

## **Appendix 8**

# **COMPARATIVE ANALYSIS OF SELECTED ENERGY PROVISIONS**

**and**

# **TRADE MEASUREMENT PROVISIONS**

# **FOCUS ON TRIPARTITE GOVERNANCE MODEL**

Document incomplete work in progress

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- current and proposed, and of some trade measurement interpretations, demonstrating continuing conflict and overlap within and outside energy provisions; with other statutory regulatory schemes and with common law contractual provisions

**ANAYLSIS OF INCONSISTENCIES IN DEFINITIONS BETWEEN  
BUL HOT WATER ARRANGEMENTS AND ALL OTHER ENERGY  
–SPECIFIC DEFINITIONS**

**SELECTED FURTHER PERTINENT DEFINITIONS  
DOCUMENT IN PREPARATION**

Note: last minute changes to prepared documentation similar to that submitted to the GCF Draft Policy Paper in September and the Commonwealth Treasury was changed upon discover of even further revisions to the Energy Retail Code in February 2010, effective date April 2010 – with retained and more extended discrepancies and inconsistencies within and outside energy laws and also to common law provisions. Though every effort has been made to incorporate comments and changes, this document remains a work in progress but is submitted as is in good faith.

I also attach extracts from the Interpretation section of the Energy Retail Code (v7) for direct comparison – a task that by now should have been achieved given the advanced stage of the NECF2 Package

**Extracts:**

**ENERGY RETAIL CODE<sup>1</sup>**

**Version 7**

**October 2009**

**February 2010 applicable April 2010**

The BWH definitions and provisions are inconsistent with all other existing energy provisions, about metering, supply points and ancillary supply points (taken as one under existing legislation), supply address (with the same meaning as supply point); energization point; billing points)

Under the *Gas (Residual Provisions) Act 1994* (GRPC) provides that any gas connection point in existence prior to 1 July 1997 considered as a single supply billing point remains so. Note the bulk gas meter measures gas volume not heating; the hot water flow meters measure water volume only not heat or gas. Under residential tenancies provisions the

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<sup>1</sup> [http://www.esc.vic.gov.au/NR/rdonlyres/132FD501-0774-467E-A8EF-800354BDA755/0/RIEnergyRetailCodeOctober2009\\_trackedchanges\\_20090814C0920410.pdf](http://www.esc.vic.gov.au/NR/rdonlyres/132FD501-0774-467E-A8EF-800354BDA755/0/RIEnergyRetailCodeOctober2009_trackedchanges_20090814C0920410.pdf)

Landlord is responsible for any utility not separately metered (other than bottled gas). The term meter implies use of an instrument designed for the purpose

### **Customer/Relevant Customer/Business/Domestic/Prescribed/Deemed Customer**

These terms are used variously and discrepantly within numbers of provisions and are interpreted at will especially in relation to the proper contractual party for communal utility infrastructure under the control of “Controller of Premises” (see NMA definitions) normally the Owners’ Corporation

A customer may be an Owners’ Corporation. In the case of the Energy Retail Code and most other Interpretations plural may mean singular, reference to natural person may mean a body corporate (Owners’ Corporation)

A **relevant** customer is defined under the [Gas Industry Act 2001](#), which is one with the Gas Industries Residual Provisions Act 1994 simply as one who consumes no more than 10,000 GJ of gas per annum, which applies to some 1.6 million Victorians. A renting tenant in a multi-tenanted dwelling is not the relevant contractual party despite the provisions in Codes and Guidelines relied up

A residential customer is one who is an end-consumer of any utility. Such a customer does not consumer, or purchase gas or electricity from any party in the absence of flow of energy to the premises deemed to be receiving it under contract law and the terms of current and proposed generic laws (see revised implied and statutory warranties provisions) and most Sale of Goods Acts

Where only a single gas meter exists on common property infrastructure as a single connection or energization point used to heat a communal water tank centrally heating water reticulated in water pipes to multiple end-users (whether residential tenants or individual owners) the proper contractual party for the sale and supply of energy is the Owners’ Corporation not individual renting tenants or owners. However, if owners, arrangements exist for the Owners’ Corporation to apportion utility costs in the manner dictated by Owners’ Corporation Rules and consistent with the Owners’ Corporation Act 2006.

