



THE HON CHRIS BOWEN MP
MINISTER FOR CLIMATE CHANGE AND ENERGY

MS24-001246

Ms Anna Collyer
Chair
Level 15
60 Castlereagh Street
SYDNEY NSW 2000

Anna.collyer@aemc.gov.au

Dear Chair *Anna*

Please find attached a package of rule change proposals to amend the National Energy Retail Rules to help households access cheaper energy deals, increase support for people experiencing hardship, and deliver more protections for consumers.

These necessary changes are recommended by the Energy and Climate Change Ministerial Council (ECMC) which on 19 July agreed that I submit the attached package to the Australian Energy Market Commission (AEMC) in my capacity as Chair of ECMC. This package was developed in response to findings presented to Energy Ministers in March 2024 by the Australian Competition and Consumer Commission (ACCC), the Australian Energy Regulator (AER) and Energy Consumers Australia (ECA) that there are aspects of the east coast regulatory framework that could be strengthened to better serve the interests of electricity consumers.

I endorse these rule change requests and ask that the AEMC urgently progress with their initiation, prioritising those proposals which are most urgent and have the highest expected impact, as agreed by Energy Ministers. These are: 'improving the ability to switch to a better offer,' 'ensuring energy plan benefits last the length of the contract,' 'preventing price increases for a fixed period under negotiated market retail contracts,' and 'assisting hardship customers.'

As the Commonwealth Minister for Climate Change and Energy, I also request withdrawal of the pending rule change request 'long-term standing offer notice', as it is now superseded by the attached package of rule change requests.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Chris Bowen'.

CHRIS BOWEN

Ensuring energy plan benefits last the length of the contract

Request to make a rule

Name and address of the person making the request

The Honourable Chris Bowen MP
Minister for Climate Change and Energy
Parliament House
Canberra ACT 2600

Statement of issue:

For many consumers, choosing an energy provider and plan is a 'set and forget' task – meaning retailers need to compete at the point of acquisition, and are not incentivised in an ongoing way to keep prices competitive for existing customers. This has resulted in consumers who do not regularly engage in the energy market experiencing higher prices.

This represents a market failure whereby the transaction costs required of customers to understand complexity and investigate alternative offers acts as a barrier to sufficient engagement in the market.

Analysis by the Australian Competition and Consumer Commission (ACCC) of flat rate plans for over 5 million existing residential customers on market retail contracts found that, in August 2023:

- 47% of residential customers were on plans with a calculated annual cost equal to or higher than the default offer
- 42% of concession customers were on plans with a calculated annual cost equal to or higher than the default offer
- 79% of residential customers could achieve a better offer if they switched to a competitively priced acquisition offer in Energy Made Easy or Victorian Energy Compare.

The ACCC's December Inquiry into the National Electricity Market (NEM) report 2023 compared the pricing outcomes of customers on plans that existed as at 1 August 2022 and 1 August 2023 (Older Plans) to the outcomes of customers on plans that have only existed since 1 August 2023 (Newer Plans). As stated in the report, the definition of Older Plans is likely to give a broad indication of the number of evergreen offers in the ACCC pricing dataset (noting limitations to this approach, as stated in the report). It found approximately 70% of customers in the dataset were on Older Plans. The report also found that approximately 64% of customers on Older Plans were paying a calculated annual cost equal to or above the equivalent default offer price, as opposed to only 32% of customers on Newer Plans.

ACCC analysis suggests retailers recoup their costs over a customer's lifetime, by setting attractively low acquisition offers and making subsequent unilateral price increases for their existing customer base over time. This means many consumers are on plans at or above the default offer or regulated price, and may be paying more than they expect, if they do not or are not able to regularly engage in the market. While efficient price discrimination is an important feature of a competitive market, there is no evidence to suggest the cohort of customers paying higher energy prices is both homogenous and possesses the ability to pay those prices. Consumers should not be subject to persistently high costs if they do not regularly engage with the market, particularly those who are experiencing hardship or face other barriers to engagement.

Under the National Energy Retail Rules (NERR), retailers can offer:

- ongoing (no contract end date) market retail plans with a benefit period
- market retail plans with a fixed term (with either a fixed price or a variable price), or
- market retail plans with no contract term or benefit period.

Each of these types of energy plan have the potential to leave a non-engaged consumer paying a high price after a period.

Retailers are able to change the benefit provided under a market retail contract. Rule 48A outlines a retailer's requirements in giving consumers notice of any benefit changes. Notice must be given in writing no earlier than 40 business days, and no later than 20 business days before the benefit change date. Retailers must also advise consumers of the relevant price comparator tool available in their area. Rule 49 of the NERR outlines when a market retail contract terminates.

