



Australian Energy Market Commission

CONSULTATION PAPER

National Energy Retail Amendment (Advance notice of price changes) Rule 2018

Rule Proponents

The Honourable Josh Frydenberg MP, Minister for the Environment and Energy on behalf of the Australian Government

The Honourable Don Harwin MLC, Minister for Energy and Utilities on behalf of the NSW Government

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RULE
CHANGE

Inquiries

Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

E: aemc@aemc.gov.au

T: (02) 8296 7800

F: (02) 8296 7899

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About the AEMC

The AEMC reports to the Council of Australian Governments (COAG) through the COAG Energy Council. We have two functions. We make and amend the national electricity, gas and energy retail rules and conduct independent reviews for the COAG Energy Council.

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1 Introduction

On 1 March 2018 the Honourable Josh Frydenberg MP, Minister for the Environment and Energy on behalf of the Australian Government; and the Honourable Don Harwin MLC, Minister for Energy and Utilities on behalf of the NSW government (the proponents) submitted a rule change request to the Australian Energy Market Commission (AEMC or Commission). The rule change request seeks to change the National Energy Retail Rules (NERR) to require retailers to provide customers¹ with advance notice of changes to energy prices.

This consultation paper has been prepared to facilitate public consultation on the rule change request and to seek stakeholder submissions. Submissions are to be lodged online or by mail by 24 May 2018.

This paper:

- provides a summary of, and background to, the rule change request
- identifies a number of questions and issues to facilitate consultation on this rule change request; and
- outlines the process for making submissions.

¹ For the purposes of this paper, customer is used in relation to describing the relationship between that customer and the retailer; consumer is used in relation to the relevant group under the retail law, rules and in the wider sense of all consumers in market.

2 Background

2.1 Retail energy contracts

Small electricity and gas consumers in Australia are generally serviced by a retailer. In some jurisdictions (the Australian Capital Territory (ACT), Tasmania, regional Queensland and the Northern Territory) the price charged to these consumers is regulated. This means retail tariff charges are set by either the jurisdictional regulator or the government. In other jurisdictions (south east Queensland, New South Wales, Victoria and South Australia) retail prices have been deregulated and are set by the retailer.

Generally, retail energy offers (both electricity and gas) are classified as being either standing offers or market offers. The differences between the two types of offers are the contractual terms and conditions:

- **standing offers** are basic electricity contracts with terms and conditions that are prescribed by law; retailers cannot alter them². In some, but not all jurisdictions, standing offer prices are also regulated
- **market offers** are electricity contracts determined by retailers in the competitive market. These contracts must contain a minimum set of terms and conditions, prescribed under the National Energy Retail Rules (NERR), such as consumer protection obligations.

Outside of minimum requirements, retailers have flexibility in how they design their market offers in response to consumer preferences and retail market conditions. The terms and conditions of market offers generally vary from standing offers, and could include incentives, different billings period or additional fees and charges.

2.2 National Energy Customer Framework

The National Energy Customer Framework (NECF) is the framework that regulates the connection, supply and sale of energy (electricity and gas) to grid-connected residential and small business energy customers. This includes the provisions related to consumer protections, standing and market offer minimum terms and conditions, and how customers are to be informed of changes in their bills.

The NECF has been adopted in the Australian Capital Territory, Tasmania, South Australia, New South Wales and Queensland. Victoria has adopted Chapter 5A of the National Electricity Law (NEL) but not the remaining components of the NECF and so the proposed rule will not apply in that state. However, Victoria has completed a process to harmonise the Victorian Energy Retail Code with the NECF.

² Except for certain permitted alterations. See section 25(4) of the NERL

² Advance notice of price changes

The NECF is comprised of the National Energy Retail Law (NERL), the National Energy Retail Regulations and the NERR. Certain parts of the NEL also form part of the NECF, including rules in relation to small customer connections (Chapter 5A of the NEL) and retail markets including billing and credit support (Chapter 6B of the NEL). The Australian Energy Regulator (AER) is responsible for monitoring and enforcement of the NECF.

2.3 Notice periods as currently enforced in NECF jurisdictions

Rule 46 of the NERR requires retailers, as a minimum, to notify customers on market retail contracts of any variation in their tariffs and charges as soon as practicable, and in any event no later than the customer's next bill. In addition, the retailer must set out in the market retail contract the obligations with regard to notice that the retailer must comply with where the tariffs and charges are to be varied.