For market settlement purposes only a single charge and a single supply point is deemed to exist. This is consistent with the [Gas Residual Provisions Act 1994](#) provisions and the Gas Distribution Code

**Deemed Contract/Deemed Contract Arrangements/Customer Contract** (terms implying the same)<sup>2</sup> – see s46 of the [GIA](#) and analysis on Apdx 1, 201-218

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<sup>2</sup> See analysis of s46 of the [GIA](#). Taking supply means from a physical connection where energy is received. Taking supply of heated water does not meet that description. Therefore the deemed provisions under s46 do not apply to end-users of heated water products reticulated in water pipes rather than gas transmission pipes or electrical lines

Revised Energy Retail Code, v 7 February 2010 effective April 2010 provisions allow a “deemed customer” relationship to last no more than two billing cycles.

The effect of this is that if deemed status is imposed on the wrong contractual parties such as occurs within the “*bulk hot water policy arrangements*” a move-in customer as a residential tenant refusing to accept unjust and unwarranted deemed contractual status for the sale and supply of energy that simply does not occur to his or her residential premises on the basis of provision of communally heated water reticulated in service pipes, repeated threats of disconnection can occur, culminating in disconnection of heated water supplies, though the clamping of hot water flow meters, despite every definition within existing and proposed energy laws that defines disconnection (ERC, NECF2, de-energization or decommissioning (Gas Code) for gas as follows:

***disconnect*** means:

(a) for electricity, the disconnection of contact between the electrical systems of two persons preventing the supply of electricity between those systems; and

(b) for gas, the separation of a ***natural gas installation*** from a distribution system to prevent the flow of gas.

At the same time, those adopting the “BHW policies” and the NECF2 Package fails to acknowledge that disconnection processes applying unjustly and improperly the term disconnection to extend to severance or suspension of heated water supplies that are communally heated and reticulated in water service pipes to individual residential premises (abodes) in multi-tenanted dwellings.

The refusal of the MCE in finalization the NECF2 Package to address the issues of discrepancies within and outside energy laws and in particular deal appropriately and fairly with these arrangements is cause for concern and will be instrumental in continuing to contribute to perceptions of poor energy-specific protection; poor commitment to the concepts of harmonization, consistency, adoption of best practice and respect for the provisions of other regulatory schemes, including national measurement provisions and the concepts of legal traceability in the sale and supply of goods and services that can be measured; and adherence to the fundamentals of the common law especially with regard to contract.

The disconnection practices, unjustly imposed contractual status on the wrong parties also have implications unjust perceived damage to credit rating and a number of provisions precedent and subsequent including expectation of provision of access to meters (usually water meters) that are behind locked doors in the care custody and control of landlords

In addition, by deemed contractual status imposition on the wrong parties, the path is opened up for exploitive conduct as has been extensively discussed in case studies and in particular the extended Deidentified Case Study again lodged with this submission, but

4 of 17

already published on the MCE arena, Productivity Commission site and Commonwealth Treasury site

In these respects – and beyond, the single market object is not met

**customer retail contract** means a contract between a small customer and a retailer of a kind referred to in section 202 for the provision of customer retail services for particular premises;

See all comments above. For more detailed discussion please see my various submissions to the ESC (Vic) 2008); Productivity Commission (2008) and (2009) MCE NECF1 Consultation RIS; MCE Gas Connections Framework (2009); Treasury's Unconscionable Conduct Issues Paper

The term "**customer**" needs to be distinguished from the term "consumer" or end-user or any utility (be it gas or electricity). This point was raised by a market participant delegate on Day 2 of the NECF2 Public Workshop Forum in Melbourne

In multi-tenanted dwellings, it is the Owners' Corporation who is provided with either a basic or negotiated connection service, not a succession of renting tenants. The contractual responsibility of a gas installation or service is always OC responsibility. Please refer Owners' Corporation Act 2006 (Vic). These provisions may vary from jurisdiction to jurisdiction.<sup>3</sup>

