

3 September 2018

Ms Shari Boyd  
Director  
Australian Energy Market Commission

By email: [shari.boyd@aemc.gov.au](mailto:shari.boyd@aemc.gov.au)

## **National Energy Retail Amendment (Advance notice of price changes) Rule 2018 (RRC0015)**

Energy Consumers Australia is the national voice for residential and small business energy consumers. Established by the Council of Australian Governments Energy Council (the Energy Council) in 2015, our objective is to promote the long-term interests of energy consumers with respect to price, quality, reliability, safety and security of supply.

We appreciate the opportunity to comment on the National Energy Retail Amendment (Advance notice of price changes) Draft Rule Determination 2018 (the Draft Rule). This letter sets out our response on the Draft Rule and draws from our original submission.<sup>1</sup>

Energy Consumers Australia supported the earlier rule change that inserted rule 48B in the National Energy Retail Rules (NERR)<sup>2</sup>. This requires retailers to notify small customers, via benefit change notices (notice), when a benefit provided to them through their market retail contract is expiring or changing. We also supported the rule change aimed at preventing discounts on inflated energy rates.<sup>3</sup>

We also support this rule change proposal. These rule changes, and the Draft Rule, are addressing market design issues that have complicated the market for households and small businesses and ultimately contributed to them paying more they need to for their electricity and gas services.

This is reinforced in the Australian Competition and Consumer Commission's (ACCC) final report on its Retail Electricity Price Inquiry (the ACCC Final Report)<sup>4</sup> which provides a full and frank assessment of the industry and regulatory framework. We note that the ACCC has concluded:

*"The approach to policy, regulatory design and promotion of competition in this sector has not worked well for consumers. Indeed, the National Energy Market (NEM) needs to be reset."*

### **Our response to the Draft Rule**

In summary, our response to the Draft Rule is as follows.

1. We welcome that the Draft Rule:
  - a. applies to standing offers and market offers of both gas and electricity retail contracts;
  - b. customers are notified of both price decreases and price increases;
  - c. the notices be delivered to customers through the customer's preferred form of communication (where indicated to the retailer); and

<sup>1</sup> <http://energyconsumersaustralia.com.au/publication/national-energy-retail-amendment-submission/>.

<sup>2</sup> <http://energyconsumersaustralia.com.au/publication/proposed-rule-notification-end-fixed-benefit-period/>.

<sup>3</sup> <http://energyconsumersaustralia.com.au/publication/preventing-discounts-off-inflated-energy-rates-submission/>.

<sup>4</sup> <https://www.accc.gov.au/regulated-infrastructure/energy/electricity-supply-prices-inquiry/final-report>.

- d. requires that retailers inform customers on the notice that they can request historical billing and energy usage data to assist them in assessing the impact of the price change

2. However, we note:

- a. the primary purpose of the Draft Rule is narrower than what was originally contemplated, being now about consumers' right to be informed about price increases before they occur and avoiding "bill shock";
- b. while notices must clearly state that a price change will occur, including a comparison of the existing and new tariffs and charges, and the date on which the change will take place, there is no requirement that the notice include guidance to empower a consumer to act on this information;
- c. the notice period has been reduced from the proposed 10 days to 5 days, and now is inconsistent with the Queensland derogation;
- d. there is no review of the Draft Rule to ensure that it achieves its stated objectives and metrics to determine whether these are being achieved; and
- e. there will need to be a strong focus on enforcement and monitoring effectiveness.

These issues are discussed in more detail below.

### **The purpose of the Draft Rule**

Before addressing the purpose of the Draft Rule, it is important to understand the concerns consumers have with energy markets.

Consumers are telling us that they do not receive value for money for the electricity services, and confidence that the market is working in consumers' interests is low.

In the most recent survey, consumers' confidence that they can effectively manage their energy use and costs fell. In June 2018 only 58% of consumers are confident in their ability to manage their use (down 11%), while half of consumers say they have enough easily understood information available to help them make good decisions about their energy supply (50% down 7%) or the right tools (46%, down 7%).<sup>5</sup>

We must re-build confidence in the market and empower consumers with services, tools and information, to help them get control of their energy use and costs.

The rule change request argued that the purpose of the notice is to ensure consumers are informed about changes to their energy prices before they occur, to avoid bill shock, and that consumers should be provided with the opportunity to shop around for the best offer.

We are concerned that the primary focus of the Draft Rule, as stated by the Australian Energy Market Commission (Commission) is simply the consumer's right to be informed of price increases before they occur and the avoidance of "bill shock" (page 15). It is not clear how this primary focus furthers the National Energy Retail Objective (NERO):

---

<sup>5</sup> <http://energyconsumersaustralia.com.au/publication/energy-consumer-sentiment-survey-findings-december-2017/>

*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 impact of this reduced scope is that the Draft Rule does not fully consider how it enables (or otherwise) the consumer to respond to the price changes in a meaningful way. This was one of the major objectives of the Rule Change Proposal. The impact of this reduced scope is highlighted further below.

### Information included in the notices

In Energy Consumers Australia's original submission, we stated that the rules should be sufficiently detailed and clear to be enforceable but avoid being prescriptive about detailed conduct such as the form of notices. We took this position because the focus should be about how best to achieve the objectives of the rule and metrics to determine whether these were being achieved. We recommended that the rule's implementation be informed by behavioural insights research, to track the range of consumer responses and most importantly, outcomes.

As this approach does not appear to be at all contemplated by the Draft Rule, we would suggest that the responsibility for the content and form of the notice be set by the Australian Energy Regulator (AER). This could then be pursued in line with the work that it has been doing on the Retail Information Pricing Guidelines<sup>6</sup> and the Benefit Change Notice Guidelines<sup>7</sup>, informed by behavioural economic research.