This is similar to the requirement in relation to standing offers. Under s22 of the National Energy Retail Law (NERL), a retailer is required to make a standing offer to small customers for whom it is the designated retailer under the retailer's form of standard retail contract, the terms of which are prescribed under the NERL and the NERR. This includes a specific price change notice clause in all standing offer contracts.³ The effect of this clause is that the retailer has to provide details of a price change in the customer's next bill.

2.4 Timing of retail price changes

Price changes in retail energy contracts are driven by a range of factors including variations in wholesale energy costs, network costs, environmental policy costs and retailer costs.

Generally, a price change driven by wholesale costs, environmental policy costs (generally set by state or federal governments) or retail costs can occur at any time of the year. Network costs on the other hand generally change once a year. In particular, transmission and distribution network businesses are subject to a regulatory determination process (for electricity) and an access arrangement process (for gas). Under these processes, the Australian Energy Regulator sets the network business' allowable revenue for a 5-year period.

In addition, for electricity network businesses, an annual pricing proposal is submitted to the AER by 31 March of each year (with the exception of Victorian network businesses⁴). The pricing proposal provides the details of how the allowable revenue will be collected for that year through consumer charges. The AER must approve the annual pricing proposal within 30 days of it being submitted.

³ Item 8.2 of Schedule 1 of the NERR (Model Terms and Conditions for Standard Retail Contracts)

⁴ As the proposed rule only applies to those jurisdictions that have adopted the NECF and the NECF does not apply in Victoria, the timeframes associated with regulatory determination, access arrangements, annual pricing proposals and tariff variation applications for Victoria are not set out.

For gas network businesses, distribution tariffs are generally subject to revision each year of the access arrangement period while transmission pipeline tariffs are comprised of a mix of regulated and commercially negotiated tariffs which may have differing escalation arrangements. The access arrangement or commercial transportation agreement stipulates the timing of any tariff revision which can vary. Generally, most annual updates occur in time for the beginning of the financial year (1 July), but this is not always the case. Furthermore, revisions to the underlying access arrangement can result in tariff changes that are, in some cases, backdated to the beginning of the financial year.

While standing offer contract prices cannot be changed more often than once every 6 months, prices in market retail contracts can be changed at any time if the terms of the market contract allow for this. If a variation clause is included in a market retail contract, rule 46 does not preclude a retailer from changing those tariffs or charges at any time (provided the customer is validly notified). In most cases⁵, in NECF jurisdictions prices change at least on 1 July of each year. The rules under which these prices changes are notified to consumers varies depending on the type of offer the consumer is on (as discussed in section 2.3).

2.5 Timing of receipt of consumer bill

Another component of when a consumer receives notice of a price change under the current rules is when the customer receives their first bill after the price change.

The timing of the customer's next bill after a price change will vary between a few days and three months depending on which particular month a customer has their meter read. Individual customers have their meters read and are billed every three months. Generally one third of customers in a particular distribution area have their meters read in one month, the following third in the next month and the last third in the final month of the quarter. This means for a 1 July price increase, for example, that for some customers the next bill may come relatively quickly after the price increase, but other customers may have to wait up to three months before they are notified of price changes.

2.6 Notice periods as currently enforced in Queensland

The extent to which the NERL applies in each state and territory depends on the legislation passed by each jurisdiction that adopts the NERL.

Queensland has adopted the NERL under section 4 of the National Energy Retail Law (Queensland) Act 2014, but with certain modifications⁶ These modifications are set out in the schedule to that Act and are also prescribed under the National Energy Retail

⁵ In Victoria prices generally change at least on 1 January of each year.

⁶ Sch5, items 8 and item 15 of the National Energy Retail Law (Queensland) Regulation 2014. (<https://www.legislation.qld.gov.au/view/pdf/2014-12-19/sl-2014-0339>); Schedule, item 17 of the National Energy Retail Law (Queensland) Act 2014 (<https://www.legislation.qld.gov.au/view/pdf/asmade/act-2014-049>).

Law (Queensland) Regulation 2014. This means that retailers in Queensland must comply with certain additional requirements that do not apply in the remaining NECF jurisdictions.

The proposed rule in the rule change request mirrors these additional requirements, which have been in operation in Queensland since 2014. This would, in effect, harmonise Queensland requirements in relation to advance notice across the remaining NECF jurisdictions.

The Queensland rule provides for notice to market offer customers at least ten business days in advance for any increase in tariffs or charges applying to the customer, and no later than the next bill for any decrease in tariffs or charges.

