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Essential Services Commission of Victoria
Level 8/570 Bourke Street
Melbourne VIC 3008 Australia

Submitted online

Energy Retail Code of Practice review – Issues Paper

Pacific Blue Retail thanks the Essential Services Commission of Victoria (**ESC**) for the opportunity to comment on the ESC's Energy Retail Code of Practice (**ERCoP**) Review Issues Paper (**Issues Paper**).

Pacific Blue Retail (**Pacific Blue**) is the wholly owned subsidiary retail arm of Pacific Blue Australia. Pacific Blue Australia, formerly Pacific Hydro, was founded in 1992, and is a leading owner, operator, and developer of renewable energy assets. It operates a high quality, diversified portfolio of wind, hydro and solar assets with an installed capacity of 665 MW. It also has a development pipeline of substantial projects totalling over 1,100 MW of potential capacity, as well as over 300 MW of energy storage solutions.

Pacific Blue has approximately 180,000 small and large customers as of July 2024. While its customer base is predominantly in Victoria, Pacific Blue, operating as both Tango Energy and Pacific Blue Retail, sells to small customers in New South Wales, Queensland, and South Australia and plans to grow its presence in these jurisdictions over the coming years.

1. Protections for consumers experiencing vulnerability

Strengthening family violence protections

Pacific Blue supports the proposal to amend the Victorian family violence protections in line with the National Energy Retail Rules (**NERR**). Harmonising the two regulatory frameworks minimises implementation costs for retailers, and allows retailers to conduct internal training in a simplified and consistent manner.

If the ESC decides to only adopt some of the provisions set out in the NERR, some key requirements the ESC should incorporate into the ERCoP are:

- ensuring retailers will not be found in breach of contract where they comply with their family violence requirements;¹ and
- requiring retailers to offer alternative preferred methods of communication where communications via the customer's preferred method are not practicable.²

¹ National Energy Retail Rules r 76K.

² National Energy Retail Rules r 76H.

Pacific Blue views these regulatory rights as enhancing the ability of energy retailers to provide affected customers with adequate assistance, as well as enabling affected customers to engage and communicate in an effective and safe manner.

Payment Difficulty Framework – training requirements

In respect of the Payment Difficulty Framework, Pacific Blue requests the ESC considers more clearly defining payment assistance obligations under the ERCoP.

The ESC requires energy retailers to communicate to customers that assistance under Part 6 of the ERCoP is an entitlement or right that the retailer will or must offer to its customers.³ However, certain assistance measures referred to under Part 6, such as the Utility Relief Grant, are only available to customers who meet specified eligibility requirements. Furthermore, retailers are not required to continue providing assistance to customers in circumstances where the customer has refused or failed to take reasonable action towards paying for their ongoing energy use after a retailer has contacted them to discuss putting forward a revised payment plan.⁴

In view of this, Pacific Blue considers that retailers may be misleading customers by advising them that they have an absolute entitlement to assistance under Part 6, given that some of these measures are conditional on customers meeting certain criteria. Pacific Blue recommends that the ESC reviews and revises the payment assistance requirements under the ERCoP to allow retailers to frame customer communications in a manner that takes into account those customers who may not be eligible to receive all forms of assistance provided for under Part 6 of the ERCoP.

Notwithstanding this, Pacific Blue agrees with the ESC's approach to strengthen the training requirements for agents on the Payment Difficulty Framework. Pacific Blue considers enhanced training obligations as important to ensuring retailers are in a position to provide customers with an informed understanding of the relevant assistance that is available to help them with managing their energy payments, while at the same time encouraging them to proactively seek assistance as required.

2. Supporting the choices of energy consumers

Supporting customers who want to disconnect from gas

In line with the Victorian Government's Gas Abolishment Roadmap, energy retailers will see an unprecedented rise in customer electrification, as well as gas abolishment requests, over the coming years.

For this reason, Pacific Blue welcomes the ESC's proposal to engage with industry stakeholders regarding proposed gas abolishment reforms, as this will provide for a more robust and fit-for-purpose framework to be developed to manage the transition to electrification. In saying this, any regulatory intervention in helping to facilitate the transition should remain adaptable while the industry continues to understand the potential complexities and barriers in respect of the transition toward greater statewide electrification.

Pacific Blue would also encourage the ESC to take a considered approach to its proposed billing and pricing reforms.

³ Essential Services Commission Guideline 3 (2022): Clear and unambiguous information or advice for residential customers anticipating payment difficulties, available at <https://www.esc.vic.gov.au/electricity-and-gas/codes-guidelines-and-policies/energy-retail-code-practice/guideline-3-2022-clear-and-unambiguous-information-or-advice-residential-customers-anticipating-or>

⁴ Energy Retail Code of Practice (Vic) cl 130(6).



Bill information requirements

If the ESC intends to adopt the Better Bills Guideline introduced by the Australian Energy Regulator (AER) in September 2023, Pacific Blue requests that the ESC consults with the AER and puts in measures to ensure there will be ongoing alignment between the Better Bills Guideline and any mirroring regime that may be implemented by the ESC. This will reduce any potential inconsistency between a version introduced by the ESC and the one currently in place by the AER, which will in turn minimise the administrative burden on retailers operating across jurisdictions.

