplied] was invalid hence no rebate applied. Jackgreen to contact customer to check number.” (83956)

2. Disputes as to the final bill

Customers have contacted EWON with a number of disputes in relation to the final bill issued by Jackgreen, such as the imposition of unusual fees and charges, or missing payments. With regard to missing payments Jackgreen advised EWON that this had occurred due to the process they used to send the final bills out as soon as possible. Although they could confirm the payments had been made, they advised that the Receiver/Managers were unlikely to agree to issuing amended bills to customers. EWON wrote to affected customers to confirm Jackgreen's advice that their previous payments had been receipted.

After a retailer has had an authorisation revoked, it is reasonable to expect that the final bills issued should take account of all payments made up to that date. If there is a dispute as to any aspect of a final bill, it is reasonable to expect that the retailer could provide a record of this receipt directly to the customer.

RoLR Case Study 4

The customer made three payments to Jackgreen - one on 16 December 2009 for \$161.12, a second on 2 January 2010 for \$99 and a last payment on 13 January 2010 for \$101. These payments were not on her final bill. She tried to contact Jackgreen on a number of occasions but after being on hold for over an hour on her last attempt she contacted EWON. EWON passed her details on to Jackgreen for follow up.

(85550)

RoLR Case Study 5

The customer transferred her account to Jackgreen several years ago. Since this time she has had problems receiving her quarterly electricity bills. The invoices are never sent and she always has to ring and request them. She received a final bill from Jackgreen for \$550.00 for the period 1/12/09 - 18/12/09. This bill includes non direct debit charges of \$10.00 and a late payment fee of \$7.00 for her last bill which was never issued. The customer disputes the application of these fees. (84558)

3. Customers in Credit

A number of customers found that they had credit balances with Jackgreen, either because they had been making payments in advance of their bill issuing, or because they had made payments after the 18 December 2009, being unaware of the RoLR event. These customers requested assistance in claiming these credits back from the Administrator or Receiver/Managers. The website of Industry & Investment NSW advised that if the payment had been made before 18 December 2009 customers should lodge a proof of debt so they would become listed as an unsecured creditor of Jackgreen. If the payment had been made after 18 December 2009 they should contact Jackgreen to attempt to discuss the matter further.

This was a very unsatisfactory situation for these customers, many of whom had been facing financial difficulties and could ill afford to lose the amount of money involved. We would like to see better consumer protection for customers in this situation when a retailer has its licence revoked.

RoLR Case Study 6

The customer was unaware of the RoLR event and paid \$500 to her account after Christmas 2009 to make things easier in the coming year. She then received a final bill that did not reflect her \$500 payment.
(85095)

Some of the credit issues related to double direct debiting, with a number of customers contacting EWON because their bank accounts had been debited twice for the same amount. After a retailer has had an authorisation revoked, there needs to be a clear avenue for disputes relating to double direct debiting to be investigated, and, if a debit is found to have been duplicated, to be promptly removed.

RoLR Case Study 7

The customer has been direct debited twice for a bill of \$145.52 but has not been able to get onto Jackgreen to discuss a refund of the amount taken in error.
(84216)

4. Customers in hardship - refusal of payment arrangements and credit listing

Customers contacted EWON because they were refused payment arrangements by the Jackgreen Receiver/Managers, and in some cases encountered very poor customer service in the process. Where possible, EWON directly referred these customers back to Jackgreen for follow up.

EWON considers that any retailer that has had its authorisation revoked should be required to offer payment arrangements to their customers experiencing financial hardship, in line with their obligations under the proposed National Energy Retail Law and current state regulations. If their timeframe does not allow for a long term payment plan, it is neither fair nor reasonable that these customers, who have expressed a willingness to pay their arrears by instalments, should have their debts transferred to mercantile agents and/or be credit listed.

Credit listing can have a significant impact on a customer for five years. Where the basis for a credit listing is disputed, and an investigation finds it to be inappropriate or done in error, it is very important to have a mechanism where this listing can be removed. As we understand that only the body that placed the listing is authorised to remove it, we consider it vital that a retailer that has had its authorisation revoked should remain available to carry out the necessary actions to remove an incorrect credit listing.

