



Energy Retailers Association
of Australia Limited

16 July 2010

Dr Patrick Walsh
Chairperson
Essential Services Commission of South Australia
GPO Box 2605
Adelaide South Australia 5001

By Email: escosa@escosa.sa.gov.au

Dear Dr Walsh

RE: Residential Energy Efficiency Scheme Code (REES Code) – Proposed Amendments

The Energy Retailers Association of Australia (ERAA) welcomes the opportunity to comment on the proposed amendments to the Residential Energy Efficiency Scheme Code (REES Code).

The ERAA is the peak body representing the core of Australia's energy retail organisations. Membership is comprised of businesses operating predominantly in the electricity and gas markets throughout Australia. These businesses collectively provide electricity to over 98% of customers in the NEM and are the first point of contact for end use customers of both electricity and gas. Since 2009, energy retailers in Australia have gained intimate operational experience working to meet liabilities under a number of state-based energy efficiency schemes, including REES. This has offered valuable insight into the aspects of each scheme that work well in practice and those that could be improved from the energy retailers' perspective.

We note that, based on operational experiences and stakeholder feedback during 2009, the first year of REES, the Commission has recently undertaken a review of the format and content of the REES Code and recommended some amendments to the document. Overall, the ERAA supports the proposed amendments and believes the changes can assist REES to run more efficiently moving forward. However, it is industry consensus that additional changes to the REES Code can be made to further improve the operation of the scheme.

Providing upfront compliance assurance

Under REES, retailers are directly liable to meet specified targets by undertaking energy efficiency activities and energy audits and to report those undertakings to the Commission on an annual basis. Retailers are also obligated to ensure these activities and audits are undertaken in strict compliance with the specifications laid out in the REES Code – even in the instance that these activities and audits are wholly out-sourced to a third-party. In contrast, other schemes place the obligation for activity compliance directly on the entity performing the activity, whether or not that entity is a retailer.

However, regardless which entity the compliance obligation applies to, in the eyes of ERAA members, the most significant difference (and disadvantage) of the REES relative to other energy efficiency schemes is its lack of a standardised and robust compliance framework from which to offer involved entities *upfront*

compliance assurance. While there is a requirement for retailers to submit to the Commission an annual Compliance Plan (*Clause 5.1.1*) and any ‘additional information’ at the Commission’s request (*Clause 5.1.4*), there is no related requirement for the Commission to provide retailers feedback and assurance regarding these submitted documents and information.

In the absence of such upfront assurance, retailers (and any contracted third-party suppliers) must undertake REES activities and audits with only provisional assurance of compliance. Further, where ‘additional information’ has been requested, there is no guarantee that this information incorporates all critical information required to illustrate scheme compliance to the Commission. Entities involved in REES must therefore bear the risks of an, in effect, retrospective compliance regime.

This method of administering the scheme is not seen as operationally efficient; it also adds a risk premium to the cost, which is ultimately borne by the consumer. As REES matures, in its later phases, it appears that this cost can only increase as retailers inevitably move their focus from activities such as lighting and showerheads, to activities where compliance may prove more difficult to demonstrate.

In recognition of this transition and the high costs already being borne, it is the view of the ERAA that a standardised process must be built into the compliance framework of the REES Code to allow for the Commission to provide retailers greater upfront assurance of scheme compliance.

For example only, such a process could be drafted under Clause 5 of the REES Code and include wording such as:

5.1.5. The Commission must review all compliance plans and additional information provided by obliged retailers and provide assessment and sign-off within 20 business days that:

(a) all reported information and products meet REES Code specifications and will be compliant under the scheme if installed, used and monitored as reported; or

(b) all reported information and products do not meet REES Code specifications and cannot be considered compliant under the scheme. In this case, additional information may be requested in order to satisfy REES Code specifications and receive Commission sign-off.

ERAA members also raise the following specific points for the consideration of the commission:

1. Duplication

Members have been concerned by the increasing amount of activities which retailers are not able to claim credit for because it later turned out that the activities had already been performed by another retailer. Currently retailers are dependent on honesty of householders to avoid this duplication. With increasing coverage of the scheme and the increasing number of audits, this issue of duplication is likely to get worse with people moving house. The options to address this issue are either through the introduction of some sort of penalty on households which knowingly have the same activities performed in their home, or alternatively a customer data base. It is recognised there may be issues with both these options, but ultimately we do not believe that retailers should be liable for the costs of the activities where the

household has knowingly signed up for REES activities which have already been performed for that same household.

As the same activity cannot be competed twice, duplication has the potential to be fraudulent, as retailers are paying for the activities to be completed and they are either being claimed without being completed, and / or defeating the purpose of the scheme by replacing new items for new items, negating any abatement. This also speaks to the integrity of the scheme and administration from ESCOSA's perspective as it may place doubt in the Minister's mind about retailers' compliance obligations being met.

The main example of this problem to date seems to be lighting, which may be undertaken in a household by one entity and then by a different entity at a later date. This is able to occur due to the REES scheme limit of 8 Compact Florescent Lights (CFLs) per household. An average SA household can have around 12 or 13 CFLs. And so it appears to have been the case that some residents who received 8 or less free CFLs were then left with remaining incandescent globes. Then, when approached at a later date to receive additional CFLs by a different entity the householder did not disclose the previous visit – for whatever reason – and finished off their lighting retrofit.