If the supply of gas through a dedicated gas meter

The term "**premises**" needs further clarification. A clear distinction needs to be made between "**premises**" which can donate chook-house, boiler room; underground facilities (under care custody and control of the Controller of Premises, normally a Landlord and/or Owners Corporation (Body Corporate)<sup>4</sup>

The *National Measurement Act 1960* amended to 1 July 2009<sup>5</sup> Act No. 64 of 1960 refers to these definitions:

**"controller"** , in relation to premises, a part of premises or a vehicle, means the person apparently in control of the premises, the part of the premises or the vehicle.

**"premises"** means:

(a) an area of land or any other place, whether or not it is enclosed or built on; or

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<sup>3</sup> Note there is a court proceeding on foot currently with an estimated total liability over the full term of the alleged contracts with regard to the **legality of the contract for "provision of hot water services ADD**

<sup>4</sup> Note Owners Corporation provisions vary between jurisdictions. Refer to Victorian Owners Corporation Act and the sorts of facilities and services that do come under their control – all common property infrastructure, including hot water services, public lighting, car-parks, gardens, etc.

<sup>5</sup> National Measurement Act 1960 amended to 1 July 2009, Act No. 60 of 1960, taking into account amendments up to Act No. 137 of 2008

[http://www.austlii.edu.au/au/legis/cth/consol\\_act/nma1960222/notes.html](http://www.austlii.edu.au/au/legis/cth/consol_act/nma1960222/notes.html)

*(b) a building or other structure*

**connection** means a physical link between a distribution pipeline and a customer's premises to allow the flow of natural gas.”

### **Supply Remit/**

### **Retailer Supply Remit**

### **Classes of Premises/Businesses Premises/Residential Premises**

### **Classes of Consumers**

Leaving definition and re-definition of these “classes” will continue to give rise to the confusion and distortion identified above -n as has been the case through numerous Orders in Council which have often had the effect of attempting to entirely re-define the laws that may have originally attempted to take care to achieve consistency, party, equity and fairness.

### **Supply Address**

This term is discrepantly used within the revised Energy Retail Code to imply a residential abode. It has the meaning within the Gas Industry Act and Gas Industry Code as synonymous with supply point (or connection/energization) point. This has implications for move-in-customers and alleged deemed carry over customers

### **Supply Point**

This term is synonymous with supply address though the latter is entirely incorrectly used within the ERC to imply a residential abode (premises) This has ripple effects on other contractual matters and on conditions precedent and subsequent, including move-in and carry-over customer issues, provision of identification on the basis of deemed contractual status; provision of access to meters (normally hot water flow meters) in the care custody and control of Owners' Corporations in the case of multi-tenanted dwellings whether publicly or privately owned and managed.

Since supply points and ancillary points are taken as one no need for mention of the latter, though for embedded networks the parent/child concept has been introduced) Since supply points and ancillary points are taken as one no need for mention of the latter, though for embedded networks the parent/child concept has been introduced)

### **Energization/Connection Point Supply point**

As previously discussed there is no flow of energy effected to the residential premises of residential tenants or individual owners supplied with heated water in service pipes where the heating of the water has been achieved through a single supply point/supply address ( (technical terms); connection point;; energization point. For settlement purposes that single master gas meter or electricity meter referred to under the ERC “bulk hot water policy provisions” is a single connection or energization point. Yet massive supply and

6 of 17

other charges, bundled or unbundled are being imposed on end-users of communally heated water deemed individually to be contractually liable under those provisions

### **Distribution supply points**

See comments above

### **Supply Address<sup>6</sup>/Supply Point**

The terms supply point and ancillary supply point are synonymous under the legislation and the *Victorian Gas Distribution System Code*. For gas energization points that were installed prior to 1 July 1997, the existing legislation considers these to be single billing points

### **Supply<sup>7</sup>**

All of these are intended to imply for gas, gas supply points and take into account the metering and metering installation concepts and definitions that apply to gas. The same applies in principle to electricity

