



**Faster: Enabling efficient customer transfers in
the electricity market through estimated reads**

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Energy + Water Consumers' Advocacy Program

Introduction

The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit law and policy organisation that works for a fair, just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues.

PIAC identifies public interest issues and, where possible and appropriate, works co-operatively with other organisations to advocate for individuals and groups affected. PIAC seeks to:

- expose and redress unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate on issues affecting legal and democratic rights;
- promote the development of law that reflects the public interest;
- develop and assist community organisations with a public interest focus to pursue the interests of the communities they represent;
- develop models to respond to unmet legal need; and
- maintain an effective and sustainable organisation.

Established in July 1982 as an initiative of the (then) Law Foundation of New South Wales, with support from the NSW Legal Aid Commission, PIAC was the first, and remains the only broadly based public interest legal centre in Australia. Financial support for PIAC comes primarily from the NSW Public Purpose Fund and the Commonwealth and State Community Legal Services Program. PIAC also receives funding from NSW Trade and Investment for its work on energy and water, and from Allens for its Indigenous Justice Program. PIAC also generates income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions.

Energy and Water Consumers' Advocacy Program

The Energy + Water Consumers' Advocacy Program (EWCAP) represents the interests of low-income and other residential consumers of electricity, gas and water in New South Wales. The aim of the program is to develop policy and advocate in the interests of low-income and other residential consumers in the NSW energy and water markets. PIAC receives policy input to the program from a community-based reference group whose members include:

- Council of Social Service of NSW (NCOSS);
- Combined Pensioners and Superannuants Association of NSW;
- Ethnic Communities Council of NSW;
- Salvation Army Eastern Australia Conference;
- St Vincent de Paul Society of NSW;
- Physical Disability Council NSW;
- Tenants Union of NSW;
- Financial Rights Legal Centre; and
- Good Shepherd Microfinance.

Faster: Enabling efficient customer transfers in the electricity market through estimated reads

The Public Interest Advocacy Centre (PIAC) thanks the Australian Energy Market Commission (AEMC) for the opportunity to comment on the Consultation Paper for the National Electricity Amendment (Using estimate reads for customer transfers) Rule 2016.

The proposed rule change arises out of the AEMC's 2012 Power of Choice Review and subsequent *Review of Electricity Customer Switching* in 2014. The Power of Choice Review identified that the allowable maximum timeframe of 65 business days for switching between retailers in the NEM was much longer than the range of 10 to 20 business days allowed in overseas jurisdictions. This is supported by data from the Australian Energy Market Operator (AEMO), which indicates that, between January 2013 and December 2015, a large proportion of customers experienced lengthy in-situ transfer times of beyond 30 calendar days:

[A]pproximately half of small in-situ customer transfers take 30 or more calendar days to complete. Specifically, 28 per cent of relevant transfers took between 30 and 60 days to complete, and a further 22 per cent took greater than 60 days.¹

The 2014 Review identified areas where the transfer process could be improved. In particular, it identified that most transfers were occurring at the next scheduled meter read date, resulting in a transfer timeframe of up to three months as most meters are read every quarter. This, along with meter access problems, can cause lengthy delays in the transfer process.² PIAC notes that the AEMC and stakeholder submissions to the 2014 Review considered 30 calendar days to be a reasonable transfer timeframe.³ The Review made a number of recommendations, one of which was to confirm that customers could transfer to a new retailer on an estimated meter read, with a view to expediting the transfer process and providing consumers with a cheaper option that avoids the cost of a special meter read.

The current rule change proposes amendments to the *National Electricity Rules* (NER) and *National Energy Retail Rules* (NERR) to allow customers the option of transferring retailers on the basis of an estimated read. The proposed changes to the NERR specify a number of conditions that must be met before an estimated read can be used (discussed below in response to Question 2). The proposed changes to the NER require AEMO to determine an estimation methodology and a dispute resolution mechanism for disputes between retailers and Meter Data Providers (MDPs) relating to the use of estimated reads in account settlement.

PIAC participated in the 2014 Review. We submitted⁴ that transfer timeframes could be significantly shortened through the increased use of estimated reads for final bills. Consistent with our previous submission, PIAC welcomes the rule change and supports the use of estimated reads in facilitating a more timely customer transfer process. PIAC takes the view that the effectiveness of a competitive market largely relies on consumer participation and the ability of

¹ AEMC 2016, Using estimate reads for customer transfers, Consultation Paper, 28 April 2016, Sydney, p7.