In relation to standing offers, variations in prices must be published in a newspaper and on the retailer's website. If the variation is an increase in prices, the publication must occur at least ten business days before the increase starts and the customer must be notified directly in advance of the price increase taking effect. If the price change is a decrease in prices, details of the change must, at a minimum, be included in the customer's next bill. However the requirements to publish price variations, and to notify customers of any price increases in advance, do not apply to retailers in Queensland who sell electricity at regulated prices.

Discussions with retailers and consumer bodies in relation to the Queensland rule already in operation indicate some concern over the consistency with which the rule is currently implemented.

3 Details of the rule change request

The proponents are proposing a rule that would require retailers, at a minimum, to notify market retail customers of price increases ten business days in advance of the change coming into effect. This is intended to replace the existing minimum requirement under rule 46(4) of the NERR to notify as soon as practicable, and in any event no later than the customer's next bill.

The proposed rule would also require the notification of customers on standing offers to be directly notified of price increases in advance of the variation taking effect. The proposed rule also retains the requirement for variations (both increases and decreases) to be published in newspapers and on retailer websites, however:

- for increases, the publication must occur ten days in advance of the increase taking effect (ie, retaining the existing arrangements)
- for decreases, the requirement to publish at least ten days in advance has been removed.

In addition, the proponents have asked the AEMC to consider whether the price change notice should be enhanced to require retailers to include information for the customer to facilitate sourcing a new competitive offer, such as via the Energy Made Easy website.

3.1 Rationale for the rule change request

Consumers right to be informed

The proponents maintain that consumers deserve the right to be informed of any changes to their energy prices when they occur. Armed with advance notice of a price increase, consumers are prompted to shop around and find a better offer. When consumers are better informed and able to shop around for better offers there are potential immediate savings from switching to lower cost offers when prices change rather than shortly after the first billing cycle.

The proponents argue that the current rules (rule 46 of the NERR in relation to market offers and s.23 of the NERL in relation to standing offers) only require notice of price increases by the customer's next bill. As a result the customer may be unaware of a price increase for up to three months after a price change.

Given existing price diversity in the market, the proponents argue that providing advance notice of price increases is likely to prompt greater, and more frequent, engagement in the market with consumers more likely to take advantage of the wide range of deals available. This will then encourage competition between retailers.

Manner of notice critical to success

The manner in which the price change notice is provided to the customer is critical to the effectiveness of the proposed rule. The proponents argue that current requirements in the NERL and NERR do not specify the manner and form of the notice that retailers must provide to consumers when tariffs change. Some retailers, it has been reported,⁷ place relatively small 'price change' notices on bills, which can be easily missed.

In addition, the proponents argue that consumers lack awareness of the AER's online comparison website Energy Made Easy and consider it appropriate to bolster awareness of the site through the proposed notice requirements.

3.2 Proposed solution

3.2.1 Proposed rule

The rule change request includes a proposed rule.⁸

The proposed rule aims to address the issues raised by requiring energy market retailers to provide customers with:

- 10 days' advance notice of price increases on market offer contracts
- Advance notice of price increases on standing offer contracts.

Consistent with the requirements under the new "Notification of end of fixed benefit period" rule made by the AEMC in November 2017, the rule proposal stipulates that the AEMC may consider it appropriate to enhance the price change notice requirements to, for example, clearly state:⁹

- that a price change will occur, the price change and the price change date
- that the small customer may use the price comparator to compare offers that are generally available to classes of small customers in their area
- the name and web address of the price comparator
- that the customer can request historical billing data and/or energy consumption data, from the retailer.

3.2.2 Contribution to the National Energy Retail Objective

The proponents indicate that the disconnect between the date on which a retailer increases a retail price and the date on which the customer is informed of that price

⁷ Rule change request page 5.

⁸ Rule change request pages 6-7.

⁹ Rule change request page 10.

increase can result in the customer paying more. Absent this information asymmetry, a customer armed with the knowledge of an impending price rise will be more likely to seek out less costly alternatives in the market. The proponents consider that as a result the rule provides for more informed customers and will lead to improved customer outcomes.

This change would improve a consumer's capacity to participate in the market with confidence and support consumer choice. The proponents consider that, as a result, the economic welfare of consumers will be maximised over the long term and therefore the proposal is in the long term interests of consumers of energy.

The proposed rule is also expected to result in the more effective operation of competitive processes and an overall improvement in the efficient operation of the market, which is in the long term interests of the consumer.

