CHOICE

Thursday 19 April 2018

Australian Energy Market Commission
Email: thomas.redmond@aemc.gov.au

RE: National Energy Retail Amendment (Preventing discounts on inflated energy rates) Rule 2018

CHOICE appreciates the opportunity to provide the following comments to the Australian Energy Market Commission (AEMC) regarding the National Energy Retail Amendment (Preventing discounts on inflated energy rates) Rule 2018.

As Australia's largest consumer organisation, we seek to protect consumers by working for fair, safe and just markets. The cost of energy has been a key concern for consumers and continues to rank ahead of any other household expenditure concerns in CHOICE's quarterly Consumer Pulse Survey.[1] A separate CHOICE survey found that although 63% of respondents felt that they were paying too much for energy, only 41% felt they had sufficient information and tools available to find what's best for their household when it came to energy.[2]

The energy market is not working for consumers, who are struggling to navigate a sea of complex energy offers to find an energy deal that meets their needs and their budget. At a fundamental level, CHOICE supports a fairer and more affordable energy market for Australian consumers. Discounting practices in the energy market that are causing substantial harm to consumers need to be addressed across the National Electricity Market (NEM). The proposed rule does not go far enough and will do little to improve outcomes for

1 CHOICE Consumer Pulse is a nationally representative survey conducted quarterly since June 2014. Final data has been weighted to ensure it is representative of the Australian population based on ABS Census data.
2 CHOICE (2015), Energy Survey, Sydney. Research was conducted in December 2015 with 1039 respondents aged between 18-75 years. The sample was nationally representative of the Australian population, based on 2011 ABS data.

consumers.

Misleading discounts hurt consumers

There are thousands of offers on the energy market, many of which are structured, marketed and designed in ways that confuse and mislead consumers.[3] These offers are extremely difficult to compare. Many consumers have trouble making sense of different features, benefits and price structures of energy offers on the market.[4] The Australian Competition and Consumer Commission's (ACCC) *Retail Pricing Inquiry Preliminary Report* found that pay on time discounts, if not supported by further information on actual prices and presentation that facilitates 'like for like' comparison, are effectively meaningless as a means of comparison between available market offers.[5] The Report also found widespread use of discounting as a primary means of advertising energy offers,[6] which is supported by data that shows that around 80% of all generally available offers include some form of discount.[7] The confusion caused by discounting has left consumers lured into apparently appealing high discount offers with higher energy costs than they would have if they had chosen an offer with a lower rate but more modest discounts.[8]

Discounts play a significant role in shaping consumers' decisions about energy. Research gathered for *the Independent Review into the Electricity & Gas Retail Markets in Victoria* (Victorian Review) found that 84% of consumers surveyed considered discounts 'very important' in their decision to switch retailers, and was the most significant factor in their choice to switch to another retailer by a significant margin.[9] Given the significant influence that discounts have on consumers' purchasing decisions, it is vital that that discounting practices are fair, accurate, and helpful. At present, there is strong evidence of discounting behaviours that have the potential to mislead and confuse, resulting in consumer detriment. An analysis of the *Victorian Energy Market Report 2015-16*[10] by the Commissioner and Chair of the Essential Services Commission Dr Ron Ben-David found that discounts benefited less

3 Australian Competition and Consumer Commission (2017), *Retail Pricing Inquiry Preliminary Report*, Canberra, p124.
4 Ibid. p124.
5 Australian Competition and Consumer Commission (2017), *Retail Pricing Inquiry Preliminary Report*, Canberra, p129.
6 Ibid. p127.
7 AEMC (2017), *Retail Energy Competition Review*, Appendix B.
8 Ibid. p.121.
9 Newgate Research (2017), *Consumer research for the Victorian Government's review of the state's energy market*, prepared for the Victorian Department of Environment, Land, Water and Planning, May 2017, slide 23.
10 Essential Services Commission Victoria (2016), *Victorian Energy Market Report 2015-16*, Melbourne.

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than 30% of household energy consumers and suggests that for every year customers receive a discounted price they typically pay undiscounted prices for another 3 years.[11]

The National Energy Retail Amendment (Preventing discounts on inflated energy rates) Rule 2018 aims to prohibit discounts on a market retail contract if the discounted rate is higher than the retailer's equivalent standing offer.[12] The AEMC's initial position addresses consumer confusion resulting from this practice, and proposes a legislative framework that will prevent one form of misleading discounting practices through the introduction of a prohibition in the National Energy Retail Rules (NERR) and the introduction of a civil penalty provision through the Retail Pricing Information Guidelines (RPIG). This will continue to be supported by existing provisions under the Australian Consumer Law (ACL) which prevent misleading and deceptive conduct.

CHOICE is supportive of the intention to address confusing discounts on inflated energy rates. However, this change does not go far enough to address more deleterious, and more widespread discounting practices that harm consumers in the energy market.

This rule change only has limited impact

The Consultation Paper suggests that the prevalence of the issue the rule change request seeks to address is low. Data analysis based on offers available on EnergyMadeEasy on 17 January 2018, found there were 77 energy offers (2% of all offers) that would breach the proposed rule. Under a rule based on the indicative drafting, a mere 20 (0.5% of all offers) energy offers would be in breach.[13] Although these numbers are subject to change due to the constant variation in energy offers, it is clear that the proposed rule will only affect a small minority of offers overall. All 20 of the energy offers that would be in breach of the proposed rule were made by a single retailer, ClickEnergy, and were no longer available on March 15 2018.