² Ibid, pp3, 8.

³ Improving the timing of the electricity customer transfer process: Rule Change Request, October 2015, p.8.

⁴ Accessible at <<http://www.aemc.gov.au/getattachment/8b15dd54-3c7b-435a-b606-36309dde30a9/Public-Interest-Advocacy-Centre.aspx>>

consumers to switch to more advantageous offers as quickly as possible. Delayed transfers can result in consumer detriment if there are savings to be gained from switching to a cheaper offer.

Consumers should not be held back where it is possible to transfer on an estimated read, in particular where customer self-reads provide an accurate meter reading for billing purposes. Equally, there need to be appropriate safeguards to ensure that the processes of estimation and account settlement do not result in consumer detriment. In this respect, PIAC considers that the proposed rule change addresses the issue of lengthy delays in in-situ transfers while providing adequate consumer protections regarding consent and accurate billing.

PIAC has responded to selected questions from the Consultation Paper, based on PIAC's experience and expertise.

Question 1 Reasons why estimated reads are not currently used on transfers

(a) Are consumers aware of the ability to transfer on an estimate, and if so, why are they reluctant to do so?

The Consultation Paper notes that the current regulatory framework does not prohibit retailers from using estimate meter reads when preparing final bills.⁵ Despite this, PIAC notes that the AEMC's *Review of Electricity Customer Switching* in 2014 found that retailers commonly transferred customers on the next scheduled meter read date, to coincide with a quarterly meter read cycle.⁶

Hence, it appears that while the use of estimated reads is permitted, it is not industry practice to transfer customers on estimates. This possibly impacts on consumer awareness; if retailers are reluctant to request an estimated read, it is unlikely that consumers are told about or given this option. Given the asymmetry in knowledge between retailers and consumers, PIAC is concerned about consumers' more general capacity to press for options not expressly offered by retailers. The fact, as indicated in the Consultation Paper, that there were no instances of transfers occurring on estimates during 2013-15 possibly points to a lack of consumer awareness.⁷

Even if consumers are aware of the option, the current lack of an established billing adjustment and settlement process to account for any variances between an estimated read and actual usage, and the potential for disputes to arise as a result of customers receiving amended final bills, may deter retailers from using estimated reads to shorten the transfer process.

Question 2 Proposed restrictions on transferring on an estimate

(a) Are the proposed restrictions on the use of estimates on transfer sufficient to overcome the consumer and retailer issues identified in answers to Question 1 above?

(d) Are there any changes to the proposed restrictions that would reduce the costs of implementing the proposed rule, without sacrificing consumer protections?

⁵ AEMC 2016, Using estimate reads for customer transfers, Consultation Paper, 28 April 2016, Sydney, p17.

⁶ Ibid, p3.

⁷ Ibid, p7.

As detailed in the Consultation Paper, the rule change proposes to allow customers to transfer on estimated reads only if all of the following conditions are met:

- the customer is remaining at the same premises (in-situ);
- the customer has consented to receiving a final bill based on an estimate read (note the proposed rule change requires explicit informed consent);
- the customer's meter is a manually read meter; and
- the immediate prior meter reading was an actual meter reading.⁸

PIAC strongly supports the proposed requirements. They establish firm boundaries around when an estimated read can be used and mitigate the risk of consumer and retailer exposure to unreliable billing.

PIAC anticipates that the proposed requirements will assist in minimising consumer complaints that may arise out of estimated final bills. Although these restrictions may lead to increased retailer costs associated with system changes and compliance, these are likely to be offset by reductions in the cost of consumer complaints.

Recommendation 1

PIAC supports the proposed limitations on when a transfer can occur on an estimated read.

Question 3 Matters relevant to consent to transfer on an estimate

(a) In the interests of clarity and certainty, should the NERR specify the matters the retailer must disclose to the customer that are relevant to the consent of a customer to a final bill based on an estimate?

PIAC notes that current rules already allow for retailers to issue bills based on estimated reads. Rule 21(1)(a) of the NERR allows this to occur where the customer has consented to the use of the estimation. The question raised in the rule change is whether there should be a more onerous requirement on retailers to obtain explicit informed consent to the use of estimated reads on transfer.