It is also noted in the rule change request that the implementation of this proposed rule is compatible with the development and application of consumer protections for small customers. Providing greater transparency to consumers which leads to substantive savings is aimed at protecting consumers against bearing unnecessary costs.

3.2.3 Costs, benefits and potential impacts

The proponents consider that advance notice of price changes is likely to have the following costs and benefits.

Benefits

Cost savings for consumers: Consumers may save money through an earlier awareness of price increases. The proponents argued that an individual consumer in NSW, for example, could save up to \$80 by switching retailer three months earlier than they may have under existing rules.¹⁰

Enhanced consumer engagement: The proposed rule will help to engage consumers in the energy market and encourage them to shop around for the best offer. Differences between worst and best electricity retail offers can exceed \$1000 in most distribution areas.¹¹

Improved Confidence in market: Consumer confidence in the market should be improved as consumers are less likely to overlook price increases and should have sufficient time to act on notices. A customer who is provided notice which is insufficient may suffer the same detriment as a customer who receives none.

Reduced risk of bill shock: Consumers will have more information thereby reducing the risk of bill shock and improving their awareness of the choices available to them.

¹⁰ See: rule change request page 5.

¹¹ AER 2017 state of the market report pages 148-150, <https://www.aer.gov.au/publications/state-of-the-energy-market-reports/state-of-the-energy-market-may-2017>

More efficient operation of market: The proposed rule provides an opportunity for additional prompts to engage with Energy Made Easy, consider alternative offers and drive improvements in competition, thereby improving the efficient operation of the market.

Harmonisation of regulation: The proposed rule would also improve compatibility of regulatory provisions in different states, reducing regulatory burden and administrative cost across jurisdictions.

Costs

System changes: The proposed rule will likely require some system changes. For those retailers who are already operating in Queensland, costs to roll out nationally should be minimal.

Electronic communication: Customers are increasingly moving to receiving electronic information from retailers. This is an avenue that can also be used to provide notice of price changes, minimising the cost of implementation of the proposed rule.

Administrative costs should be low: The proponents expect that the administrative cost of implementing the change is likely to be low and can be absorbed by retailers.

3.3 Process for this rule change

Rising retail costs of energy are an issue impacting consumers across the Australian energy market both in relation to electricity and gas. The issue has become more prevalent in the last two financial years as increases principally in the wholesale cost of energy, have contributed to retail price increases for small consumers in a number of states.

It is in this context that the proponents have requested the rule change be made under the expedited process set out in s.252 of the NERL.¹² However, the Commission considers that the rule change request should be subject to the standard rule making process under s.252 of the NERL on the grounds that it does not consider the rule change request to be a request for a non-controversial rule (as that term is defined in the NERL).

The Commission considers that the proposed rule is likely to have a significant effect on a market for energy or the regulation of customer connection services.¹³ This is because the proposed rule requires an increased level of information disclosure to customers that is likely to have implications for the operations of retailers and potentially the costs borne by industry in meeting the requirements of the rule.

¹² Rule change request page 4.

¹³ Section 235 of the National Energy Retail Law

4 Assessment framework

The Commission's assessment of this rule change request must consider whether the proposed rule meets the National Energy Retail Objective (NERO).

4.1 Rule making test

Under the NERL, the Commission may only make a rule if it is satisfied that the rule will, or is likely to, contribute to the achievement of the NERO. This is the decision making framework the Commission must apply.

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.”¹⁴

The NERO captures the three dimensions of efficiency: productive (efficient operation), allocative (efficient use of) and dynamic efficiency (efficient investment).¹⁵

Where relevant, the Commission must also satisfy itself that the rule is "compatible with the development and application of consumer protections for small customers, including (but not limited to) protections relating to hardship customers" (the "consumer protections test").¹⁶

Where the consumer protections test is relevant in the making of a rule, the Commission must be satisfied that both the NERO test and the consumer protections test have been met.¹⁷ If the Commission is satisfied that one test, but not the other, has been met, the rule cannot be made.

There may be some overlap in the application of the two tests. For example, a rule that provides a new protection for small customers may also, but will not necessarily, promote the NERO.

Based on a preliminary assessment of this rule change request, the Commission considers that the relevant aspects of the NERO are the efficient use of energy services with respect to the price of electricity.

¹⁴ Section 13 of the NERL

¹⁵ Productive efficiency means goods and services should be provided at the lowest possible cost to consumers; allocative efficiency means that the prices of goods and services should reflect the cost of providing them, and that only those products and services that consumers desire should be provided; dynamic efficiency means arrangements should promote investment and innovation in the production of goods and services so that allocative and productive efficiency can be sustained over time, taking into account changes in technologies and the needs and preferences of consumers.

