

Technical Regulations and Standards Branch
Consumer reference no.: 484188
Contact: Janusz Worony

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Ian Primrose
Independent Competition and Regulatory Commission
GPO Box 161

Civic Square, ACT 2608

submitted via email: icrc@act.gov.au

Dear Mr Primrose

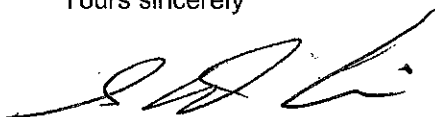
Response to ICRC Position on the implementation of the National Energy Customer Framework in the ACT

Thank you for the opportunity to comment on the ICRC's position on the implementation of the National Energy Customer Framework (NECF) in the ACT. ActewAGL Distribution supports the nationalised approach to energy regulation in accordance with this framework. The complexity of current ACT Codes applicable to ActewAGL Distribution necessitates thoughtful transition to the implementation of this framework. ActewAGL Distribution has reviewed each of the draft Codes in consideration of the NECF implementation and has outlined specific concerns with the proposed Code amendments in the attached Issues Paper.

ActewAGL Distribution considers the importance of working with the ICRC to deliver the most effective and efficient implementation of this framework with a focus on the customer/ consumer. Therefore, ActewAGL Distribution seeks further engagement with the ICRC for the purpose of updating these important regulatory codes.

Please contact Janusz Worony, Branch Manager, Technical Regulations and Standards on (02) 6293 5871 with any questions/ concerns.

Yours sincerely



Steve Devlin
General Manager, Asset Management Division

ActewAGL Distribution Issues Paper
 ICRC position on the implementation of the National Energy Customer Framework in the ACT
 June 2012

Document Reference	Code Change	ActewAGL Distribution Concern
ICRC position on the implementation of the National Energy Customer Framework in the ACT		
2 National regulation of energy, 2.3 Current ACT Framework and proposed amendments	"The Consumer Protection Code will effectively no longer apply to energy retailers or distributors, except for the minimum service standards set out in section 11 and schedule 1."	According to the proposed changes to the draft <i>Consumer Protection Code</i> , ActewAGL Distribution retains some responsibilities within this <i>Code</i> as discussed below.
Consumer Protection Code draft		
General	N/A	<p>While it is understood from the discussion paper that the ICRC intends to apply the national approach to consumer protection for electricity and gas customers and consumers and that retention of the <i>Consumer Protection Code</i> is necessary for other Utilities in the ACT, ActewAGL Distribution believes there is potential for confusion regarding the application of this <i>Code</i> as it is currently drafted.</p> <p>For example, there are specific instances where responsibilities of 'Electricity Distributors' are noted within the <i>Code</i> yet the 'Purpose' and 'Introduction' of the <i>Code</i> refer only to 'Utilities.' In accordance with the draft definition of 'Utilities' within the <i>Code</i>, this indicates the entirety of the <i>Code</i> does not apply to Electricity Distributors or Gas Distributors. ActewAGL Distribution considers that the definition of "Utility" is now no longer necessary, that the definitions of "Water and Sewerage Utility" should be retained and, to the extent that s11 applies to Gas and Electricity Distributors, a new definition for "Gas and Electricity Distributors" is created.</p> <p>Also, though 'Part 3 applies to Water and Sewerage Utilities' and 'Electricity Distributors, Gas Distributors' have been removed from this application statement, there are references to Electricity Distributors and Gas Distributors within Part 3 as noted below.</p>

ActewAGL Distribution Issues Paper
 ICRC position on the implementation of the National Energy Customer Framework in the ACT
 June 2012