### **Supply Address/Supply Point/Connection Point/Energization Point**

The end-user's premises (individual apartment, flat) is not a supply address which is a technical term synonymous with supply/connection point for energy

### **Distribution Supply Point/Supply**

Since supply points and ancillary points are taken as one no need for mention of the latter, though for embedded networks the parent/child concept has been introduced)

For embedded networks the parent/child concept has been introduced)

Energization/Supply point/supply address

Distribution supply points/

### **Supply Address**

The terms supply point and ancillary supply point are synonymous terms under the legislation and the *Victorian GDSC*. For gas energization points that were installed prior to 1 July 1997, the existing legislation considers these to be single billing points. See *GRPA, taken as one with the GIA*

### **Supply/Sale and Supply of Gas/Sale and Supply of Electricity**

All of these are intended to imply for gas, gas supply points and take into account the metering and metering installation concepts and definitions that apply to gas. The same applies in principle to electricity

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<sup>6</sup>

Erroneously used within some jurisdictional definitions to imply costs for delivery of heated water in water service pipes, which is not the responsibility of energy retailers. They sell and supply gas or electricity under licence. If they supply metering services such as maintenance of hot water flow meters, this is a service offered to Landlords and/or Owners' Corporation entities, not individual end-users of heated water. The ESC has introduced a new definition of meter for BHW which means "a device that records consumption of hot water." No aspect of current or proposed legislation intends meter to be defined in this way or for sale and supply of gas to mean "*delivery of bulk hot water services.*" This service is provided directly to the business customer, the Owners' Corporation or Landlord, not the end-user of a composite water product.

Energy suppliers are encouraged to form collusive arrangements with landlords by offering third party "maintenance and management of hot water flow meters" used in conjunction with boiler systems (hot water installation) Installation in this sense has nothing to do with a gas or electricity metering installation, but rather a boiler system with associated water service pipes that carry heated water of varying quality and temperature to individual residential premises in multi-tenanted dwellings

Gas supply is through the "*physical connection that is directly activating or opening the connection in order to allow the flow of energy between the network and the premises* (this is referred to throughout as 'energization' of the connection)<sup>188</sup>

Gas supply is through facilitation of the flow of gas (or electricity) between the network and the premises through the connection; and services relating to the delivery of energy to the (alleged)

- connection to customer's premises, using a gas fitting that "includes meter, pipeline, burner, fitting, appliance and apparatus used in connection with the consumption of gas"

### **Connection Point/Supply Point/Energization Point**

#### **Connection (VGDSVCV9)/Connect (VERC)/Connection Point**

*The joining of a gas installation to a distribution supply point to allow the flow of gas*

*(a) for electricity, the making and maintaining of contact between the electrical systems of two persons allowing the supply of electricity between those systems;*

*and*

*(b) for gas, the joining of a **natural gas installation** to a distribution system **supply point** to allow the flow of gas.*

See all comments under disconnection

No such connection takes place for those receiving heated water centrally heated in a communal boiler tank belonging to a Landlord, and where a single energization point exists responsible for heating the Landlord's boiler tank. Heated water is reticulated in water pipes to each residential tenant's apartment or flat.



It would seem quite clear cut, yet the BHW policy arrangements contained within the same code develop a new lexicon exclusive to the bulk hot water arrangements in defining meters, implicitly endorsing disconnection or suspension of water; considering poor credit rating with “water bills” to be relevant to credit history, security deposit, over due bill history, and other conditions precedent and subsequent which will have ongoing implications and which the MCE in its Package has declined to appropriately address.