The draft rule change will capture a small minority of energy offers and will do little to improve outcomes for consumers. It is particularly concerning that the prohibition would apply to the price discount of an energy rate at the date a customer enters into a contract but

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[11] Ben-David, Ron (2017), 'Do discount wars benefit retail energy customers? Don't bet on it', Submission to: *Review of electricity and gas retail markets in Victoria*.
[12] Australian Energy Market Commission (2018), *Consultation Paper: National Energy Retail Amendment (Preventing discounts on inflated energy rates)*, Sydney.
[13] Ibid. p44.

would not apply if the retailer increases the price of the market offer to exceed standing offer prices once the customer has already entered into the contract.[14]

It is also concerning that the proposed rule change may incentivise retailers to inflate standing offer prices to ensure that their market offer contracts are compliant.[15] As asserted in the consultation paper, an 'implication of the Commission's initial position is that, ignoring penalties and fees, a retailer's standing offers should be the highest price offer available to every small customer.'[16] Standing offers are already some of the highest offers on the market,[17] and any increase on the prices of these offers will have an adverse impact on consumers who are already struggling to meet their energy bills.

These offers were designed to function as a safety net for to ensure that all consumers can access electricity services. Standing offers (or default offers), were set up with a view that consumers could shop around for a more competitive market offer if they chose to do so. The AER describes standing offers as 'plans to protect small customers who are able to choose their energy retailer but have not exercised this choice',[18] yet in their current form these offers are failing to protect consumers who are not engaged in the energy market. The view that standing offers *should* be the most expensive offers on the market undermines the purpose of these offers, and penalises consumers who do not, or cannot, choose a market energy offer. This punitive view places a burden on disengaged consumers and does not provide adequate protection for consumers in a complex energy market. Standing offers need to provide safe, low-cost defaults to protect consumers who don't engage from high energy prices.

The proposed rule change does little to improve consumer outcomes and carries the risk of causing consumer detriment through a potential inflation of standing offer contracts. While CHOICE supports regulatory intervention to curtail harmful discount practices in principle, this rule change will have a minor impact, at best.

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[14] Ibid. p19.
[15] Ibid. p21.
[16] Ibid. p19.
[17] Australian Competition and Consumer Commission (2017), *Retail Pricing Inquiry Preliminary Report*, Canberra, p21.
[18] AER (2015), *Retail Pricing Information Guidelines*, Melbourne, p4.

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Consumer outcomes need to be a priority

The AEMC's assessment framework must consider whether the proposed rule change promotes the national energy retail objective (NERO).[19] The NERO 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 price, quality, safety, reliability and security of supply of energy.'

The Commission will use three criteria to assess the effectiveness of the proposed rule change: transparency of information; regulatory and administrative burden; and facilitating service and tariff innovation. These criteria fail to put consumers at the heart of these considerations, and lack focus on tangible outcomes. The first criterion is outdated, and relies on disclosure as a consumer protection, while the latter criteria don't serve consumer needs. In particular, a focus on transparency of information is short-sighted as key problems facing consumers in the energy market include information overload,[20] and a lack of engagement with energy offers. In order to achieve meaningful change in the energy market, regulatory changes need to be assessed through a lens that considers the challenges consumers face and seeks to rectify them.

Harmful discounting practices need urgent attention

The Consultation Paper explains that the rule change relates only to the practice of discounting of rates above the standing offer and suggests that the AEMC is keenly aware of issues with discounting more broadly.[21] The Commission has noted that conditional discounting, including pay on time discounting, contributes to consumer confusion. Beyond causing confusion, these discounts can and do lead to a substantial cost to consumers if they fail to pay on time. The ACCC's *Retail Electricity Pricing Inquiry Preliminary Report*[22] and the Victorian Review[23] both identified a need for regulatory intervention into these discounting practices. These practices are prevalent across the NEM: a St Vincent de Paul

[19] Section 236(1) of the NERL.
[20] Oxera (2016), *Behavioural insights into Australian retail energy markets*, prepared for the Australian Energy Market Commission, p10.
[21] Australian Energy Market Commission (2018), *Consultation Paper: National Energy Retail Amendment (Preventing discounts on inflated energy rates)*, Sydney, pp.iv.
[22] Australian Competition and Consumer Commission (2017), *Retail Pricing Inquiry Preliminary Report*, Canberra.
[23] Energy, Land, Water and Planning Victoria (2017), *Independent review into the electricity and gas retail markets in Victoria*, Melbourne.

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report showed that in January 2017, 90% of retailers offered deals with pay on time discounts, with the highest discount being 40%.[24] This practice is extremely detrimental and needs to be urgently addressed in order to improve consumer outcomes across the board.

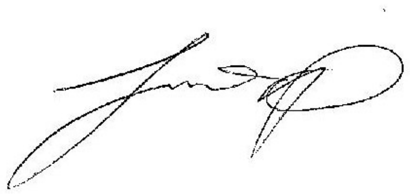
The proposed rule change is a conservative attempt to curtail discounting practices in the NEM. While it aims to improve consumer outcomes, it is unlikely to have a significant impact and risks encouraging retail practices that could lead to consumer detriment. The AEMC's assessment criteria, used for determining the relevance and impact of the proposed rule change, fails to put consumer outcomes at the heart of its decision-making process.

While CHOICE supports regulatory intervention to curtail discounting practices that are harmful to consumers, we maintain that there are more significant interventions that can be made to address detrimental practices such as pay on time discounts, which are more prevalent than discounts on inflated energy prices. The AEMC must explore options for addressing harmful discount practices in the energy market more broadly, and work to minimise consumer detriment. The proposed rule change is an attempt to improve outcomes for consumers, but it does not go far enough.

For further information please contact CHOICE on linda@choice.com.au.

Yours sincerely,

Linda Przhedetsky,



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[24] St Vincent de Paul (2017), *Victorian Energy Prices*, prepared by Alviss Consulting Pty Ltd, Melbourne p.27.

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