		<p>Additionally, Section 11, 'Obligation to comply with service standards' contains the following statement: "For the purposes of section 11 a Utility also includes an NERL authorised energy retailer and gas and electricity distributors." As discussed above, it would provide greater clarity if a new definition of "Gas and Electricity Distributor" were used for the purposes of this section, in addition to the new definition of NERL authorised retailer which has been created by way of these amendments.</p>
<p>Part 2 11.3 Method of payment of rebate</p>	<p>The following option for payment of rebate to Customers has been removed from the <i>Consumer Protection Code</i>: "(c) if the Utility is an Electricity Distributor, the rebate may be paid by the Utility to Customer's Electricity Supplier, to be deducted from the amount payable by the Customer under the next Customer Account which is due after the rebate becomes payable;"</p>	<p>ActewAGL Distribution believes this option for payment of a rebate should not be removed from the <i>Consumer Protection Code</i> as this is an efficient means of payment. Additionally, as discussed above, from the statement at the beginning of Section 11, "For the purposes of section 11 a Utility also includes an NERL authorised energy retailer and gas and electricity distributors," ActewAGL Distribution interprets the entirety of this section to apply though the use of 'Utility' is inconsistent with the Dictionary definition.</p>
<p>Part 3, Protection of Franchise Customers</p>	<p>"Application: This Part applies only to Utilities licensed to provide Utility Services to Franchise Customers."</p>	<p>ActewAGL Distribution believes there is potential for confusion regarding the application of this Code as it is currently drafted. From 3.1 (3): "Part 3 applies to Water and Sewerage Utilities." However, there are references to Electricity and Gas within Part 3. For example: 16.2 (3): "... does not have a contract with a licensed Utility or a NERL authorised retailer for the supply of electricity, gas..." and 17.4 (1): "Subject to clause 10.1, a Utility may take action to disconnect the supply of electricity or gas..." and 17.4 (3): "If, after following the procedures outlined in clause 17.4 (1) the Utility is entitled to take action to disconnect the supply of electricity or gas..." and</p>

ActewAGL Distribution Issues Paper
 ICRC position on the implementation of the National Energy Customer Framework in the ACT
 June 2012

<p>18: "In addition to the right to disconnect or restrict the supply of Utility Services as set out in clause 17, a Utility may restrict or ration the supply of electricity, gas..." ActewAGL Distribution believes these references to electricity and gas should be removed from this Part of the Code for clarity.</p>	
<p>ActewAGL Distribution suggests there are conflicting definitions of 'Utility' throughout the draft Code. For example, Part 2, (3) (3.1) (2) states: "Part 2 applies to all Utilities" which is potentially confusing.</p> <p>Additionally, the statement in Section 11, "For the purposes of section 11 a Utility also includes an NERL authorised energy retailer and gas and electricity distributors," conflicts with the Dictionary definition and introduces responsible parties within the body of the Code.</p> <p>As the Dictionary definition of 'Utility' has been modified to exclude Electricity Distributors and Gas Distributors, ActewAGL Distribution suggests consolidation of the terms 'Utility' and 'Water and Sewerage Utility' for clarity.</p>	<p>(59): 'Utility' means a Person licensed to provide a water or sewerage Utility Service under Part 3 of the Utilities Act.</p> <p>(60): 'Utility Service' includes: (a) electricity distribution, connection and supply service; (b) gas distribution, connection and supply service; (c) water collection treatment, distribution, connection and supply service, and the provision of a water Network; and (d) sewerage service, sewerage connection service, and the provision of a sewerage Network.</p>
<p>Electricity Transfer Code</p>	<p>To be revoked. No issues.</p>
<p>Electricity Feed-in Code</p>	
<p>Title page</p>	<p>"The Commission is specifically seeking comments on what provisions of the current <i>Consumer Protection Code</i> should continue to apply to Electricity Distributors and NERL retailers authorised to sell electricity given the change to consumer protection under NEECF?"</p> <p>"The Network Use of System Agreement will apply to the distributor actions so far as relevant."</p>
<p>4.1 Distributor to detail arrangements to supplier (a)</p>	<p>It is not clear why this statement is on the title page of this code nor is it clear why consumer protections are included within this Code.</p> <p>According to the discussion paper, the <i>Network Use of System Code</i> is to be revoked. Therefore, ActewAGL Distribution assumes existing Network Use of System Agreements will become obsolete.</p>

ActewAGL Distribution Issues Paper
 ICRC position on the implementation of the National Energy Customer Framework in the ACT
 June 2012