The collective attitude is one of overlooking the glaring discrepancies, the inconsistency and direct overlap and conflict with other statutory regulatory schemes and within the common law, and especially regarding contract and legal traceability of goods and services

The connection of a single mast gas or electricity meter is undertaken at the time of building erection at the request and under contract to the Developer or Owners Corporation. The same normally applies for hot water floor meters or cold water flow meters relied upon under the BHW arrangements as suitable instruments through which to measure and by conversion factor algorithm estimated deemed gas or electricity usage by end-users of heated water supplies

Since no flow of energy is effected to the individual residential premises of end-users of communally heated water, no contract can possibly exist under existing, proposed generic laws, sale of goods acts (save in Qld which changed Fair Trading and Sale of Goods Acts just prior to the sale of energy assets, presumably to make way for arrangements and any warranties made regarding the “BHW provisions; refer also to Queensland’s Infrastructure and Planning provisions discussed elsewhere)

### **Connection/Energization**

See all comments above variously under supply point/supply address/ energization point; customer, residential customer; residential premises; business premises

**Connect** in the Victorian *ERC* and proposed *NECF* means

*for electricity the making and maintaining of contact between electrical systems for two persons allowing the supply of electricity between those systems; and*

*for gas, the joining of a natural gas installation to a distribution system supply point to allow the flow of gas”*

See Energy Retail Code, v 7 (revision Feb2010) Barring the 1.1 Introduction: Purpose, Authority and Commencement date the explanations for the algorithm formula (how the calculation is actually made); interpretation – how to interpret the Guideline; Appendices 1 and 2 outlining the algorithm conversion factor formula after calculating water volume usage allegedly “*individually monitored*” for each tenant in a multi-tenanted bloc of flats and apartments) (without the necessity for site-specific reading);

### **Connection/Energization**

Energy Supply DPI/VESC’s Energy Retail Code alternative definition

*“delivery of gas bulk hot water” or “delivery of electric bulk hot water”*

Massive charges including hidden and bundled unspecified charges incorporating alleged heating component of communally heated water as a composite water product; recovery of some water supply charges; all other charges unspecified that aids a retailer and/or Landlord OC recover costs not properly the contractual responsibility of end-users of heated water products in the absence of any separate energy meter or energy connection/energization point into the residential premises of the

Creative distortion of the meaning of “*metering*” “*separate metering*” by policy-makers, regulators, complaints handlers and energy suppliers does not dilute the strength of existing legislation under other schemes. The definition to be transferred from the BHW Guideline 20(1) to the Victorian ERC is a distortion of the meaning of meter in all other provisions, and therefore impact on every aspect of perceived deemed contracts, conditions precedent and subsequent and consequences for end-consumers of utilities.

Instead a mere reference to the DPI will be included. The DPI has taken over policy responsibility for the conversion factor formulae and tariffs; whilst the ESC retains responsibility for what is included on the bills under 2.3 of the Guideline, to be transferred to 4.2 of the VERC.

### **Disconnect (VERC)**

*(a) for electricity, the disconnection of contact between the electrical systems of two persons preventing the supply of electricity between those systems; and*

*(b) for gas, the separation of a **natural gas installation** from a distribution system to prevent the flow of gas.<sup>8</sup>*

It is implicit that disconnection of hot water services is not part of the concept, definition, permissible action or provision when hot water supplies are provided by the Landlord to residential tenants, using a water storage tank that is first heated by energy supplied to him as Landlord by implicit or explicit contract to a single energization point on common property infrastructure. It is the Landlord who is supplied the energy. For VENC Corp purposes, consistent with the existing legislation, the single energization point represents a single supply point, single billing point. Therefore all supply and bundled charges, and all charges for the sale of energy belong to the Landlord

Under residential tenancy laws, unless a separate energization point exists for residential tenants for the supply of any component of energy, the landlord is the responsible contractual party. Therefore the energy legislation needs to explicitly reflect and acknowledge this.

### **Disconnection/Decommissioning/Disconnection-Reconnection**

As mentioned the term supply point is synonymous with supply address and implies an energized or new connection in relation to gas (or electricity). For gas these terms are

together defined within the existing legislation as synonymous with ancillary supply point. For gas energization points that were installed prior to 1 July 1997, the existing legislation considers these to be single billing points. Refer to Gas (Residual Provisions) Act 1994 which is one with the *Gas Industry Act 2001* (GIA).