Clarifying best offer obligations

While Pacific Blue agrees that the ESC should look to address the accessibility and availability of best offers, Pacific Blue encourages the ESC to firstly conduct independent consumer research to better understand why customers choose not to switch to the best offer provided on their bills and price change notices.

According to the ESC's Retail Market Dashboard⁵ between January and March 2024, over 2 million electricity customers, and over 1 million gas customers, were informed that they were not on the best offer that was available through their energy retailer. These figures did not include customers who may have been able to seek a cheaper offer from the market, despite being on their current retailer's deemed best offer. This demonstrates that while customers are being continuously advised that there may be better offers available, they are not electing to take up alternative offers that may cost them less.

To understand why customers are not switching to cheaper offers, and to inform any changes to the best offer requirements, Pacific Blue encourages the ESC to engage with customers directly to understand the reasons why they are not switching. The findings as a result of this engagement will give the ESC a better understanding of the barriers and challenges that customers face when accessing cheaper electricity and gas offers and will allow the ESC to tailor its requirements to motivate customers to engage with their retailer and the energy market in reducing their energy costs.

Accuracy of information on Victorian Energy Compare

Pacific Blue supports a review of the definitions of product and price-related terms within both the ERCoP and the Victorian Energy Fact Sheet Guidelines. As stated in the Issues Paper, retailers currently face uncertainty when defining features of their energy products, as terms such as 'discounts' and 'incentives' can be used interchangeably in certain circumstances. Clarifying these terms will ensure greater consistency in how information is displayed on Victorian Energy Compare as well as minimise regulatory ambiguity.

Pacific Blue also supports the inclusion of a timeframe for removing outdated products from Victorian Energy Compare. In saying that, any inclusion of defined terms such as 'expired' or 'unavailable' should have clear definitions to reduce uncertainty as to what constitutes an 'expired' or 'unavailable' energy offer.

3. Pricing and contract protections

Clarifying unclear definitions: Pay-by date

Pacific Blue requests that the ESC clarifies the definition of 'pay-by date' in circumstances where a customer has entered into a payment arrangement, such as bill smoothing.

⁵ <https://www.esc.vic.gov.au/electricity-and-gas/market-performance-and-reporting/victorian-energy-market-report/energy-market-dashboard>.



The common understanding is that the 'pay-by date' is the date on which a retailer has advised a customer, on their bill, that a payment for their energy supply and usage is due. In circumstances where a customer and a retailer have an agreement in place to allow the customer to pay for their energy usage through an alternative means, such as under a bill smoothing arrangement, the customer's actual 'pay-by-date' is the date as agreed by the retailer and the customer. The ESC needs to ensure that the 'pay-by-date' under any agreed payment arrangement is taken into account when assessing how the 'pay-by-date' is defined under the ERCoP to ensure retailers are in a position to clearly communicate to customers on alternative payment arrangements when their payments are due.

Clarifying unclear definitions: Arrange a disconnection

Pacific Blue requests the ESC, should it intend to clarify the requirements around ceasing disconnection where a customer seeks payment assistance, considers the timeframes between when a customer requests payment assistance and when disconnection is to occur.

Retailers, throughout the disconnection for non-payment process, are required to continually provide customers with information about what they must do to prevent any possible disconnection, as well as help them understand the assistance available to them if they are experiencing payment difficulties. If the ESC introduces a requirement where retailers are restricted from disconnecting a customer for non-payment where the customer has sought payment assistance, it will need to be mindful of the application of the restriction in circumstances where a customer has made this request at a time where the disconnection cannot be prevented.

Failing to have regard for the timing of requests and processes outside a retailer's reasonable control could result in a technical wrongful disconnection and a wrongful disconnection payment being applicable to the customer, when in fact the retailer has satisfied all the requirements for the disconnection and cannot do anything possible to restrict the disconnection.

Requirement to publish changes of tariffs and charges in newspapers

Pacific Blue supports the removal of the requirement to publish variations to tariffs and charges of standard retail contracts in a generally circulated newspaper. This is an onerous obligation placed on retailers which provides minimal benefits to energy consumers, who are already advised on upcoming price changes through bill change alerts.

4. General code of practice updates and other changes

Other amendments

Finally, Pacific Blue recommends the ESC works in conjunction with the Victorian Government to allow retailers to aggregate multi-site load.

Currently under the NERR retailers can enter into an agreement with a business customer who operates multiple premises to aggregate their usage, thereby avoiding the need to comply with small customer protection requirements where the customer's aggregate load exceeds the small customer usage threshold. However, this is not the case in Victoria, and retailers are required to provide small customer protections to any sites where usage is under the 40 MWh small customer threshold. While Pacific Blue acknowledges and understands the complexities of implementing such changes, Pacific Blue considers this reform to be something that would be a great benefit to retailers and consumers, as it will give large multi-site customers the flexibility to be treated as large customers which will make interactions with large multi-site business customers more streamlined and manageable.



Closing remarks

Pacific Blue looks forward to continuing to engage with the ESC as its review of the ERCoP progresses. If the ESC would like to discuss the matters outlined in this submission in further detail, please contact me via email on [REDACTED] or on [REDACTED].

Kind regards,

Matthew Frost
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Pacific Blue Retail Pty Ltd