RoLR Case Study 8

The advocate rang on behalf of her son who is currently on Centrelink unemployment benefits. He rang Jackgreen to make a \$50 per fortnight payment arrangement but they said it was not enough. He advised Jackgreen that he could not afford anymore, and was told he would be credit listed if he does not pay by a certain time. The customer swore at Jackgreen and was advised "*that's it, I'm defaulting you right now*" before the call was terminated. The customer then rang to speak to a supervisor who said, "*you swore at a lady, what do you expect*". The advocate is very worried her son is going to be credit listed.
(85207)

RoLR Case Study 9

The customer received a Jackgreen bill for \$562 and rang to seek an extension, however no one answered the phone. A voice recording explained Jackgreen is no longer an electricity retailer in NSW. EWON informed Jackgreen that the customer was seeking an extension to pay this bill. Jackgreen subsequently advised EWON they would only provide an extension to 31 March 2010. (84600)

RoLR Case Study No 10

The customer found out that she has been credit listed for non payment of an account with Jackgreen. She considers the credit listing to be incorrect. She said she started receiving invoices for her address but in another person's name. When she rang Jackgreen to dispute these invoices she provided her name and details. This led to an account being established in her name and the arrears in the other person's name were transferred to her account.
(84321)

5. Promotional offering

A number of customers signed up with Jackgreen on the basis of a \$50 credit to be applied to their account, which induced them to transfer to Jackgreen from their previous retailer. This credit has not been applied to a number of accounts.

If a retailer that has had its authorisation revoked offered its customers an inducement to enter an energy contract, it appears reasonable that they should complete their obligation under the contract. It is important that access to dispute resolution with the retailer is retained so the appropriate adjustments can be made to the customer's final account.

RoLR Case Study 11

The customer said that when she signed up with Jackgreen she was promised a \$50 voucher. This has not been honoured and she would like to receive it. She rang Jackgreen to follow this up and they referred her to the RoLR but the RoLR was unable to assist.
(84832)

6. Complaints about incorrect transfers

Complaints about transfers arise from time to time against all retailers, and are often resolved fairly quickly. Examples of such complaints include where there has been an error in the address of the premises so the wrong NMI or DPI is transferred, or because the customer states they either did not consent to the transfer, or that they consented but cancelled within the cooling off period.

Where errors have been identified, we consider it imperative that the retailer continues to have some facility to correct these incorrect transfers, and return the customer to the retailer of their choice. As transfers typically take place at the time of the next routine meter read, some errors in transfer may not become apparent until after the date the retailer's authorisation is revoked. It is important that access to dispute resolution with the retailer is retained so customer complaints about incorrect transfers can be investigated, and where appropriate, rectified.

RoLR Case Study 12

The customer's account was with another retailer, however she received two bills from Jackgreen in late 2007 and early 2008 addressed to "The Occupant" and with a slightly different address. Investigation by her current retailer indicated that Jackgreen had the wrong NMI for the customer's premises. The customer has now received a debt collection letter for \$967 from Jackgreen and does not consider she should have to pay this. (84706)

RoLR Case Study 13

The customer previously had an account with another retailer and was on their hardship program. She entered a contract with Jackgreen, but cancelled it by phone and email the following day and this was followed up by a letter. She received a bill from Jackgreen a few months later and when she contacted them they said they would cancel the contract. This was not done and the customer has now received a notice from a debt collector for a debt of \$1242.66. (85820)

We note the suggestion that the AER may impose conditions which could require a retailer that has its authorisation revoked to continue to abide by energy laws, including 'obligations associated with participation' in an ombudsman scheme.

This raises the following questions:

1. We note that one of the grounds for revocation can be failure to participate in or meet obligations under the ombudsman scheme in the relevant jurisdiction. If these are the grounds for revocation, has the AER considered what enforcement action would be available if a revoked retailer continued to refused to cooperate with an energy ombudsman to resolve outstanding customer complaints after the date of revocation?
2. EWON could only continue to assist customers in resolving their complaints following revocation if the retailer remains in effective communication. This can involve retaining the staff and processes for

investigating complaints, and implementing any remedial action if required. Is it anticipated that there would be a timeframe on this continued participation, for example for a given period, or until the ombudsman confirms the last remaining complaint has been resolved? EWON would suggest that a period of 12 months would be appropriate, and in line with the terms of EWON's Constitution.

3. What enforcement would be available against a retailer after it has had its authorisation revoked, if it then refused to abide by the energy laws, for example refusing to offer reasonable payment arrangements, and taking debt collection and credit listing action instead? It is also now a requirement for retailers to operate and maintain hardship charters and hardship assistance teams for vulnerable customers. What arrangements are envisaged for customers who are participating in the hardship program when the retailer has its authorisation revoked?