From the time of that the Essential Services Commission undertook deliberation, structuring, adoption and implementation of the existing BHW Charging Provisions, (2004 and 2005) with implementation on 1 March 2006 of the Guideline 20(1) now to be repealed and for the most part transferred to the *Energy Retail Code* Clauses 3.3 and 4.2 respectively, supply points, supply address, relevant customer and meters have been defined in such a way as to be entirely inconsistent with all other existing and proposed provisions.

The ESC was originally responsible for development of the algorithm conversion factor formulae in use (soon to be repealed and replaced with similar provisions following negotiation of regulated price).

On 1 January 2008 the DPI took over the responsibility for the formula and tariff to be used, presumably with the regulated tariff to be negotiated with retailers. It is unclear how off-peak rates will apply or where the revised formula details currently contained in Appendices 1 and 2 will reside and whether these will be transparently available online on the DPI, ESC and/or retailers' websites.

Ready accessibility to such information is crucial to providing informed consent, at least on websites, though not all stakeholders are internet literate, or would know where to look unless a specific web link is provided on bills.

If disconnection of gas or heated water supplies is undertaken by a retailer, with or without tacit or explicit sanction by policy-makers and/or regulator(s) the matter is serious if this occurs where no deemed contract exist; no just cause can be shown for such an action; no energy is supplied by the retailer or distributor on the basis of all the arguments shown above, that is to say, , no supply of gas takes place as defined under the *GIA* definitions of “customer;” “gas distribution company;” “transmission;” “transmission pipeline.

### **Gas Service Pipes/Gas Transmission Pipes**

For gas these are intended to be gas service pipes or gas transmission pipes not water pipes service pipes, disconnection and decommissioning; and other such definitions are described within VENCORP rules and how these sit with the interpretation placed on deemed provisions and application of BHW arrangements to end-users of heated water from which the heating component cannot be separated or measured through legally traceable means.

Consistent with existing legislation, for VENCORP purposes all BHW gas energization points are considered for Distributor-Retailer purposes to be single supply points and single billing points

### **Electrical Service Lines**

a *supply address* as a medical exemption *supply address* if a *customer* requests registration and provides a current medical certificate certifying that a person residing at the *supply address* has a medical condition which requires continued supply of gas; or

(d) a *customer*, unless otherwise requested by that *customer*:

- after 2 pm (for a *domestic customer*) or 3 pm (for a *business customer*) on a weekday; or
- on a Friday, on a weekend, on a *public holiday* or on the day before a *public holiday*.

Comment: What happens if medical advice is that continuity of heated water supplies is warranted on medical grounds, but that reliance is placed by distributors and retailers and their servants/contractors and/or agents to suspend those heated water supplies on the basis of wrongly imposed contractual status for the alleged sale and supply of energy.

Which disconnection procedures, checks and balances will apply?

Which complaints mechanism may be relied upon?

Who will decide whether this comes under water provisions, energy provisions, generic provisions, common law provisions?

Energy-specific ombudsmen who are industry-run are forbidden to deal with the bizarre bulk hot water arrangements, contractual disputes, over-charging, under-charging, improper disconnection practices, conditions precedent and subsequent and the host of issues for which customers who receive direct flow of energy to their residential premises are covered.

Refusal by the MCE to deal with these matters within the NECF2 Package implies disregard for proper protection of all Australians who should be able to implicitly rely on fundamental protections for security, safety and reliability of supply in addition to price parameters.

**Deemed Contract/Deemed Contract Arrangements/Customer Contract** (terms implying the same)<sup>9</sup> – see s46 of the [GIA](#) and analysis on ([attachment XXX](#))

See analysis of s46 of the [GIA](#). Taking supply means from a physical connection where energy is received. Taking supply of heated water does not meet that description. Therefore

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<sup>9</sup>

the deemed provisions under s46 do not apply to end-users of heated water products reticulated in water pipes rather than gas transmission pipes or electrical lines

### **Supply Remit/Retailer Supply Remit**

#### **Classes of Premises**

Allowing continuing changes to definitions such as under OIC's gives rise to the same sorts of discrepancies within and outside energy laws at jurisdictional and state level, with other statutory regulatory schemes and within the common law

