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Consultation paper – regulating conditional discounting

AGL Energy (AGL) welcomes the opportunity to comment on the Australian Energy Market Commission's (AEMC) consultation paper on regulating conditional discounting practices by energy retailers.

AGL has and continues to support the transparency of product design, including clear disclosure of discount levels and conditions. We have also advocated for and supported the development of a reference price so that consumers are empowered to easily compare and choose the most appropriate product based on their circumstances.

To help consumers engage and understand the market, we have been focusing our product suite on clear, simple offers for customers. We introduced our Essentials product (2018) and Essentials Plus Product[1] (January 2019) which are no-discount, fixed underlying rate products.

As the AEMC is aware, the market has undergone a substantial regulatory shift since the proponents conducted analysis on the market and prepared the proposed Rule change. This includes the AEMC's rule change on preventing discounts on inflated energy rates and the Default Market Offer (DMO). In particular, the introduction of the *Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019* (the Electricity Code) has had profound impacts on the market including:

- restricting conditional discounts from being the headline offer feature, and:
- requiring discounts to be calculated against the reference price.

In the recent Australian Competition and Consumer Commission (ACCC) Report[2], and the Australian Energy Regulator's (AER) Affordability Report, it has been observed that discounting practices were an area where significant shifts in retailer behaviour have clearly occurred from 1 July 2019. The AER further note that overall, the trends suggest retailers used the introduction of the DMO to rationalise their range of market offers and, in many cases, simplify their offerings by moving away from conditional discounts.[3] The same

[1] Additional benefits (credits) are received every 6 months the customer remains on our Essential Plus product.
[2] ACCC Inquiry into the National Electricity Market, August 2019.
[3] Australian Energy Regulator Affordability report September 2019, p.p4.1 and 43

retailer practice shift is also noticeable in relation to gas products. A cursory scan of the EnergyMadeEasy (EME) website shows there is only a limited number of pay-on-time discount gas products offered by a select few retailers, and those discounts appear to also be sitting at about 10%.[4]

Given the above, it is our position that it is too early for the AEMC to make a determination on whether conditional discounts require further regulation. A no-rule determination would therefore be appropriate until more data is available on the state of the current market and a clearer picture of retailer behaviour in the new regulatory environment is assessed. The AEMC Annual Competition Review may be an appropriate point to review the market and determine whether the proposed rule is required or not.

However, if the AEMC determine that a Rule change is necessary, we encourage a conservative regulatory response that consider the severity and scope of ongoing consumer detriment, this could include:

- Limiting the scope of the Rule to only capture conditional pay on time discounts (particularly as excessive conditional pay on time discounts are characterised as the potentially most harmful to consumers). We encourage the AEMC to ensure that product attribute conditional benefits are not captured, for example:
    - Dual fuels (where a customer receives an additional discount on their energy bills if they have both electricity and gas with a retailer).
    - Digital-only that is available where a customer acquires online and receives a discount for utilising direct debit.
- A recognition of the difference between a cost (or penalty) and a benefit to ensure that product innovation and consumer choice is not unnecessarily limited. Given the role of explicit informed consent (EIC), we do not necessarily agree that a missed benefit should be characterised as a penalty. Particularly given the new obligations for discounts to be calculated against the reference price.

Finally, while we do not believe a Rule change is necessary or appropriate at this time, should the AEMC progress with a change we suggest that option 3 (a simple percentage cap) is adopted. This option would be the most appropriate in ensuring consistent, fair and transparent outcomes for consumers. However, if the AER are given the power through a guideline to set the cap, we encourage the AEMC to set clearly defined parameters for the AER's ability to set this cap.

If you have any questions, please contact Kat Burela at kburela@agl.com.au or 0498001328.

Yours sincerely

[Signed]

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[4] Scan of EnergyMadeEasy gas offers for a 2-3 person household with varying postcodes across NSW, QLD and SA (3 per jurisdiction) on 16 September 2019.