In addition, under [rule 46](#) of the NERR, retailers can increase prices under a market retail contract after giving at least 5 business days' notice to a customer (10 business days' notice for customers in South East Queensland and market contract customers in regional Queensland).

The National Energy Retail Law (NERL) currently provides that when a market retail contract ends, a consumer is automatically moved to a standard retail contract (where the standing offer/regulated price applies), unless a consumer provides explicit informed consent to move to a new contract. See s 54(2)(b) of the *National Energy Retail Law (South Australia) Act 2011*.

The intent of this rule change request is to make sure any benefits provided under a contract (in terms of price or other offers) extend for the duration of the contract, so that if a benefit period ends, the contract ends, and to ensure that consumers on both ongoing contracts and fixed term contracts are provided with increased certainty. The default outcome for non-engagement at the time a benefit period ends becomes the local standing offer, by virtue of the contract ending too, as opposed to prices potentially well above the standing offer price. The rule change would not prevent consumers from moving to a new contract of their choosing where they are engaged and provide explicit informed consent.

Given the data and analysis provided in the ACCC's reporting, the focus of the rule change request is on price outcomes for customers, and particularly those on contracts which have a time-limited benefit period shorter than the contract period. However, given that benefits provided to customers in a benefit period are not limited to tariff discounts or other price-related terms, any rule change improving price outcomes for consumers should also give consideration to those other benefit types.

Issues regarding underlying price cannot be dealt with directly under the NERR, but could be addressed via another mechanism.

Background

The ACCC's [Inquiry into the National Electricity Market](#) (p 9), released in December 2023, found that consumers who do not regularly engage in the market experience higher prices.

See the Statement of issue above for the ACCC's data on the number of consumers paying above the default offer.

For reference, from 1 July 2020, Victoria's Essential Services Commission implemented reforms to stop retailers offering benefits (discounts, credits or rebates) part-way through a contract. From 1 July 2020, any customer that signed up to an offer with a discount, credit or rebate must receive

that benefit for the entire duration of a contract. Retailers can either offer ongoing (evergreen) contracts with no fixed end date, in which case any discounts, credits or rebates will also not have an end date. Or retailers can choose to offer fixed-term contracts of 12 months or more that only offer discounts for that fixed period. If a customer chooses a contract with a fixed end date, and does not give explicit informed consent at the end of that contract to move onto another offer, their retailer must roll them onto the Victorian Default Offer (VDO) (for electricity).

Under amendments to the Australian Energy Regulator's (AER) [Better Bills Guidelines](#) (BBG), retailers must include a 'better offer' statement on the front page of consumer bills that states whether the retailer offers a better deal and provides details on how to switch plans. However, the process of switching plans can be complex in practice and can prevent consumers from switching to a better deal – meaning this does not benefit consumers who remain disengaged, who may still be left paying high costs.

Description of the proposed rule change

This proposal aims to remove the price penalty for consumers not actively engaging with the retail energy market.

For plans with a benefit period, this could be achieved with a rule change to the minimum requirements provision under s 34(1)(b) of the NERL to provide that it is a 'minimum requirement' that a benefit period must extend for the duration of a contract. The proposal does not aim to limit the ability of retailers to change underlying prices.

The current requirements around giving notice of the end of a benefit period (rule 48A) may need to be revised as the proposed rule change would mean that the end of a benefit period is also the end of a contract. Rule 48 outlines the requirements for retailers on the end of a fixed term market retail contract. This rule would need to ensure that retailers are obliged to give reasonable notice ahead of the end date of the customer's benefit period, the options available to the customer, and the change that will occur if no action is taken. The AEMC will need to consider what a reasonable time period would be. The options presented to the customer should include, at a minimum:

- the retailer's deemed better offer available for that customer (following the BBG requirements), and
- the change that will occur if no action is taken by the customer e.g. default to the retailer's standing offer.

To address the need for explicit informed consent, the rules for market retail contract minimum requirements could be amended to include a standard term in the terms and conditions for the end-of-contract arrangement, such that consent is given.

As the energy bill under a standard retail contract may be higher than the energy bill under the best available market retail contract, the requirements for the notice should include a statement similar to that which is required under the BBG to appear on bills, but comparing the standard retail contract and the best available market retail contract (i.e. not the customer's expiring contract). It is anticipated that this would be the same as the deemed better offer. The notice is not subject to the same space constraints as a bill and the AEMC may consider other minimum content requirements, which could include, for example reference to the Energy Made Easy website.

How the proposed rule change will address the issue

The proposed rule change would ensure that the terms in immediate effect, on agreement to a contract, extend to the end of that contract. Customers would not have to ensure that they re-engage with the market to obtain a reasonable price. The default for non-engagement becomes the local standing offer, as opposed to prices potentially well above the standing offer price, as evidenced by the ACCC's reporting.