#### **Classes of Consumers**

Allowing continuing changes to definitions such as under OIC's gives rise to the same sorts of discrepancies within and outside energy laws at jurisdictional and state level, with other statutory regulatory schemes and within the common law

#### **Electrical Service Lines**

Disconnection/Decommissioning/Disconnection-Reconnection

Gas fitting (Gas Industry Act) *"includes meter pipeline burner fitting appliance and apparatus used in connection with the consumption of gas"*

Gas Service Pipes/Gas Transmission Pipes

For gas these are intended to be gas service pipes or gas transmission pipes not water pipes service pipes, disconnection and decommissioning; and other such definitions are described within VENCORP rules and how these sit with the interpretation placed on deemed provisions and application of *BHW* arrangements to end-users of heated water from which the heating component cannot be separated or measured through legally traceable means.

Consistent with existing legislation, for VENCORP purposes all *BHW* gas energization points are considered for Distributor-Retailer purposes to be single supply points and single billing points

#### **Continuing problem – contractual issues and legal traceability of goods and services allegedly supplied to end-users of heated water within energy laws**

The proper contractual party is the Owners' Corporation in these circumstances, not end-users of the heated water

#### **Meter/Double Custody Changeover Point normally at outlet of meter**

#### **Meter - DPI/ESC's ERC alternative definition:**

No meters as defined in the legislation reside in individual apartments receiving bulk hot water. There is no distribution supply point for gas associated with the provision of heated water to tenants

Allowing continuing changes to definitions such as under OIC's gives rise to the same sorts of discrepancies within and outside energy laws at jurisdictional and state level, with other statutory regulatory schemes and within the common law

**meter** in respect of a **customer** means:

(a) for electricity, the device which measures and records the consumption of electrical energy consumed at the **customer's supply address**;

(b) for gas, an instrument that measures the quantity of gas passing through it and includes associated equipment attached to the instrument to filter, control or regulate the flow of gas and;

(c) for **electricity bulk hot water** or **gas bulk hot water**, the device which measures and records the consumption of bulk hot water consumed at the **customer's supply address**.

**Comment:** A supply address is a technical term meaning the same as supply point/connection point/energization point. It does not have the meaning in legislation as given above and commonly used by the ERC in its documents. This is also reflected within the NECF2 package though the discrepancy has been pointed out many times over.

Defining a meter in this manner, discrepantly with all other existing and proposed energy laws, and in conflict with the principles of legally traceability of goods and services in trade measurement will continue to make for distortions, inequities, unwarranted imposition of contractual status for the alleged sale and supply of energy. In the case of the heated water provided under the BHW arrangements, no flow of energy to the premises deemed to be receiving it is achieved.

## Appendix 2

### Bulk Hot Water Charging

#### Gas Bulk Hot Water Pricing Formulae

A. **Gas bulk hot water rate** (cents per litre) = CF (MJ per litre)

\* **gas bulk hot water tariff** (cents per MJ)

Where **customers** are charged by their **retailer** for **energy** in delivering **gas bulk hot water**:

CF = the **gas bulk hot water conversion factor** = 0.49724 MJ per litre

**gas bulk hot water tariff** = the **standing offer** tariff applicable to the **gas bulk hot water** unit (gas tariff 10/11)

Where **customers** are charged for **energy** in delivering **gas bulk hot water** pursuant to a **market contract**:

CF = the **gas bulk hot water conversion factor** = 0.49724 MJ per litre

*gas bulk hot water tariff* = the market tariff applicable to the *bulk hot water* unit B.  
*Retailer* provided *gas bulk hot water* per customer supply charge (cents) = the supply charge under the tariff applicable to the relevant *gas bulk hot water* unit divided by the number of *customers* supplied by the relevant *gas bulk hot water* unit.

*Retailers* may decide not to charge the supply charge or may decide to roll-in the supply charge into the commodity charge of the applicable tariff.