¹⁶ Section 236(2)(b) of the NERL

¹⁷ That is, the legal tests set out in s.236(1) and (2)(b) of the NERL

4.2 Proposed assessment framework

To determine whether the proposed rule would be likely to promote the NERO, the Commission will assess the rule change request against an assessment framework. The framework may be refined during the rule change process.

The NERO requires efficiency in the investment, operation and use of energy services in the long term interests of consumers. Where feasible, competitive markets provide the best means of promoting efficiency. Competition can be defined as a process of independent rivalry, where two or more parties (rivals) compete to supply a good or a service to consumers. Where competition is effective, retailers will have strong incentives to provide products and services that consumers value and set prices that reflect efficient costs.

The rule change request seeks to create a requirement for advance notice of price changes and to provide energy consumers with information to assist them in shopping around for alternative contracts. Given the importance of competition in driving efficient outcomes in markets, a key consideration of the AEMC in assessing this rule change request is the degree to which the proposed rule is likely to further promote competition.

Stakeholder views are invited on the proposed assessment framework which includes the following criteria to assess whether the proposed rule is likely to promote the NERO, namely the impact the rule has on:

- **Transparency of information:** Lack of appropriate transparency in the market, and in particular a lack of timely information about price changes, can lead to consumers both losing confidence in, and failing to engage with, the market. The Commission intends to consider the impact of the proposed rule on market transparency and timely information availability, as required for consumers to make informed product and supplier choices.
- **Consumer engagement and participation:** Consumer participation in the market, through actions like changing retailer or contract, provides retailers with information and incentives to develop products that better meet consumer preferences, in terms of price and other terms and conditions. The Commission will assess the proposed rule in terms of the likelihood it will increase the consumer's use of energy comparison websites like Energy Made Easy and the potential for the consumer to review their current offer and move to better offers where they are available.
- **Competition between retailers:** To participate in the market with confidence and in a way that sends the appropriate signals to retailers about consumer preferences, consumers need to have clear and relevant information on retail offers. Where consumers have clear and relevant information on offers, retailers will have greater incentive to provide contract terms that meet consumer preferences because they know their consumers are engaged and have sufficient information to churn to better offers where available. The Commission will assess

the degree to which advance notice and the scope, format and content of advance notices is likely to enable consumers to engage with the market and either churn to a new retailer or new offer and in so doing increase the level of competitive activity between retailers.

- **The regulatory and administrative burden:** The AEMC intends to consider the benefits of the proposed rule change against the implementation costs that would likely pass through to consumers in a workably competitive market. Requiring additional notices to be sent to consumers could create additional costs for retailers, particularly when required outside the billing cycle. The Commission will examine whether this incremental cost is more than offset by the benefits to consumers. The degree to which consistency with the existing rule in Queensland will save retailers costs by harmonising requirements across states will be assessed in implementing this rule. The Commission will consider the impacts on expected benefits and costs of requiring the notice in different forms.

The proposed rule will be assessed against the relevant counterfactual of not making the proposed change to the NERR. That is, against the current situation where energy consumers are not required to receive advance notice of price changes.

4.3 Making a more preferable rule

Under section s.244 of the NERL, the Commission may make a rule that is different (including materially different) from a market initiated proposed rule (a more preferable rule) if it is satisfied that, having regard to the issue or issues that were raised by the market initiated proposed rule, the more preferable rule will or is likely to better contribute to the achievement of the NERO.

5 Issues for consultation

Taking into consideration the assessment framework, a number of issues have been identified for initial consultation. Stakeholders are encouraged to comment on these issues as well as any other aspect of the rule change request or this paper, including the proposed assessment framework.

5.1 Materiality of the issue and potential benefits of implementation

There are two issues raised by the rule change request. Firstly, is that consumers are disadvantaged as a result of not being provided advance notice of price changes. This may result in consumers who are subject to 'bill shock' when they do receive notice of an increase. Secondly, consumers are not provided the opportunity to become engaged and ensure they are on the best offer prior to being subject to the new prices.

Issue 1	Significance of issue
1.	What do you view as the primary purpose of the notice?
2.	Does the delay in notice of a price change negatively impact consumers? Why or why not?
3.	Will advance notice of price changes lead to increased consumer engagement? Why or why not?

