

Our Ref: EWOQ/18/0058



17 April 2018

Australian Energy Market Commission  
GPO Box A2449  
SYDNEY SOUTH NSW 1235

[www.aemc.gov.au](http://www.aemc.gov.au)

**Re: Project Reference Code RRC0012  
Consultation Paper – National Energy Retail Amendment (Preventing discounts on inflated energy rates) Rule 2018**

Thank you for the opportunity to make a submission on the Australian Energy Market Commission's (AEMC) Consultation paper for the National Energy Retail Amendment NERA (Preventing discounts on inflated energy rates) Rule 2018 (the consultation paper).

**Background to the Energy and Water Ombudsman (EWOQ)**

EWOQ provides a free, fair and independent dispute resolution service for small electricity and gas customers across Queensland and water customers in south east Queensland who are unable to resolve a dispute with their supplier.

In our submission, we have only provided responses to the questions based on our experience as an external dispute resolution scheme dealing with residential and small business energy customer complaints in Queensland.

EWOQ is very supportive of any proposal which aims to improving outcomes for electricity consumers including those which focus on increased transparency from retailers around electricity market offers and prices.

Specifically we are supportive of any change assessed by the AEMC likely to promote the transparent provision of clear information to facilitate consumer choice. We agree that customers should have the information they need to compare and choose products and services they value at prices they are willing to pay.

We understand the rule change proposed by the Federal government in December 2017 aims to prohibit a retailer applying a discount to a market retail contract if any of the rates in the contract are higher than the retailer's equivalent standing offer rates, and we support its intent to prevent behaviour that could be considered confusing for the average customer who may be misled by the practice of discounting inflated prices.

One of our key priorities is to raise awareness and proactively promote our services to energy customers within our jurisdiction, including the Aboriginal and Torres Strait Islander Community, Culturally and Linguistically Diverse customers and the older Australians. With these customers in mind, we support the restriction of retail practices which are not in the interest of consumers.

## Assessment Framework

We understand the AEMC will assess the extent to which the proposed rule and alternatives are likely to promote information provision that facilitates informed consumer choices. To perform our role and to achieve a fair and reasonable outcome, we endeavour to take into account the rights and responsibilities of both the customers and the scheme participants under relevant legislation, codes and standards. With this in mind, we support the AEMC's choice of assessment framework which evaluates the rule against the criteria of transparency of information; regulatory and administrative burden on market participants and facilitating service and tariff information.

### Issues raised in the rule change request

#### **Question 2 Standing Offers and consumer confusion**

Do stakeholders agree that retailers applying discounts in market offers to rates above that retailer's standing offer rates is inherently confusing?

In principle, we support practices that promote transparency and consistency to enable all customers to better engage in the market in a meaningful way. For this reason we agree that applying discounts to market offers with rates above the equivalent standing offer rates could lead customers to believe the discount is of relatively greater value than it is because the base rate is inflated.

#### **Question 4 Appropriateness of Australian Consumer Law (ACL) and Retail Pricing Information Guidelines (RPIG)**

Are the ACL and the RPIG generally the appropriate mechanisms to govern retailers making and advertising market offers to customers?

We support the role of the ACL and RPIG in how retailers make and advertise market offers to consumers because they provide a framework for how retailers operate and outline what consumers should expect in terms of pricing information quality.

#### **Question 5 Civil penalty recommendation**

Should a civil penalty provision be added to sections 25 and 37 of the National Energy Retail Law, in respect of the requirement to present standing and market offers in accordance with the RPIG? What would be the benefits of doing so? What would be the costs?

As evidenced by our submission of 16 March 2018 on the Draft AER RPIG, we support the proposed RPIG which ensure retailers provide consistent, simple and transparent information to assist customers to better engage with the market and understand and compare plans best suited for their circumstances. We agree that introducing a civil penalty will strengthen the RPIG and agree this will avoid legal costs associated with having to pursue action under the ACL whilst enabling the AER to issue an infringement notice with penalties of up to \$20,000 (for a body corporate).