The rule change would not prevent consumers from moving to a new contract of their choosing where they are engaged and willing to do so.

This would provide energy consumers with greater certainty over their energy costs, and reduce bill shock once a benefit period ends. It would also promote equity by ensuring those who struggle to engage with the market do not face unfair penalties.

How the proposed rule change will or is likely to contribute to the achievement of the National Electricity Objective

The National Energy Retail Objective (NERO), set out in the *National Energy Retail Law*, is:

“to promote efficient investment in, and efficient operation and use of, energy services for the long term interests of consumers of energy with respect to:

- a. price, quality, safety, reliability and security of supply of energy; and
- b. the achievement of targets set by a participating jurisdiction—
 - i. for reducing Australia's greenhouse gas emissions; or
 - ii. that are likely to contribute to reducing Australia's greenhouse gas emissions.”

The relevant aspect of the NERO for this request is the price of energy services in the long-term interests of consumers of energy. The proposed rule change advances the NERO by ensuring consumers do not face an unfair price penalty if they cannot, or do not, actively engage with the retail energy market.

Expected costs, benefits and impacts

Expected benefits

The rule change(s) will benefit consumers by ensuring they do not face an unfair price penalty if they cannot, or do not, actively engage with the retail energy market when a benefit under their retail market contract comes to an end.

Structurally adjusting the onus for engagement more towards the retailer in these scenarios would lead to lower transaction costs, more, and more-focussed engagement, and increased demand side competitive pressure, leading to downward pressure on consumer prices.

For engaged customers, the proposal would act as an additional prompt for customers to switch to competitive market offers. It may also prompt customers who have switched to a market offer in the past to search out a competitive market offer.

For disengaged customers it would reduce the ability of retailers to increase prices above the Default Market Offer (the DMO), better supporting the role of the DMO in protecting disengaged customers.

Expected costs

For retailers: There may be costs for retailers in moving away from energy plan pricing models that change over the course of the contract, however, consistency of terms and conditions across the duration of a contract would provide a simpler arrangement for retailers to manage.

For consumers:

The transaction cost for some consumers to move onto their next contract could be brought forward by this rule taking effect. Compared to the long-run effect of non-engagement in the market demonstrated by the ACCC's evidence on the spread of prices above regulated prices, it is anticipated the cost of that transaction occurring sooner than otherwise would be outweighed by the benefits of the change.

For disengaged customers, there are some potential concerns:

- Those customers on market offers below the DMO at contract expiry would be moved to a standard retail contract capped by the DMO (although they will be notified about this).
- The outcomes for customers would vary as consumption varies around the DMO consumption levels. Unlike the Victorian Default Offer (VDO), the DMO does not provide for a price structure which allows for a diversity of pricing of standing offers above and below the DMO.
- The DMO does not apply to customers on complex tariff structures such as demand tariffs, that may become increasingly prevalent as smart meter roll out accelerates.

Expected impacts

For retailers:

Retailers would no longer be able to automatically roll consumers over to higher prices at the point at which a benefit period under a market retail contract comes to an end. This can be expected to impact the prevalent dynamic of retailers offering attractive 'acquisition' offers designed to encourage switching, while planning to make a profit in the longer term as the customer moves off the benefit period and/or experiences tariff increases. It is important to note that acquisition pricing in and of itself does not accurately reflect the cost to serve a customer over a long period of time, as evidenced by retailers' common revenue strategy outlined above.

The AEMC may wish to consider the impacts of Victoria's 'Ensuring energy contracts are clear and fair' final decision, which introduced provisions that require retailers to roll customers onto the nearest matching, generally available offer at the end of a contract or benefit period, unless the customer opts for another offer.

For consumers:

Consumers would require clear communication in the lead up to the expiry of their contracts to encourage take up of a similar competitive offer (from their existing retailer or another retailer), so reversion to the standard contract price would function as a fallback/safety net and prevent the 'loyalty tax' from taking hold.

Overall, these rule changes would benefit consumers by ensuring they are offered a new plan before the initial contract terms they signed up to cease to have effect i.e. a benefit period ends and their price goes up.

Engaged consumers would still be able to exercise choice with regards to securing the best plan available to meet their needs. This rule change would not affect the ability of efficient retailers to offer competitively priced contracts to customers. However, it is possible that acquisition pricing would trend closer toward the long-term efficient price to serve a customer.

Customers who do not or cannot engage with the market would experience greater price protection by defaulting to the local standing offer if a new contract is not signed with their existing retailer or a new retailer.