5.2 Length of notice period

In initial consultation with a number of stakeholders that have had to apply a similar rule in Queensland since 2014, several stakeholders have said the ten day timeframe is difficult to comply with. It puts stress on postal and call centre infrastructure if all customers have to be notified, and subsequently call in, at the same time.

Retailers also need enough time to assess any network tariff changes. These are normally submitted by the 31st of March in each year for electricity, with the AER then making its decision within 30 business days of receiving the proposal with the new network tariffs then applying on 1 July. This gives the retailer a limited timeframe of around six weeks to assess the impact of the changes, decide on new retail tariffs for the year ahead, update all billing systems and prepare notices to be sent out in accordance with the ten day advance notice period.

For gas retail markets the timing of network cost increases can vary depending on the access arrangement for a particular network or pipeline, but these updates also tend to occur prior to the beginning of each financial year. As per electricity, the AER then makes its decision on new tariffs within 30 business days of receiving the tariff proposal. However, depending on when the tariff revision application is submitted a retailer may have less time to implement new retail charges and notify customers than is the case in relation to the process for electricity network tariff changes.

Under the proposed rule advance notice periods for market offer customers and standing offer customers are different. Customers on standing offers would have to be notified of price increases only in advance. They could also make themselves aware of the increase via the company's website or in the newspaper ten days in advance, assuming these are notices the customer would be looking out for on a regular basis. There may be some benefit from applying the ten day notice period equally to standing offers as to market offers, both for retailers in terms of harmonising the administration of the proposed rule and for those consumers on standing offers.

Under the Retail Pricing Information Guidelines, currently being revised by the AER, retailers have two days to change prices on Energy Made Easy after the offer has been made available to customers. There may as a result be a small timing issue between price notifications to customers and prices customers can see and compare on Energy Made Easy. This may make it more difficult and confusing for customers to accurately compare retail offers.

Issue 2	Length of notice period
4.	Is there a significant benefit to consumers from ten business days' advance notice rather than just advance notice? Why or why not?
5.	Should the same period of advance notice also apply in the case of standing offers? If not, Why not?
6.	What options are available to limit issues that may arise in relation to the difference in the timeframes between the timing for providing notice of price changes and the requirements related to when offers are available on Energy Made Easy?

5.3 Coverage of the notice

The rule change request makes reference mostly to energy and energy prices. The NERL and NERR generally apply equally to both electricity and gas.

Issue 3	Gas
7.	Is there any reason why the proposed rule should not apply equally to both retail electricity and gas contracts?

Both the proposed rule and the existing Queensland rule differentiate between price increases and decreases. Price increases under market offers are seen to require ten business days' notice under the proposed rule while price decreases require notification only with the next bill. Requiring ten days' notice for price decreases as well as increases may have benefits as well as drawbacks. Retailers for example may be in favour of this requirement as it is an opportunity for positive engagement with customers. On the other hand requiring ten business days' notice particularly in the case of small price decreases may be a disincentive on retailers to pass the small

decrease through to customers given the costs associated with providing the advanced notice.

Issue 4	Notice coverage
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- | | |
|-----------|---|
| 8. | Should ten business days' advance notice also be provided in the case of decreasing prices? If not, why? |
|-----------|---|

5.4 The method and contents of the notice

Customers vary in the form of notice and communication they prefer from their retailer. The form of communication that customers prefer is also evolving rapidly as more customers opt for electronic notification and retailers look to move more customers to low cost, flexible forms of communication. In cases where customers have opted for electronic communication, sending paper notices may not be desired by the customer even where this is to make the customer aware of price increases.

Retailers have also developed mobile applications for communication with their customers. The proposed rule does not currently stipulate the way in which market offer customers are to be notified. This may then allow for the retailer to use consumers' preferred method of communication. Alternatively if the view is that advance notice of price changes should be given special attention, postal notices may be considered more effective.

Current requirements in the NERR do not specify the manner and form of the notice that retailers must provide to consumers when tariffs change. Some retailers place relatively small price change notices on bills, which can be missed.

The purpose of the proposed rule is to increase transparency and engagement with the market to help consumers move to the best offer available to them, particularly in an environment of rising prices. However, notice of price changes may be an indirect approach to increasing consumer engagement.

