



17 April 2018

Ms Anne Pearson  
Chief Executive  
Australian Energy Market Commission  
PO Box A2449  
Sydney South NSW 1235

Dear Anne

### **AEMC Reference RRC0012 – Preventing discounts on inflated energy rates**

Thank you for the opportunity to comment on the “*AEMC Consultation Paper - National Energy Retail Rule Amendment (Preventing discounts on inflated energy rates) Rule 2018*”.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers. Our comments are informed by our investigations into these complaints as well as via our Community Outreach program.

EWON welcomes this rule change proposal as just one step in addressing the current lack of consumer confidence emanating from, amongst other things, concerns about current market options. These concerns have been raised in reviews such as the AEMC 2017 Retail Energy Competition Review, the Thwaites review in Victoria and the ACCC Retail Electricity Pricing Inquiry. EWON notes that the Australian Energy Regulator (AER) has already addressed some issues through its revision of the Retail Pricing Information Guideline.

As the Consultation Paper identifies, most, but not all, retailers have changed their practice since the ACCC took action under the Australian Consumer Law, and current industry practice is to discount from standing offer rates.<sup>1</sup> In proposing to make this industry practice a Rule, the AEMC is introducing a level of transparency that will assist in strengthening consumer confidence in energy markets.

### **A good step forward but...**

EWON has two significant concerns.

EWON’s first concern is about unintended consequences. The Consultation Paper identifies a key risk is that retailers may inflate standing offers to avoid the risk of non-compliance.<sup>2</sup> The impact of this risk is that the standing offer of the local area retailer is the reference price for customers of exempt entities under the *AER (Retail) Exempt Selling Guideline*. Therefore such inflation would adversely impact customers who have difficulty accessing the market for alternative offers. Accordingly mitigating this risk has to be further considered as part of this Rule change process.

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<sup>1</sup> P26 *AEMC Consultation Paper - National Energy Retail Rule Amendment (Preventing discounts on inflated energy rates) Rule 2018*.

<sup>2</sup> P21 *ibid*

One possible solution for this problem is to have the AER monitor the standing offers of local area retailers and, if there is an inflation of the standing offer prices, to establish an alternative reference price in the Exempt Selling Guideline. However this would not be a timely solution. Accordingly, further consideration needs to be given to this issue before the final rule determination.

EWON's second concern is the AEMC proposed approach, which requires either consumption or the daily supply charge in the market offer to be below those in the standing offer in order for that market offer to be valid. This approach would mean that a valid market offer could have a daily supply charge that is below the standing offer and a significantly higher usage charge than the standing offer. Further, a discounting rate, if applied, may obscure the actual costs associated with the contract.

While an offer that reduces the daily supply charge in return for higher usage costs could be attractive for a single elderly person with low consumption, the inverse applies for a high consumption consumer such as a large family or a vulnerable consumer in poor quality rental accommodation with high usage appliances.

In the Consultation Paper there is consideration for providing the AER with discretion to apply a 'materiality' test on the value of added benefits and services offered in a market contract in establishing equivalence with a standing offer.<sup>3</sup> This approach should also be put in place for market offers which, while valid, have a below standing offer element, e.g. daily supply charge, which is negated by a much higher element, e.g. usage charge.

Such an approach would, in both instances, at best, influence retailers to design market offers which meet the spirit of effective competition and are aimed at regaining positive consumer confidence. Or if required, the discretion would enable the AER to disallow market offers which, while meeting the letter of the rule, are detrimental and perhaps non-transparent to consumers.

It is important to allow retailers the room to innovate and offer products that meet customer's needs and the above approach would achieve this, **and** the rule proponents stated intention of preventing:

*"the practice of applying discounts to rates that significantly exceed the base rate as represented by the retailer's standing offer."<sup>4</sup>*

If you would like to discuss this matter further, please contact Rory Campbell, Manager Policy & Research, on (02) 8218 5266.

Yours sincerely



**Janine Young**  
**Ombudsman**  
**Energy & Water Ombudsman NSW**

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<sup>3</sup> P32 *ibid*

<sup>4</sup> P6 *ibid*