C. *Customer gas bulk hot water* charge (cents) = the *customer's* metered consumption of hot water (litres)

\* *gas bulk hot water* price (cents per litre)

+ *customer's* supply charge (cents)

<http://www.esc.vic.gov.au/NR/rdonlyres/1C4BEA8F-B31D-49F2-89F0-3E2D70172A1B/0/EnergyRetailCodeFebruary2010with1April2010dateofeffect20100201.pdf>

### Electric Bulk Hot Water Billing Formulae

A. Where *customers* are charged for *energy* in delivering *electric bulk hot water* either by their *retailer* under a *standing offer* contract or pursuant to a *market contract* the:

*Customer electricity bulk hot water* charge (cents) = the *customer's* metered consumption of hot water (kilolitres)

\* electricity tariff rate(s) applicable to the *customer* for the applicable *electric bulk hot water* unit (cents per kWh)

\* CF (kWh per kilolitre)

Where:

CF = *electric bulk hot water conversion factor* used by *retailers* to bill *electric bulk hot water* customers. The *electric bulk hot water conversion factor* will have a maximum value of 89 kWh per kilolitre. Where *customers* are currently billed using a lower *electric bulk hot water conversion factor*, or a lower *electric bulk hot water conversion factor* for the site is assessed, *retailers* must bill *customers* using the lower *electric bulk hot water conversion factor*.

The *customer's* electricity tariff must be an off-peak tariff if supplied from an off-peak *electric bulk hot water* unit.

### Comment:

#### Option 2—Fixed conversion factor

Selected for Victoria without site specific meter readings – all usage is deemed – calculated from water volume using a hot water flow meter whilst at the same time

15 of 17

including heating values, pressure factors and other alleged gas data usage apportioned to individuals receiving no flow of gas or electricity to their premises. What they receive is a composite water product from which the gas volume or heat cannot possibly be calculated.

The option fixes the conversion factor at the previous historic level of 0.49724 MJ per litre. To provide for such an approach, the fixed conversion factor would need to be included in the GTO (or current equivalent).

In Queensland the market is operated like a water market but energy sale and supply alleged. Bills is cents per litre applying a gas rate and massive supply and FRC charges also included to each individual

Though in theory the Owners Corporations in public housing are meant to receive the bills and fairly apportion along with a composite service charge for a range of services, use of communal laundry facilities, etc, in practice the original “agreement” is believed to be obsolete and energy bills and directly sent to end-users in public housing receiving communally heated water.

In South Australia it is more common for site specific reading to take place, also based on water volume calculate to determine how the prescribed “gas rate” should be applied.

***Metrology Procedure: Part A (National Electricity Market)*** is the procedure as published by the Australian Energy Market Operator in accordance with clause 7.14.1(a) of the ***National Electricity Rules***.

***Metrology Procedure: Part B (National Electricity Market)*** is the procedure as published by the Australian Energy Market Operator in accordance with clause 7.14.1(a) of the ***National Electricity Rules***.

***National Electricity Rules*** means the Rules made under the National Electricity (Victoria) Law applicable in Victoria as a result of the operation of section 6 of the ***National Electricity (Victoria) Act 2005***.

***National Gas Rules*** means the Rules made under the ***National Gas Law*** as contained in a Schedule to the ***National Gas (South Australia) Act 2008***.

As mentioned in the footnotes, the term supply point is synonymous with supply address and implies an energized or new connection in relation to gas (or electricity). For gas these terms are together defined within the existing legislation as synonymous with ancillary supply point. For gas energization points that were installed prior to 1 July 1997, the existing legislation considers these to be single billing points.

The NGL refers to an end-user of gas as follows: “***end user means a person who acquires natural gas or proposes to acquire natural gas for consumption purposes.***”

It is preposterous to suggest illegal consumption of supply; commencement of taking supply or any other such term when no flow of energy can be shown to occur regardless



of change of ownership or operation of network in the case of electricity (no networks exist for gas and therefore cannot be strictly termed embedded

This is discussed elsewhere in the context of contract law; generic laws current and proposed including unfair contract and implied and statutory warranty provisions; Owners' Corporation laws; residential tenancy provisions.