



Retail Energy Market Company

Self-Reported Breach by Wesfarmers Kleenheat Gas Pty Ltd

Apparent Breach of Appendix 6 of the Retail Market Rules by Wesfarmers Kleenheat Gas Pty Ltd

Overview

Rule 350 of the Retail Market Rules (the “Rules”) requires Users to have an annual audit conducted of their compliance with certain Rules relating to obtaining Explicit Informed Consent (“EIC”) from their customers before undertaking certain market transactions. The Wesfarmers Kleenheat Gas Pty Ltd (“Kleenheat”) audit under Rule 350 for 2015 identified that Kleenheat had several issues with meeting its EIC obligations under the Rules.

The Relevant Rules

Rule 350 requires each user to appoint an auditor to annually conduct a negative assurance audit on the EIC information pursuant to the following Rules:

- Rule 55A: requires Users to get customers’ EIC before requesting their historic standing meter data;
- Rule 72(1): requires Users to get customers’ EIC before lodging MIRN discovery requests;
- Rule 72(4): requires Users to not use any customers’ information if the customers’ EIC is withdrawn;
- Rule 79(1): requires Users to get customers’ EIC before transferring the customers;
- Rule 79(4): requires Users to withdraw a transfer request within 2 business days if a customer’s EIC ceases to apply before the transfer takes effect;
- Rule 166A: requires Users to get customers’ EIC before requesting historic meter data; and
- Rule 349: requires Users to comply with Appendix 6.

Appendix 6 of the Rules specifies the requirements for EIC – some of the key clauses of which are:

- An EIC must be given:
 - (a) expressly;
 - (b) in writing (for large customers), or in writing or verbally (for small use customers);
 - (c) after the User has disclosed all necessary information to the customer; and
 - (d) by a competent person.
- Users must:
 - (e) create a record of all EICs received;
 - (f) keep records of their EICs for 2 years; and
 - (g) provide a copy of the Record to REMCo if REMCo requests it.
- A record must:
 - (h) Be in a form capable of examination by REMCo; and
 - (i) include information to allow REMCo or auditors to verify compliance with the EIC-related Rules.

Apparent Rule Breaches

Users must submit their auditor's report under Rule 350 to REMCo within 3 months after the end of the year (i.e. by before 31 March). Kleenheat provided its 2015 auditor's report to REMCo on 30 March 2016, advising that the auditor found that Kleenheat had some issues with meeting its EIC obligations under the Rules in 2015.

Regarding Small Use Customers:

The audit uncovered 507 failures by Kleenheat to record EIC for small use customers.¹ This represents 0.9% of the Kleenheat's 58,208 small use customer transfers in 2015. Examples of the kinds of failures include:

- not recording customers' EIC because the recording was paused while the customers' credit card details were being taken and not resuming the recording once the EIC was received; and
- The recording of customers' EIC being overwritten by a beep, making it inaudible.

These issues represent breaches of clauses (e) and (f) from Appendix 6 of the Rules, as Kleenheat does not have a record of the relevant EICs for these customers.

Regarding Large Customers:

The audit uncovered one isolated instance of an incorrect EIC for a Small-Medium Enterprise ("SME").² The EIC for the SME was obtained using the incorrect consent template.

The audit uncovered three instances of incorrect EICs for Commercial and Industrial ("C&I") customers,³ including:

- two instances where Kleenheat responded to a Request for Proposal ("RFP"), where Kleenheat considered that EIC was implicit in the RFP and did not follow up with written EIC; and
- an isolated instance where verbal EIC for a SME was obtained orally, but clause (b) from Appendix 6 of the Rules specifies that EIC for large customers must be written, and Kleenheat did not follow-up for a written EIC following identification of usage >1TJ/a.

These issues represent breaches of clause (b) from Appendix 6 of the Rules, as Kleenheat does not have a written EIC for these three large customers.

Proposed Action

To address the EIC issues with small use customers, Kleenheat:

- has revised and tested its customer service scripts to take customers' EIC before their credit card details;
- has made changes to its customer service systems to provide a reminder to customer service staff about recording EIC;
- has changed its process for RFPs to ensure EIC to obtain historical data is obtained separately and in line with explicit wording in the Rules, in addition to the consent provided by customer to undertake all actions necessary to provide quotation as instructing in standard RFP process;
- has provided further and ongoing training to its customer service staff and sales executives, and has revised its training documents; and

¹ A small use customer is one that consumes ≤ 1 TJ/a of gas.

² A SME is a business customer that consumes >1 TJ/a of gas but ≤ 10 TJ/a.

³ A C&I customer is a business customer that consumes >10 TJ/a of gas.

- is considering some further recommendations from their auditor regarding improvements to the call recording processes.

Invitation for submissions:

Before determining whether any further action is required, REMCo invites written submissions from participants as to:

- the effect that this apparent breach has on their operations (if any), and
- their view with regard to the determination, if any, REMCo should make under Rule 329 in respect of the apparent Rule breaches.

Submissions are requested by no later than 5:00 PM (AEST) on Monday 02/05/16 to remco_administration@aemo.com.au.

Alternatively, submissions can be sent by post to REMCo at:

Chin Chan
Retail Energy Market Company Limited
C/- AEMO
GPO Box 2008
Melbourne
VIC 3001

If you have any questions regarding this matter, please contact Chin Chan on (03) 9609 8345.

Chin Chan

Group Manager – Market Management

Australian Energy Market Operator

(Acting as Agent for the Retail Energy Market Company Limited)

Phone: (03) 9609 8345

Email: chin.chan@aemo.com.au