

Australian Energy Market Operator

Self-reported breach by Wesfarmers Kleenheat Gas Pty Ltd

Apparent breach of Retail Market Procedures (WA) 79 and 166A by Wesfarmers Kleenheat Gas Pty Ltd in August 2016

Overview:

Clause 350(2) of the WA Retail Market Procedures (“Procedures”) requires a user to appoint an auditor each calendar year to undertake a “negative assurance audit” of its compliance with certain clauses during the year.

Wesfarmers Kleenheat Gas Pty Ltd (“Kleenheat”) has breaches of clauses 79 and 166A of the Procedures in August 2016. Kleenheat self-reported these instances to its auditors during the audit and subsequently these breaches have been reflected in Kleenheat’s EIC audit report to AEMO on 29 March 2017.

Kleenheat was made aware of a series of customer sign ups without explicit informed consent through its shopping centre kiosks by one agent in August 2016 after being made aware by customer complaints in late August and September 2016. Kleenheat investigated all customer sign ups from this particular agent to ascertain the extent of the impact, to find seven customers were affected. Kleenheat immediately cancelled the customer transfer requests to ensure there was only minimal inconvenience to the customers affected, and none of the customers switched retailers.

The breaches occurred in August 2016 on the dates of the 9th, 11th, twice on 15th and 19th, and 25th of August 2016.

These appear to be a breach of clauses 79 and 166A of the Procedures by Kleenheat.

Clauses 79 and 166A of the Procedures reads as follows:

79. Explicit informed consent

(1) Before lodging a transfer request with AEMO, an incoming user must obtain the transferring customer’s explicit informed consent to the lodgement.

{Note: This consent could be obtained at the same time, and on the same form, as consent under clause 72, and may include consent for the purposes of clause 82(a).}

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166A. Explicit informed consent required

(1) Before lodging a request with a network operator for historical metering data or historical meter reading data for a delivery point that relates to a period for which the user was not the current user, a user must obtain the customer’s explicit informed consent to the receipt by the user of the requested data.

{Note: The user should ensure that the customer’s consent extends to all actions the user may need to undertake to complete the request for the historical metering data or historical meter reading data.}

(2) If at any time before the network operator has provided information to a user under clause 167(4), a customer's explicit informed consent under clause 166A(1) ceases to apply (for example because it is withdrawn), then the user must withdraw the request to the extent that the request relied upon the customer's explicit informed consent.

(3) If at any time after the network operator has provided information to a user under clause 167(4), a customer's explicit informed consent under clause 166A(1) ceases to apply (for example because it is withdrawn), then the user must not use the information for any purpose and must to the extent reasonably practicable delete all copies of the information.

Impact:

Kleenheat advised AEMO that there was no adverse customer impact on the seven affected customers as the transfer requests were cancelled within days of the original sign up date, meaning none of the affected customers switched retailers. Kleenheat believes that no other retailers were affected as the customer transfers were cancelled immediately after they were discovered and none of the affected customers switched retailers.

Resolution:

Kleenheat advised that it has taken the following actions:

- Immediately terminated the employment of the kiosk agent who signed up customers without their explicit informed consent to Kleenheat's Standard Form Contracts.
- Contacted each of the seven affected customers to explain and apologise for the situation. All customers accepted were satisfied with the explanation and accepted the apology.
- Compliance refresher training was delivered to all kiosk staff warning of the presence of fraud and the seriousness of the offence including instant dismissal by Kleenheat.

Proposed Further Actions:

There is no further action required.

Invitation for submissions:

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

- the effect that this incident has on their operations, and
- their view with regard to the determination, if any, AEMO should make under clause 329 of the Procedures in respect of the apparent breaches of the Retail Market Procedures.

Submissions are requested by no later than 5:00pm (AEST) **Friday 26/05/2017**. Submissions should be sent by e-mail to rmo@aemo.com.au.

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

Chin Chan
AEMO
GPO Box 2008
Melbourne
VIC 3001

If you have any questions regarding this matter, please contact Carol Poon on (03) 9609 8509.

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