Depending on whether the notice is to inform the customer or alternatively act as a trigger for increased engagement in the market, the contents of the notice may differ. For example, if the purpose is simply to notify, the notice may be more straightforward only containing information on the price change and the effective date. On the other hand, if it is meant to promote engagement, the notice may have to contain additional information. For example this could include the retailer's best offer, the comparison website and a note about any possible timing limitation between the offer in the notice (10 days before it becomes effective) and the offers on the comparison website, which have to be uploaded no later than two days after they become available.

Issue 5 Method and contents of notice

9. **What methods, if any, should be specified in the rule (for example: letter, email, website or app) as sufficient for informing the customer of price changes?**
10. **Should the method of advance notice be specified in the rule or should the method of notice be left to the retailer?**
11. **What information, as a minimum requirement, should be contained in the price variation notice? Why?**
12. **Is this dependent on your view of the purpose of the notice, either as purely a notification of a price increase or a prompt to engagement?**
13. **Is there any other information not identified by the proponents that should be included in the notice? If so, what? What purpose should it serve?**

5.5 Exemptions

The proposed rule does not explicitly refer to exemptions. The Queensland rule exempts retailers that are subject to notified prices set by the minister for price-regulated areas outside of south east Queensland where there is no effective competition.

Because of timing differences between the ten day requirement for advance notice to customers and the requirement on Energy Made Easy to update offers on the site no later than two days after new offers are made, consumers may be prompted to churn as a result of advance notice to a retailer that has not yet updated Energy Made Easy for price increases.

However, the consumer would be made aware of forthcoming price increases with their new retailer when they enter the new contract. A short term exemption may be appropriate where a retailer has recently acquired a consumer and the consumer was made aware of a near term increase in prices due under their new contract at the time the contract was entered into.

Issue 6 Exemptions

14. **Should businesses that have their prices set by the regulator be exempt from the proposed rule?**
15. **Should a retailer be given an exemption if it acquires a customer that was informed of the future price increase at the time the customer switched to the retailer?**

- 16. If this exemption is included in any rule made, what terms, conditions or restrictions should apply so it only captures consumers who have churned as a result of being provided a price change notice?**

5.6 Commencement date

The proponents suggest a commencement date of 1 June 2018 for the proposed new retailer obligations, so that the proposed rule could be in force by 1 July 2018.¹⁸

However, it is recognised that it will be necessary for retailers to update systems and processes in order to implement any rule made. This will take some time depending on the systems and processes and will vary by retailer.

Issue 7 Commencement Date

- 17. How long from when a final rule is made, if found appropriate, would it take to make the required changes to implement the rule?**
- 18. Besides billing systems changes, are there any other systems or processes that would need to be made before any final rule could be implemented?**

¹⁸ Rule change request pages 7 and 10.

6 Previous work

The AEMC has previously made rule changes and recommendations aimed at increasing both the amount of information available to consumers and their level of engagement and participation in the market.

On 9 and 30 August 2017 the Prime Minister announced agreement from the seven largest retailers on a range of measures to improve outcomes for electricity consumers.

The fixed benefit rule completed in November 2017 and the current rule change on preventing discounts on inflated energy rates, were both developed following the Prime Minister's meetings with energy retailers last year.

The Prime Minister's meetings looked at the key issue of affordability, with a priority being that consumers have increased transparency about their bills.

6.1 National Energy Retail Amendment (Notification of the end of a fixed benefit period) Rule 2017

On 7 November 2017 the AEMC made a final rule under 48A and 48 B of the National Energy Retail Rules (NERR) requiring electricity and gas retailers to notify small customers when benefits, such as price discounts, provided to them for a minimum or fixed period in their retail contracts are ending or changing.¹⁹

The rule's key requirements apply only to retailers with small customers on market retail contracts for electricity or gas where the contract provides a benefit to the customer (such as a price discount) for a minimum period or fixed benefit period that does not continue for the life of the contract.

The rule commenced on 1 February 2018 with retailers obliged to send notices with simple information to relevant customers. This information includes:

- a statement that the customers benefit will change and the date on which this will happen
- a reference to the AER's price comparator website Energy Made Easy
- reference to the customers' ability to request historical billing data to assist in using Energy Made Easy.
- any early termination charges payable under the contract.

¹⁹ Final determination,
<https://www.aemc.gov.au/sites/default/files/content/319fe7ad-6136-4daf-b4ce-41a975b53360/RC0010-Determination-Notification-of-the-end-of-fixed-benefit-period.PDF>

By 1 July 2018, the AER will publish guidelines on more detailed information in the Retail Pricing Information Guidelines (RPIG). Retailers must commence including this detailed information in notices to relevant customers no later than 1 October 2018.