All the CFLs installed in the second visit, once reviewed by ESCOSA at the end of the year, were then deemed duplicate and non-compliant and not counted towards that retailer's annual REES count. It was retailer experience in 2009 that this was a small percentage of all reported activities. So this does not appear to be a grave threat to the overall integrity of the scheme, but it would be highly preferable if the scheme design, administration and operation was such that it did not occur and it does not increase or spread to other activities.

As this problem seems to reside nearly exclusively with lighting at present, it could be worth considering whether the 8 CFL limit imposes unnecessary additional cost on retailers and their suppliers and should be increased or deleted as part of the REES Activity review currently underway.

2. Database

The other issue which retailers believe needs to be addressed is ESCOSA's database. It is understood that the companies engaged to perform the REES activities use different versions of Australia Post's database to that used by ESCOSA. As such, retailers often have difficulties claiming the credits for activities because site addresses are not in ESCOSA's database. Retailers consider that this could be resolved if ESCOSA updates its database to ensure it includes all new suburbs and site addresses.

3. CEO sign off

Currently the annual REES audit has to be signed off by the retailer's CEO. Retailers believe this is unnecessary and that any information provided to ESCOSA by the CEO or anyone else working for a retail business should be accurate. As such, retailers would propose that retail businesses be able to propose their own delegated authority to sign off the audit.

4. Builders Licence issues

The ERAA is aware that issues have arisen with acceptance of activities due to minor licensing technicalities. In particular, we are aware that some activities are in question where, whilst the parties who performed the physical activities were appropriately licensed, not all of the intermediaries were at all times licensed in the required way. Factors leading to this situation include a change in ownership of an intermediary business, but without continuance of the required licence holding staff member.

Essentially, the problem seems to have arisen in part because SA building licensing regulations are not something that energy retailers or their compliance activity providers have previously needed to understand. Nor were they familiar with the time it can take to obtain additional licences, so that normal business events such as a change in company ownership and staffing can leave a temporary gap in the chain of licensing. That the commission did not specify its requirements in this regard until the audit stage, feels retrospective to the affected retailers.

It is our understanding that once this was identified; timely action was taken to correct it. However it also appears that the length of time required to correct the licence problem was not immediately appreciated, and with activity continuing in the interim, a significant amount and value of activity was carried out in that interim, at a significant cost, which is now being disallowed. It appears this activity was undertaken in good faith with the expectation that it would be allowed because action was taken promptly to correct the problem and all activity was actually done by licensed workers.

The risk that retailers see if this position is maintained by the commission is that large and efficient activity providers so affected may withdraw from the SA activity market. If this occurs, it will significantly reduce competition in the provision of REES compliance activities and so potentially sharply push up the cost of compliance activities for retailers, leading ultimately to higher costs to consumers. Another potential consequence is that the SA market is seen as less attractive by retailers, leading to a further reduction in offerings, customer choice and competition, again potentially leading to higher costs to consumers.

Where there is a failure of upfront compliance assurance, such as this, the risk for retailers is considerably heightened due to the ability of the commission to retrospectively review submitted activity, without limitation, and remove them for a failure to comply in light of new or current information that was not previously known or considered by the entity undertaking the activity, but ultimately generating a shortfall from previous responsibility years.

So for example, if the federal insulation scheme had not been front page news, would ESCOSA have requested the further information leading to identification of a technical compliance breach? Or had they not identified the breach until the 3rd or 4th years of the scheme, how far back would retailers have been required to make good for or pay a shortfall penalty? Only when the full potential of such risks to retailers are considered in this context, can the full extent of risk premium cost impact, and the risk to retailer interest in the SA market be fully appreciated.

Lastly, retailers cite this case as another example of the need for changes to the REES administration to provide greater upfront certainty on compliance of activities in order to deliver this novel scheme in the most transparent and cost effective manner practical.



5. Country Areas

At present there is no incentive for energy retailers to provide activity in country areas where the cost of delivery may be higher. The commission could give consideration to means of providing such an incentive.

6. National Consistency

Whilst ERAA members welcome the efforts of policy makers and regulators to improve the design and administration of energy efficiency schemes is, it should not be forgotten that even greater public benefit would potentially flow from harmonisation of all current and future state and national energy efficiency schemes. Indeed energy retailers consider it essential that any national energy efficiency scheme be designed to replace all current state and territory schemes and to make any further state or territory schemes unnecessary. In general, the public interest is best served if states seek to lead the nation towards harmonisation, rather than seeking to lead policy development in ways that result in greater variation of regulation between jurisdictions, with its attendant costs to consumers.

Finally, ERAA members believe that the staff of the commission should be acknowledged for their efforts to engage with the energy retail industry to efficiently run and improve the REES scheme. The ERAA looks forward to working with the Commission to help make REES a more efficient and successful scheme. Should you wish to discuss the details of this submission further, please contact me on 02 9241 6556.

Yours sincerely

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Executive Director
Energy Retailers Association of Australia