In this context, we would expect that the AER's work on the Guidelines for the Advance Notice of Price Changes could consider variations to the notice such as:

- incorporating a percentage change representation of the price variations (e.g. price increase of 6% or decrease of 2%); and
- referencing the ways that consumers can engage in the market. For example, the notice could incorporate:
  - the retailer's best offer;
  - "information about the ability of the small customer to choose an alternative retailer to purchase customer retailer services" (analogous to the Queensland derogation in relation to the expiry of fixed benefits); and
  - a reference to comparison sites, such as the Energy Made Easy (EME) website noting the timing of price changes being reflected on EME (i.e. check EME on 1 July for updated price offers).

This approach would also allow the AER to ensure that consumer insights are accounted for in the content and form of the notice and for flexibility in terms of the notices. It would also allow for the purpose of the Draft Rule to be tested from the perspective of the outcomes for consumers.

### Reducing the notice period

The intent of the proponents of the rule change – Minister Frydenberg and Minister Harwin – was clear. Consumers were to benefit from being advised in advance of price changes and given the opportunity to find a better offer:

---

<sup>6</sup> <https://www.aer.gov.au/retail-markets/retail-guidelines-reviews/retail-pricing-information-guidelines-2018>.

<sup>7</sup> [https://www.aer.gov.au/system/files/AER%20Benefit%20Change%20Notice%20Guidelines%20-%20June%202018\\_0.pdf](https://www.aer.gov.au/system/files/AER%20Benefit%20Change%20Notice%20Guidelines%20-%20June%202018_0.pdf).

*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. As IPART noted in its report, when looking at other sectors that supply retail services under ongoing contracts, most terms and conditions provide for price changes only with prior notice. Ensuring energy customers also have this information is key to assisting them to shop around, and to putting more pressure on retailers with the effect of driving down prices.<sup>8</sup>*

Further, the proponents of the rule change stated that:

*this notice should be provided in sufficient time prior to a price change, and with sufficient clarity, to allow the consumer to consider their options.*

To this end the proponents drafted the rule change to apply to market offers as follows:

*The notice must be given–*

*(a) if the variation results in an increase in the tariffs and charges applying to the customer – at least 10 business days before the variation to the tariffs or charges are to apply to the customer; or*

*(b) if the variation results in a decrease in the tariffs and charges applying to the customer – as soon as practicable, and in any event, no later than the customer’s next bill.*

Similar drafting was proposed for standing offers. We note that the proponents stated that:

*The form of the proposed revision to rule 46(4) mirrors an existing derogation to the NERR that has applied in Queensland since 2014. The proposal would therefore have the beneficial effect of harmonising the notice requirements across the remainder of the National Energy Consumer Framework (NECF) jurisdictions.*

We are disappointed that the Draft Rule only requires that consumers are given five days’ notice of price changes. This is half the time of the original Proposed Rule and the Queensland derogation. We note the Commission’s commentary on the need to balance the commercial and operation requirements of retailers against the time needed by consumers to be informed and prevent price shock.

We believe that the question of whether five days or ten days’ notice provides the better outcome is a matter that would ideally be tested by randomised control trials. Five days’ notice may not be sufficient for a consumer to take appropriate action. Alternatively, some might argue that assuming the consumer receives the notice five days in advance (as opposed to it being sent five days in advance) it provides consumers with a higher sense of urgency to act immediately.

Absent evidence that there are commercial issues for retailers or other reasons not to opt for ten days, there is a strong case to align the period with Queensland and support harmonised outcomes.

---

<sup>8</sup> Joint Rule Change Proposal of the Australian and New South Wales Governments to the Australian Energy Market Commission, page 3, [https://www.aemc.gov.au/sites/default/files/2018-04/Rule%20change%20proposal\\_2.pdf](https://www.aemc.gov.au/sites/default/files/2018-04/Rule%20change%20proposal_2.pdf)

### Monitoring effectiveness

For the purposes of better understanding how consumers respond to the additional information, Energy Consumers Australia proposes that a further addition be made to the Draft Rule. This will require a retailer to report to the AER four months after a price change:

1. The number of customers who were affected by the price change;
2. The number of customers to whom a notice of the price change was sent;
3. The number of customers who either changed plans or provider after the notice was sent and before the next bill as received; and
4. The number of customers who either changed plans or provider after the notice was sent and the next bill received within three months of the price change.

The AER would be required to include in its public reporting, the information at 2 above as a percentage of the information at 1, and information at 3 and 4 above as percentages (to two decimal places) of 2.

### Conclusion

Energy Consumers Australia supports changes to the rules that ensure consumers are notified about price changes and are empowered to respond, as was the clear intention of the proponents.

We welcome the Draft Rule applying to standing offers and market offers of both gas and electricity retail contracts and notifying customers of price decreases and price increases. We also applaud the fact that the notices are to be delivered to customers through the customer's preferred form of communication (where indicated to the retailer) and require that retailers inform customers on the notice that they can request historical billing and energy usage data to assist them in assessing the impact of the price change.

We do however see real value in additional market research and alternative designs to be considered and incorporated in the Draft Rule, in particular:

- the contents of the Draft Rule are determined by the AER in guidelines developed through behavioural economics research into how consumers respond to the notices; and
- the notice period is at least 10 days to enable consumers to respond to the price changes.

If you have any questions regarding our submission, please contact Sabiene Heindl, Director Strategic Engagement on 02 9220 5500 or [sabiene.heindl@energyconsumersaustralia.com.au](mailto:sabiene.heindl@energyconsumersaustralia.com.au).

Yours sincerely,

Chris Alexander  
Director Advocacy and Communications