The guidelines will specify the information a customer needs to use Energy Made Easy to compare different offers. The AER may also include additional information in the guidelines, for example, information to allow a customer to compare the amount they were billed in the benefit period with amounts they would be billed under available offers. This will help to ensure a consistent approach between different retailers so consumers are able to calculate and compare different offers.

As part of the rule change, the Commission also recommended that the requirements to notify customers be made a civil penalty provision.

Issue 8	Conflicts with notices
19.	Do any conflicts arise in relation to the operation of the notification of the end of a fixed benefit period rule and the proposed rule?
20.	If yes, how could the conflicts be resolved?

6.2 National Energy Retail Amendment (Retailer price variations in market retail contracts) Rule 2014

On 23 October 2014 the AEMC made a final rule to improve the information given to consumers when entering retail energy contracts. The rule required retailers to better inform consumers about any terms and conditions relating to price changes on contract entry, enabling consumers to engage more confidently in retail energy markets and make decisions that they consider better meet their needs. The rule commenced on 1 May 2015.²⁰

A new rule 46A was introduced into the NERR requiring retailers to clearly, fully and adequately disclose any term or condition in a market retail contract that provides for variation of tariffs, charges or benefits to the customer prior to the entry by the customer into the contract with the retailer.

Rule 64 was also amended, requiring a retail marketer to provide a small customer information in relation to non-price charges and benefits, and also to advise the customer of when changes to prices will be notified to them by the retailer.²¹

This proposed rule differs from these changes in that, among other things, it requires information to be provided during the term of a contract, rather than on contract entry.

²⁰ Australian Energy Market Commission, Rule Determination, National Energy Retail Amendment (Retailer price variations in market retail contracts) Rule 2014, 23 October 2014.

²¹ <https://www.aemc.gov.au/rule-changes/retailer-price-variations-in-market-retail-contrac>

The AER is currently in the process of completing version 5 of the Retail Pricing Information Guidelines. The draft Guidelines include a number of proposed changes to address the complexity of the energy plan and price information available to customers and make it easier for customers to compare energy plans. These changes seek to increase customer engagement and confidence in the retail energy market.

6.3 Previous AEMC reviews

The AEMC's reviews of competition in retail energy markets have consistently found that consumers' ability to change to the most cost effective offer is limited by their awareness of alternative offers and their understanding of the differences between offers.²²

The AEMC has put forward a number of recommendations aimed at addressing the challenge of providing consumers with the information they need to compare offers and choose an energy plan that suits them. The first three recommendations in our 2017 retail energy competition review were aimed at increasing customer awareness and information transparency of retail market offers.

The review also indicated that the AER may need to consider whether amendments to its retail pricing guidelines are required or whether rule change requests need to be made to the AEMC.

²² AEMC Supplementary Report: Increasing Consumer Engagement, 31 October 2013, Section 3.1; AEMC Final Report, 2014 Retail Competition Review, pp.21-30; AEMC Final Report, 2015 Retail Competition Review, pp.34-38; AEMC Final Report, 2016 Retail Competition Review, pp.39-44; AEMC Final Report, 2017 Retail Competition Review, pp.77-100.

7 Lodging a submission

The Commission has published a notice under s.251 of the NERL for this rule change proposal inviting written submission. Submissions are to be lodged online or by mail by 24 May 2018 in accordance with the following requirements.

Where practicable, submissions should be prepared in accordance with the Commission's Guidelines for making written submissions on rule change requests²³ The Commission publishes all submissions on its website subject to a claim of confidentiality.

All enquiries on this project should be addressed to Russell Pendlebury on (02) 8296 7800.

7.1 Lodging a submission electronically

Electronic submissions must be lodged online via the Commission's website, www.aemc.gov.au, using the "lodge a submission" function and selecting the project reference code RRC0015. The submission must be on letterhead (if submitted on behalf of an organisation), signed and dated.

7.2 Lodging a submission by mail

The submission must be on letterhead (if submitted on behalf of an organisation), signed and dated. The submission should be sent by mail to:

Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

The envelope must be clearly marked with the project reference code RRC0015.

²³ This guideline is available on the Commission's website www.aemc.gov.au

Abbreviations

AER	Australian Energy Regulator
Commission	Australian Energy Market Commission
NECF	National Energy Customer Framework
NEL	National Electricity Law
NERL	National Energy Retail Law
NERO	National Energy Retail Objective
NERR	National Energy Retail Rules
RPIG	Retail Pricing Information Guidelines