#### **Question 6 Direct prohibition within the NERR**

Should some specific types of market retail contracts be expressly prohibited under the NERR?

In line with our consumer protection role, we do not agree with the practice of retailers intentionally confusing customers with discounting inflated rates. If it is assessed that these offers have the potential to cause confusion and can never be in the long term interests of consumers, we can see the value in direct prohibition.

**Question 9 Materiality and discretion for the AER**

Do you think the concept of materiality for differences between tariff structures and benefits and services in standing offers and market retail contracts is appropriate?

We agree that it is appropriate to consider the concept of materiality for differences between the market retail contract and the standing offer with regards to tariff structures (energy payments and rates) and benefits and services. This will give the AER discretion and scope to decide on what an equivalent standing offer is and also reduce the ability for retailers to make small changes to offers to remove equivalences.

**Question 15 Likely response to a rule reflecting the indicative drafting**

What would be the expected response of retailers to a rule implementing the indicative drafting?

We support the AEMC's proposed assessment framework involving the assessment of the extent to which the rule change is likely to restrict retail offers and the side effects of the restrictions including the possibility of increases to standing offers as well as reducing the freedom of retailers to develop innovative services and tariffs that consumers value.

We note the AEMC must also, where relevant satisfy that the rule is compatible with the development and application of consumer protections for small customers including those relating to customers in hardship. We encourage the AEMC to consider vulnerable groups in their assessment of the rule change and the expected response of retailers.

**Question 17 Civil penalties for part one of the initial position**

Is a civil penalty recommendation for a rule reflecting the Commission's initial position in the consultation paper appropriate?

We agree that a civil penalty recommendation may be appropriate. As well as sending a strong signal to retailers, we also think a civil penalty aligns with the aim of the rule which is to strengthen the RPIG.

**Question 20 Complementarity of the rule change to current arrangements**

Given the current regulatory arrangements does the rule change complement these arrangements and address discounting practices which can cause confusion and consumer detriment?

We agree that the combination of the introduction of prohibition through the NERR will complement ACL and the proposed RPIG with the introduction of the civil penalty provision in the regulation of discounting in the retail energy markets. We endorse the proposed hierarchy of regulatory arrangements on discounting in retail energy markets presented in Figure 4.1 of the consultation paper.

**Question 21 Complementarity of the rule change to potential future arrangements**

Would a final RPIG including the comparison pricing table requirement in the draft RPIG published 30 January 2018 reduce the need for, or reduce the benefit for, a potential rule on this rule change request? Are there other aspects of the draft RPIG that would reduce the need for, or reduce the benefit of such a rule?

A comprehensive final RPIG will not, in our view, reduce the need for or benefit for a potential rule change. Given that each part of the proposed framework deals with a different part of regulating discounts, we believe the combination sends a strong message to all stakeholders about reducing barriers to the market and offers a holistic solution with each part strengthening the position of the other.

Although consumers will be able to compare and contrast market offers on EME, comparing like with like, the rule change addresses deliberate attempts by retailers to confuse customers for profit.

**Question 22 Consideration of retail gas**

Is there a reason why a rule made in response to this rule change request should not cover retailer gas offers? Is there a case to exclude gas from a rule, or to treat retail gas differently from retail electricity?

In principle, we would support any proposed rule made in response to this rule change request to prevent or prohibit gas customers from being deliberately misled or confused by retailers.

In principle, we endorse the AEMC's proposed package of regulatory arrangements as presented in the consultation paper and agree with the AEMC's assessment that it aligns with the electricity energy objective, focusing on the promotion of consumers' interests in the longer term and allowing consumers to better engage with the retail energy market.

Thank you for the opportunity to contribute to this consultation paper. If you require any further information regarding this matter please contact Ms Ilona Cenefels, General Manager – Reporting, Policy and Research on 07 3087 9455.

Yours sincerely,



**Jane Pires**

Energy and Water Ombudsman