It is current industry practice to prepare a final bill based on an actual meter read. It should go without saying that the inherent nature of a final bill requires that the bill be final – ie, that the account can be settled and closed. PIAC believes that any departure from this understanding, which is based on how consumers would reasonably interpret the term 'final bill', requires a higher level of consent from customers. That is the case here with the use of an estimated read in a final bill. It is crucial that, in the process of signing up customers, retailers provide a clear explanation about the different types of meter reading options, including their implications for transfer times and billing as well as the importance of providing meter access, so that customers have the information they need to make an informed decision about how they would like to transfer. In this regard, PIAC contends that the more onerous standard of explicit informed consent is necessary.

⁸ Ibid, p18-19.

Recommendation 2

PIAC supports the more onerous standard of explicit informed consent when a retailer is obtaining a customer's consent to transferring and receiving a final bill based on an estimated read.

Turning to the current provisions on explicit informed consent in the *National Energy Customer Framework* (NECF), s 39(1)(a) of the NERL requires that the retailer has 'clearly, fully and adequately disclosed all matters relevant to the consent of the customer, *including each specific purpose or use of the consent*' (emphasis added). PIAC notes that the level of disclosure as mandated in the law requires retailers to explain to customers what they are consenting to – in this case, a final bill based on an estimated read. Related to this, Rule 46A of the NERR specifies that, for the purposes of a customer transferring to a market retail contract, 'matters relevant to the consent of the customer' include, 'without limitation, any term or condition in the market retail contract that provides for the variation of tariffs, charges or benefits to the customer under that contract'. We note that Rule 46A currently does not explicitly specify the situation of a customer transferring on an estimated read. If left open to interpretation, there is a risk that retailers may not see explicit informed consent as mandatory.

There is also a need to ensure that retailers obtain explicit informed consent to both the new offer and the use of an estimated read. PIAC is concerned that retailers, particularly where marketing functions are outsourced, may consider a customer's consent to either as consent to both. This includes higher-risk marketing channels such as telephone marketing, door-to-door sales, a third party's online comparator service, and less commonly through bundled products such as through a phone plan.

Therefore, in the interests of clarity and certainty for all stakeholders and to encourage consistent retailer practices, PIAC strongly recommends that Rule 46A explicitly require a retailer to obtain a customer's explicit informed consent to the use of an estimated read in an in-situ transfer. We believe that this will assist retailers in meeting the proposed explicit informed consent obligation, and provides transparency in consumer protections. Clarity and transparency are necessary in encouraging consumer engagement and confidence in the market.

Recommendation 3

PIAC recommends amending Rule 46A to explicitly include the use of an estimated read in an in-situ transfer as 'matters relevant to the consent of the customer'.

(b) If so, what matters should be included? Potential matters include the bases on which an estimate may be prepared, and the fact that, while the estimate will not be replaced with an actual read, the customer will only be charged for the energy they consume (as between the last bill from the old retailer and the first bill from the new retailer).

To ensure that the explicit informed consent is an effective consumer protection and customers clearly understand what they are consenting to, PIAC considers it would be appropriate to include the following matters:

- how the estimation is calculated where a customer self-read is not possible;

- that the customer will only be paying for actual energy used (that is, as between the immediate prior actual meter reading before switching and the first actual meter reading after switching), and that an estimate read is used to expedite the transfer process; and
- that the customer's final bill from their old retailer and first bill from their new retailer will be calculated based on the same estimate read, and that billing adjustments for any under- or over-estimation will occur between businesses only with no impact on the customer.

Recommendation 4

PIAC recommends that 'matters relevant to the consent of the customer' should include the estimation methodology, the fact that the customer will only pay for actual amount of energy used, and a statement that customer billing will not be impacted by any adjustments for under- and over-estimation.

Question 4 Record of customer's consent to transfer on an estimate

(a) Should the proposed rule include a requirement for the new retailer to provide the old retailer with a record of the customer's explicit informed consent to the use of an estimate that complies with the requirements of sections 39 and 40 of the NERL?

(b) If so, how should that record be provided? Would the Business to Business (B2B) Procedures provide an appropriate framework for providing consent records?

This question asks whether the new retailer should be required to provide the old retailer with a record of the customer's explicit informed consent to the use of an estimated read. In line with s 39(2) of the NERL, a record of the consent would be in the form of a document signed in writing, or a voice recording or electronic communication generated by the customer. Under s 40, the new retailer must keep a record of the consent for two years and be able to produce a copy if requested by the customer.