4.3 Dispute resolution - supplier disputes	"If no Network Use of System Agreement exists, the following procedure will apply:..."	<p>According to the discussion paper, the <i>Network Use of System Code</i> is to be revoked. Therefore, ActewAGL Distribution assumes existing Network Use of System Agreements will become obsolete and suggests it is not necessary to reference those agreements.</p> <p>Additionally, ActewAGL Distribution notes the insertion of the distributor - supplier dispute resolution procedure as it currently exists within the <i>Network Use of System Code</i>. ActewAGL Distribution suggests this insertion may not be best placed within the <i>Electricity Feed-in Code</i>.</p>
4.4 Dispute resolution - occupier disputes	<p>"Disputes between electricity distributors and occupiers of premises in relation to the Electricity Feed-in Scheme will be resolved in accordance with the Utilities Act and Complaints procedures developed by the electricity distributor.</p> <p>An electricity distributor must develop, maintain and implement procedures to deal with..."</p>	<p>ActewAGL Distribution does not believe it is necessary nor is it efficient to include additional procedures for dispute resolution between electricity distributors and occupiers within this code when these processes are defined within the <i>Consumer Protection Code</i>. The <i>Consumer Protection Code</i> addresses both Customers and Consumers where Consumers are identified as:</p> <p><i>Consumer</i>, in relation to a utility service, means -</p> <p>(a) a customer for the service; or</p> <p>(b) an occupier of a customer's premises to which the service is provided;</p> <p>And includes an invitee of the customer or occupier.</p>
5.2 Dispute resolution - distributor disputes	"Disputes between NERL retailers and electricity distributors in relation to the Electricity Feed-in Scheme will be resolved in accordance with the arrangements set out in the Network Use of System Agreement in place between the parties."	<p>In accordance with Section 7 of the Electricity Feed-in Act, the distributor actions of this Code are classified as a utility service.</p> <p>According to the discussion paper, the <i>Network Use of System Code</i> is to be revoked. Therefore, ActewAGL Distribution assumes existing Network Use of System Agreements will become obsolete.</p> <p>Additionally, ActewAGL Distribution notes the insertion of the</p>

ActewAGL Distribution Issues Paper
 ICRC position on the implementation of the National Energy Customer Framework in the ACT
 June 2012

		<p>supplier - distributor dispute resolution procedure as it currently exists within the <i>Network Use of System Code</i>. ActewAGL Distribution suggests this insertion may not be best placed within the <i>Electricity Feed-in Code</i>.</p>
<p>6.1 Applicability of Consumer Protection Code provisions</p>	<p>"Electricity distributors and NERL retailers must comply with the listed provisions of the Consumer Protection Code 2010 (No. 2) D12010-178 which are set out in Schedule 4 to this Code."</p>	<p>ActewAGL Distribution does not support the duplication of the <i>Consumer Protection Code</i> within this Code. Rather, ActewAGL Distribution supports the use of Schedule 2 in the current version of the <i>Electricity Feed-in Code</i> which defers to the <i>Consumer Protection Code</i> rather than duplicating sections of the Code.</p> <p>The new Schedule 4 to the Feed-in Code imposes obligations on distributors that go beyond what is required by the NERL, the NERR and the applicable customer contracts. Given that electricity distributors will have a DSCC with all customers who have a retail electricity supply account, which will include all occupiers for the purposes of the Feed-in Code, ActewAGL Distribution feels that the occupier will be appropriately protected under the consumer protections afforded by NECF.</p>
<p>Electricity Network Boundary Code</p>		
<p>3.3 - 3.4 3.3 Boundary between Electricity Network and Customers' Premises 3.4</p>	<p>3.3: "(1) The boundary between an Electricity Network and a Customer's Premises is at the Customer's side of the service fuse at: a. the point of attachment of an overhead service line to the Customer's building or structure; or b. the point of entry of an underground service cable to the Customer's building or structure; or if neither paragraphs (a) nor (b) apply as otherwise agreed under clause 3.4, subject to clause 3.3(2). (2) An Electricity Distributor may, taking into account industry standards reasonably determine the boundary between its Electricity Network and a Customer's Premises."</p>	<p>ActewAGL Distribution suggests less ambiguity in this statement relative to the term 'infrastructure.' For example, is the term "infrastructure" intended to reflect the Utilities Act definition of infrastructure? Given that the Code is an industry code made under the Utilities Act, this seems to ActewAGL to be the most appropriate definition.</p> <p>The term "technical standards" is not defined in either the Code or the Utilities Act, and ActewAGL suggests that a definition should be included to ensure clarity.</p> <p>ActewAGL also seeks clarity as to the intention of this definition. ActewAGL's interpretation of the amendment is</p>

	<p>3.4: "Despite any other provision in this Code, an Electricity Distributor and a Customer may: (1) agree upon an alternative boundary between the Electricity Network and the Customer's Premises; and/ or (2) define assets within a Customer's Premises to be part of the Electricity Network. It remains the responsibility of the Electricity Distributor under any agreement made under this section to ensure the infrastructure complies with the relevant technical standards as in force from time to time."</p>	<p>that simply reinforces the status quo – that is, the electricity distributor is responsible for the infrastructure comprises its electricity distribution network under the Utilities Act. If the proposed amendment is intended to serve a purpose broader than reinforcing the current position under the Utilities Act, ActewAGL submits that such a requirement would be outside the scope of an industry code.</p>
<p>Electricity Network Capital Contribution Code</p>		
<p>No issues.</p>		
<p>Electricity Network Use of System Code</p>		
<p>To be revoked.</p>		<p>While ActewAGL Distribution recognises the benefit of the Retail Support Rules within the NECF and supports the revocation of the <i>Network Use of System Code</i> in the ACT, ActewAGL Distribution relies on the full implementation of these provisions in NSW as well as in the ACT to maintain the distributor - retailer relationship across the jurisdictional boundary.</p>
		<p>Provisions for mutual limitation of liability for loss or damage within the current <i>Network Use of System Code</i> are not replicated in any way in the Retail Support Obligations of the NERL. This includes "any loss, liability or expense which that other party may suffer or incur unless the loss, liability or expense is a direct result of the first party's negligence or breach of contract." and without limiting the aforementioned, "a party is not liable for any loss of profits, business or anticipated savings, or for any indirect or consequential loss, arising out of or in connection with that party's performance (including any breach) of this agreement, whether in contract, tort (including negligence) or otherwise."</p>

		<p>Additionally, the current <i>Network Use of System Code</i> includes that "any liability a party has to the other for breach of this agreement, or under an indemnity in this agreement, is reduced to the extent the other party caused or contributed to the breach, or to the application of the indemnity." These same provisions do not exist under the NECF.</p>
<p>Prepayment Meter System Code</p>		
<p>To be revoked. No issues.</p>		
<p>Gas Network Boundary Code</p>		
<p>3.3 -3.4 3.3 Boundary Between Gas Distribution Network and Customers' Premises 3.4 Code does not Prevent Parties Agreeing on Alternative Boundary Between Gas Distribution Network and Customers' Premises</p>	<p>3.3: "The boundary between a Gas Distribution Network and a Customer's Premises is at the Point of Supply. 3.4: "Despite any other provision in this Code, a Gas Distribution Network and a Customer may: (1) agree upon an alternative boundary between the Gas Distribution Network and the Customer's Premises; and/ or (2) define assets within a Customer's Premises to be part of the Gas Distribution Network. It remains the responsibility of the Gas Distributor under any agreement made under this section to ensure the infrastructure complies with the relevant technical standards as in force from time to time."</p>	<p>ActewAGL are concerned that the terms 'infrastructure' and 'relevant technical standards as in force from time to time' are ambiguous. To clarify those terms, ActewAGL propose that the additional wording in the draft is changed to; It remains the responsibility of the Gas Distributor under any agreement made under this section, to ensure the infrastructure comprising its Gas Distribution Network complies with the relevant technical standards as in force under the Act, from time to time.</p>
<p>Gas Network Capital Contribution Code</p>		
<p>1.1 Application</p>	<p>No issues. "Should this Code continue to apply to NERL retailers authorised to supply gas?"</p>	<p>ActewAGL Distribution believes it is not necessary to maintain applicability of this Code to NERL retailers as there is no practical application. Only the Gas Distributor imposes a Capital Contribution Charge payable by a Customer. ActewAGL Distribution notes that the keyword "standard" used in this code, is also used in the NECF Part 12A. While Part 12A</p>

		refers to a connection definition and this Code refers to connection charges for a connection, the use of the same term to refer to different aspects of a connection is ambiguous.
Guidelines for Greenhouse Gas Disclosure on Customer Accounts		
	To be revoked. No issues.	
Retailer of Last Resort Guidelines		
	To be revoked. No issues.	
Ring Fencing Guidelines for Gas and Electricity Network Service Operators in the ACT		
	To remain without change at this time. No issues.	
Utility Reporting and Material Breaches and Non-Compliance		
		Though the ICRC discussion paper notes "This Guideline will require minor amendments to reflect changes to definitions in the Utilities Act," there are no proposed changes in the copy included as Attachment 13. In this case, ActewAGL Distribution assumes that changes to this document are not planned for 1 July 2012 implementation. However, ActewAGL Distribution would like the ICRC to consider the alignment of jurisdictional reporting requirements with national reporting requirements including the removal of duplication, where possible.
Electricity (Greenhouse Gas Emissions)		
	No issues.	
Utilities (NERL retailers - determination of applicable codes)		
	No issues.	