PIAC notes that a requirement for the new retailer to provide a record of the explicit informed consent to the old retailer is a higher obligation than the current standard. Under Division 5 of the NERL, retailers are only required to obtain and keep a record of a customer's consent and there is no further obligation to provide evidence of this consent when arranging for a customer transfer. While we agree that the requirement to obtain explicit informed consent should be onerous to maintain a high level of consumer protection, we query whether it would be practical for the new retailer to provide copies of voice recordings and scans of signed documents to the old retailer, which may lead to a slower transfer process and therefore inefficient outcomes for consumers. We also query whether this may potentially allow the old retailer, whose interest is to retain customers, to find opportunities to unreasonably object to a transfer, thereby delaying the transfer process. If the objective is to ensure that retailers obtain consent and are able to demonstrate that it was given, then in PIAC's view the current requirements to obtain and keep a record of the consent is sufficiently onerous.

For the purposes of communicating customer consent, PIAC suggests that the B2B Procedures could require the new retailer to formally communicate to the old retailer that the new retailer has obtained explicit informed consent. Given that the new retailer must, under current law, obtain and keep a record of the consent, the old retailer should be able to rely on the accuracy of the new retailer's statement. This would be an alternative to requiring the new retailer to provide the old retailer with a record of the consent in the proposed rule.

Recommendation 5

PIAC recommends against requiring the new retailer to provide the old retailer with a record of the customer's explicit informed consent to the use of an estimate read. PIAC instead recommends that the B2B Procedures could require the new retailer to formally communicate to the old retailer that the new retailer has obtained the customer's consent.

Question 5 Consequences of using an estimate without consent

If a customer's final bill is based on an estimate, and the customer gave explicit informed consent to the transfer to a new retailer but did not consent to the use of an estimate for the final bill, what should the consequences be for the customer, the old retailer and the new retailer? Is it appropriate for the transfer to become void or would some other remedy better serve the customer?

PIAC notes that under s 41 of the NERL, a transaction (such as a transfer to a new retailer) is void if explicit informed consent is not obtained or the retailer cannot demonstrate that it was obtained. In the situation where a customer has consented to transferring to a new retailer but has not consented to transferring on an estimated read, voiding the new contract in spite of the customer's intention to transfer would be detrimental to the customer. This is because the customer is not able to switch to a more competitive offer of their choice. PIAC considers that this creates an undesirable outcome in a competitive market, and we recommend against voiding the transfer.

A consumer dispute in this situation would likely unfold in one of two ways: either the customer contacts the old retailer to dispute an estimated final bill, or the customer contacts the new retailer to dispute their consent to the use of an estimated read. In the more likely event that the customer contacts the old retailer, the old retailer will likely explain that an estimated final bill has been issued on the basis that the customer has consented to the use of an estimate read. The old retailer is also likely to refer the customer to the new retailer to dispute that consent to the use of an estimated read was given.

As per the explicit informed consent provisions under the NERL (discussed above in Question 4), the new retailer bears the onus of demonstrating consent in any dispute. Considering that the old retailer has had no role to play other than providing an estimated read, it therefore seems appropriate for the onus to be placed on the new retailer to remedy the situation (for example, by arranging for the transfer to occur at the next scheduled meter read date). In either scenario, the old retailer would only be responsible for cancelling the issued final bill. PIAC recommends that the B2B procedural documents should be amended to specify clear procedures for both new and old retailers to follow. This would assist in minimising poor industry practice such as blame-shifting among retailers and referring customers back and forth.

Recommendation 6

PIAC recommends against voiding a transfer where a customer has not consented to transferring on an estimated read. As the customer has indicated their intention to switch retailers, voiding the transfer will create a perverse outcome in a competitive market.

Recommendation 7

PIAC recommends that, where the customer has not given their explicit informed consent to transferring on an estimate read, the new retailer should bear responsibility for remedying the situation.

Recommendation 8

PIAC recommends that, in the interest of establishing consistent industry practice, amendments to B2B procedural documents are necessary to provide clear procedures for both new and old retailers to follow when remedying a situation where a customer has not provided explicit informed consent to transferring on an estimate read.

Question 7 New estimation methodology for estimates on transfers?

(a) In the context of preparing estimates for final bills for in-situ transfers, are the current estimation methodologies set out in AEMO's metrology procedures sufficient or is a new methodology necessary?

(b) Should the rules include any general principles regarding the new estimation methodology, for example that customer reads should be given priority, where available?

PIAC notes that Rule 21(2) of the NERR and the Metrology Procedures currently allow for a variety of estimated reads: customer self-read, customer's historical consumption, and average usage for a comparable customer.⁹ Despite the current options available, PIAC agrees with the rule change proposal to 'require AEMO to consult on, develop and publish a procedure for the estimation of metering data for the purposes of preparing a final bill upon transfer'.¹⁰

PIAC also agrees with the AEMC that the new procedure should aim to minimise any variance between an estimated read and actual usage, having regard to accuracy and cost of the procedure. PIAC considers that a consultation would provide a useful opportunity for AEMO to investigate the use of digital photos in customer self-reads. We consider that permitting and standardising the use of digital photos will significantly improve the reliability of bills and the efficiency of the transfer process.

In PIAC's view, the use of estimated reads will not undermine consumer protections such as billing accuracy, so long as the estimation methodology provides an estimate that as closely as possible reflects actual usage, therefore minimising bill shock. We note that current estimation methods provide varying levels of reliability; self-reads are accurate and therefore the most reliable, while estimations based on historical consumption are less reliable, and estimations based on average usage for a comparable customer are the least reliable.

PIAC therefore strongly supports the use of customer self-reads because it is the most cost-effective and reliable option in facilitating faster transfers, and is well supported by smart technology. It is not difficult for the majority of customers to take a date stamped photo of their meter using a smartphone. On this basis, we recommend that the Rules make self-reads the default option, where available. If a self-read is not available, the next option should default to

⁹ See Metrology Procedure: Part B: Metering data validation, substitution and estimation procedure for metering types 1-7, 15 May 2015.

¹⁰ AEMC 2016, Using estimate reads for customer transfers, Consultation Paper, 28 April 2016, Sydney, p22.

estimation based on historical consumption. Estimations based on average usage for a comparable customer should only be used as a last resort.

We acknowledge, however, that self-reads may not be a feasible option for some customers for the following reasons:

- Not all customers understand how to read their meters. PIAC's understanding is that manually read interval meters can be more difficult to read than accumulation meters as there are often multiple screen displays to 'flick through', each depicting different usage registers (particularly if the customer is on time of use tariffs);
- Some types of customers, such as elderly or disabled customers or those living in unit blocks, may not be able to access their meters;
- Not all customers have access to smart phone technology or the internet to take and email photos.

PIAC takes the view that these difficulties should not preclude self-reads from becoming the default option as the benefits of making self-reads commonly available outweigh the difficulties some customers may experience in taking self-reads. Some of the difficulties may be easily circumvented – for example, a retailer could include meter reading instructions on its website.

Recommendation 9

PIAC supports an AEMO consultation on developing a procedure for the estimation of metering data, and recommends that AEMO investigate the use of digital photos with a view to establishing digital photos as the industry standard for customer self-reads.

Recommendation 10

PIAC recommends that customer self-reads should become the default estimation method and the NERR should be amended to reflect this.

Other comments

The B2B settlement process

It is important that regulatory changes do not introduce complexity and confusion for consumers. On this basis, the transfer process should be kept as simple as possible so that consumers are encouraged to opt in to a faster switching process and benefit from a more competitive offer earlier rather than later. PIAC is therefore strongly supportive of keeping the billing settlement process isolated to retailers and MDPs only.

This means that, as envisaged in the rule change proposal, customers will not receive amended final bills to correct for any previous under- or over-estimation in the original final bill, with any adjustments settled between retailers only. The customer will only pay for the amount of energy they actually consume and, as the AEMC notes, any underestimation of energy use at the time of transfer will be reflected in a lower first bill from the new retailer (and vice versa).¹¹

¹¹ Ibid, p11-12.

Recommendation 11

PIAC supports the proposed B2B settlement process for under- and over-estimation as it does not impact on customer billing and minimises customer confusion.

What about gas customers?

As discussed above, the proposed rule change delivers clear benefits to electricity consumers who are switching retailers in-situ. PIAC notes that gas customers are also billed on a quarterly meter read cycle and experience similar lengthy transfer times of up to several months. Given that smart meters for residential gas customers are still some way off, we consider that there is significant value in extending the proposed changes to the gas market and therefore recommend that the AEMC deliver similar reforms for gas customers.

Recommendation 12

PIAC recommends that the AEMC deliver similar reform to gas customers, by:

- *reviewing recent data from AEMO relating to gas transfer times and the number of customers transferring on an estimate read*
- *initiating a consultation process to identify current issues and barriers to the use of an estimate read in gas customer transfers, and*
- *initiating a rule change allowing estimated meter reads to be used in in-situ gas customer transfers.*